

CONWAY

CIVIL SERVICE COMMISSION

RULES AND REGULATIONS

Foreword

The following Rules and Regulations of the Conway Civil Service Commission (the “Commission”) are promulgated pursuant to the authority of the Ark. Code Ann. § 14-51-301(a)(1)(Michie Supp. 1999), as amended from time to time.

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CHAPTER 1

GENERAL PROVISIONS

Section 1 Applicability

Pursuant to the authority of Conway, Ark. Ord. No. 18,501 (June 5, 2001), these rules and regulations shall apply to sworn members of the Conway Police Department ("CPD") and Conway Fire Department ("CFD").

Section 2 Amendment of Rule

New rules and regulations, and amendments to existing rules and regulations may be adopted by the Commission after giving thirty (30) calendar days' notice and holding at least one (1) public hearing on the proposed new or amended rules and regulations. All public hearings shall be reported by a certified court reporter.

Section 3 Meetings

The Commission's annual meeting date shall be on the first Monday of May. When necessary, special meetings may be called by any member of the Commission, provided that the notice requirements of the Arkansas Freedom of Information Act are followed.

Section 4 Quorum

For purposes of all business, three (3) members of the Commission shall constitute a quorum.

Section 5 Election of Chair

The Chair of the Commission shall be elected annually by the other members of the Commission on the first Monday in May. In the event a quorum of the Commissioners cannot be present on this date, the selection of the Chair will occur at the next regularly scheduled or special meeting at which a quorum is present. The Chair shall preside over meetings of the Commission and shall be its executive officer. He or she shall vote on all questions coming before the Commission. In the absence of the Chair, the remaining Commissioners shall elect one of their number to act in his or her stead. The Commissioner so elected shall have the powers, rights and duties of the Chair during his or her absence.

Section 6 Election of Secretary

The Commission shall, annually, elect one of its members as Secretary who shall be responsible for keeping the books and records of the Commission, conducting its correspondence and causing a transcript to be prepared of all evidence taken in appeal hearings before the Commission. The Secretary is also to work with and act as a liaison to the City of Conway ("City") employee assigned to assist the Commission. The Commission may, in its discretion, designate a member of the City's Human Resources staff to fulfill the responsibilities of the Secretary.

Section 7 Minutes

The Director of the Human Resources Department of the City of Conway ("HR Department"), or his designee, shall attend all meetings of the Commission and, if directed by the Commission, fulfill the duties and responsibilities of Secretary as described in Section 6. This employee shall record the minutes of all Commission actions and have said minutes typed and presented for approval or amendment at the next regularly scheduled Commission meeting, or as soon thereafter as practicable.

CHAPTER 2

HIRING AND SELECTION PROCESS

Section 1 Eligibility for Hire

Eligibility for appointment to sworn positions in the CPD and CFD is governed by Ark. Code Ann. § 14-51-301, as that statute may be amended from time to time. All necessary prerequisites to being considered for such positions shall be included in job postings distributed by the HR Department. In addition to the minimum qualifications stated in Section 2 below, applicants must comply with any deadlines for submitting all necessary information in order to be eligible to compete in the hiring process. Deadlines for submitting such necessary information shall be set by the HR Department. Selection of the Police and Fire Chiefs is not governed by these Rules and Regulation.

Section 2 Qualifications

To be considered for employment as a police officer with the CPD, applicants must meet the following minimum qualifications, most of which are promulgated by the Arkansas Commission on Law Enforcement Standards ("ACLES"). In the event of additions or modifications adopted by the ACLES, such changes shall be followed, and will be included in this section without need of a public hearing

1. Citizen of the United States;
2. Be at least twenty-one (21) years of age, but less than forty-six (46) as a police officer. If an applicant turns forty-six (46) at anytime prior to being hired by the CPD, he is no longer eligible for hire. An applicant must be at least twenty and one-half (20 1/2) years of age, but less than forty-six (46) on the date of the written examination;
3. No felony convictions;
4. High school graduate or possess GED;
5. Hold a valid driver's license;
6. Be of good character as determined by a thorough background investigation;
7. Have acceptable vision (uncorrected visual acuity must not exceed 20/100 in either eye, correctable to 20/20 or better in each eye);
8. Possess normal hearing and be free of any hearing defect which, in the opinion of the physician administering the required post-offer physical examination, could adversely affect performance of duty; and

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9. Successfully complete a physical agility test, psychological examination and post-offer physical examination, including a post-offer of employment drug test.

To be considered for employment as a firefighter with the CFD, applicants must meet the following minimum qualifications. In the event of additions or modifications adopted by Ark. Code Ann. § 14-51-301, such changes shall be followed, and will be included in this section without need of a public hearing

1. Citizen of the United States;
2. Be at least twenty and one-half (20 1/2) years of age but less than thirty-five (35) by the date of the written examination. If an applicant turns thirty-five (35) at any time prior to being hired by the CFD, he/she is no longer eligible for hire. Thus, an applicant who is on a certified hiring eligibility list will be removed from the list if he turns thirty-five (35). An exception to the maximum age limitation exists for any person who has at least two (2) years of previous experience as a paid firefighter with another fire department and whose years of experience as a paid firefighter when subtracted from the person's age leaves a remainder of not more than thirty-two (32) years. Service as a volunteer firefighter does not qualify for purposes of calculating service time for the maximum age limitation;
3. No felony convictions;
4. High school graduate or possess a GED;
5. Hold a valid driver's license;
6. Be of good character as determined by a thorough background investigation;
7. Successfully complete a physical agility test; and
8. Successfully complete a post-offer physical examination and meet all medical standards of NFPA 1582 (National Fire Protection Association Medical Qualifications for Firefighters) including a post-offer of employment drug test.

Section 3 Advertisement of Selection Process

Public advertisement of all examinations, and any other components of the hiring process, shall be given by publication of notice in a newspaper having a bona fide circulation in the City of Conway ("City"), and by distributing job postings throughout City buildings at least ten (10) calendar days before the initial date of the examination. This notice shall be made by the HR Department.

Section 4 Selection Process

The selection process for hiring by the CPD and CFD shall be administered as often as necessary, with the need to be determined by the Chief of the applicable department in consultation with the HR Department. The City is an equal opportunity employer and all qualified applicants are entitled to compete in the selection regardless of race, sex, age, national origin, color, religion, disability or any other characteristic protected by state or federal law. The selection process administered to candidates for appointment to sworn positions in the referenced departments may be based on results of written, oral, or practical examinations, including physical agility tests, or any combination of the above. The Civil Service Commission shall create and administer these examinations, with the aid of outside professionals when deemed necessary. In the alternative, the Civil Service Commission may direct HR to create and administer these examinations, with the aid of outside professionals when deemed necessary.

Any applicant who, at any time during the selection process, fails to meet the minimum qualifications described in Chapter 2 of these rules and regulations, or who is found to have attempted fraud or deception in the selection process, will be ineligible to continue in the selection process.

Upon completion of the entry level examination process, the names of the successful candidates shall be ranked according to their composite score and the names placed on a list. The list, which may be restricted to the number of projected vacancies, shall be presented to the Commission for certification. Upon certification, the list shall remain effective for a period of one (1) year, or until the list is completely exhausted. At the expiration of this one (1) year time period, all right of priority under the list shall cease.

Section 5 Hiring of Employees

Hiring of new employees who meet the qualifications stated in Section 2 is based on their performance in the selection process described in this chapter, as well as a post-offer medical examination. Upon certification of the list by the Commission, the Police Chief or Fire Chief, as the case may be, may hire any of the three ranked highest on the certified list. In the event of ties, all candidates tied for a particular numerical ranking on the certified list shall be regarded as equally qualified and be considered for hire if among the top three candidates on the list. There may be occasions when the City adopts an affirmative action plan governing hiring by the CPD or CFD. If so, the provisions of such plan may be applicable to the hiring process.

Section 6 Removal of Name from Certified List

The Commission may remove an eligible candidate from a certified list if: (a) the eligible candidate declines an offer of employment; (b) the candidate cannot be located either by telephone or by correspondence mailed to the candidate's last known address; or (c) the candidate otherwise becomes ineligible to be employed, such as failing to meet any prerequisites for hire established by the Commission.

Section 7 Temporary Employees

If necessary, the HR Department is authorized to arrange for the hiring of temporary employees. Such hiring may be undertaken without the temporary employees participating in the selection process, with the consent of the Commission, in cases of emergency, and pending hiring employees from a certified list. No temporary employees shall continue longer than sixty (60) calendar days without the consent of the Commission, nor shall successive temporary appointments be permitted except in times of grave danger. The Commission is the final authority on whether successive temporary appointments are warranted.

Section 8 Military Service

The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), as may be amended from time to time, provides that a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to 2-5 perform service in a uniformed service shall, among other things, not be denied initial employment or any benefit of employment on the basis of that membership, application for membership, performance of service, application for service, or obligation.

- A. A person who is a member of a certified list of candidates eligible for hire as a Firefighter or Police Officer, but is not available for employment because of military service, shall have his rank on the certified list preserved during the military service period, if:
1. Other persons certified to the same list were hired during the lifetime of the list; and
 2. But for the person's absence due to military service, he would have been ranked in the top three on the list and therefore eligible for hire; and
 3. The absence due to military service does not exceed 5 years; and

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4. He notifies the City of Conway Human Resources Department of his intent to return from military service and assume his place on the certified list as follows:
 - a) If the period of military service was for more than 30 days but less than 181 days, by notifying Human Resources of his intent to return not later than 14 days after completing the period of service or, if such notification is impossible or unreasonable through no fault of the person, the next full calendar day when notification becomes possible. This notification may be either verbal or in writing.
 - b) If the period of service was for more than 180 days, by notifying Human Resources of his intent to return no later than 90 days after completing the period of service.

 - B. A person who satisfies the requirements of Section 8.A. will be eligible for enrollment in the next recruit school (Police Officer or Firefighter as applicable) beginning immediately following the submission of a timely application as stated in Item 3 above, providing that the applicant: Passes a pre-employment background check, medical examination, drug screen and any testing and selection components implemented while the candidate was absent due to military leave

CHAPTER 3

PROBATIONARY PERIOD

Section 1 Entry Level Probationary Period

All new employees of the CPD shall be required to serve a 24-month probationary period.
All new employees of the CFD shall be required to serve a 12-month probationary period.
During these periods of time, the probationary employee may be discharged, by the Chief of the CPD or CFD for any reason other than the individual's race, sex, color, national origin, age, religion, disability or any other characteristic protected by state or federal law.

Section 2 Promotional Probationary Period

Existing employees promoted to a higher rank must complete a probationary period of six (6) months in the rank to which he/she is promoted. During these periods of time, the probationary employee may be demoted to the former rank, by the Chief of the CPD or CFD for any reason other than the individual's race, sex, color, national origin, age, religion, disability or any other characteristic protected by state or federal law.

CHAPTER 4

PROMOTIONS

Section 1 Promotional Opportunities

Positions above the entry-level rank, except for the Police and Fire Chief positions shall be filled by promotion, with the purpose of selecting the best available candidate for each position. The promotion process for each rank of employment in the CPD and CFD, which is governed by the promotion procedure guidelines described in Section 3, shall be conducted as often as needed to ensure an adequate number of personnel.

Section 2 Advertising Promotional Opportunities

When a promotional examination is to be given, the HR Department shall make all reasonable efforts to advertise the process in such a manner that all eligible employees will have the opportunity to compete in the process.

Section 3 Promotion Procedure Guidelines

The Commission, as part of its obligation to establish eligibility lists for promotion based upon open competitive examinations, hereby directs the HR Department to develop promotion procedure guidelines, to be presented to the Commission for review and approval, encompassing each rank within the CPD and CFD. The guidelines shall provide for selection components for each rank, which may include written examinations, oral interviews, or practical examinations, length of service, efficiency ratings, and educational or vocational qualifications. Included within these types of examinations are assessment centers and any other promotional components determined to be appropriate by the HR Department, and approved by the Commission. The guidelines shall include an appeal procedure for any component for which such procedure is feasible. If there is a dispute concerning whether a component should have an appeal procedure, the issue shall be brought to the Commission for a final decision. If necessary, the HR Department shall consult with outside experts in designing the selection components to be utilized.

No person shall be eligible to compete for promotion to a higher rank unless the employee has served at least one (1) year in a lower rank, except in case of emergency, which emergency shall be decided by the Commission. The Commission shall determine the rank or ranks, and the required time of service in a lower rank, for candidates to be eligible to compete for advancement to the higher rank. These provisions shall be incorporated into the Promotion Procedure Guidelines.

Section 4 Promotion of Employees

Upon completion of the selection process, including any appeals, the candidates shall be ranked in the order of their standing and their names placed on a list to be submitted for certification by the Commission. This list will be effective for a period not less than one year from the date of certification by the Commission and not greater than two years from the date of certification by the Commission. The effective period of the eligibility list for a specific classification/rank shall be stated in the Promotion Procedure Guidelines approved by the Commission.

If the Commission designates an effective period for eligible lists of more than one (1) year, a person shall be eligible for examination for advancement from a lower rank to a higher rank if the person is within 12 months of meeting the time in service requirements for eligibility stated in the Guidelines. However, if that person takes the examination and is then placed on the eligibility list for promotion, the person shall not be considered as standing among the three highest on the list and shall not be eligible for promotion from the eligible list until the person meets the minimum service time requirement in the lower rank as established by the Commission.

The Police or Fire Chief, as the case may be, may select any of the three (3) standing highest on the certified list for promotion to the rank for which the candidate has competed provided that the candidate meets the promotion eligibility requirements as stated in the Guidelines. In the event of ties, all candidates tied for a particular numerical ranking on the certified list shall be regarded as equally qualified and be considered for promotion if among the top three candidates on the list provided that the candidates meet the promotion eligibility requirements stated in the Guidelines. At the expiration of the effective period of the list, all right of priority under the list shall cease.

CHAPTER 5

REINSTATEMENT

Section 1 Eligibility for Reinstatement

An employee who resigns in good standing is eligible to apply for reinstatement to the same or a similar position from which he resigned, provided that the application for reinstatement must be made within one (1) year of the date of resignation. Eligible employees seeking reinstatement within one (1) year shall not be required to compete in the selection process for their former position, but must complete a post-offer of reinstatement physical examination including drug screen and, for the CPD, a psychological examination if the person has not been employed in a sworn position with the CPD for six (6) months or more. In addition, any employee reinstated pursuant to this Chapter must successfully complete a 12-month probationary period. During this period, the employee may be discharged by the Chief of the CPD or CFD for any reason other than the employee's race, sex, color, national origin, age, religion, disability or any other characteristic protected by state or federal law. All applications for reinstatement are conditioned upon the existence of a vacancy in the CPD or CFD, as the case may be, and approved by the Police Chief or Fire Chief. In addition, applicants for reinstatement must meet all the qualifications set forth in Chapter 2, Section 2 of these Rules and Regulations.

Section 2 Procedure for Reinstatement

Upon receipt of a timely application for reinstatement, the Police Chief or Fire Chief must submit to the Commission and the HR Department a written request for approval of the application. The request must include the former employee's name, title, salary, date of resignation, proposed date of reinstatement, and the cause of vacancy which the reinstated employee will fill.

Section 3 Approval of Reinstatement

A timely submitted and properly documented application for reinstatement will be placed on the Commission's agenda as soon as practicable. Provided the application is received prior to the one (1) year deadline, the request for approval will be considered by the Commission, even if it is on the agenda of a meeting taking place after the deadline. A request receiving a favorable vote of a majority of a quorum of the Commission shall be approved.

Section 4 Terms of Reinstatement

An employee approved for reinstatement shall receive the salary he was earning at the time of his resignation. Provided that, if the employee's former salary would be less than the minimum for the position to which the employee is reinstated, the reinstated employee's salary will be determined pursuant to the City's Administrative Personnel Policy and Procedure Manual and Compensation Manual. No reinstated employee will be placed on the City's payroll without approval by the Commission. For purposes of vacation, sick leave, and longevity, reinstated employees shall be regarded as new employees.

Section 5 Military Leave

Applications for reinstatement made by employees whose absence was necessitated by military service shall be governed by applicable state and federal law.

CHAPTER 6

DISCIPLINE AND APPEAL PROCEDURES

Section 1 Disciplinary Action

No civil service employee of the CPD or CFD, who has successfully completed his probationary period, shall be discharged, reduced in rank or compensation or suspended without pay without being notified in writing of such action and the reasons upon which it is based. An employee discharged, reduced in rank or compensation, or suspended without pay shall have the right, within ten (10) calendar days from the date of notice of the disciplinary action, to reply in writing and request a hearing before the Commission. Any such written reply shall be a part of the record before the Commission in the event of an appeal hearing. Suspensions are limited to a maximum of thirty (30) calendar days.

Section 2 Appeal Hearings Before the Commission

As noted in Section 1, a request for a hearing must be made in writing within ten (10) calendar days after the employee is notified in writing of the grounds for being discharged, reduced in rank or compensation or suspended without pay. Such request should be directed to the HR Director, and must be received in the HR Department within the ten (10) calendar day period for requesting a hearing. In the event a request for hearing is made, the Commission shall, within fifteen (15) calendar days of receipt of the request, schedule a date for the hearing. The hearing date will not be within this fifteen (15) calendar day period.

When scheduling hearing dates, the Commission will take into consideration the schedules of the employee, the employee's attorney, City management and the City's attorney. However, if the schedules are unable to be coordinated, a date will be set at the convenience of the Commission. All requests for a continuance of a scheduled hearing must be in writing and presented to the Director of the HR Department, who will refer the request for continuance to the Chair of the Commission. A continuance will be permitted for emergency reasons only, at the discretion of the Commission. In no case will an agreement by the attorneys for a continuance be recognized except by consent of the Commission. The hearing will be conducted in accordance with the procedures outlined in Ark. Code Ann. § 14-51-308 (Michie Repl. 1998), as amended from time to time. The CPD or CFD has the burden of proof by a preponderance of the evidence to establish that the employee appealing a disciplinary action violated the rules, regulations, or general orders upon which the disciplinary action is based. All proceedings in such hearings shall be reported by a certified court reporter. The Commission, based upon the evidence presented at the hearing, may uphold the disciplinary decision of City management or, if it disagrees, take any of the following actions:

- a) With respect to a demotion, restore the employee to the rank held prior to being demoted, with pay;
- b) Modify dismissal to reinstatement with pay;
- c) Modify a dismissal to a suspension without pay not to exceed thirty (30) calendar days;
- d) Increase or reduce a suspension without pay not to exceed thirty (30) calendar days;
Or
- e) Overrule a suspension and order termination of the employee.

The decision of the Commission shall be by a majority vote of the entire membership. As provided in Chapter 1, Section 4, if a Commissioner recuses from an appeal hearing, the remaining Commissioners shall constitute a quorum. In the event four (4) Commissioners remain to consider an appeal, and the vote results in a tie, the decision of the CPD or CFD will be considered upheld and the employee shall have the immediate right to file a notice of appeal to Faulkner County Circuit Court. If, due to multiple recusals, fewer than three (3) Commissioners are available to consider an appeal, the decision of the CPD or CFD shall be considered final, and the employee may proceed with a notice of appeal to Faulkner County Circuit Court. Both the City and the affected employee have the right to appeal the decision of the Commission. Any appeal taken from the Commission's decision to the Faulkner County Circuit Court shall be pursuant to procedures set forth in Ark. Code Ann. § 14-51-308, as may be amended from time to time.

Section 3 **Scheduling Order**

In order to facilitate appeal hearings before the Commission, the Commission has adopted a scheduling order which is issued on each case to come before the Commission. At the discretion of the Commission, this scheduling order may be amended from time to time. Attorneys and employees not represented by counsel are expected to strictly follow the scheduling order.

CHAPTER 7

POLITICAL ACTIVITIES

The following provisions govern the political activities of personnel in the CPD and CFD.

Section 1 No Discrimination

No sworn employee of the CPD or CFD shall be hired, demoted, suspended, discharged or otherwise discriminated against because of political opinion or affiliation.

Section 2 Permitted Political Activities

Employees of the CPD and CFD may engage in the following political activities:

- a) Contribute to and campaign for candidates for elected office during non-duty time;
- b) Solicit campaign contributions during non-duty time, but not from subordinates;
- c) Run for political office subject to the requirements of Arkansas Code Annotated § 21-1-207;
- d) Publicly support candidates for elected office; and
- e) Contribute to and campaign for ballot issues during non-duty time. ("Ballot issues" include constitutional amendments, bond issues and other such issue elections.)

Section 3 Prohibited Political Activities

Employees of the CPD and CFD may not engage in the following political activities:

- a) Campaign at any time when on duty, in uniform or when acting in an official capacity as a police officer or fire fighter;
- b) Campaigning at any time on City property or in any manner which implies endorsement by the City of Conway, CPD or CFD of any candidate or position. (The prohibition against campaigning on City property shall not prohibit an off-duty police officer or fire fighter from lawfully campaigning at polling places on election day);
- c) Solicit campaign contributions by identifying themselves as a police officer or firefighter or any other manner which implies endorsement by the City. of Conway, CFD or CPD of any candidate or position;
- d) Compel or otherwise place pressure upon a subordinate to contribute to or campaign for any ballot issue or candidate for public office; or
- e) Place campaign material on any City of Conway property, including CPD or CFD uniforms.

If an employee covered by these rules and regulations is elected to an office which causes a conflict, or negatively impacts the employee's performance with his City position, as determined by the Police Chief or Fire Chief, as applicable, the employee will be required to either resign his position with the City or the office to which he was elected.

CHAPTER 8

REVIEW OF CITIZEN COMPLAINTS

Section 1 General Provisions and Purposes

In the 1997 regular session, the Arkansas General Assembly adopted Act 1221 to provide for review of citizen complaints by municipal civil service commissions. Act 1221 amended Ark. Code Ann. § 14-51-301 (b) to require the adoption of rules providing for "a review of complaints filed by any citizen pursuant to rules promulgated by the commission, including rules that give the commission the authority to consider certain personnel issues in executive session, and to establish any necessary appellate procedures." This statute governs civil servants in the municipal police and fire departments. In accordance with this statutory mandate, the Commission hereby adopts the following rules and regulations for the review of citizen complaints against the CPD and CFD. For purposes of these rules and regulations, a citizen complaint is defined as one filed by any individual against personnel of the CPD or CFD, provided the complaint is lodged in accordance with this chapter.

Pursuant to the procedures outlined below, the Commission shall, where requested by the original complainant, review complaints addressing the issue of use force, including deadly force, as well as all other incidents of citizen contact involving personnel in either the CPD or CFD. It is of paramount importance that the review procedures protect the constitutional and employment rights of any employee involved in the investigation. Equally important is the Commission's mandate to undertake a full and fair review on behalf of the citizen complainant, the Conway City Council and the citizens of the City of Conway. In view of these purposes, the Commission will only consider complaints which have first been investigated by the Internal Affairs Division of the CPD or CFD, or other departmental division deemed appropriate by management of the respective department.

Section 2 Complaint Procedure

The following procedures shall apply to review of citizen complaints by the Civil Service Commission:

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- a) Any citizen wishing to request Commission review of a complaint against personnel of the CPD or CFD must first file a complaint with the appropriate department. This complaint must have been filed within thirty (30) calendar days of the date of the incident upon which the complaint is based. This does not mean the CPD or CFD will not investigate a citizen complaint made more than thirty (30) calendar days after the incident about which the citizen complains. However, the Commission will not review the decision of the CPD or CFD unless the thirty (30) calendar day time frame is met. This time limitation is not imposed to discourage complaints, but rather to ensure that investigations take place in close proximity to the incidents on which complaints are based. Such a procedure makes it more likely that witnesses will be available, and memories will be fresher.
 - b) The Commission will not review a citizen complaint until it has been investigated by the CPD or CFD, and a decision reached by the applicable department. The investigation may be undertaken by the Internal Affairs Division of the CPD or CFD, or other departmental division deemed appropriate by management of the respective department.
 - c) A request for Commission review of the decision by the CPD or CFD shall be submitted in writing to the Director of Human Resources for the City of Conway, 1201 Oak, Conway, Arkansas 72032, within fifteen (15) calendar days after the decision of the CPD or CFD is issued. The request must be signed by the original complaining party, or the party's legal guardian or representative, and shall contain the complaining party's name, address and telephone number.
 - d) The Director of Human Resources shall maintain a docket book in which all requests for Commission review of complaints are entered at the time of receipt.
 - e) Receipt of the request for review will be acknowledged in writing by certified mail.
 - f) The Director of Human Resources shall advise the Commission of the receipt of the request for review within five (5) calendar days after receiving it, and verify that it was filed in accordance with this complaint procedure.
 - g) The Director of Human Resources shall request a copy of the investigatory file compiled by the CPD or CFD within ten (10) calendar days of the scheduled meeting date when the citizen complaint will be reviewed. Copies of the file shall then be provided to the Commission members as soon as practicable upon receipt of the file.
 - h) If the incident which is the subject of the request for review is under criminal investigation by the CPD, CFD or some other law enforcement agency, or if it is the subject of pending criminal judicial proceedings, Commission review of the complaint shall be deferred and the matter shall be classified by the Commission Chair as pending until such proceedings have reached a final disposition. Final disposition, for purposes of a law enforcement investigation, occurs when a decision is made on whether criminal charges will be filed. For purposes of criminal judicial proceedings, final disposition occurs when the trial has concluded or, if there is an appeal, upon the decision of the appellate court. If the review is deferred, the Director of Human Resources shall promptly notify the requesting party in writing by certified mail. At the conclusion of any investigation or proceeding which causes the deferral of reviewing a complaint, the requesting party will be notified by certified mail. If the requesting party wishes to continue to pursue the review process, the Director of Human Resources must receive written notice within ten (10) calendar days.
 - i) If an employee of the CPD or CFD files an appeal with the Commission regarding disciplinary action taken against him, and the disciplinary action resulted from the same incident about which a citizen complaint is filed, review of the citizen complaint shall be deferred pending final disposition of the employee's appeal by the Commission.

Section 3 Review Procedure

- a) Subject to Section 2(g), review of citizen complaints will take place at the next regularly scheduled Commission meeting after the request for review is received, and all necessary notifications and receipt of materials provided for in this chapter have occurred. Three of the five current Civil Service Commissioners shall constitute a quorum for the purpose of reviewing citizen complaints. If a quorum is not present, review of a citizen complaint shall take place on the earliest date a quorum will be present.
- b) The Director of Human Resources shall notify the original complainant and the Chief of Police or Fire Chief, as appropriate, of the date of the meeting at which the complaint will be reviewed. Notification of the original complainant shall be by certified mail at least ten (10) calendar days prior to the hearing date.
- c) Review of a citizen complaint will be initially limited to a review of the investigatory file by the Commission members individually, and a presentation by a member of the CPD or CFD, designated by the police or fire chief, summarizing the contents of the file. There will be no testimony taken, and the presentation shall be in executive session. If the citizen who filed the complaint wishes to do so, he or she may make a presentation to the Commission regarding the complaint after the CPD or CFD representative concludes his presentation. The citizen presentation shall likewise be limited to a statement of position, not presentation of testimony by witnesses and will also be in executive session. If the citizen is unable to appear in person, he may submit a written statement in lieu of a live presentation.
- d) If the employee involved in the incident which is the subject of the complaint was not terminated or suspended by the CPD or CFD, the contents of the file will not be made public or released to any person, and the presentation by the CPD or CFD representative and the citizen complainant shall be conducted in executive session. After the presentations, the Commission shall meet in executive session to determine if a review of the investigatory file and the substance of the presentations are sufficient to resolve the complaint. This determination will be made by a majority vote of a quorum of the Commission. In the event of a tie vote, the action taken by the CPD or CFD shall be deemed upheld and no further review will be undertaken by the Commission. The executive sessions permitted in this subsection and Section 3(e) are authorized exceptions to the open meetings provisions of the Arkansas Freedom of Information Act ("FOIA"). No decision made in executive session shall be effective unless, following the executive session; the Commission reconvenes in public and votes on the action taken.
- e) If the Commission determines that any level of adverse disciplinary action may be appropriate for the employee against whom the citizen complaint has been made, it shall order that a hearing be scheduled as soon as practicable. The employee shall be notified of the hearing, offered the opportunity to attend and be questioned by the Commission about the citizen complaint, and to show cause why discipline should not be administered. If he chooses to attend the meeting, the employee may be represented by counsel, and shall be entitled to submit evidence in his behalf. The employee may also waive his appearance at the hearing and stand on the record before the Commission.

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- f) At the hearing to address the complaint, the Commission shall be empowered to adjourn to executive session with any employee involved in the incident which is the subject of the complaint. Others who may be present at such an executive session include counsel for the employee, the Fire Chief or Police Chief, as the case may be, counsel for the CFD or CPD, counsel for the Commission, a certified court reporter and such others as the Commission may deem appropriate. The Commission, in executive session, may also review additional evidence, and the testimony of other witnesses including any whose presence shall be compelled pursuant to the Commission's subpoena power set forth in Ark. Code. Ann. § 14-5 1209 (Michie Repl. 1998).
 - g) Any employee who chooses to appear at the hearing as provided in subsection (e) shall be advised of his constitutional right to refuse to testify, and no disciplinary action taken shall be based merely on the fact that the employee exercises this right. Further, while no statement made by any employee in the course of an Internal Affairs investigation may be used against him in any subsequent criminal prosecution, if the employee did give a statement during the Internal Affairs investigation, such statement may be considered by the Commission in reaching its decision on the citizen complaint.

Section 4 Findings of Commission

Upon completing its review of the investigatory file or, if necessary, after conducting a further hearing on the citizen complaint, the Commission shall make one of the following findings with regard to each complaint received:

- a) The Commission concurs with the findings of the CPD or CFD.
- b) The Commission finds that disciplinary action should have been taken against the employee(s) involved in the complaint. If the Commission reaches this conclusion, it may impose any disciplinary action which it is otherwise authorized to take under Arkansas state law and these rules and regulations.
- c) The Commission finds that disciplinary action was properly taken, but disagrees with the form of discipline imposed. If the Commission reaches this conclusion, it may impose any disciplinary action which it is otherwise authorized to take under Arkansas state law and these rules and regulations.
- d) The Commission finds that no disciplinary action should have been taken. If the Commission reaches this conclusion, it may reverse the disciplinary action, and enter an order directing that the employee be reimbursed for whatever loss the employee may have sustained by reason of a suspension, discharge or demotion, taking into consideration any remuneration which the employee may have received from other sources pending the final determination on the citizen complaint. Notwithstanding the preceding sentence, losses for which the employee is to be reimbursed do not include any compensation claimed to have been lost due to the inability to work off duty jobs.

The Commission's decision, which shall be by a majority vote of a quorum, is final and shall be announced publicly at the conclusion of the meeting, unless a public announcement would reveal information exempt from disclosure under the FOIA. In that case, the Commission will limit its public statement to whether it agrees with the disciplinary action or, if not, that it disagrees and has imposed another form of discipline available to the Commission. In the event of a tie vote, the action taken by the CPD or CFD shall be deemed upheld.

Section 5 Appellate Procedures

- a. The Commission recognizes the possibility that an employee of the CPD or CFD may choose to appeal to the Commission any termination, demotion or suspension (fifteen (15) days or more) which results from a request for review of a complaint filed under this Chapter. If so, the appeal will be handled as provided in Chapter 8 of these rules and regulations and Ark. Code Ann. § 14-5 I -308(c) and (d) (Michie Repl. 1998), as may be amended. If the employee prefers, he can request that the Commission issue a written order confirming its decision, and appeal directly to the Faulkner County Circuit Court as provided in Ark. Code Ann. § 14-51-308(b), as may be amended.
- b. If the employee requests a hearing before the Commission, the appeal procedure will be governed by the provisions of Ark. Code Ann. § 14-5 I -308(e), as may be amended.

CHAPTER 9

MISCELLANEOUS PROVISIONS

Section 1 Leave of Absence

All employees to which these rules and regulations apply may be granted a leave of absence without pay for up to six (6) months. All such leaves, which are renewable for up to six (6) additional months shall be granted at the discretion of the Police or Fire Chief. The granting of leaves of absence is subject to the needs of the CPD or CFD, and any applicable state or federal law. Employees shall continue to accrue seniority while on leave of absence; however they will not accrue vacation and sick leave. The employee's pay progression date will also be adjusted according to the amount of time they are off work. Employees are responsible for paying the cost of all employee insurance coverages and the total cost of dependent insurance coverages subject to the provisions of any applicable state or federal law.

Section 2 Other Applicable Policies

Employees subject to these rules and regulations are also covered by some of the policies contained in the City's Administrative Personnel Policy and Procedure Manual (the "Personnel Manual"). Access to these policies can be obtained by contacting the HR Department.

Section 3 Non-Discrimination

These rules and regulations are applicable to all covered employees regardless of race, sex, age, national origin, color, religion, disability or any other characteristic protected by state or federal law.

ADOPTION

These rules and regulations, having been discussed at least one (1) public hearing as required by Arkansas law, are hereby adopted at the meeting held by the Commission on June 1, 2015.

Bob Bell, Chairman

Cornell Maltbia, Secretary

APPROVING PARTIES

The table below lists the people who are required to provide their approval of this document.

<u>Date</u>	<u>Approved By</u>	<u>Position</u>
06/01/2015	_____ Bob Bell	Conway Civil Service Chairman
06/01/2015	_____ Cornell Maltbia	Conway Civil Service Secretary
06/01/2015	_____ Susan Wilson	Conway Civil Service Commissioner