

**AN ORDINANCE TO CREATE
SECTION 2.52. OF THE CODE OF
GENERAL ORDINANCES OF THE
TOWN OF BURLINGTON, RACINE
COUNTY.**

The Town Board of the Town of Burlington, Racine County, Wisconsin does hereby create Ordinance 2.52 to read as follows:

POLICE AND FIRE COMMISSION

Sections:

- 2.52.010 Purpose.**
- 2.52.020 Definitions.**
- 2.52.030 Membership and organization.**
- 2.52.040 Powers and duties.**
- 2.52.050 Disciplinary action.**
- 2.52.060 Compensation.**
- 2.52.070 Commission procedures.**

2.52.010 Purpose.

This chapter is created under the auspices of Sections 62.13, Wis. Stats., and 60.56, Wis. Stats. The purpose is to create a police and fire commission to assist the town in the hiring, firing and discipline of the chief and members of the fire department and chief and officers of the marine division. The town believes it is in the public's best interest to have independent third parties to offer input and recommendations regarding hiring, discipline and firing practices, to hire new officers, to address concerns of either department and to handle and carry out the discipline and termination of members and officers. (Ord. dated 8/25/05 (part))

2.52.020 Definitions.

The following terms shall have the following meanings within the context of this chapter:

"Accused" refers to any chief or subordinate against whom charges have been brought.

"Chief" refers to the chief of the Fire Department and Marine Division of the town of Burlington.

"Commission" means the board of police and fire commissioners of the town of Burlington.

"Complainant" refers to any person, entity or body filing charges against a subordinate or chief.

"Fire Department" refers to the fire department created under the auspices of Section 2.20 of this code.

"Major Discipline" refers to any discipline that may result in suspension without pay or termination.

"Member" refers to all positions within the police commission.

"Minor Discipline" refers to any discipline that is not "Major Discipline" and may include with-pay suspensions, warnings (written or verbal) and reprimands.

"Subordinate" refers to all members or officers of the Fire Department and Marine Division other than the chiefs.

"Marine Division" refers to the water patrol created under the auspices of Section 2.48 of this code.

(Ord. dated 8/25/05 (part))

2.52.030 Membership and organization.

A. Membership. There is established the police and fire commission of the town of Burlington. Members shall

consist of five citizens, three of whom shall constitute a quorum. The town chairperson shall, upon adoption of this chapter, appoint in writing, five commissioners for varying terms. No appointment shall be made which will result in more than three members of the commission belonging to the same political party. All commissioners shall be residents of the town of Burlington. No commission member shall also be a member of the town board, a chief, member or officer of either the Fire Department or Marine Division. If a member is an immediate relative (to the first degree) of the chief, member or officer, such member shall recuse him/herself from all actions related to such chief, member or officer.

B. Terms. The initial members shall serve varying terms, with the term of the first commissioner expiring September 1, 2023, the term of the second commissioner expiring September 1, 2024, the term of the third commissioner expiring September 1, 2025, and the term of the fourth commissioner expiring September 1, 2026 and the term of the fifth commissioner expiring September 1, 2027. Thereafter, the town chairperson shall, on a five-year cycle consistent with the foregoing, and between the second Tuesday of April and the second Tuesday of May, appoint in writing, new members for five-year terms for upcoming vacancies.

C. Presiding Officer. The first commissioner shall act as the initial commission chairperson. Thereafter, on the final meeting prior to September 1st of each year, the commission shall elect a

member to act as president for the next year.

D. Secretary. The secretary shall be selected by the commission members.

E. Vacancies. In the event of a vacancy on the commission, the town chairperson shall appoint a replacement to serve the remainder of the vacating member's term. If the vacating member is the president, after the vacancy has been filled, the commission shall elect a new president as set forth herein. (Ord. dated 8/25/05 (part))

2.52.040 Powers and duties.

The commission shall have such powers as may be necessary to perform its functions and duties to meet the goals and purpose of this chapter. Such powers shall include the following:

A. Disciplinary Action. The commission shall be responsible for all disciplinary action against the chiefs, officers and members of both departments, including termination, as fully set forth herein.

B. Disciplinary Files. The commission shall establish and maintain disciplinary record files for the chiefs, officers and members of both departments. These files may include hiring information, commendations and recommendations, and other documents as may be deemed necessary by the commission to fully advise them regarding actions concerning the individual subject to discipline.

C. Hiring. When vacancies occur in either department for chief or officers of the Marine Division, the commission shall accept applications for the position, conduct interviews, consider the opinions

of existing members/officers, and take any other necessary action to enable the commission to fill such position. For the hiring of new officers for the Marine Division, the commission shall consider the recommendations of the current chief. As Fire Department members are volunteers, there is no hiring process. The Fire Chief may request the assistance of the commission when accepting new volunteers, but said chief shall have final approval of such volunteers. Compensation is reserved to the Town Board.

D. Assist With Policies & Practices. The commission shall assist the chief of both departments in establishing policies and practices of the departments. The chiefs shall retain final decision-making in such regard, subject to approval of the Town Board.

E. Other Matters. The Town Board, the chiefs or members and officers may request the assistance of the Commission in other matters, subject to Town approval. The scope and authority to be exercised by the Commission in such other matters shall be established by the Town.

F. Employment of Experts and Staff. The commission may employ and pay experts and staff for their services, supplies and such other expenses as may be necessary and proper, not to exceed the appropriations and regulations made by the town board, and the initial annual budget shall be as established by the town board and amended from time to time.

G. Reports and Recommendations. The commission may make reports and recommendations relating to discipline

and firing of chiefs, officers and members of both departments.

H. Information. The commission may request any available information from any public official necessary for the commission to carry out its powers and duties.

2.52.050 Disciplinary action.

The commission shall be responsible for all major discipline of the chiefs, officers, and members of both departments including termination, and minor discipline as requested by either chief. Minor discipline handled solely by the chiefs is not subject to the procedures set forth below, but the chiefs shall relay any such discipline to the Commission for its records. Any member or officer subject to minor discipline by a chief may request that the commission and process below be utilized.

A. Charges. Charges may be filed against such persons by a member of the commission, the town board, by the commission as a body, or by any aggrieved person. Such charges shall be in writing and shall be filed with the president of the commission. Pending disposition of such charges, the commission may suspend the individual subject to discipline if the charges warrant such action.

B. Hearing. Following the filing of charges in this case, a copy thereof shall be served upon the person so charged. The commission shall set a date for hearing not less than ten (10) days nor more than thirty (30) days following the service of charges. Hearing on the charges shall be public, unless the accused requests that they be held in

closed sessions, as allowed by law, and both the accused and complainant may be represented by an attorney and may compel the attendance of witnesses by subpoena which shall be issued by the president of the commission on request, and be served as subpoenas under Chapter 885, Wis. Stats.

C. Form of Discipline. After hearing, the commission shall determine the form of discipline, if any, based upon the evidence before it, in the following forms:

1. Warning. The commission may issue a verbal warning to the accused, which warning shall not be made part of the accused's permanent disciplinary record.

2. Reprimand. The commission may issue a written reprimand to the accused which shall be placed in the accused's disciplinary file.

3. Suspension. The commission may suspend, for any period deemed appropriate, any accused, with or without pay.

4. Termination. The commission may terminate the accused.

D. Basis for Discipline. No accused may be disciplined in any fashion, including termination, unless the commission determines whether there is just cause, as described in this subsection to sustain the charges. In making its determination, the commission shall apply the following standards, to the extent applicable:

1. Whether the accused could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct;

2. Whether the rule or order that the accused allegedly violated is reasonable;

3. Whether the complainant, before filing the charge against the accused, made a reasonable effort to discover whether the accused did in fact violate a rule or order;

4. Whether the effort described under subsection (D)(3) of this section was fair and objective;

5. Whether the complainant discovered substantial evidence that the accused violated the rule or order as described in the charges filed against the accused;

6. Whether the complainant is applying the rule or order fairly, objectively and without discrimination against the accused;

7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the accused's record of service;

8. Whether the proposed discipline is consistent with disciplinary measures taken under other similar circumstances;

9. Findings and determinations hereunder and orders of reprimand, suspension, or termination, shall be in writing and, if they follow a hearing, shall be filed within seven days thereof with the secretary of the commission;

10. The commission may make further rules for the administration of this subsection.

E. Compensation. No accused shall be deprived of compensation while disciplinary proceedings are pending, including during any period of suspension. The commission shall, however, have the right to suspend compensation after a full hearing, if it

deems such discipline is appropriate and warranted under the circumstances, and consistent with the foregoing process.

F. Appeal. Any person disciplined under this section may appeal from the order of the commission to the circuit court by serving written notice thereof on the secretary of the commission within ten (10) days after the order is filed. Within five days thereafter, the commission shall certify to the clerk of circuit court the record of the proceedings, including all documents, testimony and minutes. Thereafter, the procedures set forth in Section 62.14(5i), Wis. Stats., shall govern the disposition of such an appeal.

G. Contractual Rights. Notwithstanding the foregoing disciplinary procedures, the commission shall abide by all procedures, rights and duties set forth in any contract to the extent applicable. Such contractual terms shall, to the extent inconsistent with the terms of this chapter, take precedence over the terms of this chapter. This shall include any grievance procedure as may be established by the terms of any such contract. The commission shall appoint one of its members to take part in any grievance procedure and to speak and act on behalf of the commission, consistent with its quorum disciplinary determination. (Ord. dated 8/25/05 (part))

2.52.060 Compensation.

A. For department chiefs and subordinates. The salaries and wages of such persons shall be fixed by the town board.

B. For Commission Members. The town board may establish compensation

for commission members, and amend the same on an annual basis in its annual budget. (Ord. dated 8/25/05 (part))

2.52.070 Commission procedures.

A. Elections. Before September of each year, the commission shall elect from its members, a president, vice-president, and secretary. Upon motion of any commission member, the vote of the commission shall be by secret ballot. Terms shall begin September 1st.

B. Duties. Commission officers shall have the following duties and responsibilities:

1. The president shall:

a. Preside over all meetings and hearings and ensure their orderly conduct;

b. Accept filing of written charges against chief or water patrol officers;

c. Issue subpoenas for the attendance of witnesses at hearings pursuant to Section 62.13(5)(d), Wis. Stats.;

d. Administer oaths to witnesses appearing before the commission;

e. Formally read the charge(s) to the accused at any hearing, including the provisions alleged to have been violated;

f. Ask questions and control questions asked by other commission members during any hearing;

g. Ensure standards for procedural due process are afforded the accused at any hearing;

h. Adjourn commission proceedings.

2. The vice-president shall act in the capacity of president whenever the president is unavailable to act for any reason.

3. Secretary. The secretary shall:

a. Conduct all correspondence of the commission, send all notices required by law, ordinance, or these rules or as otherwise requested by the commission;

b. Cause to be published such official notices as are required;

c. Attend and keep a record of all commission proceedings, including the preservation of testimony and any evidence received by the commission at any hearings in a permanent record and to certify such record to the circuit court when required by law;

d. Maintain the minutes of each meeting and hearing, upon approval by the commission;

e. Provide copies of all commission minutes to each commission member as soon as possible and file a copy of such minutes with the town clerk;

f. Accept filing of all appointments under Section 62.13(1) Wis. Stats; and

g. Accept for filing all findings and determinations of the commission relative to disciplinary actions and commission orders, all of which shall be filed within three days of their adoption pursuant to Section 61.13(5)(f), Wis. Stats.

4. Amendment to Procedures. Except as otherwise provided by statute or ordinance, the commission rules and regulations shall be prescribed, amended or repealed by a majority vote of the commission members present. Any such commission rule or regulation adopted by the commission and approved by town board majority, shall govern the activities of the commission until such rule or regulation has been amended or repealed as provided herein.

Introduced and adopted this 13 day
April, 2023 by the Town Board of the
Town of Burlington, Racine County,
Wisconsin.

TOWN OF BURLINGTON

BY:

Chairman

ATTEST:

Clerk