

**POLICE COMMISSION**  
**OF THE CITY OF HARDIN**  
Rules of Appeal



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## I. APPLICABLE LAWS

### Montana Code Annotated (2025)

#### **§ 7-32-4151. Police commission required in all cities and some towns.**

(1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission".

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

#### **§ 7-32-4155. Role of police commission in hearing and deciding appeals brought by police officers.**

(1) The police commission shall hear and decide appeals brought by any member or officer of the police department who has been disciplined, suspended, removed, or discharged by an order of the mayor, city manager, or chief executive.

(2) The police commission shall, at the time set for hearing an appeal of a police officer, hear and determine the appeal according to the rules of evidence applicable to courts of record in the state.

#### **§ 7-32-4156. Appeals to be in writing.**

An appeal brought by any member of the police force must be in writing in the form required by the police commission, and a copy must be served upon the mayor, city manager, or chief executive at least 30 days before the time fixed for the hearing of the appeal.

#### **§ 7-32-4157. Rights of police officer.**

The appealing police officer has the right to be present at the hearing in person and by counsel and to be heard and to give and furnish evidence in the police officer's appeal.

#### **§ 7-32-4158. Police commission hearings open to public.**

All hearings must be open to the public.

#### **§ 7-32-4159. Subpoena authority of police commission.**

The presiding officer or acting presiding officer of the police commission may issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing,

and any person served with a subpoena is bound to attend in obedience to the subpoena. The police commission has the same authority to enforce obedience to the subpoena and to punish the disobedience to the subpoena as is possessed by a judge of the district court in similar cases. However, punishment for disobedience is subject to review by the district court of the proper county.

**§ 7-32-4160. Decision by police commission.**

The police commission shall, after the conclusion of the hearing, decide the appeal and must have the power, by a decision of a majority of the commission, to sustain (affirm), modify, or overrule the disciplinary order of the mayor, city manager, or chief executive.

**§ 7-32-4161. Enforcement of decision.**

The mayor shall make an order enforcing the decision of the police commission. The decision or order is subject to review by the district court of the proper county on all questions of fact and all questions of law.

**§ 7-32-4164. Right to appeal.**

A member of the police force who is disciplined, suspended, removed, or discharged as a result of a decision by the mayor, city manager, or chief executive has a right of appeal:

- (1) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the member is covered by a collective bargaining agreement; or
- (2) to the police commission. A final decision of the police commission may be appealed to the district court of the proper county. The district court has jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force. A suit to review a decision or an order or for reinstatement to office may not be maintained unless the suit is begun within a period of 60 days after the decision by the police commission has been filed with the city clerk.

## II. PARTIES

### **Rule 1. The Parties of the Appeal shall be:**

- (1) **Appellant.** The appealing officer who is seeking relief from the discipline
- (2) **Appellee.** The City of Hardin.
- (3) No third parties, relators, intervenors, joinder, or others shall be permitted.
- (4) Other officers seeking relief from discipline arising from a similar or the same incident shall be heard in a separate appeal.

### **Rule 2. Representation of Parties**

- (1) **Appellant**
  - a. The Appellant may be self-represented, or
  - b. May be represented by legal counsel admitted to practice law in the State of Montana.
  - c. No other person other than the Appellant or an attorney licensed in Montana may represent the Appellant.
  - d. The Appellant is not entitled to the appointment of legal counsel.
- (2) **Appellee**
  - a. The Appellee may be represented by the Hardin City Attorney, or
  - b. May be represented by other legal counsel admitted to practice law in the State of Montana.
  - c. No other person other than the Appellant or an attorney licensed in Montana may represent the Appellant.

### III. COMMENCING THE APPEAL

#### **Rule 3: When to make the appeal**

- (1) An appeal can be made after a final order/decision of the mayor or chief of police has been issued to discipline, suspend, remove, or discharge the appealing officer. The decision/order shall be placed in writing and delivered to the appealing officer.
- (2) The appeal may be made before or after the discipline, suspension, removal, or discharge has been effectuated.
- (3) The City's decision to suspend the effectuation of the discipline, suspension, removal or discharge pending an appeal does not preclude the officer from the appeal process.
- (4) An officer's status as suspended or discharged does not affect the officer's right to appeal.
- (5) An appeal must be filed no later than 30 days from the final order/decision of the mayor or chief of police has been delivered to the appealing officer.
  - a. Calculation of the 30 days does not include the day the final order/decision is delivered to the appealing officer. All legal holidays and weekends are included in the 30 day period. If the 30<sup>th</sup> day falls on a Saturday, Sunday or legal holiday, then the appealing officer has until the next business day to file the appeal.
  - b. Any pending appeals not filed before the adoption of these rules have 30 days from the adoption of these rules by the Commission to file.

#### **Rule 4: Where to make the appeal**

- (1) The Appellant may file the appeal with the Hardin City Clerk at 406 North Cheyenne, Hardin, Montana, by presenting an original of the appeal to the clerk during regular business hours.
- (2) Email filing of the appeal is allowed only upon approval of the Hardin City Clerk.
- (3) The Hardin City Clerk shall time stamp the appeal and notify the Police Commission of the filing.

#### **Rule 5: Service**

- (1) After filing with the Hardin City Clerk, a copy of the appeal must be served upon the City of Hardin by providing a copy to either:
  - a. The Mayor of the City of Hardin, or
  - b. The Hardin City Attorney, or
  - c. Any staff member of either.
- (2) Service must be done in person by either the Appellant, or another person over the age of 18.
- (3) The Mayor, or the City Attorney, may waive personal service, in writing.

(4) Proof of Service must be provided to the Hardin City Clerk, and sworn upon oath by the person serving the appeal, or proof of waiver must be provided to the Hardin City Clerk.

### **Rule 6: Form of the Appeal**

(1) The first page of the appeal should generally represent the caption of a filing in a Montana Court, and should include the following:

- a. The Appellant's name, address, email address, and phone number in the upper left hand corner, or the same for legal counsel representing the Appellant.
- b. The name of the Hardin Police Commission above the party names.
- c. The names of the parties shall be on the caption as Appellant and Appellee.
- d. A blank for a case number should be above the title of the appeal
- e. The caption should be substantially in the following format:

**BEFORE THE HARDIN POLICE COMMISSION, STATE OF MONTANA**

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Name of Officer,	)	
Appellant	)	Case Number: _____
v.	)	
City of Hardin, Montana,	)	<b>APPEAL FROM</b> _____
Appellee.	)	

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f. The appeal should be titled:

- i. Appeal from Discipline, or
- ii. Appeal from Suspension, or
- iii. Appeal from Removal, or
- iv. Appeal from Discharge.

(2) The body of the appeal should somewhat resemble a legal pleading filed in a Montana Court:

- a. The pleading shall be on ordinary 8.5" x 11" paper.
- b. The body of the pleading shall be double spaced
- c. Each paragraph shall be numbered.
- d. Line numbers on the left margin may be used.
- e. Each page shall be numbered

### **Rule 7: Contents of the Appeal**

- (1) The appeal should consist of a written statement stating the reasons for the appeal and the relief sought.
- (2) The appeal should contain specific allegations of fact, rationale, or affirmative defenses that justify the appeal and support a claim of an abuse of discretion by the mayor or chief of police in the order/decision. If the appeal fails to

contain specific allegations of facts, rationale, affirmative defenses, or other items that justify the appeal and support an allegation of an abuse of discretion, the appeal may be dismissed, without prejudice.

a. A general denial to the facts and rational found in the final disciplinary document(s) may not be sufficient to support an appeal, and such general denial may result in dismissal of the appeal, without prejudice

- (3) The complete and final disciplinary document or documents issued by the mayor or chief of police shall be attached to the appeal and filed with it. Failure to attach the disciplinary documents in their entirety shall result in dismissal of the appeal, without prejudice.
- (4) If an appeal is dismissed without prejudice for failure to follow procedure, or failure to provide allegations to support an appeal, the Appellant shall have 60 days to re-file, or the appeal shall be deemed dismissed with prejudice.
- (5) For the sake of efficiency and expediency of the appeal process, the appeal should specify which part or portions of the disciplinary documents are being appealed, and which parts or portions are not appealed.
- (6) The appeal may contain references to, and excerpts of, the City of Hardin Personnel Policy manual, the Hardin Police Department Policy Manual, the Montana Code Annotated, and any rules promulgated by any agency in the State of Montana.
- (7) To the greatest extent possible, the Appellant's pleading should not include any evidence, recordings, transcripts, photos, videos, or other materials that may have been used or referenced at any Due Process hearing. The intent is to keep the pleadings short and plain, and to allow the parties to present all such information during the Evidentiary Hearing, to make sure the Rules of Evidence are applied to evidence, and to allow cross examination of witnesses. The Appellant's pleading need not be verified.

#### **Rule 8: Responsive Pleading**

- (1) The City shall file a responsive pleading to the appeal within 21 days of service of the appeal, not including the day of service.
- (2) The responsive pleading shall be subject to the same formatting rules as in Rule 6, above.
- (3) The responsive pleading shall contain specific allegations of fact to rebut or refute the allegations of the appeal, and to support the final disciplinary documents.
- (4) The responsive pleading may contain all the Appellee's findings contained in the complete and final disciplinary document or documents, which may outline the reasons for the discipline, suspension, removal, or discharge whether or not such findings are raised or challenged by the Appellant's pleadings.
- (5) The responsive pleading may contain references to, and excerpts of, the City of Hardin Personnel Policy manual, the Hardin Police Department Policy Manual, the Montana Code Annotated, and any rules promulgated by any agency in the State of Montana.

(6) To the greatest extent possible, the Appellee's pleading should not include any evidence, recordings, transcripts, photos, videos, or other materials that may have been used or referenced at any Due Process hearing. The intent is to keep the pleadings short and plain, and to allow the parties to present all such information during the Evidentiary Hearing, to make sure the Rules of Evidence are applied to evidence, and to allow cross examination of witnesses. The Appellee's pleading need not be verified.

### **Rule 9: Initial Review**

(1) Within 20 days of receipt of the appeal and the responsive pleading, the Commission shall meet and review the pleadings.

- a. The Commission's Initial Review of the pleading must be done at a public meeting, with regular notice posted.
- b. Parties may be present at the Initial Review, but may not present any evidence or argument.
- c. The Commission shall not ask any substantive questions of the parties, nor solicit any evidence, nor any argument from the parties at the Initial Review.
- d. Members of the public may be present, but may not make public comment, as the Commission is serving as a quasi-judicial board. All documents and evidence filed or presented as part of the appeal are subject to public inspection and may be obtained from the City Clerk after the Initial Review, or after the Evidentiary hearing if they are submitted at the Evidentiary Hearing.

(2) The Commission shall determine whether there is sufficient evidence in the pleadings that a reasonable mind could reach a conclusion that the City abused its discretion.

- a. When determining if there is sufficient evidence that a reasonable mind could conclude that the City abused its discretion, the Commission shall consider:
  - i. The evidence and facts alleged in the appeal.
  - ii. The complete and final disciplinary documents attached to the appeal.
  - iii. The responsive pleading.
  - iv. Any part of the Montana Code.
  - v. The Montana Police Commission Handbook, Fourth Edition, 2010.
  - vi. The City of Hardin Personnel Policy Manual
  - vii. The Hardin Police Department Policy Manual
- b. The Commission must make all deliberations and decisions of sufficient evidence during the Initial Review, unless the Commission decides that the demands of individual privacy exceed the merits of public disclosure.

- (3) If the Commission finds sufficient evidence that a reasonable mind could reach a conclusion of an abuse of discretion, then the Commission shall set the matter for an Evidentiary Hearing.
  - a. The Evidentiary Hearing may not be less than 30 days from the Initial Review, or less than 30 days from the date of proof of service.
  - b. The Evidentiary Hearing shall be held at the City Council Chambers.
  - c. The Commission may seek input from the parties regarding the date, time, and length of the Evidentiary Hearing.
  - d. Upon an Evidentiary Hearing being set, the procedure outlines in Part IV, below, shall apply.
- (4) A finding of sufficient evidence that a reasonable mind could reach a conclusion of an abuse of discretion is not the final finding of the Commission, but only a finding that the appeal should continue, and that there is support to conduct an Evidentiary Hearing. The Commission is not bound by a finding of sufficient evidence, and may rule against the Appellant after the Evidentiary Hearing.
- (5) If the Commission does not find sufficient evidence that a reasonable mind could reach a conclusion of an abuse of discretion by the City, then the Commission shall dismiss the appeal, with prejudice.
  - a. The decision to dismiss is subject to review by the District Court.

#### IV. THE EVIDENTIARY HEARING

##### **Rule 10: Disclosures Prior to the Evidentiary Hearing.**

- (1) Evidence
  - a. Five days before the Evidentiary Hearing, each party shall provide the other party with copies of all evidence that may be presented at the hearing.
- (2) Witnesses
  - a. Five days before the Hearing, each party shall provide the other party with a list of potential witnesses, with address and phone number of each witness.
  - b. Any party may seek a subpoena to compel a witness to testify, per Rule 11(1)(b).
- (3) A party may be precluded from presenting evidence or calling a witness to testify if they have not previously disclosed either in accordance with these rules.

##### **Rule 11: How the Evidentiary Hearing will be Conducted.**

- (1) Chair
  - a. Not less than 15 days before the Evidentiary Hearing, the Commission shall choose a licensed attorney, a judge, justice, or other competent and uninterested person to serve as the chair of the hearing.
  - b. The Chair shall have the authority to issue subpoenas to compel the attendance of witnesses.
    - i. Any party seeking a subpoena shall submit a request for the subpoena no less than 10 days prior to the hearing by filing the proposed subpoena with the City Clerk.
    - ii. The Chair may sign the subpoena, and provide the subpoena to the City Clerk who will notify the submitting party.
    - iii. The Chair may inquire the reason for any subpoena by requesting written justification for the subpoena, which must be served upon the opposing party and time given for a response, and may reject any subpoena if the request is without support.
    - iv. The subpoena may be served by the Hardin City Police, if in the city limits of Hardin, or any other lawful manner of service as described in the Montana Rules of Civil Procedure.
  - c. The Chair shall conduct the Hearing in an orderly and civil manner, similar to a civil trial in a Montana Court.
  - d. The Chair shall rule on objections during the Hearing, and shall apply the Montana Rules of Evidence to the Hearing.
- (2) Continuances
  - a. Either party may request a continuance by filing a written motion for continuance with the City Clerk, and serving the other party a copy of the motion.

- b. The moving party must provide support for the motion.
- c. The non-moving party must be allowed five days to respond to the request for the continuance prior to a decision on the Motion.
- d. The motion may be either granted or denied by the Chair of the Evidentiary Hearing, if one has been selected, or, if no Chair has been selected, by the Commission by a majority vote held at a public meeting.

(3) The Commission

- a. The Commission shall consider the evidence, shall serve as the fact finder, and shall issue the decision after deliberation.
- b. Any Commissioner that has a conflict of interest, interest in, or consequential knowledge of the matters contained in the appeal, or is in anyway in a position that compromises their ability to serve as an independent fact finder must disclose as much before the Evidentiary Hearing, and a replacement must be found for the Hearing.
- c. The Commission shall consider all the reasons for the discipline, suspension, removal, or discharge, not just those raised and challenged by the Appellant.
- d. The Commission's deliberations shall be open to the public, unless the Chair decides that the demands of individual privacy exceed the merits of public disclosure.
- e. A decision shall be made by a majority vote of the Commission.
- f. A decision must be made only upon the testimony and evidence presented at the Evidentiary Hearing.
- g. A decision must be based upon a finding of a preponderance of the evidence, which means more likely than not. Preponderance of the evidence is a lesser burden of proof than beyond a reasonable doubt or clear and convincing evidence.
- h. The Commission's decision must be to sustain (affirm), modify, or overrule the decision of the mayor or the chief of police.
- i. A decision to overturn the mayor or chief of police must be made upon a finding of an abuse of discretion by the mayor or the chief of police, supported by a preponderance of the evidence that such abuse occurred.

(4) Recording

- a. The Hearing shall be audio recorded by an electronic device.
  - i. If the deliberations are closed as outlined in Rule 11(3)(d), then the deliberations must still be recorded, but the closed session recording must be kept sealed and separate from the recording of the Hearing.
- b. The Commission shall keep the recordings of the Hearing and deliberations for a period of five years, and provide copies to any party upon request within that time period.

## Rule 12: Hearing Procedure

### (1) Opening Statements

- a. The Appellant may make the first opening statement, or waive.
- b. The Appellee may make an opening statement, or waive.
- c. Opening statements are introductory, and shall provide notice to the Commission of the evidence expected to be presented, and the purpose for the introduction thereof.
- d. Opening statements are not argumentative.

### (2) The Montana Rules of Evidence Shall govern the Hearing.

- a. Character witnesses' testimony and evidence shall be limited to avoid the presentation of cumulative testimony and evidence.
- b. All witnesses shall be sworn by oath prior to testimony.
- c. Direct examinations may not use leading questions, unless authorized by the Chair.
- d. Cross-examinations may use leading questions.

### (3) Witnesses should be excluded from the Hearing prior to their testimony.

- a. The Appellant shall not be excluded.
- b. The City may have either the mayor or chief of police present during the entire proceeding, and who shall not be excluded.

### (3) The Appellant shall present his or her case-in-chief first.

- a. The Appellant may call any previously disclosed witness to testify.
  - i. The Chair may preclude witness testimony if it is cumulative.
- b. The Appellant may present previously disclosed evidence.
  - i. The Chair may preclude evidence if it is cumulative.
- c. The Appellee may cross-examine any witness called by the Appellant.
  - i. Cross examination is limited to the scope of direct examination.
- d. The Appellant may redirect any witness after cross examination.
  - i. Redirect examination is limited to the scope of cross examination.
- e. No cross examination after re-direct shall be conducted.

### (4) The Appellee shall present its case-in-chief.

- a. The Appellee may present evidence and testimony of all the Appellee's findings contained in the complete and final disciplinary document or documents which support the discipline, suspension, removal, or discharge, whether or not such findings are raised or challenged by the Appellant's pleadings, or presented in the Appellant's case-in-chief.
- b. The Appellee may call any previously disclosed witness to testify.
  - i. The Chair may preclude witness testimony if it is cumulative.
- c. The Appellee may present previously disclosed evidence.
  - i. The Chair may preclude evidence if it is cumulative.
- d. The Appellant may cross-examine any witness called by the Appellee.
  - i. Cross examination is limited to the scope of direct examination.
- e. The Appellee may redirect any witness after cross examination.
  - i. Redirect examination is limited to the scope of cross examination.
- f. No cross examination after re-direct shall be conducted.

(5) Calling of other party as witnesses.

- a. Either party may call the other as a witness.
  - i. If the Appellant has been alleged to have violated any law, or if any part of Appellant's testimony may expose the Appellant to criminal liability, then the Appellant may not be compelled to answer questions related to such criminal accusations.
    - 1. These protections only apply to questions related to criminal conduct.
    - 2. The Appellant may be compelled to answer other questions that are not related to criminal conduct.
    - 3. If the Appellant is self-represented, or has already testified, then the right against self-incrimination may be deemed waived.
  - ii. The Appellant may call the mayor or chief of police to testify.
  - iii. The Appellant may not call the Hardin City Attorney, or any member of Hardin City Attorney's Office, to testify.

(6) Hearing open to the public.

- a. The Hearing is open to the public, unless the Chair decides that the demands of individual privacy exceed the merits of public disclosure..
- b. Members of the public may not make public comment during the Hearing, as the Commission is serving as quasi-judicial board.

(7) Closing Arguments.

- a. Following the Appellee's case in chief, the Appellant may present closing arguments, or may waive.
- b. Following the Appellant's closing, or waiver thereof, the Appellee may present closing arguments, or may waive.
- c. The Appellant may provide a rebuttal closing argument, limited to the scope of the Appellee's closing statement.
- d. Under no circumstances is new evidence to be introduced, presented, or argued in either party's closing statements.

(8) Decision.

- a. The Commission must render a decision prior to the close of the Hearing.
- b. The Commission's deliberations shall be open to the public, unless the Chair decides that the demands of individual privacy exceed the merits of public disclosure.
- c. If a decision cannot be made the day of the Hearing, then the Commission must schedule deliberations and a decision on another day. In no event shall more than seven (7) business days elapse before a decision is made once the Hearing has concluded.
  - i. The Commission may not deliberate outside of announced times and locations if a decision is not made the day of the Hearing.
  - ii. Deliberations on another day must be open to the public, unless the Chair decides that the demands of individual privacy exceed the merits of public disclosure.

- iii. The parties are entitled to be present if deliberations continue to another day.
- d. A decision is made by a motion of one commissioner to either sustain (affirm), modify, or overrule the decision of the mayor or chief of police.
  - i. Once a motion is made, there must be a second.
  - ii. If a motion has a first and a second, the Chair shall call for a vote of the Commission.
  - iii. A motion passes if the majority of the Commission votes in the affirmative.
  - iv. Once a vote is made, the Chair shall announce the vote, and the number voting either Yea or Nay.

### **Rule 13: Post Hearing Procedure**

- (1) Written Decision and Order.
  - a. Once a decision has been announced at the Hearing, the Commission shall cause a written Decision and Order to be issued.
    - i. The Commission may draft the decision and order, or
    - ii. The Commission may request the Chair to draft the Decision and Order, or
    - iii. The Commission may request the prevailing party to submit proposed decision and order.
  - b. The written Decision and Order must contain a findings of fact, conclusions of law, and a conclusory order.
    - i. The Order must state whether the appeal is dismissed for lack of evidence, or if the Appellee's decision to discipline, suspend, remove, or discharge the Appellant is sustained (affirmed), modified, or overruled.
- (2) Copies to each party.
  - a. The Commission must provide a copy of the written Decision and Order to each party.
- (3) Filing with City Clerk.
  - a. The Commission must file the Decision and Order with the City Clerk.
- (4) Enforcement.
  - a. The Mayor shall enforce the Decision and Order of the Commission, unless appealed to the District Court.

## V. APPEAL TO DISTRICT COURT

### Rule 14: Appeal to District Court

- (1) Either party may appeal the Police Commissions' Decision to the Montana 22<sup>nd</sup> Judicial District Court in Big Horn County, Montana.
  - a. Each party has 60 days from the filing of the written Decision and Order with the City Clerk to appeal.
- (2) Upon appeal to the District Court, the appealing party should file a notice of the Appeal with the City Clerk.
- (3) Upon appeal to the District Court, either party is entitled to copies of the entire appeal file from the Police Commission, including the recordings of the proceedings.

Voted upon and adopted this 10 day of December, 2025

YEA VOTES 3

NAY VOTES 0

  
Presiding Officer, Hardin Police Commission