INTRODUCTION

This appeal of the consolidated disciplinary appeals of Officers Devin Sparks and Randy T. Murr (collectively “Officers”) requires the Civil Service Commission (“Commission”) to answer a narrow question of law: whether the Manager of Safety has jurisdiction to rescind and modify a disciplinary order after the ten-day appeal deadline passes and the disciplined officer has not filed an appeal to the Commission. We find that the Manager of Safety’s jurisdiction over disciplinary matters does not end once the ten-day time period to appeal the order of discipline has passed. The Commission determines that the authority to rescind and modify a
disciplinatory order is necessarily implied by the Denver City Charter’s grant of general
disciplinary authority over the Police and Fire Departments to the Manager of Safety.

The Manager of Safety’s authority to rescind and/or modify a disciplinary order is not
without limits. At a minimum, considerations of finality and due process preclude the Manager
of Safety from arbitrarily rescinding or modifying a disciplinary order once it has been issued. It
is not within the scope of this decision to define the precise contours of the Manager of Safety’s
authority in this area. For purposes of this case, it is sufficient for the Commission to determine
that the Manager of Safety’s jurisdiction is not terminated once the ten-day appeal deadline has
passed. Accordingly, we reverse the decision of the Hearing Officer Panel in this case and
remand these consolidated cases for a disciplinary hearing.

I. FACTUAL BACKGROUND

The Commission adopts the material facts set forth in the Panel’s Decision and Order on
Summary Judgment (“Panel’s Summary Judgment Order”):

On July 19, 2010, then Manager of Safety Ronald Perea approved separate Orders of
Discipline directed against Officers Sparks and Murr (“Original Disciplinary Orders”). The
following day, July 20, 2010, both Officers received copies of their respective disciplinary
orders. Both Officers were disciplined for a violation of RR-102.1 of the Operations Manual,
Duty to Obey Department Rules and Mayoral Executive Orders, as it pertains to Operations
Manual Section 109.01(2)(a.1). This section concerns the quality requirements associated with
records and reports. It requires that the information in records and reports be absolutely truthful
and dependable. Manager of Safety Perea fined Officer Sparks the loss of twenty-four hours and
suspended Officer Murr without pay for three days.
The disciplinary orders advised both Officers that pursuant to § 9.4.15(A) of the Denver City Charter, they each had ten days from receipt of the order to file an appeal with the Civil Service Commission. Neither Officer Sparks, nor Officer Murr, filed an appeal of the Original Disciplinary Orders with the Commission prior to the deadline.

On August 19, 2010, thirty-one days after he approved the Original Disciplinary Orders, Manager of Safety Perea issued orders rescinding the Original Disciplinary Orders issued to both Officers pursuant to his authority under the Charter of the City and County of Denver.

On March 25, 2011, approximately seven months after the Original Disciplinary Orders were rescinded, then Manager of Safety Charles Garcia issued revised disciplinary orders for both officers (“Revised Disciplinary Orders”). Manager of Safety Garcia dismissed both officers for violation of RR-112.2 of the Operations Manual, Commission of a Deceptive Act. The Manager of Safety also suspended Officer Sparks without pay for thirty days for violation of RR-306, Inappropriate Force. There is no dispute that both the Original Disciplinary Orders and the Revised Disciplinary Orders arose from the same conduct.

II. PROCEDURAL HISTORY

On April 4, 2011, Officers Sparks and Murr filed separate appeals of the Revised Disciplinary Orders with the Civil Service Commission. On May 23, 2011, the Chief Hearing

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1 After rescinding the Original Disciplinary Orders, Ronald Perea resigned from his position as Manager of Safety. Charles Garcia was appointed Manager of Safety in March 2011.

2 In addition, Officer Sparks brought an action in Denver County District Court seeking a temporary restraining order against the City’s enforcement of the Revised Disciplinary Order. See Sparks v. City & County of Denver, Case No. 11CV2082. The Court denied the motion for a temporary restraining order for various reasons including that Officer Sparks had failed to exhaust his administrative remedies and that it was unlikely that he would prevail on the merits of his claim. See Exhibit 3 to the City’s Response to the Motion for Summary Judgment at 1-2, 5-8.
Officer in the Sparks’ appeal consolidated the appeals. On June 6, 2011, the officers filed a motion for summary judgment asking the Hearing Officer Panel to find that the Manager of Safety no longer had jurisdiction to modify the Original Disciplinary Orders once the ten-day deadline for appealing the orders had passed. On August 22, 2011, the Hearing Officer Panel heard oral argument on the officers’ motion for summary judgment.

On July 6, 2011, the Hearing Officer Panel granted the officers’ motion for summary judgment, holding that the Manager of Safety lacked jurisdiction to rescind the initial orders of discipline issued to the Petitioners and subsequently to issue new orders of discipline after the ten day time period for appeal to the Commission had lapsed. *Panel’s Summary Judgment Order* at 9-11. The Hearing Officer Panel reasoned that once the ten-day appeal period had passed, the Original Disciplinary Orders became final: Absent a provision in the City Charter or in the Civil Service Commission rules expressly authorizing the Manager of Safety to rescind or modify discipline once the appeal deadline has passed, the Manager of Safety no longer had jurisdiction to rescind or modify the orders. *Id.*

On September 14, 2011, the City timely filed a notice of appeal of the Panel’s Summary Judgment Order with the Commission. After full briefing we issue the following Decision and Final Order.³

³ Because the facts and legal arguments were adequately presented in the briefs filed by the parties in this case, the Commission did not believe oral argument would assist it in reaching a decision.
III. DECISION

A. Basis for Appeal

The Charter of the City and County of Denver (“City Charter”) limits our review of the Hearing Officer Panel’s decision to certain defined circumstances. See City Charter § 9.4.15(F); see also Woods v. City & County of Denver, 112 P.3d 1050, 1052 (Colo. App. 2005). In this case, the City appealed the Hearing Officer Panel’s decision on two separate grounds: (1) the Panel’s decision involves an erroneous interpretation of departmental or Civil Service Commission rules, and (2) the Panel’s decision involves policy matters that may have effect beyond the case at hand. City’s Corrected Opening Brief at 4.

The Hearing Officer Panel’s decision rests upon its interpretation of the City Charter and Departmental rules. In addition, it addresses significant policy considerations as to the scope of the Manager of Safety’s jurisdiction over disciplinary actions. Accordingly, we conclude that this appeal is properly before the Commission pursuant to City Charter § 9.4.15(F)(b), (c).

B. Standard of Review

Because the Panel’s decision on summary judgment turned on a question of law, our review is de novo. Commission Rule 12 § 11(J)(6); see also Vukovich v. Civil Service Comm’n of the City and County of Denver, 832 P.2d 1126, 1128 (Colo. App. 1992) (citing Blaine v. Moffat County School Dist. Re No. 1, 748 P.2d 1280 (Colo. 1988)).

C. The Manager of Safety Is Not Divested of Jurisdiction to Rescind or Modify a Disciplinary Order After the Ten-Day Appeal Deadline Has Passed

This dispute requires the Commission to define the scope of the Manager of Safety’s authority under Denver’s City Charter. The Colorado Court of Appeals has instructed that the “general rules of statutory construction apply to municipal charters.” Cook v. City & County of
A municipal charter confers not only those powers expressly defined, but also those “necessarily implied” by the language of the charter. *Id.* A charter, like any legislative scheme, should be read to “give consistent, harmonious, and sensible effect to all parts of a statute.” *See Jefferson Cnty. Bd. of Equalization v. Gerganoff*, 241 P.3d 932, 935 (Colo. 2010). Similarly, a statute should be read to harmonize potentially conflicting provisions. *See Hygiene Fire Prot. Dist. v. Bd. of Cnty. Comm’rs*, 205 P.3d 487, 490 (Colo. App. 2008).

The City Charter defines the authority of the Manager of Safety. City Charter §§ 2.6.1, 2. It provides that the Manager of Safety shall have, “subject to the supervision and control of the Mayor, full charge and control of the departments of fire and police.” *Id.* § 2.6.2 (emphasis added); *Cook*, 68 P.3d at 589. This includes final authority to discipline members of the classified service, subject, of course, to review by this Commission.

With respect to the discipline of police officers, the City Charter vests the Chief of Police with authority to initiate disciplinary actions. City Charter § 9.4.14(A). The Chief of Police must prepare a written disciplinary order which details the specific disciplinary action, a specification of charges, and a report that sets forth “the evidence and reason for such charges” and submit it to the Manager of Safety for approval. *Id.* Within fifteen days of receipt of the proposed disciplinary order and accompanying report, the Manager of Safety shall issue an order which approves, modifies, or disapproves of the disciplinary action. *Id.* § 9.4.14(B). Once the Manager of Safety has issued a disciplinary order, the officer has ten days from date of completion of service of the order to file an appeal with this commission. *Id.* § 9.4.15(A).
In this case, neither Officer appealed the Original Disciplinary Orders. Thus, the crux of the Officers’ argument is that because neither the City Charter, nor departmental rules, provide the Manager of Safety with explicit authority to rescind a disciplinary order once the time to appeal has passed, any such action is *ultra vires*. Instead, the Officers assert, “[s]ole jurisdiction for [the Officers’] discipline, at that time, rested with the Civil Service Commission, not with the Department of Safety.” *Officers’ Corrected Answer Brief* at 9. The Commission disagrees.

The Manager of Safety’s authority is not limited to those powers expressly set forth in the City Charter or departmental rules. Controlling case law instructs that the Manager of Safety also has those powers necessarily implied by the City Charter’s broad grant of disciplinary authority to the Manager of Safety. *See Cook*, 68 P.3d at 589-90. One of the powers necessarily implied by the City Charter’s grant of broad disciplinary authority to the Manager of Safety is the power to reconsider the exercise of that authority. *See Citizens for Responsible Growth v. RCI Development Partners, Inc.*, 252 P.3d 1104, 1107 (Colo. 2011) (“Until judicial review is initiated or jurisdiction is divested in some other way, a quasi-judicial body is not necessarily precluded from reconsidering and superseding its own final decision.”); *Trujillo v. General Electric Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980) (“[T]he power to decide in the first instance carries with it the power to reconsider.”).

The Officers have not directed the Commission to any controlling Colorado law to the contrary. The Officers assert that *Colo. State Board Medical Examiners v. Lopez-Somayoa*, 887 P.2d 8 (Colo. 1994) stands for the broad proposition that “an agency like the Denver Department of Safety may not set aside a final decision it has already imposed once the aggrieved party has
either appealed the decision or the time to appeal has passed.” *Officers’ Corrected Answer Brief* at 5. The Officers’ characterization of *Lopez-Somayoa* goes well beyond the holding of the case.

In *Lopez-Somayoa*, the state medical board, after a quasi-adjudicatory hearing, imposed a five-year period of probation on a physician’s license to practice medicine. 887 P.2d at 10. The physician timely filed an appeal of the disciplinary order with the Colorado Court of Appeals. *Id.* at 11. After the appeal was filed, the medical board purported to issue a supplemental order which placed additional conditions on the physician’s medical license. *Id.* The Colorado Supreme Court held that once the physician appealed the original order, the medical board was without jurisdiction to impose additional sanctions upon the physician’s license. *Id.* at 14-15. Thus, the case stands for the proposition that an agency loses jurisdiction to determine any matter affecting the substance of a decision once that decision has been appealed to the courts. *Id.* In this case, the Officers never appealed the Original Disciplinary Orders. Thus, *Lopez-Somayoa* provides no support for their position.

Absent controlling legal authority compelling a decision to the contrary, the Commission elects to interpret the City Charter so as to resolve one of the fundamental concerns arising from the Hearing Officer Panel’s decision: what happens if material evidence comes to light after the ten-day appeal deadline has passed which justifies a change in the disciplinary order, either to the benefit or the detriment of the disciplined employee?

The Officers assert that once the ten-day appeal deadline has passed, jurisdiction over the disciplinary matter passes to the Civil Service Commission and any modification of the order must be pursued through “post-order remedies” before the Commission. *Corrected Answer Brief* at 9, 14. This argument misapprehends the scope of the Commission’s jurisdiction. Under the
plain language of the City Charter, the Commission does not have jurisdiction to review every disciplinary order issued by the Manager of Safety. The Commission only has jurisdiction to review disciplinary appeals filed within the ten-day appeal period. City Charter § 9.4.15(A); see also Cunningham v. Dept. of Highways, 823 P.2d 1377, 1380 (Colo. App. 1991) (“[I]f an appeal or a request for an extension of time is not filed with the statutory ten-day period, it is generally true that the agency lacks jurisdiction to review the action complained of.”).

It is true that one of the bases on which the Commission may review a disciplinary order is that “new and material evidence is available.” Id. § 9.4.15(F). However, any review of a disciplinary order by the Commission is predicated on the timely filing of an appeal. Id. (“In deciding the appeal, the Commission shall rely only upon the evidence presented to the Hearing Officer except when the appeal is based on new and material evidence. . . . Review of a Hearing Officer decision by the Commission shall be limited to the following grounds: (a) new and material evidence is available that was not available when the appeal was heard by the Hearing Officer . . . .” (emphasis added)). If the officer does not appeal the disciplinary order within the 10-day period set forth in the City Charter, the Commission never obtains jurisdiction to review the order.

Thus, under the plain language of the Charter, the Commission has no jurisdiction to issue any “post-order” remedies sought by either the City or an aggrieved officer once the ten-day appeal deadline has passed. If the Commission were to affirm the Hearing Officer Panel’s decision in this case, any disciplinary order that was not appealed would be set in stone after the appeal deadline passed. There would be no procedural mechanism by which a party, including the disciplined employee, could seek modification of the order in any circumstance, including
the discovery of new evidence, after the 10-day appeal deadline passed. Neither the Manager of Safety, nor this Commission, would have jurisdiction to reconsider the order. Such an interpretation of the City Charter would raise grave due process concerns if, for example, exculpatory evidence were brought to the City’s attention.

The Commission rejects this cramped and inflexible interpretation of the City Charter. The City Charter’s grant of broad disciplinary authority to the Manager of Safety must include the power to rescind and/or modify a disciplinary order once the ten-day appeal period has passed in certain circumstances, including when new and material evidence justifies such modification. Under our reading of the Charter, the Manager of Safety has a reasonable period of time to rescind or modify a disciplinary order after it has been issued, assuming that it is not the subject of an appeal to this Commission or the courts. The reasonableness of the Manager’s review in any particular case will turn on the specific circumstances of that case.

The Commission’s holding in this case should not be read to grant the Manager of Safety unlimited authority to rescind or modify a disciplinary order no matter how flimsy the basis for modification. In this case, we resolve only the narrow question of whether the Manager of Safety is divested of jurisdiction to rescind or modify a disciplinary order once the ten-day appeal deadline has passed. For the reasons set forth above, we hold that Manager of Safety is not divested of jurisdiction under those circumstances. Any modified disciplinary order subsequently issued by the Manager of Safety is subject to administrative review by the Civil Service Commission as set forth in the City Charter.
CONCLUSION AND ORDER

For the reasons set forth above, the Hearing Officer Panel’s Decision and Order on Summary Judgment is reversed. This matter is remanded to the Panel for a hearing on the merits of the Officers’ consolidated disciplinary appeals.

Filed this 9th day of April, 2012.

FOR THE CIVIL SERVICE COMMISSION
CITY AND COUNTY OF DENVER

By: Earl E. Peterson
Executive Director