

# City of Firetown

## DISCIPLINARY ACTIONS

SECTION: 1

Revision Date: January, 2008

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### SECTION 1 – TYPES OF DISCIPLINARY ACTIONS

Any officer or employee of the City in the Classified Service who has successfully completed the probationary period prescribed in accordance with these rules may be disciplined or removed from office or employment for cause by the appointing authority. An appointing authority may impose the following types of discipline:

- (a) Discharge from City employment
- (b) Demotion
- (c) Suspension from duty without pay.
  - 1. Any suspension invoked under this Rule against any one person in the Classified Service for one or more periods shall not aggregate more than ninety (90) days in one calendar year.
  - 2. In lieu of leave without pay, suspension may be:
    - (a) Charged against an employee's accumulated leave, or (CTO); or
    - (b) Reflected in a reduction of five (5%) percent for one (1) or more pay periods, provided that such action is mutually agreeable to both the department head and the employee.
- (d) Reduction of salary.
  - 1. An employee's salary may be reduced one (1) or more steps within the range prescribed for his/her class for a period to be prescribed by the appointing authority.
- (e) Letter of Reprimand.
  - 1. A letter of reprimand constitutes a formal written warning regarding an employee's behavior and is placed in an employee's personnel file. After a two (2) year period, an employee may make a written request to the City Manager to remove the reprimand.

The City Manager shall have the discretion of either removing or retaining the reprimand in the employee's personnel file. If the reprimand is retained in the personnel file, the employee may, on an annual basis, make a request in writing to the City Manager to remove the reprimand.

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(f) Last Chance Agreement.

1. A Last Chance Agreement is a written contract between the City and an employee which stipulates conditions of employment, typically as a result of an employee testing positive for alcohol or controlled substances specified in the City's Drug Free Workplace policy.

A Last Chance Agreement may be recommended, at the discretion of the appointing authority, as a form of discipline in lieu of discharge, or in conjunction with other forms of discipline.

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### **SECTION 2 – CAUSE FOR DISCIPLINARY ACTION**

Any of the following shall be deemed sufficient cause for disciplinary action against any employee with permanent status in the Classified Service. The following is not all inclusive:

- (a) Actions contrary to or in violation of these rules;
- (b) Inefficiency or incompetence in the performance of his duty;
- (c) Willful disobedience or insubordination, or violation of any lawful regulation, written procedure or policy, or order or failure to obey any lawful and reasonable direction given him by his supervisor;
- (d) Refusal, neglect or failure to perform in full duty capacity after being so qualified by physical examination;
- (e) Misuse of sick leave;
- (f) Dishonesty;
- (g) Alcoholic or drug intoxication while on duty;
- (h) Disorderly conduct;
- (i) Discourteous or offensive treatment of the public or other employees;
- (j) Absence without leave, or failure to report after leave has expires, or after such leave has been disapproved or revoked and cancelled by the Commission; provided, however, that is such absence or failure to report is excusable, the Personnel Officer may dismiss the charges;
- (k) Conviction of a felony, or conviction of a criminal offense involving moral turpitude, which shall be construed to mean any act of baseness, vileness or depravity; or any act contrary to justice, honesty, modesty or good morals; or any act done with deception, or through corrupt motives;
- (l) Neglect of duty;
- (m) Negligence or willful misconduct causing damage to public property or waste of public supplies;

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- (n) Solicitation or taking for personal use a fee, gift, or other valuable thing in the course of his work or in connection with it when such fee, gift or other valuable thing so solicited or given him by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons;
- (o) Failure to obey an order from the City Manager or other department head to terminate or desist from outside employment or enterprise that has been determined by the Civil Service Commission to be incompatible with City employment or detrimental to the efficiency of his regular City work;
- (p) Any conduct unbecoming an officer or employee of the City.

Charges filed by any citizen against any person in the Classified Service shall be in writing under penalty of perjury.

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## RULE VIII DISCIPLINARY ACTIONS

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### SECTION 3 – WARNING TO EMPLOYEES

If the work or behavior of an employee with permanent status is in some respect unsatisfactory, it shall be the duty of the supervisor or appointing authority to so advise the employee and to counsel him explaining the standards by which he is being judged in order that he shall have reasonable opportunity to attain such standards. Should continuation of the unsatisfactory work or behavior warrant any disciplinary action set forth in Section 1, the employee shall be so warned. Omission of warning shall not prevent the appointing authority from taking disciplinary action but such omission may be taken into consideration by the City Manager or the Civil Service Commission on review of the action.

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### **SECTION 4 – INITIATING A PRE-DISCIPLINARY HEARING**

If the employee's supervisor determines that disciplinary action against an employee with permanent status may be necessary, the supervisor shall notify the appointing authority. If the appointing authority concurs, he shall cause a NOTICE OF PROPOSED DISCIPLINARY ACTION to be personally served upon the employee or sent by registered mail to the employee's residence. The NOTICE OF PROPOSED DISCIPLINARY ACTION shall contain:

- (a) The disciplinary action proposed;
- (b) The cause or causes for the disciplinary action as detailed in Section 2, Rule VIII;
- (c) The description of the nature, purpose and location of evidence which supports the cause(s). All documents considered, whether relied upon or not, shall be either attached or specifically identified. The names of all persons consulted shall also be identified.
- (d) A date and time for the Pre-Disciplinary Hearing, allowing a reasonable opportunity for the employee to prepare and respond.

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### **SECTION 4.1 – PRE-DISCIPLINARY INVESTIGATION OF FIREFIGHTERS (FFBOR)**

When any member is under investigation and subject to interrogation by his commanding officer, or any other member of the Firetown Fire Department, which would lead to disciplinary action, such interrogation shall be conducted under the provisions of this section.

This section shall not apply to any interrogation of a member in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other member, nor shall this section apply to an investigation concerned solely with and directly with alleged criminal activities:

- (a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the member is on duty, or during the normal working hours for the member, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the member being interrogated, the member shall be compensated for such off-duty time in accordance with regular department procedures.
- (b) The member under investigation shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the member under interrogation shall be asked by and through no more than two (2) interrogators at one time.
- (c) The member under investigation shall be informed of the nature of the investigation prior to any interrogation. The member under investigation may be given a direct order to respond to questions. The officer shall be informed that information provided will not be used in any subsequent criminal proceeding. Failure to respond to questions can be the grounds for separate disciplinary action.
- (d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his own personal physical necessities.
- (e) The member under investigation shall not be subjected to offensive language or threatened with punitive action, except the refusal to respond to questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the member under interrogation to be subjected to visits by the press or news media without his express consent nor shall his home address or photograph be given to the press or news media without his express consent.

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- (f) The complete interrogation of a member may be recorded. If a tape recording is made of the interrogation, the member shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The member shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons; except those which are deemed by the investigating agency to be confidential. No notes or reports which are deemed confidential may be entered in the officer's personnel file. The member being interrogated shall have the right to bring his own recording device and record any and all aspects of the interrogation.
- (g) If prior to or during the interrogation of a member it is deemed that he may be charged with a criminal offense, he shall be immediately informed of his constitutional rights.
- (h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses upon matters which are likely to result in punitive action against any member, that officer, at his request, shall have the right to be represented by a representative of his choice who may be present at all times during such interrogation. The representative shall not be a person subject to the same investigation.

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### **SECTION 4.2 – INVESTIGATION OF MEMBERS**

- (a) No member shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a member refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the member refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the member refused to take a polygraph examination.
- (b) No member shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the City of Firetown.

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### **SECTION 5 – PRE-DISCIPLINARY HEARING**

The employee may present to the Hearing Officer either a written or oral response to the NOTICE OF PROPOSED DISCIPLINARY ACTION. At the request of the employee, the date of the hearing may be delayed for a reasonable period of time. In no case shall the delay exceed thirty (30) calendar days from the original date of the hearing.

The Hearing Officer for the Pre-Disciplinary Hearing shall be the appointing authority, unless the appointing authority has been directly involved in the investigation and preparation of the charges. If the appointing authority has been directly involved in preparing the proposed disciplinary action, the City Manager shall conduct the Pre-Disciplinary Hearing and render a decision.

All testimony taken at the Pre-Disciplinary Hearing shall be either formally transcribed or recorded, unless foregone by mutual consent.

In response to the NOTICE OF PROPOSED DISCIPLINARY ACTION, the employee may present evidence and arguments in written and oral form.

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### **SECTION 6 – NOTICE OF DISCIPLINARY ACTION**

The Hearing Officer shall deliver a written NOTICE OF DISCIPLINARY ACTION to the employee, a copy of which shall be filed with the Director of Administrative Services. Such NOTICE shall be personally served on the employee or sent by registered mail to his residence, as reflected in his personnel file. In the case of an employee who has permanent status and who is administered any disciplinary action, the NOTICE shall contain the following:

- (a) The kind and effective date of disciplinary action.
- (b) The specific charges set forth with sufficient particularity as will enable the employee to understand the charges made against him and to answer them.
- (c) Approximate dates of warnings given pursuant to Section 3 regarding type of deficiency for which disciplinary action is taken, or reasons for necessity to take action without warning the employee.
- (d) Dates of Pre-Disciplinary Hearing.
- (e) Statement advising the employee of his right to appeal the imposition of the disciplinary action.

In cases where a LETTER OF REPRIMAND is issued, the NOTICE shall have attached a copy of the Letter and a statement that the Letter will be placed in the employee's personnel file five (5) working days hence unless an appeal is filed with the City Manager in accordance with Section 7 of this rule.

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### SECTION 7 – APPEAL OF DISCIPLINARY ACTION

Within ten (10) working days after the presentation to him of the NOTICE OF DISCIPLINARY ACTION(S) the employee may file with the Administrative Services Department an APPEAL OF DISCIPLINARY ACTION to the Civil Service Commission. Failure on the part of an accused employee to file an APPEAL to the Commission within the time allowed shall cause judgment against said employee to be entered forthwith.

An APPEAL OF DISCIPLINARY ACTION shall include the employee's written request for Commission review of the disciplinary action, and shall specify whether he desires to have a Commission review by means of private hearing, or by means of public hearing. The written APPEAL must also set forth each and every ground for the appeal, and all arguments and evidence that support each ground of appeal.

Any employee who has been granted permanent status in a class shall have the right to appeal any disciplinary action to the Commission except for disciplinary action resulting in a Letter of Reprimand.

If an employee appeals a disciplinary action discharging him from City employment, the position held by the employee shall be considered a temporary vacancy pending final action on the employee's appeal. In the interim, the position may be filled only by a temporary or interim appointment.

Disciplinary action resulting in the discharge of an employee with probationary or other non-permanent employment status by an appointing authority shall be considered final if approved by the City Manager and shall not be subject to appeal to the Commission. Probationary employees who had per status immediately prior to accepting a promotional position for which they are now serving in a probationary status shall be entitled to reinstatement to the former permanent position unless charges are filed and the employee is discharged in the manner provided in these Rules.

After the filing of an APPEAL and prior to the Civil Service Commission Hearing, a meeting may be held at the discretion of the Director of Administrative Services or his designee to review and clarify with the employee (and his representative, if applicable) all grounds, arguments and evidence set forth in the employee's appeal.

APPEAL OF LETTERS OF REPRIMAND: Any employee who has been granted permanent status shall have the right to appeal to the City Manager the content of a Letter of Reprimand. The time frame for filing an APPEAL OF A LETTER OF REPRIMAND also shall be five (5) working days and shall be made in writing to the City Manager.

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### **SECTION 7.1 – RIGHT TO REVIEW OF OTHER ACTION**

- (a) No firefighter shall have any comment adverse to his interest entered in his personnel file or any other file used for any personnel purposes by his employer, without the member having first read and signed the instrument containing the adverse comment indicating he is aware of such comment; except that such entry may be made if after reading such instrument, the member refuses to sign, that fact shall be noted on that document, and signed or initialed by such officer.
- (b) A firefighter shall have thirty (30) days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.
- (c) In addition, a firefighter may appeal any comment in the same manner as a Letter of Reprimand may be appealed.

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## RULE VIII DISCIPLINARY ACTIONS

### SECTION 8

Revision Date: October, 2006

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### SECTION 8 – DISCIPLINARY HEARING BY CIVIL SERVICE COMMISSION

- (a) Subject to availability of Commission members, the Commission shall commence a hearing within ten (10) working days from the filing of said appeal. This ten (10) day limit may be extended up to an additional 20 working days by mutual agreement of the parties.

Any party may request an extension of more than 30 working days from the date of the filing of the appeal or the scheduled date of the hearing, whichever is later, if approved by the Commission based on one or more of the following reasons:

- (i) unavailability of the parties or their respective representatives
- (ii) unavailability of appropriate facilities for the hearing
- (iii) unavailability of witnesses critical to the presentation or defense of the matter
- (iv) any other reason the denial of which would result in an injustice to any party

During the Commission's review of the request for an extension, no information regarding the specifics of the allegations that are the subject of the discipline shall be disclosed to the Commission except for such limited information that is necessary for the determination as to the granting or denying of the request for the extension.

- (b) Whenever a disciplinary hearing is held, the Personnel Officer shall notify the employee and the appointing authority of the date, time and place of hearing, and, if the hearing is public, shall publicly post notice in the City Hall.
- (c) The basis of the hearing shall consist of that material identified in the APPEAL OF DISCIPLINARY ACTION. There is a requirement for reciprocal discovery. The employee and the appointing authority shall be entitled to appear personally, submit documents, call persons to present personally oral information and ask questions of persons who present opposing information. The Rules of evidence do not apply. Each may be represented by counsel to the extent of presenting summaries of their respective cases at the commencement and conclusion of the hearing, and any other function in the capacity of representation as the Commission may deem appropriate. The appointing authority may be represented by a subordinate supervisory employee.
- (d) Oral information shall be presented only under oath administered by the Personnel Officer.
- (e) The Commission may ask questions of persons submitting information, opening statements and concluding arguments. The Commission may compel attendance of persons or the production of documents by subpoenas issued in the name of the City by the City Clerk.
- (f) In reaching its decision, the Commission shall use the preponderance of evidence as the standard of proof. The Commission may affirm, modify or dismiss each action of the Hearing Officer, or may remand the matter for rehearing. The decision of the Commission shall be final.

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### SECTION 9 – FINDINGS AND DECISION

Upon conclusion of the Civil Service Commission hearing, the findings and decision of the Commission shall be set forth in writing and shall state:

- (a) As to each charge whether or not such charge is sustained;
- (b) Whether the level of discipline is appropriate.

If the Commission sustains the Hearing Officer's decision regarding the charges, but does not affirm the level of discipline imposed, the Commission shall fix the level of discipline.

With ten (10) working days after concluding the hearing, the Commission shall certify its findings and conclusions. A certified copy of the findings and decision shall be furnished to the employee and the Hearing Officer.

The findings and conclusions of the Civil Service Commission shall be final and no appeal shall be taken therefrom.