

FBOR DISCIPLINARY APPEAL PROCEDURE

City of Seaside

The following appeals procedures are adopted pursuant to Government Code § 3254.5 of the Firefighters Procedural Bill of Rights Act.

1. DEFINITIONS

- a. The term “Firefighter” means an employee who is considered a “Firefighter” under Government Code § 3251(a), except for the Fire Chief who shall be subject to a separate policy governing his/her right to appeal.

The classifications of employees who are Firefighters include: Firefighter, Fire Engineer, Fire Captain, Fire Marshal, and Division Chief.

- b. The term “punitive action” means any action defined by Government Code §3251(c), i.e., “any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.”

2. APPEAL OF A PUNITIVE ACTION NOT INVOLVING DISCHARGE, DEMOTION, SUSPENSION, OR REDUCTION IN BASE SALARY OF A FIREFIGHTER

Pursuant to Government Code § 11445.20, the following informal hearing procedure shall be utilized for an appeal by a Firefighter of a punitive action not involving a discharge, demotion, suspension, or reduction in base salary (examples: written reprimand, transfer for purposes of punishment).

- a. **Notice of Appeal:** Within five (5) calendar days of receipt by a Firefighter of notification of punitive action as set forth above, the Firefighter shall notify the Fire Chief in writing of the Firefighter’s intent to appeal the punitive action. The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.
- b. **Presiding Officer:** In an informal hearing, the Fire Chief or his/her designee shall be the presiding officer. The Fire Chief or his/her designee shall conduct the informal hearing in accordance with these procedures. The determination of the Fire Chief shall be final and binding. If the Fire Chief cannot serve as the hearing officer because of actual bias, prejudice or interest as defined by Government Code § 11425.40, then the City Manager or his/her designee shall serve as the Presiding Officer. In such cases, the determination of the City Manager shall be final and binding.

- c. **Burden of Proof:** The employer shall bear the burden of proof at the hearing.
- 1) If the action being appealed does not involve allegations of misconduct by the employee, the limited purpose of the hearing shall be to provide the Presiding Officer the opportunity to establish a record of the circumstances surrounding the action. The Department's burden of proof shall be satisfied if the Department establishes by a preponderance of the evidence that the action was reasonable. The Department's burden of proof may be satisfied even though reasonable persons may disagree about the appropriateness of the action.
 - 2) If the punitive action involves charges of misconduct, the Department shall have the burden of proving by a preponderance of the evidence the facts which form the basis for the charge and that the punitive action was reasonable under the circumstances.
- d. **Conduct of Hearing:**
- 1) The formal rules of evidence do not apply, although the Presiding Officer shall have discretion to exclude evidence which is incompetent, irrelevant or cumulative, or the presentation of which will otherwise consume undue time.
 - 2) The parties may present opening statements.
 - 3) The parties may present evidence through documents and testimony.
 - i. Witnesses shall testify under oath.
 - ii. Subpoenas may be issued pursuant to Government Code §§ 11450.05 – 11450.50.
 - iii. Unless the punitive action involves a loss of compensation, the parties shall not be entitled to confront and cross-examine witnesses.
 - 4) Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the hearing officer.
- e. **Recording of the Hearing:** If the punitive action involves the loss of compensation, then the hearing shall be stenographically recorded by a certified court reporter. Otherwise, the hearing may be tape recorded. The per diem cost of the court reporter shall be equally borne by the parties. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

- f. **Representation:** The Firefighter may be represented by an association representative or attorney of his or her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the Firefighter.
 - g. **Decision:** The decision shall be in writing pursuant to Government Code § 11425.50. The decision shall be served by first class mail, postage prepaid, upon the Firefighter as well as his/her attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the Firefighter that the time within which judicial review of the decision may be sought is governed by Code of Civil Procedure § 1094.6.
- 3. APPEAL OF A DISCIPLINARY DECISION INVOLVING DISCHARGE, DEMOTION, SUSPENSION, OR REDUCTION IN BASE SALARY OF A FIREFIGHTER**
- a. **Inapplicability:** In those instances where the procedures in Government Code §§ 11400, et seq. are inapplicable to an administrative appeal, the administrative appeal shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code.
 - b. **Notice of Discipline as Accusation:** The final notice of discipline which may be issued at the conclusion of any pre-disciplinary procedures shall serve as the Accusation as described in Government Code §§ 11500, et seq. Pursuant to Government Code § 3254, subsection (f), the discipline shall not be effective sooner than 48 hours of issuance of the final notice of discipline. The notice shall be prepared and served in conformity with the requirements of Government Code §§ 11500, et seq. The Accusation shall include or be accompanied by a statement to the employee that advises him or her of the right to request a hearing by filing a Notice of Appeal as provided in Government Code § 11506. A copy of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code shall be provided to the Firefighter concurrently with the notice of discipline.
 - c. **Notice of Appeal:** In accordance with Government Code § 11506, within fifteen (15) calendar days after service of the Accusation on the Firefighter as set forth above, the Firefighter shall notify the Personnel Services Manager in writing of the Firefighter's intent to appeal the punitive action by filing a Notice of Appeal. The Notice of Appeal must be signed by either the Firefighter or on his or her behalf, and must include the mailing address of the employee and/or his representative. Failure to file a timely Notice of Appeal constitutes a waiver of the employee's right to a hearing.

- d. Pursuant to Government Code §§ 11507 and 11516, at any time before or after the case is submitted for decision, the department may file an amended or supplemental Accusation. All parties must be notified of the amended or supplemental Accusation. .
- e. **Administrative Law Judge:** Pursuant to Government Code § 11512, the City has determined that appeals shall be presided over by an administrative law judge on staff of the State Office of Administrative Hearings, hereinafter referred to as the “ALJ”. The ALJ shall preside at the appeal hearing, rule on the admission and exclusion of evidence and determine and rule on all matters of law, both procedural and substantive. In conducting the appeal hearing the ALJ shall follow the provisions set forth in section 11513 of the California Government code.
- f. **Time and Place of Hearing:** Pursuant to Government Code § 11508, unless otherwise decided by the Fire Chief or his/her designee, a hearing shall be conducted at City Hall at a time to be determined by the Fire Chief or his/her designee in coordination with the employee and his/her representative.
- g. **Notice of the Hearing:** Notice of the hearing shall be provided to the parties pursuant to Government Code § 11509.
- h. **Findings:** The appeal proceedings shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically. Within 30 days after the case is submitted to him or her, the ALJ shall prepare a proposed written decision to be submitted to the City Manager. Within 60 days of receipt by the City Manager of the ALJ’s proposed decision, the City Manager may take any of the following actions:
 - 1) Adopt the proposed decision in its entirety.
 - 2) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
 - 3) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the City Manager under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.
 - 4) Reject the proposed decision and refer the case to the same ALJ if reasonably available, otherwise to another ALJ, to take additional evidence. If the case is referred to the ALJ pursuant to this subparagraph, he or she shall prepare a revised proposed decision based on the additional evidence and the transcript and other papers that are part of the record of the prior appeal hearing.

A copy of the revised proposed decision shall be furnished and the decision shall be served to each party and his or her attorney.

- 5) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties the City Manager may decide the case upon the record without including the transcript.

- i. **Decision:** The City Manager's decision will be reduced to writing and shall be final and binding on the parties. The City Manager's written decision shall be served on the parties in accordance with Code of Civil Procedure section 1094.6 and the decision shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.5