RALPH M. TERRAZAS

January 31, 2017

BOARD OF FIRE COMMISSIONERS FILE NO. 17-022

TO:

Board of Fire Commissioners

FROM:

Ralph M. Terrazas, Fire Chief

SUBJECT:

MODIFICATIONS TO DISCIPLINE PHILOSOPHY

FINIAL ACTION. Approved	Approved w/Corrections	Withdrawn
FINAL ACTION: —— Approved —— Denied	Approved w/CorrectionsReceived & Filed	Other

SUMMARY

The Fire Department is seeking to formalize the modification of its discipline philosophy from a punitive model to a public service discipline model, which embraces education based discipline. Since Summer 2015, the Department has been employing education based discipline on a pilot basis to resolve discipline cases with success. Education based discipline substitutes courses or training for all or part of the recommended suspension days, in cases where the member and circumstances of the case are amenable to an alternative resolution.

This report is an overview of the Department's efforts to implement education based discipline. Subsequent reports will be presented to the Commission outlining the specifics of the plan to implement a public service discipline model, including education based discipline.

RECOMMENDATION

That the Board:

- 1. Approve the development of a public service discipline model proposed by the Department.
- 2. Receive and approve this report.

FISCAL IMPACT

The Department is moving toward a public service discipline model, including education based discipline, which will significantly reduce the time and expense attendant to the

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investigation and adjudication of discipline matters; however the actual cost savings are yet to be determined.

DISCUSSION

Following the 2006 City Controller and City Personnel Audits, the Board of Fire Commissioners approved an Audit Action Plan (Board of Fire Commissioners Report 06-041-S Audit Action Plan, 05/02/2006) addressing the concerns of the two audits. In the ensuing two years, the Board of Fire Commissioners, the Department, and LAFD Stakeholders, consisting of labor and other Department organizations, conferred and collaborated to create the framework for the present disciplinary process.

The resulting 2008 Audit Implementation Plan (BFC# 08-026), as approved by the Board of Fire Commissioners, directed the Department to implement many of the Controller's and Personnel Department's recommendations vetted by the Stakeholders. Several key requirements of the Plan were to develop disciplinary guidelines through a collaborative process, to restore members' and the public's confidence that the disciplinary process is fair, and to adopt procedures and processes to ensure the outcomes of the Department's discipline process are consistent with the standards.

Since 2008, the Department has made great strides in improving its handling of disciplinary investigations and proceedings since the creation of the Professional Standards Division, the Complaint Tracking System (CTS) and Discipline Tracking System (DTS). However, a change in the disciplinary model is needed.

The adoption of the disciplinary penalty guidelines, intended initially to promote consistency in the disciplinary process, resulted in a punitive disciplinary model. The pursuit of consistency in penalties with the disciplinary guidelines resulted in rigidity in the handling of discipline assessments, without due regard to legitimate mitigating circumstances or the adequacy and effectiveness of alternative sanctions to deter future misconduct. This further contributed to the backlog of matters awaiting member opted Board of Rights hearings. These and the other related mandates created a punitive model of discipline in the Department.

The Department has discussed the need to modify the discipline process with the Commission over the past few years.

At the Board of Fire Commissioners' meeting on January 21, 2014, the Board of Fire Commissioners directed the Fire Chief to explore updates to the discipline process approved in the 2008 Audit Implementation Plan to allow the Department to adjudicate minor complaints with other alternatives such as corrective action, training and counseling, even when there is a relevant disciplinary guideline.

The Department began piloting a program for education based discipline in several cases starting in Summer 2015. To date, the Department has resolved eleven cases with education based discipline settlement agreements which provide for a mix of courses, training and either reduced suspension days or eliminated suspension days.

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The Department has identified settlement criteria to be considered when assessing the appropriate level of discipline for particular cases. The Department has met informally with the United Firefighters of Los Angeles (UFLAC), the Independent Assessor and BOFC members about the settlement criteria, so that all stakeholders can be assured that settlements are approached with consistent, fair procedures, which are well documented.

In addressing the eleven cases through the pilot process, the Department considered the following:

- 1. Assessment of each case using the five settlement factors to determine eligibility.
- 2. Determination of the most appropriate course or courses that would satisfy the goal of the Department and meet the needs of the involved member.

These cases were then settled by mutual agreement between the member, UFLAC and the Department, with a formal settlement agreement.

To date, the courses which have been used in settlements are those offered at no cost to our members or the City by the Los Angeles Sheriff's Department. The courses offered so far have included Decision Making, Team Building, Anger Management and Dispute Resolution. The Department intends to expand the list of courses to be used with education based discipline as they are identified.

Education based discipline is a recognized approach consistent with *Douglas v. Veterans Administration* 5 M.S.P.B. 280 (1981) (decision of the Merit System Protection Board outlining the factors to determine the appropriate penalty for employee misconduct.)

Public Service Discipline Model

The "Public Service Discipline" model is based on four core concepts and provides the Department with structure in determining the appropriate level of corrective or punitive action necessary to modify a member's behavior while maintaining a high level of public service.

The Department has provided these criteria to the Union, and will formally present them to the full Commission once the Department and Union have conferred.

¹ The Department identified the following five criteria to consider when evaluating a case to determine the appropriate settlement proposal:

^{1.} Whether the misconduct harmed the public service;

^{2.} Whether the misconduct is likely to recur;

^{3.} Whether the misconduct or the harm caused by the misconduct is serious;

^{4.} Whether the Department is likely to prevail with formal discipline; and

^{5.} Whether alternative sanctions would adequately deter future conduct.

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Concept One: The Department's first and fore

The Department's first and foremost consideration is maintaining its

high level of public service to the City and the public;

Concept Two:

The Department's second consideration is to balance the interests

of the City, the public, the Fire Service, the Department, its

members and the accused member:

Concept Three: Third, the Department strives to use the appropriate level of

corrective or punitive action that will ensure the delivery of public

service and correct the member's behavior to conform to the

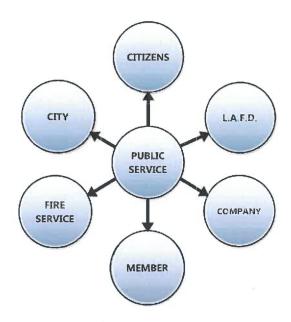
Department's expectations; and

Concept Four: Finally, in determining the appropriate level of corrective or punitive

action, the Department considers (1) the harm to the public service;

(2) the circumstances surrounding the incident and (3) the

likelihood of reoccurrence.



CONCLUSION

The Professional Standards Division has been consulting with the Independent Assessor, United Firefighters of Los Angeles City (Local 112) and the Fire Commissioners to formalize the adoption of a public service philosophy and model for discipline. Reports will be presented to the Commission with a detailed explanation of each of these proposed modifications at future Commission meetings.

Board report prepared by Karen Richter, Acting Commander, Professional Standards Division, and Erin Joyce, Chief Special Investigator, Professional Standards Division.