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August 21, 2006

Karen Sisson, Deputy Mayor  
Office of the Mayor  
Room 303, City Hall

Ellen Sandt, Assistant CAO  
CAO's Office  
Room 1500, City Hall East

Dear Deputy Mayor Sisson and Assistant CAO Sandt:

**Proposed Charter Changes**

In response to your request for additional information, the following provides detail relative to the proposed Charter changes outlined in my July 27, 2006 communication.

1. **Exemptions**

**Charter Section:** 1001(a).

**Proposed Language:** Add ***"All Fire Assistant Chiefs and Fire Deputy Chiefs."***

**Operational Benefits/Efficiencies:** Would allow for the appointment of the most qualified individuals to the Fire Assistant and Fire Deputy Chief ranks. Exempting mid- and top-level Fire supervisors is standard practice across the nation; Los Angeles is an exception.

**Issues/Concerns:** Incumbent Assistant and Deputy Chiefs would forfeit Civil Service protection. Employee organization concerns.

**Affected Group/s:** Current Fire Assistant and Fire Deputy Chiefs.

2. **Examinations**

**Charter Section:** 1005.

**Proposed Language:** Add ***"Allow open examinations for selected lateral positions within the Fire Department."***

**Operational Benefits/Efficiencies:** Would allow for the testing and lateral transfer of highly qualified individuals from outside fire service agencies.

**Issues/Concerns:** Would expand the candidate pool for certain high-level Fire Department positions.

**Affected Group/s:** For selected positions, current LAFD members would compete with non-LAFD personnel.

BFC 06-073-S1

3. **Promotional Process**

**Charter Sections:** 1005, 1009, or 1010.

**Proposed Language:** Add ***"Allow for revised performance evaluations to be incorporated in Fire Department promotional examinations."***

**Operational Benefits/Efficiencies:** Current performance evaluation measures may be revised in response to recent audits. Incorporating revised performance evaluations in the promotional examination process would aid the selection process.

**Issues/Concerns:** Current performance evaluations have not yet been revised.

**Affected Group/s:** LAFD members.

4. **Probation**

**Charter Section:** 1011(a).

**Proposed Language:** Revise as follows: "A candidate appointed to an entry level classified position shall be employed on probation for a period not exceeding 12 months, with the specific period to be established by the board, and for a period not exceeding 18 months, to be measured from the commencement of recruit training, for those members of the Police Department **and Fire Department** appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers **and firefighters**. ***The firefighter probationary period shall not be impacted by pre-appointment fire-related programs.***"

**Operational Benefits/Efficiencies:** Would permit longer period to demonstrate ability, would allow for expanded evaluation period of probationary employee, and would base probation strictly on service in the firefighter rank.

**Issues/Concerns:** N/A.

**Affected Group/s:** Probationary firefighter personnel.

5. **Disciplinary Procedure Proposed Changes**

The following proposed rights and due process changes to Charter Section 1060 "Disciplinary Procedures for the Fire Department" are listed with their respective operational benefits and would affect current LAFD members.

a. **Charter Section:** 1060(a) – Extending statute.

**Proposed Language:** Revise as follows: "The charges must be filed within ~~one year~~ **two years** of the department's discovery of the act committed or omitted by a member and in no event later than ~~two~~ **four** years from the date ..."

**Operational Benefits/Efficiencies:** Would allow the LAFD to complete complex and/or lengthy investigations, thus permitting time to complete the disciplinary process.

- b. **Charter Section:** 1060(a), (b), (h), (m), (o), (p), and (t) – Authority to demote.

**Proposed Language:**

Subsection (a) - "No member of the Fire Department shall be suspended, removed, **demoted in rank**, or otherwise separated from the service of the Fire Department (other than by resignation) ..."

Subsection (b), add new (4) - "**demote in rank, with or without suspension or reprimand or both, any member, subject to the right of the member to an appeal to a Board of Rights as provided in this section.**"

Subsection (h) - "... or the Fire Chief may, without a hearing, impose the penalty of suspension, **demotion, demotion and suspension**, or removal as he or she deems fit and proper."

Subsection (m), insert new (3) – "**demotion in rank, with or without suspension or reprimand or both; or**"

Subsection (m) – "The decision and order must be certified in writing and a copy immediately delivered to the Fire Chief **as soon as practicable, but in no event later than ten days after the decision of the Board of Rights. For purposes of this section, demotion in rank shall mean reduction in civil service classification. The provision of this section shall not apply to reduction in pay grade or similar personnel actions caused by reassignment, deselection from bonused position, and the like. Reductions shall be administered under policies adopted by the department.**"

Subsection (o) – "In the case of a **demotion**, suspension, **demotion and suspension**, or removal, the Fire Chief shall cause a copy of the notice of the penalty to be served upon the accused ..."

Subsection (p) – "In any case of suspension, **demotion and suspension**, or removal prescribed by the Board of Rights, or by the Fire Chief if no hearing is held before a Board of Rights, ..."

Subsection (t) – "Any person restored to duty or reinstated in his or her office or position after suspension, **demotion**, or removal, shall be entitled to receive full compensation ..."

**Operational Benefits/Efficiencies:** Increases the authority of the Fire Chief and/or a Board of Rights to demote a member in rank or pay grade with or without suspension or reprimand or both. Provides more remedies for those instances when a reduction in rank makes more sense than a lengthy suspension or termination.

- c. **Charter Section:** 1060(a) – Tolling of statute in circumstances when an administrative charge is based substantially or entirely on conduct that may be punished criminally.

**Proposed Language:**

Add near end of Subsection (a): "... from the date of the act or omission ***except for an administrative charge based substantially or entirely on conduct which may be punishable criminally, the limitation period shall be based upon the most comparable, applicable penal law – federal, state, county, or City. In this case, the limitation period shall be based upon the following:***

- (1) ***If violation of law is punishable as a felony, the limitation period shall be that period established for the crime. Where no limitation period is established for the felony, there shall be no limitation period for administrative purposes. Conduct treated either as a felony or misdemeanor under the applicable penal law shall be regarded as felonious.***
- (2) ***For an administrative charge based substantially or entirely on conduct punishable as a misdemeanor, the limitation period shall be four years from the occurrence. Conduct treated as either a misdemeanor or an infraction under the applicable penal law shall be regarded as a misdemeanor."***

**Operational Benefits/Efficiencies:** Allows the courts system to adjudicate criminal misconduct prior to the Department taking action.

- d. **Charter Section:** 1060(b) – Prior to any pre-disciplinary procedures, authorize the Fire Chief to place a member on administrative leave without pay for up to six months; and break Subsection (b) into two separate subsections.

**Proposed Language:**

Subsection (b) – "Temporary Relief from Duty; ~~Suspension~~. ***Prior to any pre-disciplinary procedures, the Fire Chief may temporarily relieve any member from duty without pay for up to six months when the actions of the member are deemed, by the Fire Chief, to be egregious in nature, pending a Department investigation.***

Temporary Relief from Duty; Suspension. After following pre-disciplinary procedures otherwise required by law ..."

**Operational Benefits/Efficiencies:** Financial benefit to the City.

- e. **Charter Section:** 1060(o) – Remove language prohibiting the Fire Chief from imposing a greater penalty than the decision of the Board of Rights.

**Proposed Language:** "... the Fire Chief shall either execute the order, or the Fire Chief may, at his or her discretion and in lieu of the order, impose a penalty **greater or** less severe than that ordered by the Board of Rights, ~~but may not impose a greater penalty.~~"

**Operational Benefits/Efficiencies:** Provides the Fire Chief the opportunity to have the final decision in all discipline cases, and provides for greater consistency.

- f. **Charter Section:** 1060(g) – Revise Board of Rights composition.

**Proposed Language:** "The Board of Rights shall be composed of three **two** officers of the rank of battalion chief or higher **and one individual who is not a member of the department (the civilian member).** *The members selected as prescribed in this section shall constitute the Board for the purpose of hearing and deciding upon the matter for which it was specially drawn. The qualifications of, selection procedures for, and compensation of the civilian members shall be established by ordinance.* Upon the filing of the request for hearing before a Board of Rights, the accused shall draw six **four** cards from a box containing the names of all officers who are qualified to be members of the board (except the names of the accused, the accuser, the Fire Chief, Deputy Chiefs, and other officers who may be prejudiced or disqualified by reason of being a material witness to the facts constituting the charges made), and shall select any three **two** of the six **four** names drawn to be members of the Board of Rights, rejecting the three **two** names not selected by replacing them in the box."

**Operational Benefits/Efficiencies:** Allows the Fire Department to remain a self-governing organization, but with increased accountability to and influence from the community it serves.

- g. **Charter Section:** 1060(c), (h), and (o) – Extend from 5 to 10 days the time period the Fire Chief has to provide a copy of a verified written complaint to the Board of Fire Commissioners in the event there is an order of relief from duty or suspension.

**Proposed Language:**

Subsection (c) – "In the event any order of relief from duty or suspension is made, the order shall contain a statement of the charges assigned as causes. The Fire Chief shall, within five **ten** days after the order is served as provided in subsection (d), file with the Board of Fire Commissioners, a copy of a verified written complaint upon which the order is based, with a statement that a copy of the order and verified complaint was served upon the accused. The complaint

shall be verified by the oath of the Fire Chief and shall contain a statement in clear and concise language of all the facts constituting the charge or charges. If the complaint and proof of service are not filed within the ~~five~~ **ten** day period prescribed, the order of temporary relief from duty or suspension shall be void ...”

Subsection (h) – “The Fire Chief shall cause notice of the action to be served upon the accused and shall file a statement of the action with the Board of Fire Commissioners within ~~five~~ **ten** days.”

Subsection (o) – “Within ~~five~~ **ten** days of delivery to the Fire Chief of a certified copy of the decision and order of the Board of Rights, the Fire Chief shall either execute the order ...”

Subsection (o) – “In the case of a ..., the Fire Chief shall cause a copy of the notice of the penalty to be served upon the accused and shall file a statement of such action with the Board of Fire Commissioners within ~~five~~ **ten** days thereafter.”

**Operational Benefits/Efficiencies:** Eliminates an unnecessarily restrictive limitation.

- h. **Charter Section:** 1060(b)(2) – Extend the time period from 30 to 60 days for the Fire Chief to suspend a member with loss of pay and with or without reprimand, subject to the right of the member for a Board of Rights hearing.

**Proposed Language:**

Subsection (b)(2) – “suspend the member for a total period not to exceed ~~30~~ **60** days with loss of pay and with or without reprimand, subject to the right of the member to a hearing before a Board of Rights. In the event the member files an application for a hearing before a Board of Rights as provided in this section, the suspension shall automatically become a temporary relief from duty pending hearing and decision by the Board of Rights. In the event that the member fails to apply for a hearing within the period prescribed **in subsection (e)**, he or she shall be deemed to have waived the hearing and the suspension shall remain effective, unless the Fire Chief requires that a hearing be held.”

**Operational Benefits/Efficiencies:** Provides greater remedy for serious infractions of Department rules, without the necessity of a Board of Rights hearing.

- i. **Charter Section:** 1060(f) – Extend the time for the Fire Chief to schedule a Board of Rights hearing from 5-10 days to 5-30 days.

**Proposed Language:**

Subsection (f) - "Upon the selection of a Board of Rights, the Fire Chief shall set the time (not less than five nor more than ~~ten~~ **thirty** days thereafter) and designate a place where the hearing is to be held, and shall cause notice thereof to be served upon the accused."

**Operational Benefits/Efficiencies:** Eliminates an unnecessarily short time period to convene a Board of Rights hearing. Reduces organizational disruption.

- j. **Charter Section:** 1060(h) – Clarify language for failure to request a hearing before a Board of Rights; failure to appear before a Board of Rights; Fire Chief authority in cases of failure to request/appear; and break Subsection (h) into two separate subsections.

**Proposed Language:**

**~~"Failure to Request by the Accused to Select a Hearing Board; Failure to Appear.~~** In the event the accused ***requested a Board and*** fails to request ***select*** a hearing before a Board of Rights within the ***five day*** period ***as prescribed in subsection (e)***, the Fire Chief may require a hearing to be held before a Board of Rights ***as prescribed in subsection (e)***.

***In the event the accused fails to select a Board of Rights (when directed by the Fire Chief) at the time and place directed by the Fire Chief, the Fire Chief or designee may select a Board of Rights within ten days. and may for that purpose, within five days after the expiration of such period, The Fire Chief or designee shall draw three two names from a box to constitute sit on the board.***

***Failure to Appear.*** If a Board of Rights has been constituted for the purpose of hearing and the accused, without reasonable excuse, fails, or refuses to appear before the Board of Rights at the time and place designated, the Fire Chief ***or designee*** may, at his or her discretion, either direct the Board of Rights to proceed with the hearing in the absence of the accused, or the Fire Chief may, without a hearing, impose the penalty ..."

"If the accused and the Fire Chief both fail to draw and create a Board of Rights within the period prescribed ***in subsections (e) and (h)*** in any case of temporary relief from duty pending hearing, the temporary relief from duty shall be null and void."

**Operational Benefits/Efficiencies:** Allows for greater operational efficiency in selecting a Board in the event the Fire Chief is not available, and clarifies language.

- k. **Charter Section:** 1060(d) – Replacement of certified mail option.

**Proposed Language:** Revise as follows: "The service of any notice, order or process mentioned in this section, other than service of subpoena, may be made either by handing the member a copy personally. ***If a copy of any notice, order, or process cannot with reasonable diligence be personally served, substitute service may be made in accordance with policies adopted by the department*** or by sending a copy by certified mail to his or her last known address of record with the Fire Department if, after due diligence, the member cannot be found."

**Operational Benefits/Efficiencies:** Eliminates roadblocks to service when a member refuses to sign.

- l. **Charter Section:** 1060(q) – Clarify language re double jeopardy.

**Proposed Language:** "No member shall be twice tried ***before a Board of Rights*** for the same offense, except upon his or her request."

**Operational Benefits/Efficiencies:** Clarifying language only.

- m. **Charter Section:** 1060(l) – Expand Subsection (l) title; allow relevant prior acts to be admitted as evidence.

**Proposed Language:**

Expansion of Subsection (l) title: "Representation; Transcript; ***Evidence.***"

Add new paragraph at end of Subsection (l): "***Evidence of prior acts, irrespective of whether they were associated with a personnel complaint against the accused and irrespective of the resolution of the complaint, may be considered in the discretion of a Board of Rights if relevant to the charges, such as, if the prior acts tend to prove that the conduct charged is consistent with a pattern of conduct.***"

**Operational Benefits/Efficiencies:** When used in limited circumstances, provides the Department a greater opportunity to enforce progressive discipline for related acts, each of which does not rise to corrective action.



- n. **Charter Section:** 1060(a) – Clarifying language re filing charges.

**Proposed Language:** Subsection (a): “The charges must be filed *with the Board of Fire Commissioners* within ...”

**Operational Benefits/Efficiencies:** Clarifying language only.

- o. **Charter Section:** 1060(c) – Clarifying language re day of week/holiday.

**Proposed Language:** Add to end of Subsection (c): *“For clarification purposes throughout this section of the Charter, when the last day of any such period falls on a weekend or City holiday, the period shall extend to the next business day.”*

**Operational Benefits/Efficiencies:** Clarifying language only.

- p. **Charter Section:** 1060(e) – Clarifying language re application for hearing.

**Proposed Language:** Revise title and selected text of Subsection (e):

*“(e) **Request Application for Hearing by the Accused.** Within five days after personal service upon the accused of a copy of the verified complaint or within ten days after service by certified mail **in any other manner provided for in this section**, the accused member may file with the Fire Chief a written application for a hearing before and decision by a Board of Rights. **If the accused fails to select a Board at the time and place directed by the Fire Chief, the Fire Chief (not less than five days and not more than 60 days thereafter) may proceed with the penalty specified in the verified complaint served to the accused or may proceed with the selection of a Board as provided in subsection (h).**”*

**Operational Benefits/Efficiencies:** Clarifying language only.

- q. **Charter Section:** 1060(a) – Potential post-audit needs.

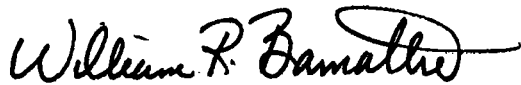
**Purpose:** Future Equal Employment Opportunity Unit staff and Professional Standards Bureau staff may have need to conduct independent investigations of employees that could result in changes to the disciplinary process, enforcement, employee rights, and penalties.

**Operational Benefits/Efficiencies:** The Fire Department’s response to recent audits may include the need for such independent investigations.

Deputy Mayor Sisson  
Assistant CAO Sandt  
August 21, 2006  
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If you have any questions, please contact Chief of Staff Roxanne V. Bercik at (213) 978-3840.

Sincerely,

A handwritten signature in black ink, reading "William R. Bamattre". The signature is fluid and cursive, with a large, stylized initial "W" and a long, sweeping underline.

WILLIAM R. BAMATTRE  
Fire Chief

WRB:ChChVI

C: Board of Fire Commissioners