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# LOS ANGELES FIRE DEPARTMENT



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BOARD OF FIRE COMMISSIONERS  
FILE NO. 12-149

TO: Board of Fire Commissioners

FROM: Brian L. Cummings, Fire Chief

SUBJECT: SUMMARY OF PROPOSED AMENDMENTS TO CITY CHARTER  
SECTION 1060 ENTITLED "DISCIPLINARY PROCEDURES FOR  
THE FIRE DEPARTMENT"

FOR INFORMATION ONLY:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

## **For Information Only:**

The purpose of this Informational Board Report is to provide the HRDC/Personnel Committee with a summary of proposed amendments to City Charter Section 1060 entitled "Disciplinary Procedures for the Fire Department" (These amendments are still in preliminary draft form).

## **Section 1060 (a). Applicability; Rights.**

### **Types of Punitive Action against Sworn Members**

Current: Limits punitive action against a sworn member to (1) a suspension without pay or (2) discharge. Suspension limited to a period not exceeding six months.

Proposed: Expands punitive action against a sworn member to (1) suspension with loss of pay up to 180 calendar days; (2) a temporary reduction in salary in lieu of a suspension without pay; (3) demotion in rank; (4) a combination of suspension, temporary salary reduction or demotion; or (5) discharge or separation from service as punitive action

### Statute of Limitations

*Note: The Board of Fire Commissioners approved a report regarding the proposed changes to the statute of limitations under Section 1060 on March 6, 2012. (See Board Report 12-040). On or about March 7, 2012, the report was referred to the City Council. (Refer to Council File Numbers 11-1699 and 12-0349).*

**Current:** Requires punitive action against sworn member imposed within one year of the Department's discovery of the alleged misconduct and in no event, more than two years from the date of the alleged misconduct. Limitations period is stopped when (1) the accused member is served with a verified copy of the complaint and (2) a copy of the verified complaint and other specified documents is lodged with the Board of Fire Commissioners.

**Proposed:** Would require punitive action against sworn member imposed within one year of the Department's discovery of the alleged misconduct. Tolling provisions in the Firefighters Procedural Bill of Rights would be contained in the Charter. Limitations period satisfied when the accused member is notified of the Department's intent to impose disciplinary action.

### **Section 1060 (b). Temporary Relief From Duty; Suspension.**

#### Temporary Relief From Duty

**Current:** Allows the Fire Chief to temporary relief a member from duty pending a Board of Rights.

**Proposed:** Would the Fire Chief to temporarily relieve a member from duty pending a Board of Rights, 30 days after the member was served with charges (to allow for pre-deprivation due process). Calendar priority would be given to a Board of Rights where a member has been relieved from duty. Amendments would bring Section 1060 into alignment with City Charter Section 1070 for police officers.

#### Authority of Fire Chief to Impose Disciplinary Action

**Current:** Allows the Fire Chief to suspend a member for a period not to exceed thirty (30) calendar days with loss of pay and to direct a member to a hearing before a Board of Rights when the Fire Chief believes that the proposed disciplinary action should exceed a thirty (30) calendar day suspension without pay.

**Proposed (Version 1):**

In addition to the current provisions in Section 1060(b), the Fire Chief could (1) reduce the member's salary for a specified period time in lieu of a suspension (not to exceed a loss of pay equal to an actual suspension); (2) demote a member in rank; or (3) a combination thereof.

**Proposed (Version 2):**

Would allow the Fire Chief to (1) suspend a member for up to 180 calendar days without pay; (2) reduce the member's salary for a specified period of time in lieu of suspension; (3) demote a member in rank; (4) a combination thereof; (5) discharge a member from service.

**Section 1060(c). Complaint.**

**Current:** Requires the Department to file, in matters of suspension or where a member is relieved from duty, within five days of service, a copy of the verified complaint and a statement that the member has been served with copies of specific disciplinary documents, with the Board of Fire Commissioners. The filing of the documents with the Board of Fire Commissioners satisfies the statute of limitations under Section 1060.

**Proposed:** Requirement remains in effect but the act does not satisfy the statute of limitation. See Amendment to Section 1060(a).

**Section 1060(d). Service.**

Manner of Service of Notice, Order or Process

**Current:** Requires that any notice, order or process identified in Section 1060 must initially be personally served. After the Department has demonstrated due diligence as to attempted personal service, the Department may serve the member via certified mail at his or her last known address of record on file with the Department.

**Proposed:** Would allow the Department, at its discretion, to serve a member with any notice, order or process identified in Section 1060 either personally or by certified mail to the members last known address of record on file with the Department.

**Section 1060(e). Application for Hearing; Failure to Respond to Hearing.**

Current: Section 1060 currently requires that a member must file a written application to the Fire Chief requesting a hearing before a Board of Rights within specific time periods, depending on the manner of service.

Proposed: Add that if the member fails to request a hearing before a Board of Rights in the manner prescribed, that failure would be deemed a waiver of the member's right to a hearing and requires the Fire Chief to proceed with the imposition of the penalty.

**Section 1060(f). Time and Place of Hearing.**

Current: Section 1060 requires that once a Board of Rights is selected, the Fire Chief shall set a time within five to ten days in which the Board of Rights must convene.

Proposed: Section 1060 would extend the period of time that a Board of Rights must convene to no less than five days and no more than thirty days after the Board members are selected. Contemplates proposed Charter amendments mandating a civilian Board member (hearing officer or administrative law judge) must be identified and selected for the Board of Rights.

**Section 1060(g). Composition of Board of Rights.**

Current: Board of Rights is comprised of three officers of the rank of Battalion Chief and above. Member picks six names at random from a box of eligible chief officers. Member strikes three names.

Proposed: Board of Rights would be comprised of one civilian and two officers of the rank of Battalion Chief and above. The civilian would be trained in the law, hearing procedures and evidence (administrative law judge or a hearing officer). Two chief officers selected from six names picked by the accused from a box with the member and the Department each striking two names.

**Section 1060(h). Failure to Appear**

Ability of Fire Chief to Proceed with Board of Rights Where Member Has Not Applied for Hearing

Current: If a member fails to request a hearing before a Board of Rights within the statutory period, the Fire Chief may convene a Board of Rights and require a hearing begin within five days after the application period has lapsed.

Proposed: If a member fails to request a hearing before a Board of Rights within the statutory period, member's failure to request a hearing would be deemed a waiver of his or her right to a hearing and Fire Chief would impose the discipline without further delay.

**Section 1060(i). Oaths, Affirmation and Subpoenas.**

Issuance of Subpoenas During the Investigative Process

Current: Board of Rights has the power to administer oaths and affirmations and demand the issuance of a subpoena for the attendance of witnesses and/or the production of evidence, provided that the matter is already pending before a Board of Rights.

Proposed: Would allow the Department to request issuance of subpoenas during the investigative process and identifies the Board of Fire Commissioners as the entity for hearing to quash the subpoena. Board of Rights would continue to have the power to administer oaths and affirmations and demand the issuance of a subpoena for the attendance of witnesses and/or the production of evidence, provided that the matter is already pending before a Board of Rights. Amendments would bring Section 1060 into alignment with City Charter Section 1070(j) for police officers.

**Section 1060(j). Legal Advice.**

No changes proposed.

**Section 1060(k). Burden of Proof; Evidence.**

Current: Department has the burden of proving each charge against the member by preponderance of evidence.

Proposed: Retains the current provision and adds that evidence of acts tending to prove that the conduct charged is consistent with a

pattern of conduct would be admissible (similar to that allowed under Penal Code Section 1101(b)). Amendments would bring Section 1060 into alignment with City Charter Section 1070 for police officers.

**Section 1060(l). Ex Parte Communications.**

Current: None.

Proposed: Would prohibit communications outside of the Board of Rights with Board members regarding the subject matter of the hearing. Amendments would bring Section 1060 into alignment with City Charter Section 1070(k) for police officers.

**New Section 1060(m). Representation; Transcript. (Replaces Former Section 1060(l)).**

Cost of Accused's Defense

Current: Requires the Department pay for the cost of the accused member's representative by requiring the Fire Chief to assign the selected representative to the defense.

Proposed: Would place the cost of the accused member's appeal, including the cost of the representative, on the accused.

Cost of Board of Rights Transcripts

Current: Requires the Department pay and provide a certified copy of the Board of Rights hearing transcripts to the accused.

Proposed: Require the accused bear the costs of obtaining a certified copy of the Board of Rights hearing transcript.

**New Section 1060(n). Findings and Decision. (Former Section 1060(m) and incorporating Former Section 1060(n)).**

Authority of the Board of Rights to Impose Discipline

Current: Upon a finding of guilty, Board of Rights has power to prescribe a penalty of (1) suspension without pay not exceeding six months with a reprimand; (2) reprimand; or (3) removal from office.

Proposed: At the conclusion of the penalty phase, the Board of Rights will have the power to (1) uphold the suspension, demotion, temporary salary reduction (or combination thereof) or removal or separation as prescribed by the Fire Chief; (2) increase, modify or reduce the penalty prescribed by the Fire Chief; or (3) impose no penalty.

Penalty Phase Separate From Guilt Phase; Use of Personnel File to Determine Penalty

Current: Board of Rights may review the Department personnel history and records for the purpose of determining a proper penalty. The Board of Rights must conduct its review of the personnel history and records in the presence of the member and can use the information only after the member has been given a reasonable opportunity to explain the information.

Proposed: Would require that upon a finding of guilt, the Board of Rights would convene a penalty phase during which both the accused and the Department may bring evidence that may assist the Board of Rights in determining the proper penalty. The accused's personnel history and records would be made available to the Board of Rights and considered to the extent that it is relevant and allowed by law after consideration of privacy issues.

**Former Section 1060(n). Personnel History and Records.**

Incorporated into proposed Section 1060(n).

**Section 1060(o). Imposition and Reduction of Penalty.**

Current: Grants the Fire Chief to lower, but not raise the penalty prescribed by the Board of Rights.

Proposed: Retains the same power for the Fire Chief but adds the punitive action of "demotion in rank" to the section.

**Section 1060(p). Effective Date of Penalty.**

Current: Requires that a suspension ordered by the Board of Rights relates back to the first date that a member was temporarily relieved from duty pending a Board of Rights.

Proposed: Leaves current provision intact and allows the Fire Chief, at his or her discretion the power to convert a suspension without pay to a "temporary salary reduction" equaling the loss of pay from the suspension imposed by the Board of Rights.

**Section 1060(q). Double Jeopardy; Exoneration.**

Current: States that a member cannot be tried twice for the same offense.

Proposed: Clarifies that double jeopardy attaches only if the member is tried twice for the same offense by a Board of Rights. (Necessary because of confusion in past cases where a member alleges that being exposed to a concurrent civil trial, DHS, DMV or other licensing decision, or to a criminal prosecution resulting in reduction in charges or dismissal)

**Section 1060 (r). Rehearing.**

No changes proposed.

**New Section 1060(s). Calendar Days.**

Proposed: Defines how time periods are calculated for the purposes of Section 1060.

**New Section 1060(t). Public Records.**

Proposed: Identifies that the order filed with the Board of Fire Commissioners under Section 1060(c) and the notice of penalty filed with the Board of Fire Commissioners under Section 1060(o) are "public records". Amendments would bring Section 1060 into alignment with City Charter Section 1070(y) for police officers

**New Section 1060(u). Other Legal Rights.**

Proposed: Would state that disciplinary proceedings under Section 1060 do not interfere with any other legal right or remedy that the accused member may have in other courts or jurisdictions. Amendments would bring Section 1060 into alignment with City Charter Section 1070(v) for police officers.



**New Section 1060(v). Restoration to duty.**

Proposed: Would state member restored to duty or reinstated after challenging a suspension without pay, demotion in rank, temporary salary reduction, a combination thereof, or removal at a Board of Rights is entitled to full compensation as if the disciplinary action had not occurred. The Section limits the total compensation to one year of salary unless otherwise provided by law. . Amendments would bring Section 1060 into alignment with City Charter Section 1070(w) for police officers.

**New Section 1060(w). Effects of New Charter.**

Proposed: Proposed Section 1060(w) specifies the effective date of the revised Charter provisions. Amendments would bring Section 1060 into alignment with City Charter Section 1070(z) for police officers.

Board report prepared by Assistant Chief Dean Ulrich, Professional Standards Division and Chief Special Investigator Paul Hayashida, Professional Standards Division