

# **FLORENCE TOWNSHIP FIRE DISTRICT NO.1**

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## **720 DEPARTMENT DUE PROCESS PROCEDURES:**

### **PURPOSE:**

To provide a means by which persons involved in certain proposed disciplinary actions, rulings or orders shall be given proper notice of same and to provide said person with due process procedures.

### **SCOPE:**

This policy is applicable to all personnel. Note: whenever there is a discrepancy between this policy and the Disciplinary Procedures set forth in the Collective Bargain Agreement, the procedure set forth in the Collective Bargain Agreement shall prevail with regard to those employees who are covered by the Collective Bargaining Agreement.

### **PROCEDURE:**

#### **WRITTEN STATEMENT OF ALLEGED IMPROPER BEHAVIOR:**

Due process procedures shall be initiated upon the filing of a written statement of alleged improper behavior submitted by any person to the Chief or his/her designee. The written statement of alleged improper behavior shall constitute a written statement of alleged actions or inactions of a member/employee which allegedly violates the rules of conduct for fire department members/employees. Said written statement shall set forth in ordinary and concise language the acts or commissions or failure to act with which the respondent is alleged to have participated in, to the end that the respondent will be able to prepare his or her defense.

#### **OBLIGATIONS ON THE CHIEF:**

It shall be incumbent upon the Chief to make a determination as to whether he/she is able to function in a disinterested and objective manner in consideration of the matter before him/her. If the Chief determines that he cannot function in a disinterested and objective manner, he shall turn the matter over to the Chairman of the Board of Fire Commissioners, who shall designate either a Commissioner or a department officer to fulfil the Chief's obligations in the particular matter.

#### **PRELIMINARY INVESTIGATION:**

Upon receipt and consideration of the written statement of alleged improper behavior, the Chief or his designee, shall make a preliminary investigation as to the validity of the alleged improper behavior. If the Chief or his/her designee determines that the allegations of improper behavior has no merit, then the Chief may dismiss the matter and respond in writing to the complainant. If the preliminary investigation indicates the need for further action, then the Chief shall proceed as appropriate with either a verbal warning, written reprimand or a suspension up to five (5) days.

## **WRITTEN STATEMENT OF ALLEGED IMPROPER BEHAVIOR:**

If the Chief determines that it is appropriate to levy a suspension in excess of five (5) days or to seek termination, then the Chief or his/her designee must complete an investigation which should include obtaining statements from appropriate individuals. The Chief or his/her designee must complete a Notice of Disciplinary Action Form which must specify the specific provisions of these policies and procedures which the respondent is alleged to have violated, but shall not consist merely of charges phrased in language of such provisions without supporting allegations/facts. The Notice of Disciplinary Action should provide enough specificity to the end that the respondent will be able to prepare his or her defense. The Chief shall cause a copy of the Notice of Disciplinary Action to be served on the respondent by any of the following means: (1) personal service, (2) by registered or certified mail, return receipt requested, or (3) by electronic means (provided there is a received receipt received by the sender) and addressed to the respondent at his or her email address, or at the address appearing on the books and records of the Department. Service by mail shall be deemed effective two (2) days after such mailing in a regular depository of the United States Mail. Electronic service shall be deemed effective upon the receipt by the sender of a received confirmation.

## **NOTICE OF RIGHT TO REQUEST A HEARING BEFORE THE BOARD OF FIRE COMMISSIONERS:**

The Notice of Disciplinary Action shall contain the following language, "If you desire a hearing before the Board of Fire Commissioners on the above charges, you must notify the Chief and or his designee and the secretary of the Board of Fire Commissioners within ten (10) calendar days of receipt of this form. If you request a hearing, it will be held."

The Notice of Disciplinary Action may also set forth the hearing time, date and place. The hearing date shall be no sooner than ten (10) calendar days after the last date on which the respondent has to request a hearing before the Board.

**IF A MEMBER/EMPLOYEE FAILS TO MAKE A WRITTEN REQUEST FOR A HEARING WITHIN TEN (10) CALENDAR DAYS OF RECEIPT OF THE NOTICE OF DISCIPLINARY ACTION FORM, THEN THE PROPOSED ACTION IN THE NOTICE OF DISCIPLINARY ACTION SHALL BECOME FINAL AND UN-APPEALABLE.**

## **IMMEDIATE SUSPENSION OF MEMBER/EMPLOYEE:**

A member/employee may be suspended immediately and prior to a hearing where it is determined by the Chief that the member/employee is unfit for duty or is a hazard to any person

if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of the Fire District services.

**Content of Investigative Reports:** When an investigative report is prepared by a Supervisor, it must include the following information before it will be considered complete:

- Summary of the incident – should answer the questions: who, what, when, where, why and how. In a criminal situation, a police report will be requested through the Florence Township Police Records Division;
- Interviews conducted – this must include the interviewee rank, date, time, location, those present, and the information discussed. If possible, a signed statement by the interviewee should be obtained;
- Conclusion – from the information available, the Supervisor must make a determination as to whether or not the employee’s action or inaction is a failure to comply with his or her duties under these Standard Operating Procedures, the rules and regulations established by the Commissioners or a violation of N.J.A.C., Section 4A:2-2.3. Extenuating circumstances may be discussed in this section; and
- Attachments – relevant documents that the Supervisor feels should be part of the investigative report. The completed report shall be forwarded to the Fire Chief. The Fire Chief will gather or cause to be gathered any additional information necessary and forward the investigation report together with any supplemental information to the Board of Fire Commissioners together with the Fire Chief’s recommendation as to whether or not disciplinary action should be taken.

- 1. Members/Employees Responsibility to Answer Questions and provide a written statement:** A member/employee may be compelled by a Supervisor to answer questions that are related to his/her duties, actions or fitness for duty. Member/Employee must provide a full written account of his/her actions when requested by supervisor. Failure to do so completely and truthfully may be the basis for disciplinary action.

#### **Right to Representation During Investigatory**

**Interviews:** A member/employee shall have a right to representation present only during investigatory interviews. An investigatory interview occurs when a Supervisor questions a member or employee to obtain information, which could be used as a basis for discipline or asking an employee or member to defend his or her conduct.

#### **Member/Employee’s Right and Responsibility to Request**

**Representation:** If a member/employee has a reasonable belief that discipline or other adverse consequences may result in what he or she says, the member or employee has the right to request representation. Neither the

Board, the Chief nor other Supervisors are required to inform the member/employee of his or her right to representation; it is the employee's or member's responsibility to know and request.

**Procedure to be Followed if Member Requests Representation:** When a member or employee makes the request for representation, for a representative to be present, the Fire District has three (3) options:

- (a) It can stop questioning until the representative arrives;
- (b) It can call off the interview; or
- (c) It can tell the employee that it will call off the interview unless the employee voluntarily gives up his or her rights to a representative.

**Representatives Role During Investigatory Interview:** During an investigatory interview, management must inform the representative or Fire Company representative of the subject of the interview. The representatives must also be allowed to speak privately with the member or employee before the interview. While the interview is in progress, the representative cannot tell the member/employee what to say. At the end of the interview, the representative can add information to support the member or employee's case

#### **AMENDED OR SUPPLEMENT DISCIPLINARY ACTION:**

At any time prior to the hearing date, the Chief may file or permit filing of an amended or supplemental Notice of Disciplinary Action. All parties shall be notified thereof at least five (5) calendar days prior to the hearing date. If the amended or supplemental Notice of Disciplinary Action presents new charges, the Chief shall afford the respondent a reasonable opportunity to prepare a proper defense thereto.

#### **DISCOVERY:**

Upon written request by the other party, made at least seven (7) days prior to the hearing and within fifteen (15) days after the service of the complaint or within ten (10) days after service of any amended or supplemental Notice of Disciplinary Action, either party is entitled to: (1) obtain the names and addresses of witnesses to the extent known to the other party and (2) request and receive copies of any statements or writing the other party intends to offer as evidence at the hearing. Nothing in this Section, however, shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made conditional or protected as the attorney's work product. Any party claiming his request for discovery has not been complied with shall submit a petition to request discovery to the Hearing Officer. The Hearing Officer shall make a determination and issue a written order setting forth the matters or parts thereof which the petitioner is entitled to discover.

#### **STATEMENTS:**

At any time ten (10) days or more prior to the hearing or a continued hearing, any party shall mail or deliver to the opposing party a copy of any sworn statement which that party proposes to introduce into evidence. Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the respondent a request to cross-examine the statement's author, his right to cross-

examine such author is waived and the sworn statement, if introduced in evidence, shall be given the same effect as if the author had testified orally. If an opportunity to cross-examine the statement's author is not afforded after a request is made as herein provided, the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.

**HEARING:**

**A. IF A MEMBER/EMPLOYEE FAILS TO MAKE A WRITTEN REQUEST FOR A HEARING WITHIN TEN (10) CALENDAR DAYS OF RECEIPT OF THE NOTICE OF DISCIPLINARY ACTION FORM, THEN THE PROPOSED ACTION IN THE NOTICE OF DISCIPLINARY ACTION SHALL BECOME FINAL AND UN-APPEALABLE.**

B. When a member/employee who is entitled to a hearing, makes a timely written request for a hearing, it shall proceed as follows:

1. At least three (3) members of the Board of Fire Commissioners shall consider the case unless there are less than (3) members willing to serve in which case (2) members of the Board may consider the case and render a binding decision. The members of the Board of Fire Commissioners who shall be hearing the case, shall select a person to serve as a hearing officer and preside over the hearing. Such hearing officer may be the solicitor of Florence Township Fire District #1. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. The Board of Fire Commissioners may determine the manner in which the hearing will be conducted, so long as the rights set forth in these procedures are protected. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding. Council for the Florence Township Fire District #1 may be present at all hearings and may serve as hearing officer.
2. Neither the complainant nor respondent must be in attendance at the hearing.
3. Each party shall have the right to do the following, but may waive any or all of these rights:
  - (a) make an opening statement
  - (b) introduce evidence, testimony, and witnesses
  - (c) cross-examine opposing witnesses
  - (d) rebut evidence and testimony
  - (e) make a closing statement.

Even if the complainant and / or respondent does not testify in his own behalf, each may still be called and questioned.

4. Whenever the Board of Fire Commissioners has commences to hear a matter and a member of the Board of Fire Commissioners withdraws prior to a final determination, the remaining members shall continue to hear the case and render a binding decision.
5. Oral evidence shall be taken only on oath or affirmation administered by the hearing officer.

**DECISION OF THE BOARD OF FIRE COMMISSIONERS:**

Within thirty (30) days of the conclusion of the hearing, the members of the Board of Fire Commissioners who heard the case, shall make a decision on the matters raised in the Notice of Disciplinary Action. Said decision shall be set forth in writing and shall contain the concise finding of the facts as determined by the panel of Board of Fire Commissioners who heard the case. Said writing shall also set forth a decision on the charges specified in the Notice of Disciplinary Action. The decision of the Board may be but is not limited to one of the following:

1. The accusations in the complaint are unfounded and the complaint is dismissed;
2. The accusations in the complaint have been substantiated but no disciplinary actions are required;
3. The allegations of the complaint are substantiated and:
  - (a) a written reprimand is warranted;
  - (b) a suspension for a period of time is warranted;
  - (c) termination/dismissal from the department is warranted;
  - (d) any other actions deemed just by the Board of Fire Commissioners.

**THE DECISION OF THE BOARD OF FIRE COMMISSIONERS CONSIDERING THE CASE SHALL BE FINAL:**

The written decision by the Board of Fire Commissioners shall be a final and unappealable decision which is binding upon both the Fire District and the member/employee charged.

Adopted:  
Revised: 10-2016

Readopted: 10-2016