

## LA CITY CHARTER AREAS OF CONCERN AS IT PERTAINS TO DEFINITIONS & PROCEDURES

### **Procedures/City Charter/Disciplinary Process not Followed**

[https://codelibrary.amlegal.com/codes/los\\_angeles/latest/laac/0-0-0-49#JD\\_ChA1](https://codelibrary.amlegal.com/codes/los_angeles/latest/laac/0-0-0-49#JD_ChA1) :

### **Skelly Process (See Additional Details at the End)**

[https://sfdhr.org/sites/default/files/FileCenter/Documents/1945-The\\_Skelly\\_Process.pdf](https://sfdhr.org/sites/default/files/FileCenter/Documents/1945-The_Skelly_Process.pdf)

### **Here is a link to the LA city Charter:**

[https://codelibrary.amlegal.com/codes/los\\_angeles/latest/laac/0-0-0-2](https://codelibrary.amlegal.com/codes/los_angeles/latest/laac/0-0-0-2)

### **Link to LADWP disciplinary policies:**

<https://insidedwp.ladwp.com/cs/WebFiles/AdmManual/Administrative%20Manual%20-%20Volume%202%20-%20Section%2050-04-Work%20Performance%20-%20A%20Guide%20to%20Employee%20Discipline.pdf>

### **See Additional Documents and Support in this Packet:**

Look at civil service rule 7.2 "Abandonment of Post"

### **See Below for Fire, Police, City Attorney, Civil Servants.**

#### **Sec. 101. Powers of the City.**

The City of Los Angeles shall have all powers possible for a charter City to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in the Charter, subject only to the limitations contained in the Charter.

#### **Sec. 103. Delivery of Services.**

Every City office and department, and every City official and employee, is expected to perform their functions with diligence and dedication on behalf of the people of the City of Los Angeles. In the delivery of City services and in the performance of its tasks, the government shall endeavor to perform at the highest levels of achievement, including efficiency, accessibility, accountability, quality, use of technologically advanced methods, and responsiveness to public concerns within budgetary limitations. Every analysis and review of the performance of the government and its officers shall seek to ascertain whether these high standards are being met, and if not, shall recommend methods of improvement.

#### **Sec. 104. Restrictions on the Powers of the City.**

(i) **Non-discrimination.** In the employment of persons in the service of the City, there shall be no discrimination in selection or compensation on account of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, or marital status.

#### **Sec. 106. Definitions.**

(a) **Days.** If this Charter requires an act to be performed within a specified number of days, it shall mean consecutive calendar days unless otherwise stated. When the last day to perform an act falls on a weekend or City holiday, the period shall extend to the next business day.

(b) **Notice.** Unless otherwise provided by this Charter or ordinance, if this Charter requires notice to be given to an individual, that notice shall be deemed given on the date of personal service, or upon deposit in the mail, certified or first class mail, to the last known address. Unless otherwise provided by this Charter or ordinance, if notice is mailed, the time by which the recipient must take any action required under the Charter shall commence five days after this notice is mailed.

#### **Sec. 115. Changes in City Departments.**

After the Operative Date of this Charter, the departments of Animal Regulation and Building and Safety, which are no longer included in the Charter, shall continue to exist, and to perform the powers and duties prescribed for them in the Charter immediately prior to the Operative Date, until the departments, powers or duties are changed or eliminated by ordinance.

The adoption of this Charter is not intended to affect the powers and duties of the Department of Cultural Affairs or Department of Transportation or their respective commissions. Those powers and duties shall continue until changed or eliminated by ordinance.

#### **Sec. 117. Changes in Civil Service Discipline Provisions.**

Changes in the civil service discipline provisions of Section [1016](#) shall not affect any proceeding or action that has been commenced prior to the Operative Date of this Charter.

#### **Sec. 215. Oath of Office.**

Every officer provided for in the Charter shall, before entering upon the discharge of the duties of office, take the following oath or affirmation: “I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California and the Charter of the City of Los Angeles, and that I will faithfully discharge the duties of the office of (here inserting the name of the office) according to the best of my ability.”

#### **Sec. 230. Mayor.**

Except as otherwise provided in the Charter, management authority shall be vested in the Mayor who shall be the Chief Executive Officer of the City and shall devote his or her entire time to the duties of the office. The Mayor shall execute and uphold all laws and ordinances of the City.

(i) declare a local emergency and coordinate the City’s emergency response activities in accordance with procedures established by ordinance, and supervise emergency preparedness activities in the various departments and offices, including the Mayor’s office, in a manner consistent with City policy;

(j) establish procedures and implement policies not inconsistent with the Charter or ordinance as are necessary to effectively manage and supervise the responsibilities entrusted to the Mayor through the issuance of executive directives, which, in the absence of conflicting provisions in the Charter or ordinance, and until revised or rescinded by the Mayor, shall be binding on all departments, commissions, appointed officers and employees of the City. Executive directives shall be filed with the City Clerk and be published in the manner described in Section [251](#). Executive directives shall take effect 15 days after publication;

#### **Sec. 233. Temporary Transfer of Employees.**

The Mayor may make temporary transfers of employees, not to exceed 120 days in any calendar year, from one appointed office or department to another, except the Proprietary Departments, to relieve temporary shortages in personnel, or to meet temporary demands for additional employees caused by temporary or

seasonal requirements in any office or department. The Mayor shall notify the City Clerk at the time the transfer of employees is made, and the City Clerk shall notify the President of the Council, the Director of the Office of Administrative and Research Services and the Board of Civil Service Commissioners of the transfer. The compensation of employees so transferred shall be a charge upon the office or department to which the employees are transferred for the period of the transfer. In the event of objection in writing to the temporary transfer by any of the appointing authorities involved, the Mayor shall determine whether or not the transfer shall be made.

### **Sec. 253. Urgency Ordinances.**

The Council may adopt an urgency ordinance that shall take effect upon its publication. An urgency ordinance may only be adopted if required for the immediate preservation of the public peace, health or safety. Any urgency ordinance shall contain a specific statement showing its urgency, and must be passed by a three-fourths vote of the Council. No grant of any franchise, right or privilege shall ever be construed to be an urgency measure.

### **Sec. 371 +. Regarding Contracts, Bidding Process, etc...**

### **Sec. 1000. Applicability.**

The provisions of this Article shall apply to all employees of the City, except for those specifically exempted in Section [1001](#).

### **Sec. 1001. Exemptions.**

Each of the following positions shall be exempt from this Article:

(a) **Exempt Positions.**

- (1) All officers elected by the people.
- (2) All members of the boards of commissioners.
- (3) All chief administrative officers of the City's departments and offices and the Directors of the Public Works' Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services.
- (4) Two positions in the class of Assistant General Manager or Deputy Director in each City office or department, and two positions in the class of Assistant Director in each of the Public Works Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services, and two positions in the class of Deputy Controller in the Office of Controller.
- (5) All Deputy Chiefs of Police.
- (6) All Deputy Chiefs of Fire.
- (7) Positions in the Office of the Mayor.
- (8) Positions established by the Council for the purpose of assisting the members of the Council in the performance of their duties, except for clerical personnel.
- (9) All positions in the office of the City Attorney.

- (10) The Chief Financial Officer of the Department of Water and Power.
- (11) The Executive Director of the Board of Police Commissioners.
- (12) The Inspector General of the Police Department.
- (13) The Executive Director and all non-clerical personnel of the City Ethics Commission.
- (14) All Assistant Directors in the Office of Administrative and Research Services.
- (15) The Traffic Manager and the Port Warden of the Harbor Department.
- (16) Crossing Guards.
- (17) All physicians and psychologists subject to Section [1040](#).
- (18) All officers of election.
- (19) Persons specially employed by the City Clerk, as authorized by the provisions of Section [405](#) of the Charter, to assist in the conduct of any election.
- (20) Positions elsewhere specifically exempted by the Charter.

(b) **Management, Professional, Scientific or Expert Services.** In addition to those positions described in subsections (a), (c) and (d) of this section, up to 150 persons to provide management services or to render professional, scientific or expert services of an exceptional character to offices or departments including the Proprietary Departments. Appointments under this subsection shall be subject to the following:

(1) As to each position to be exempted under this subsection, and prior to the initiation of the selection process to fill the position, the Mayor shall forward to the Council a recommendation for an exempt position which sets forth the educational, experience and other professional requirements of the position and describes the circumstances presented by the department seeking the appointment that preclude filling the position through the civil service system. Within ten Council meeting days from receipt of the recommendation, the Council may by two-thirds vote disapprove the Mayor's recommendation for the exemption. If the Council does not act on the recommendation within the specified time period, the recommendation shall be deemed approved. When the position is vacated, the exemption shall terminate unless re-authorized in accordance with this subsection.

(2) No person may be employed under this subsection if he or she has served in an exempt position in the office of an elected City official in the prior two years unless he or she meets the professional experience requirements established for the position.

(3) Persons who have been exempted or who have been appointed to an exempt position prior to the effective date of this Charter, will retain their exemption. Exemptions under this subsection shall be prospective and shall be made only at the time of filling a vacant position.

(4) Council may, by ordinance adopted by two-thirds vote, increase the maximum number of exempt positions as provided in subsection (b) to no more than one percent (1%) of the regular authorized positions in the City workforce, provided that if the maximum number of exempt positions is increased pursuant to this subsection, the number of positions created by subsections (a) (4), (5) and (c) of this section shall be counted toward the maximum allowable exemptions. If Council provides for a maximum number of exemptions based

on a percentage of the workforce, and a reduction in the workforce results in more filled exempt positions than permissible, each incumbent shall retain the exemption, but when vacated, such excess exemptions shall terminate.

(c) **Proprietary Department Positions.** In addition to the exempt positions in the Proprietary Departments created by subsections (a), (b)(1), (2), (3) and (d) of this section, up to 15 positions in the Department of Water and Power and up to ten positions to be allocated between the Harbor Department and the Department of Airports for employment of persons to provide management services or to render professional, scientific or expert services of an exceptional character. Exemption of these positions shall be subject to the following:

(1) Upon receipt of a request for an exempt position by the department which sets forth the educational, experience and other professional requirements of the position and describes the circumstances that preclude filling the position through the civil service system, the Mayor shall forward to the Council a recommendation for the exempt position. Within ten Council meeting days from receipt of the recommendation, the Council may by two-thirds vote disapprove the Mayor's recommendation for the exemption. If the Council does not act on the recommendation within the specified time period, the recommendation shall be deemed approved.

(2) No person may be employed under this subsection if he or she has served in an exempt position in the office of an elected City official in the prior two years unless he or she meets the professional experience requirements established for the position.

(3) Persons who have been exempted or who have been appointed to an exempt position prior to the effective date of this Charter, shall retain their exemption. Exemptions under this subsection shall be prospective and shall be made only at the time of filling a vacant position.

(d) **Positions Approved by Council.** In addition to the exempt positions created in subsections (a), (b) and (c) of this section, any of the following may be exempted from the provisions of this Article upon the request of the head of the department or office in which they are employed, by order of the Board of Civil Service Commissioners, approved by the Council by resolution:

(1) positions of unskilled laborers, including drivers;

(2) positions for workers, mechanics or craftspersons (including crew leaders) employed exclusively in that position on the construction of public works, improvements or buildings;

(3) any position requiring the services of one individual for not more than half time and paying a salary not to exceed three-fourths of the monthly rate established by the salary fixing authority of the department, division or office for entering-level clerical positions;

(4) grant-funded positions for a term of no more than two years which, by application of the procedures described in this subsection, may be extended for one additional year for a maximum exemption period of three years.

Any exemption made under the provisions of (1) through (4) may be terminated at any time by resolution of the Board of Civil Service Commissioners.

(e) **Leave of Absence from Civil Service.** Each person exempted or appointed to an exempt position under this section shall, during the period of exempt employment, be considered as being on leave of absence from the classified civil service if at the time of exemption he or she holds a position in the classified civil service, or is entitled to hold a position therein, and shall continue, during such period, to accrue seniority credit the same as though serving in such position.

## SECTION HISTORY

Amended by: Subsec. (a), Charter Amendment Q § 1, approved March 8, 2011, effective April 8, 2011.

### **Sec. 1011. Probation.**

(a) **Length of Probation.** 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 employees appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers. The civil service rules may provide for a different period of probation for non-entry level employees, not exceeding six months except that a longer period, not exceeding 12 months, may be fixed for management personnel.

(b) **Termination During Probation.** At or before the expiration of the probationary period, the appointing authority may terminate the probationary employee by delivering written notice of termination to the employee assigning in writing the reasons for the termination. The appointing authority shall subsequently notify the board of such termination. Unless the probationary employee is served with written notice of termination during the probationary period, the employee's appointment shall be deemed complete.

### **Sec. 1016. Discharge or Suspension.**

(a) **Discharge or Suspension for Cause.** Any board or officer having the power of appointment shall have the power to suspend or discharge any officer, member or employee of the office or department. No person in the classified civil service shall be discharged or suspended except for cause, which shall be stated in writing by the board or officer having the power to make such discharge or suspension.

(b) **Statement of Cause.** The written statement of cause shall be filed with the Board of Civil Service Commissioners, with certification that a copy has been served upon the person so discharged or suspended, in accordance with Section [1018](#). Upon filing with the board, the discharge or suspension shall take effect.

(c) **Application for Hearing.** Within five days of service of the written statement upon any person so discharged or suspended, the person shall file a written application with the board in order to require the board to hold a hearing to investigate the grounds for the discharge or suspension. In the event that the person does not file an application, the board may, but is not required to, within 15 days after the filing of the written statement with the board, determine to hold a hearing to investigate the grounds for the discharge or suspension.

(d) **Reinstatement; Restoration.** If, after investigation and hearing as required by law is held, the board finds, in writing, that the grounds stated for the discharge or suspension were insufficient or were not sustained, the board shall order the person to be reinstated or restored to duty. With the consent of the appointing authority, the board may also reduce the length of the suspension, or may substitute suspension for discharge, if the board makes a written finding that such action is warranted. The order of the board with respect to the discharge or suspension shall be promptly certified to the appointing board or officer, and shall be final and conclusive.

(e) **Compensation.** If the board orders reinstatement or restoration to duty of a person who has been discharged or suspended, the person shall be entitled to receive compensation from the City the same as if he or she had not been discharged or suspended by the appointing board or officer.

(f) **Change of Disciplinary Review.** The Council may, by ordinance, provide for an alternative system for impartial review of employee discipline as set forth in subsections (b) through (e) of this section, provided that such a system conforms with due process standards for a fair hearing, and provided there remains a process for review of employee discipline in which costs are borne by the City.

(g) **Finality of Order of Suspension for Lack of Funds.** The order of any appointing board or officer suspending any person because of lack of funds or lack of work in the department shall be final, and shall not be subject to review by the Board of Civil Service Commissioners.

(h) **Applicability.** The procedure for review of discipline set forth in this section shall not apply to:

(1) those members of the Police Department appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers who are subject to the provisions of Section [1070](#) of the Charter.

(2) those members of the Fire Department appointed under civil service rules and regulations to perform the duties of regular firefighters who are subject to the provisions of Section [1060](#) of the Charter.

(3) any suspension of five working days or less in any 12 month period for personal delinquency. The reasons stated in writing for any suspension shall be furnished to the suspended employee and promptly filed with the board. Any suspension which results in an employee having a total suspended time by reason of the exercise of authority under this subsection in excess of five working days in any 12 month period shall be subject to all of the provisions of this section.

#### **Sec. 1017. Demand for Reinstatement; Claim for Compensation.**

Whenever it is claimed by any person that he or she has been unlawfully demoted, suspended, laid off or discharged, and that person has filed an application for a hearing as provided in Section [1016](#)(c) and reinstatement or restoration to duty has been denied, the person may file a written claim for compensation and a demand for reinstatement. The claim and demand must be filed within 90 days from the date of the decision of the board following a hearing, or if no hearing is applied for, from the date on which it is claimed that the person was first illegally, wrongfully or invalidly demoted, laid off, suspended or discharged. The demand for reinstatement must be filed with the board and the claim for compensation must be filed with the City Clerk. Failure to file a demand for reinstatement with proof of filing with the board, within the time specified in this section, shall be a bar to any action to compel reinstatement. Proof of filing with the City Clerk of the claim for compensation within the time and in the manner specified shall be a condition precedent to any recovery of wages or salary claimed to be due on account of demotion, layoff, suspension or discharge. Except as provided in this section, claims for compensation shall conform to the requirements of Section [350](#).

#### **Sec. 1018. Service of Notice.**

Service of notice in accordance with this Article may be made by handing a copy to the person or by sending a copy by certified mail to the person's last known residence if, after due diligence, the person cannot be found.

#### **Sec. 1019. Falsification and Corruption.**

(a) **Investigation.** The board shall investigate the enforcement of the civil service provisions of this Article and the civil service rules. All officers of the City shall aid the board in all proper ways in carrying out the civil service provisions of this Article.

(b) **Reprimand; Recommendation of Discharge or Suspension.** Any person holding a position in the classified civil service who willfully violates any of the civil service provisions of this Article shall, after hearing by the board, be subject to reprimand by the board. The board shall have the right to recommend suspension, discharge, or in lieu of discharge, demotion of the person to the appointing power.

(c) **Misdemeanors.** The following conduct is a violation of this Article and shall be punishable as a misdemeanor:

(1) any oral or written false statement willfully made under oath in any application or document filed with the board, in any proceeding before the board, in any investigation conducted by or under the jurisdiction of the board, or in any proceeding arising under this Article.

(2) any conduct, whether done alone or in cooperation with others to defeat, deceive or obstruct any person in respect to his or her right of examination; to corruptly or falsely mark, grade, estimate, or report upon the examination of proper standing of any person examined under the civil service provisions, or aid in so doing; or to willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects of any person for employment or promotion.

(3) direct or indirect payment or promise of payment of money or other valuable consideration to any person for appointment, proposed appointment, or promotion to a position in the classified civil service.

### **EMPLOYMENT IN THE CITY ATTORNEY'S OFFICE**

#### **Sec. 1050. Employment in the City Attorney's Office.**

The City Attorney's Office shall be subject to the following:

(a) No person shall be removed, suspended or reduced in grade without good cause who has served continuously as an attorney in the Office of the City Attorney for two years or more immediately preceding the action, or who has served continuously in any other capacity in the Office of the City Attorney for one year or more immediately preceding the action. The time during which persons serve at the pleasure of the City Attorney as prescribed in subsection (d) shall not be considered in the computation of time periods under this provision.

(b) Every person having served for those periods enumerated in the preceding subsection who is removed, suspended, or reduced in grade, shall have the right to appeal to an impartial trier of fact in accordance with written rules promulgated by the City Attorney. The rules shall, before they become effective, be submitted to the Council. If the Council approves the rules, or if the Council fails to disapprove the rules within 60 days after submission, they shall become effective. The rules shall provide for service upon the person involved of a written statement of grounds and for a fair hearing by an impartial trier of fact who may:

(1) deny the appeal;

(2) sustain the appeal and order that the appellant be reinstated with full back pay to the position from which removed, suspended, or reduced in grade; or

(3) sustain the appeal in part and deny it in part and substitute as a lesser penalty either a suspension or a reduction in grade as may be appropriate. The trier of fact shall have the power to administer oaths and affirmations, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence at the hearing by subpoena to be issued by the City Clerk.



(c) Notwithstanding any other provision of this section, any person employed in the Office of the City Attorney is subject to layoff due to lack of work, lack of funds, or abolishment of position in a manner consistent with the principles contained in Section [1015](#). The rules promulgated pursuant to the preceding subsection shall establish the procedures for layoffs, determination of seniority rights, and for the establishment of reserve lists.

(d) Notwithstanding any other provision of this section, the City Attorney may appoint to serve at the pleasure of the City Attorney from among persons not then employed in the Office of the City Attorney no more than four assistants who meet the qualifications for those positions, and no more than four other persons. At the time of the appointments, the City Attorney shall file with the City Clerk a statement identifying the persons appointed. The appointment of all persons serving at the pleasure of the City Attorney shall terminate when the succeeding City Attorney is sworn in, unless reappointed by the succeeding City Attorney. In the event there is no vacancy in the class of positions to which a person is appointed under this provision, and should the Council fail to authorize an additional position, the person in the class to which the appointment is to be made having the least seniority in that class and higher classes shall be reassigned to a position in any other lower class of positions in which that person has displacement rights based on seniority or, at that person's option, may be transferred to any vacant position in the Office at the same or lower level class for which that person is found by the City Attorney to be qualified.

## **DISCIPLINARY PROCEDURES FOR THE FIRE DEPARTMENT**

### **Sec. 1060. Rights and Due Process Procedures.**

(a) **Applicability; Rights.** For purposes of this section, the term "member" refers to all officers and firefighters of the Fire Department. This section shall not apply to any member of the department who has not completed the period of probation in his or her entry position as provided in Section [1011\(a\)](#). Members not covered by this section who are otherwise entitled by law to a hearing or appeal with regard to proposed or imposed discipline shall be provided a hearing or appeal under rules promulgated by the Fire Chief.

The right of a member of the Fire Department, except the Fire Chief and any other member in a position exempt from civil service, to hold his or her office or position and to receive compensation attached to the office or position is hereby declared to be a substantial property right of which the holder shall not be deprived arbitrarily or summarily, nor other than as provided in this section. No member of the Fire Department shall be suspended, removed, or otherwise separated from the service of the Fire Department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair and impartial hearing before a Board of Rights except as provided in subsection (b) and (h) of this section. The charges must be filed within one year of the department's discovery of the act committed or omitted by a member and in no event later than two years from the date of the act or omission. No case of suspension with loss of pay shall be for a period exceeding six months.

(b) **Temporary Relief from Duty; Suspension.** After following pre-disciplinary procedures otherwise required by law, the Fire Chief may:

(1) temporarily relieve from duty any member pending a hearing before and decision by a Board of Rights on any charge or charges pending against the member; or

(2) suspend the member for a total period not to exceed 30 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, 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.

(3) cancel such temporary relief from duty, or following such relief from duty, restore the member to duty with or without restrictions pending a hearing before a Board of Rights.

(c) **Complaint.** 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 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 day period prescribed, the order of temporary relief from duty or suspension shall be void and of no effect and shall be automatically revoked, and the accused member restored to duty with the department without loss of pay and without prejudice, as if no order of relief from duty or suspension had been made.

(d) **Service.** 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 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.

(e) **Application for Hearing.** 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, the accused member may file with the Fire Chief a written application for a hearing before and decision by a Board of Rights.

(f) **Time and Place of Hearing.** Upon the selection of a Board of Rights, the Fire Chief shall set the time (not less than five nor more than ten days thereafter) and designate a place where the hearing is to be held, and shall cause notice thereof to be served upon the accused. After the Board of Rights has first convened, the board may continue the hearing of the matter to a specific date, and no other notice need be given, except as required by order of the board.

(g) **Composition of Board of Rights.** The Board of Rights shall be composed of three officers of the rank of battalion chief or higher. Upon the filing of the request for hearing before a Board of Rights, the accused shall draw six 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 of the six names drawn to be members of the Board of Rights, rejecting the three names not selected by replacing them in the box.

(h) **Failure to Request a Hearing; Failure to Appear.** In the event the accused fails to request a hearing before a Board of Rights within the period prescribed, the Fire Chief may require a hearing to be held before a Board of Rights and may for that purpose, within five days after the expiration of such period, draw three names from a box to constitute the board.

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 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 of suspension or removal as he or she deems fit and proper. 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 days.

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

(i) **Oaths, Affirmations and Subpoenas.** Each member of the Board of Rights shall have the power to administer oaths and affirmations, in any investigation or proceeding pending before the board, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence.

Upon demand of any member of the Board of Rights, the City Clerk shall issue a subpoena in the name of the City, and attest the same with the corporate seal. The subpoena shall direct and require the attendance of the witnesses or the production of evidence at the time and place specified. It shall be the duty of the Chief of Police to cause all such subpoenas to be served upon the person or persons required to attend or produce evidence. It shall be the duty of the Council to provide suitable penalties for disobedience of such subpoenas, and the refusal of witnesses to testify or produce evidence.

(j) **Legal Advice.** Upon the request of any two members of the Board of Rights, the board's chairperson shall request an attorney from the City Attorney's office who shall advise the board on legal matters during any session of the hearing. The attorney need not be physically present at the hearing, but may advise the Board telephonically or through other means of communication. The same attorney advising the Board of Rights shall not advise the department's advocate in the same matter.

(k) **Burden of Proof.** In Board of Rights proceedings, the Fire Department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.

(l) **Representation; Transcript.** At the hearing, the accused shall have the right to appear in person and by counsel or representative, or both, and make defense to the charges and may produce witnesses and cross-examine witnesses. The accused shall have the right and privilege to select and name any other member of the department of any rank not higher than the rank of captain (who is not otherwise disqualified by reason of prejudice or being a party to the action in any capacity) to act as his or her defense representative at the hearing. The Fire Chief must immediately assign the member selected to act as defense representative, and it is hereby made the duty of such member to use every legal means available and exercise the best efforts of which he or she is capable to defend the accused at the hearing.

All testimony at the hearing shall be given under oath, reported by a stenographer and transcribed and the member shall be entitled, upon request, to a certified copy of the transcript without charge or payment of fee.

(m) **Findings and Decision.** The Board of Rights shall, at the conclusion of the hearing, make its findings of guilty or not guilty on each charge which must be based only upon the evidence presented at the hearing. If the accused is found not guilty, the board shall order his or her restoration to duty without loss of pay and without prejudice, and the order shall be self-executing and immediately effective. If the accused is found guilty, the Board of Rights shall, by order, prescribe its penalty of:

(1) suspension for a definite period not exceeding six months with total loss of pay, and with or without reprimand; or

(2) reprimand without further penalty; or

(3) removal from office or position.

The decision and order must be certified in writing and a copy immediately delivered to the Fire Chief.

(n) **Personnel History and Records.** The departmental personnel history and records of the accused shall be available to the Board of Rights only if the accused has been found guilty of any charge upon which he or she was heard by the Board of Rights, and then only for the purpose of determining a proper penalty, except that the medical package of the accused shall not be considered by the board with regard to penalty unless such information is relevant to a charge as to which there was a finding of guilty. At the penalty stage, the board must look to the nature and gravity of the offense of which the accused has been found guilty and may at its discretion review the departmental personnel history and record of the accused, provided that no item or entry in the record may be considered by the board except in the presence of the accused, unless the member has failed or refused to be present, and then only if the accused has been given a fair and reasonable opportunity to explain the item or entry.

(o) **Imposition; Reduction of Penalty.** Within five 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, or the Fire Chief may, at his or her discretion and in lieu of the order, impose a penalty less severe than that ordered by the Board of Rights, but may not impose a greater penalty. In the case of a suspension or removal, 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 days thereafter.

(p) **Effective Date of Penalty.** In any case of suspension or removal prescribed by the Board of Rights, or by the Fire Chief if no hearing is held before a Board of Rights, the time of the suspension shall be computed from the first day the member was suspended or relieved from duty pending hearing before and decision by the Board of Rights and the removal shall relate back to and be effective as of the date of the relief from duty pending hearing before and decision by the Board of Rights. Notwithstanding the above, the Fire Chief and the member may agree to an alternative date for the commencement of the period of suspension and/or may agree to non-consecutive dates for the term of the suspension.

(q) **Double Jeopardy; Exoneration.** No member shall be twice tried for the same offense, except upon his or her request. In any case of exoneration of the accused after a hearing before a Board of Rights, exoneration shall be without prejudice to the member.

(r) **Rehearing.** At any time within three years after the effective date of removal, the removed member may file a request with the Fire Chief to be reheard or to be heard on the cause of his or her removal, together with a supporting affidavit setting forth in clear and concise language the reasons or grounds for a hearing or rehearing. The Fire Chief shall consider and make a decision upon the request within 30 days after filing. If the Fire Chief determines that good reason or cause exists for a hearing or rehearing, the Fire Chief shall without unnecessary delay, cause a Board of Rights to be constituted for the purpose of hearing and deciding upon the matter. The Board of Rights shall, at the conclusion of the hearing, render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, board or other tribunal, or any investigation or report of or discretion exercised by the Fire Chief in cases where no hearing was had before a Board of Rights), based only upon the evidence presented at such hearing. The board shall make and certify its decision and order in writing, and deliver a copy to the Fire Chief. The Fire Chief shall proceed in the same manner as provided for above after decision by a Board of Rights.

(s) **Other Legal Rights.** This section shall not be construed to affect any rights a member may have to assert other legal rights or remedies in relation to his or her office or position or to the compensation attached thereto, or to appeal to or be heard or tried by any court or other tribunal of competent jurisdiction.

(t) **Restoration to Duty.** Any person restored to duty or reinstated in his or her office or position after suspension or removal, shall be entitled to receive full compensation from the City as if the suspension or removal had not been made, except that such compensation shall not be for more than one year's salary unless otherwise provided by law.

(u) **Effects of New Charter.** This section shall not apply to the discipline of any member who was relieved from duty or who appealed a suspension to a Board of Rights prior to its effective date. Matters arising out of such relief from duty or suspension shall be adjudicated in accordance with applicable prior Charter provisions.

## **DISCIPLINARY PROCEDURES FOR THE POLICE DEPARTMENT**

### **Sec. 1070. Rights and Due Process Procedures.**

(a) **Applicability; Rights.** As used in this section, member shall mean an employee of the Police Department who has peace officer status as defined in California Penal Code Section 830.1. The provisions of this section shall not apply to any member of the Police Department who has not completed the period of probation in his or her entry level position, as provided in Section 1011(a). Non-tenured Police officers, where otherwise entitled by law to a hearing or appeal with regard to proposed or imposed discipline, shall be provided a hearing or appeal under procedures promulgated by the Chief of Police.

The rights of a member, except the Chief of Police and any other member in a position exempt from civil service, to hold his or her office or position and to receive compensation attached to the office or position is hereby declared to be a substantial property right of which the holder shall not be deprived arbitrarily or summarily, nor other than as provided in this section. No member shall be suspended, demoted in rank, suspended and demoted in rank, removed, or otherwise separated from the service of the department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair, and impartial hearing before a Board of Rights, except as provided in subsections (b) and (i). No case of suspension with loss of pay shall be for a period exceeding 65 working days.

(b) **Temporary Relief from Duty; Suspension; Demotion.** After following predisciplinary procedures otherwise required by law, the Chief of Police may:

(1) temporarily relieve from duty any member pending a hearing before and decision by a Board of Rights on any charge or charges pending against the member, except that a member so relieved shall not suffer a loss of compensation until 30 days after the date on which the member was served with the charge or charges, except as provided for in subsection (q) or whenever the employee is temporarily relieved of duty on a new charge or charges while relieved of duty or serving a suspension based on a prior charge or charges. There shall be a calendar priority for Board of Rights hearings when a member is subject to relief from duty pending a hearing. The Chief of Police in his or her sole discretion shall have the power to cancel temporary relief from duty, or following relief from duty, to restore the member to duty with or without restrictions pending hearing; or

(2) suspend the member for a total period not to exceed 22 working 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 as provided in this section; or

(3) demote the member in rank, with or without suspension or reprimand or both, subject to the right of the member to a hearing before a Board of Rights as provided in this section; or

(4) demote the member in rank, with or without temporary relief from duty or cancellation of such relief from duty, subject to the right of the member to a hearing before a Board of Rights as provided in this section.

In the event the member suspended and/or demoted in rank under this subsection files an application for a hearing by a Board of Rights as provided in this section, the suspension and/or demotion shall automatically be stayed pending hearing and decision by the Board of Rights. Provided, however, in the case of any member

demoted in conjunction with a temporary relief from duty or cancellation of such relief from duty, the demotion shall not be stayed pending a hearing before and decision by a Board of Rights unless the accused specifically requests in the written application that the Board consider the demotion in conjunction with the appeal of the temporary relief from duty or cancellation of such relief from duty. In the event that the member fails to apply for a hearing within the period prescribed, the member shall be deemed to have waived a hearing, and the suspension and/or demotion shall remain effective unless the Chief of Police requires that a hearing be held.

(c) **Limitations Periods.** No member shall be removed, suspended, demoted in rank, or suspended and demoted in rank for any conduct that was discovered by an uninvolved supervisor of the department more than one year prior to the filing of the complaint against the member, except in any of the following circumstances:

(1) If the act, omission, or allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the member waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the criminal investigation is a multi jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(6) If the investigation involves a matter in civil litigation where the member is named as a party defendant, the one year time period shall be tolled while that civil action is pending.

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the member.

(9) If a predisciplinary notice is required or utilized and the response results in additional investigation, the one-year period shall be tolled while the additional investigation is pending.

(d) **Complaint.** Any order of relief from duty, cancellation of relief from duty pending a Board of Rights hearing, suspension, demotion in rank, or suspension and demotion in rank shall contain a statement of the charges assigned as causes. The Chief of Police shall, within five days after the order is served as provided in subsection (e), file with the Board of Police 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 Chief of Police and shall contain a statement in clear and concise language of all the facts constituting the charge or charges.

(e) **Service.** The service of any notice, order, or process mentioned in this section, other than service of subpoena, may be made by handing the accused a copy personally. If a copy of any notice, order or process cannot with reasonable diligence be personally served, service may be made by United States mail.

(f) **Application for Hearing.** Within five days after personal service upon the accused of a copy of the verified complaint, or within ten days after service in any other manner provided for in this section, the member

may file with the Chief of Police a written application for a hearing before and decision by a Board of Rights. A Board of Rights is considered a *de novo* hearing.

(g) **Time and Place of Hearing.** Upon the selection of a Board of Rights, the Chief of Police shall set the time for (not less than 10 nor more than 30 days thereafter) and designate a place where the hearing is to be held, and shall cause notice thereof to be served upon the accused. After the Board of Rights has first convened, the Board may continue the hearing of the matter to a specific date, and no other notice need be given, except as may be required by order of the Board.

(h) **Composition of Board of Rights.** The Board of Rights shall be composed of two officers of the rank of captain or above and an individual who is not a member of the department (the civilian member), except as provided in the second paragraph of this subsection below. 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 a hearing before a Board of Rights, as provided in subsection (f), the accused shall draw four cards from a box containing the names on cards of all officers who are qualified to be members of the Board of Rights (except the names of the accused, accuser, the Chief of Police, any staff or command officer specifically exempted by the Chief of Police in accordance with the provisions of the Board of Rights Manual or successor document, and any other officer who may be prejudiced or disqualified by reason of being a material witness to the facts constituting the charges made, otherwise disqualified for cause as determined by the Chief, or who has a conflict of interest). The accused shall select any two of the four names drawn to be members of the Board of Rights.

Notwithstanding the foregoing, the Council may adopt an ordinance providing the accused the option of having the complaint heard and decided by a Board of Rights composed of three individuals who are not members of the department (three civilian members) instead of a Board composed of two officers and one civilian. The qualifications of, selection procedures for, and compensation of the civilian members shall be established by ordinance. If the Council adopts an ordinance providing the option for an all civilian Board of Rights as described in this paragraph: the ordinance shall not apply to any complaint that has been filed by the Chief of Police with the Board of Police Commissioners prior to the effective date of the ordinance; the Council shall not repeal the ordinance for at least two years after it is adopted; and the department shall submit a report to the Council evaluating the effectiveness of the ordinance at the end of the two-year period.

(i) **Failure to Request a Hearing; Failure to Appear.** In the event the accused fails to request a hearing before a Board of Rights as provided in subsection (f) within the period prescribed, the Chief may require a hearing to be held before a Board of Rights and may for that purpose, within five days after the expiration of such period, draw two names from a box to sit on the Board.

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 at the time and place designated, the Chief of Police 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 Chief may, without a hearing, impose a penalty of suspension, demotion in rank, suspension and demotion in rank, or removal as he or she deems fit and proper. The Chief shall cause notice of the action to be served upon the member and shall file a statement of the action with the Board of Police Commissioners within five days.

If the accused and Chief both fail to draw and create a Board of Rights within the period prescribed, the complaint shall be null and void.

(j) **Oaths, Affirmations and Subpoenas.** During an internal investigation, prior to a Board of Rights hearing, or prior to or during other administrative proceedings, the Police Commission may compel the attendance of witnesses and the production of evidence by subpoena. Upon demand of the Police

Commission, the City Clerk shall issue a subpoena in the name of the city and attest the same with the corporate seal. The subpoena shall direct and required the attendance of the witnesses or the production of evidence, at the time and place specified. A request to quash a subpoena may be filed with the Police Commission who shall decide the matter. Each Board member shall have the power to administer oaths and affirmations in any investigation or proceeding pending before a Board of Rights, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence by subpoena. Upon demand of any Board member, the City Clerk shall issue a subpoena in the name of the City and attest the same with the corporate seal. The subpoena shall direct and require the attendance of the witnesses or the production of evidence, at the time and place specified. It shall be the duty of the Chief of Police to cause all such subpoenas to be served upon the person or persons required to attend or produce evidence. It shall be the duty of the Council to provide suitable penalties for disobedience of such subpoenas and the refusal of witnesses to testify or produce evidence.

(k) **Legal Advice; Ex Parte Communication.** Upon the request of any two Board members, the Board's chairperson shall request an attorney from the City Attorney's office who shall advise the Board on legal matters during or between any session of the hearing. The attorney need not be physically present at the hearing, but may advise the Board telephonically or through other means of communication. The attorney who advises the Board may not advise the department's advocate in the same matter.

Ex Parte communication with members of a Board of Rights regarding the subject matter of the hearing while proceedings are pending is prohibited. No person shall attempt to influence the decision of a Board of Rights except during the hearing and on the record.

(l) **Burden of Proof.** In Board of Rights proceedings, the department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.

(m) **Representation; Transcript; Evidence.** At the hearing, the accused shall have the right to appear in person and by counsel or representative, (at his or her expense) and make defense to the charge or charges and may produce witnesses and cross-examine witnesses.

All testimony at the hearing shall be given under oath and shall be reported by a stenographer for possible transcription. Upon prepayment of the fee for the preparation thereof, the accused shall be entitled to a certified copy of the transcript; provided, however, when the department has previously had all or a portion of the report transcribed, a copy of the previously prepared report(s) shall be given to the member without charge. When the report is transcribed, the original transcript shall be placed on file in the department.

Evidence of 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 acts tend to prove that the conduct charged is consistent with a pattern of conduct. The acts may have occurred either before or after the conduct concerning which the member is presently charged.

(n) **Finding and Decision.** The Board of Rights shall at the conclusion of the hearing make findings of guilty or not guilty on each charge, which findings shall be based only upon the evidence presented at the hearing. If the accused is found not guilty, the Board shall order the member's restoration to duty without loss of pay and without prejudice, and the order shall be self-executing and immediately effective. If the accused is found guilty, the Board of Rights shall prescribe its penalty by written order of:

(1) suspension for a definite period not exceeding 65 working days with total loss of pay, and with or without reprimand; or



- (2) demotion in rank, with or without suspension or reprimand or both; or
- (3) reprimand without further penalty; or
- (4) removal.

The decision of the Board must be certified in writing and a copy delivered to the Chief of Police as soon as practicable, but in no event later than ten days after the decision of the Board of Rights. Whenever a Board of Rights prescribes a penalty of suspension or removal and the member is not currently relieved from duty, the Chief may temporarily relieve the member from duty pending execution of the order.

For purposes of this section, demotion in rank shall mean reduction in civil service classification. The provisions of this section shall not apply to reductions in pay grade or similar personnel actions caused by reassignment, deselection from bonused positions, and the like. Such personnel actions shall be administered under policies adopted by the department.

(o) **Personnel History and Records.** The departmental personnel history and records of the accused shall be available to the Board of Rights only if the accused has been found guilty of any charge upon which the member was heard or tried by the Board of Rights, and then only for the purpose of determining a proper penalty. At the penalty stage, the Board may consider the entire departmental personnel history and record of the accused which shall include, among other things, information concerning personnel complaints against the accused that were sustained and information derived from complaints against the accused that were not resolved, to the extent and in the manner allowed by department policy except that the medical package of the accused shall not be considered by the Board with regard to penalty unless such information is relevant to a charge as to which there was a finding of guilty. In prescribing the penalty, the Board shall look to the nature and gravity of the offense of which the member has been found guilty and may at its discretion review the departmental personnel history and record of the member. No item or entry in the record may be considered by the Board except in the presence of the member and only where the member has been given a fair and reasonable opportunity to explain any item or entry unless the member has failed or refused to be present. Personnel records introduced at or considered by the Board are confidential except for any document or information from a document that was publicly disclosed during the hearing.

(p) **Imposition; Reduction of Penalty.** Within ten days of delivery of a certified copy of the decision of a Board Rights to the Chief of Police, the Chief shall either uphold the recommendation of the Board of Rights or may, at his or her discretion, impose a penalty less severe than that ordered by the Board Rights, but may not impose a greater penalty. In the case of a demotion, suspension, demotion and suspension, or removal, the Chief shall cause a copy of the notice of the penalty to be served upon the member and shall file a statement of this action with the Board of Police Commissioners within five days.

(q) **Effective Date of Penalty.** A removal prescribed by the Board of Rights, or by the Chief of Police if no hearing is had before a Board of Rights, shall relate back to and be effective as of the date of the relief from duty without pay pending hearing before and decision by the Board; however, where a final decision has been made by the Chief of Police prior to the end of the 30 day period referred to in subsection (b)(1), the removal shall be effective immediately. When there has been no relief from duty, the removal shall be effective upon service of the order. The effective date of any suspension and/or demotion prescribed by the Board of Rights, or by the Chief of Police if no hearing is had before a Board of Rights, shall be determined by policies adopted by the department; provided, that in case of suspension where there has been a temporary relief from duty, the 30 day period referred to in subsection (b)(1) or any portion thereof in which the member received compensation shall not be counted as part of the suspension. Nothing in this section shall preclude the imposition of a suspension without pay when a final decision is made prior to the end of the 30 day period. Practices in effect on the effective date of the most recent amendment to this section shall remain in effect until the adoption of any modification to the policies.

(r) **Calendar Days.** Except as otherwise provided in this section, all time periods, including those of limitation, shall be calculated in calendar days. When the last day of any such period falls on a weekend or City holiday, the period shall extend to the next business day.

(s) **Not Guilty.** In any case of a finding of Not Guilty of the accused after a hearing before a Board of Rights, the finding of Not Guilty shall be without prejudice to the member.

(t) **Rehearing.** At any time within three years after the effective date of removal, the removed member may file a request with the Chief of Police to be reheard or to be heard on the cause of the member's removal, together with a supporting affidavit setting forth in clear and concise language the reasons or grounds for a hearing or rehearing. The Chief shall consider and make a decision on the request and affidavit within 30 days after filing. If the Chief determines that good reason or cause exists for a hearing or rehearing, the Chief shall, without unnecessary delay, cause a Board of Rights to be constituted for the purpose of hearing and deciding upon the matter. The Board of Rights shall, at the conclusion of the hearing, render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, Board, or other tribunal, or any investigation or report of or discretion exercised by the Chief in such cases where no hearing was had before a Board of Rights) based only upon the evidence presented at the hearing. The Board shall make and certify its decision and order in writing and deliver a copy to the Chief. The Chief shall proceed in the same manner as provided for above after decision by a Board of Rights.

(u) **Modification of Penalty.** Following the filing of the notice of penalty with the Board of Police Commissioners as required in subsection (p), the Chief of Police may correct a technical error, or where there is good cause shown, may reduce a penalty, including restoration of a person following removal. The provisions of subsection (w) shall not apply to this subsection; however, the member shall receive full compensation for any penalty or portion thereof already served which has been reduced or nullified by the Chief of Police. The Chief of Police shall file a copy of the modified order or statement of his decision with the Board of Police Commissioners.

(v) **Other Legal Rights.** This section shall not be construed to affect any rights a member may have to assert other legal rights or remedies in relation to his or her office or position or to the compensation attached thereto, or to appeal to or be heard or tried by any court or other tribunal of competent jurisdiction.

(w) **Restoration to Duty.** A member restored to duty after removal or temporary relief from duty, or whose suspension or demotion has been overturned in whole or in part, shall be entitled to receive full compensation from the City as if the nullified penal action had not been taken; except that such compensation shall not exceed one year's salary unless otherwise required by law.

(x) **Decisions Based on Evidence.** Members of a Board of Rights are to make decisions based solely on the evidence before them.

(y) **Public Records.** The order referred to in subsection (d) and the notice of the penalty referred to in subsection (p) are considered to be a public record at the time of filing of such documents with the Board of Police Commissioners. The Chief of Police or his or her designee shall be the custodian of public records referred to in this section.

(z) **Effects of Amending This Section.** This section shall not apply to the discipline of any member who was relieved from duty or who appealed a demotion or suspension or both to a Board of Rights prior to its effective date. Matters arising out of such relief from duty, demotion or suspension shall be adjudicated in accordance with applicable prior Charter provisions.

## SECTION HISTORY

Amended by: Charter Amendment 1, approved April 10, 2001, effective May 5, 2001; Subsec. (h), Charter Amendment C § 1, approved May 16, 2017, effective June 14, 2017.

### **SKELLY PROCESS**

[https://sfdhr.org/sites/default/files/FileCenter/Documents/1945-The\\_Skelly\\_Process.pdf](https://sfdhr.org/sites/default/files/FileCenter/Documents/1945-The_Skelly_Process.pdf)

At a minimum, the pre-removal safeguards must include:

1. Notice of the proposed action.
2. The reasons therefore.
3. A copy of the charges and materials upon which the action is based.
4. The right to respond, either orally or in writing to the authority initially imposing discipline. No requirement to provide an employee with a full trial type evidentiary hearing prior to the initial taking of punitive action. See Below:

1. The notice of proposed action. What you intend or propose to do to the employee.
2. The reasons therefore. What is the reason for the proposed discipline? What policies, procedures, laws, etc. has the employee failed to follow?
3. A copy of the charges and materials upon which the action is based. This must be given at the time the notice of adverse action is served. What are the supporting documents? All backup material, including but not limited to department policies/procedures, witness statements, photographs, investigatory report & findings. You must include everything, even if you believe the employee already has the document.
4. The right to respond, either orally or in writing to the authority initially imposing discipline. There is no requirement that the employee attend the meeting; he/she can respond in writing to the charge. This right to respond must occur PRIOR to final disciplinary action.

### **ABANDONMENT TRAINING:**

Civil Service 7.2, abandonment of rights and post.