

## **EXHIBIT A**

### **FBOR DISCIPLINARY APPEAL PROCEDURES**

Fresno County Fire Protection District

#### **1. PURPOSE AND APPLICABILITY**

- A. These disciplinary appeals procedures set forth herein are adopted pursuant to Government Code § 3254.5 of the Firefighter’s Procedural Bill of Rights Act.
- B. These procedures apply to Firefighter and public safety personnel (as defined by Section 2 of these procedures) that are employed by the District who have completed their initial probationary period with the District. Probationary employees, at-will employees, contracted workers, and at-will non-life safety employees shall not have rights to the procedures in this policy.
- C. These procedures shall not apply to employees of the California Department of Forestry and Fire Protection who are contracted with the District. Those individuals are instead governed by contract and the policies of the California Department of Forestry and Fire Protection.

#### **2. DEFINITIONS**

- A. The term “Firefighter” means a public safety employee who is considered a “Firefighter” under Government Code § 3251(a). The classifications of employees of the District who are Firefighters for purposes of these policies include Paid Call Firefighters.
- B. The term “punitive action” means any action defined by Government Code §3251(c), i.e., “any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.”

#### **3. APPEAL OF A LESSER PUNITIVE ACTION NOT INVOLVING DISCHARGE, DEMOTION, SUSPENSION, OR REDUCTION IN BASE SALARY OF A FIREFIGHTER**

Pursuant to Government Code § 11445.20, the following informal hearing procedure shall be utilized for an appeal by a Firefighter of a punitive action not involving a discharge, demotion, suspension, or reduction in base salary (examples: written reprimand, transfer for purposes of punishment without reduction in base salary).

- A. **Notice of Appeal:** Within five (5) calendar days of the effective date of a lesser punitive action subject to this informal hearing procedure, the Firefighter shall notify the Fire Chief in writing of the Firefighter’s intent to appeal the punitive

action. The Notice of Appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.

- B. **Notice of Hearing:** Within five (5) calendar days of the District's receipt of the Firefighter's Notice of Appeal, the Fire Chief or his/her designee shall serve the Firefighter with a Notice of Hearing that indicates the District has chosen to proceed according to the informal hearing process outlined herein. The Notice of Hearing shall state the time and place of the informal hearing. A copy of this informal hearing procedure shall be attached to the Notice of Hearing.
- C. **Presiding Officer:** In an informal hearing, the Fire Chief or his/her designee shall be the presiding officer. The Fire Chief or his/her designee shall conduct the informal hearing in accordance with these procedures. The determination of the Fire Chief shall be final and binding. If the Fire Chief cannot serve as the hearing officer because of actual bias, prejudice, or interest as defined by Government Code § 11425.40, then the Administration Chief or his/her designee shall serve as the Presiding Officer. In such cases, the determination of the Administration Chief shall be final and binding. In instances where neither the Fire Chief nor Administration Chief may conduct the hearing, the District shall retain an independent third-party to do so.
- D. **Burden of Proof:** The employer shall bear the burden of proof at the hearing.
- i. If the action being appealed does not involve allegations of misconduct by the employee, the limited purpose of the hearing shall be to provide the Presiding Officer the opportunity to establish a record of the circumstances surrounding the action. The District's burden of proof shall be satisfied if the District establishes by a preponderance of the evidence that the action was reasonable. The District's burden of proof may be satisfied even though reasonable persons may disagree about the appropriateness of the action.
  - ii. If the punitive action involves charges of misconduct, the District shall have the burden of proving by a preponderance of the evidence the facts which form the basis for the charge and that the punitive action was reasonable under the circumstances.
- E. **Conduct of Hearing**
- i. The formal rules of evidence do not apply, although the Presiding Officer shall have discretion to exclude evidence which is incompetent, irrelevant or cumulative, or the presentation of which will otherwise consume undue time.
  - ii. The parties may present opening statements.

- iii. The parties may present evidence through documents and testimony.
  - a. Witnesses shall testify under oath.
  - b. Subpoenas may be issued pursuant to Government Code §§ 11450.05 – 11450.50.
  - c. Unless the punitive action involves a loss of compensation, the parties shall not be entitled to confront and cross-examine witnesses.
- iv. Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the hearing officer.

F. **Recording of the Hearing:** If the punitive action involves the loss of compensation, then the hearing shall be stenographically recorded by a certified court reporter. Otherwise, the hearing may be tape recorded. The per diem cost of the court reporter shall be equally borne by the parties. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

G. **Representation:** The Firefighter may be represented by a representative or attorney of his or her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the Firefighter.

H. **Decision:** The decision shall be in writing pursuant to Government Code § 11425.50. The decision shall be served by first class mail, postage prepaid, upon the Firefighter as well as his/her attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the Firefighter that the time within which judicial review of the decision may be sought is governed by Code of Civil Procedure § 1094.6.

#### 4. **APPEAL OF A DISCIPLINARY DECISION INVOLVING DISCHARGE, DEMOTION, SUSPENSION, OR REDUCTION IN BASE SALARY OF A FIREFIGHTER**

A. **Inapplicability:** In those instances where the procedures in Government Code §§ 11400, *et seq.* are inapplicable to an administrative appeal, the administrative appeal shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code.

B. **Notice of Discipline as Accusation:** The Final Notice of Discipline which may be issued at the conclusion of any pre-disciplinary procedures shall serve as the Accusation as described in Government Code §§ 11500, *et seq.* Pursuant to Government Code § 3254(f), the discipline shall not be effective sooner than 48 hours of issuance of the Final Notice of Discipline. The Notice shall be prepared and served in conformity with the requirements of Government Code §§ 11500, *et seq.* The Accusation shall include or be accompanied by a statement to the employee that advises him or her of the right to request a hearing by filing a Notice

of Appeal as provided in Government Code § 11506. A copy of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code shall be provided to the Firefighter concurrently with the Final Notice of Discipline.

- C. **Notice of Appeal:** In accordance with Government Code § 11506, within fifteen (15) calendar days after service of the Accusation on the Firefighter as set forth above, the Firefighter shall notify the Administration Chief in writing of the Firefighter's intent to appeal the punitive action by filing a Notice of Appeal. The Notice of Appeal must be signed by either the Firefighter or on his or her behalf and must include the mailing address of the Firefighter and/or his/her representative. Failure to file a timely Notice of Appeal constitutes a waiver of the Firefighter's right to a hearing.
- D. **Amended or Supplemental Materials:** Pursuant to Government Code §§ 11507 and 11516, at any time before or after the case is submitted for decision, the District may file an amended or supplemental Accusation. All parties must be notified of the amended or supplemental Accusation.
- E. **Administrative Law Judge:** Pursuant to Government Code § 11512, the District has determined that appeals shall be presided over by an administrative law judge on staff of the State Office of Administrative Hearings, hereinafter referred to as the "ALJ". The ALJ shall preside at the appeal hearing, rule on the admission and exclusion of evidence and determine and rule on all matters of law, both procedural and substantive. In conducting the appeal hearing the ALJ shall follow the provisions set forth in section 11513 of the California Government code.
- F. **Time and Place of Hearing:** Pursuant to Government Code § 11508, unless otherwise decided by the Fire Chief or his/her designee, a hearing shall be conducted at District Headquarters at a time to be determined by the Fire Chief or his/her designee in coordination with the employee and his/her representative.
- G. **Notice of the Hearing:** Notice of the hearing shall be provided to the parties pursuant to Government Code § 11509:
  - i. The District shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense, or, as applicable, notice of participation.
  - ii. The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before Fresno County Fire Protection District at **[Place of Hearing]** on **[Date]** at **[Time]** upon the charges made in the accusation served upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by a representative or attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to **[appropriate District officer]**.

- H. **Findings:** The appeal proceedings shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically. Within 30 days after the case is submitted to him or her, the ALJ shall prepare a proposed written decision to be submitted to the Fire Chief. Within 100 days of receipt by the Fire Chief of the ALJ's proposed decision, the Fire Chief may take any of the following actions:
- i. Adopt the proposed decision in its entirety
  - ii. Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
  - iii. Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the Fire Chief under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.
  - iv. Reject the proposed decision and refer the case to the same ALJ if reasonably available, otherwise to another ALJ, to take additional evidence. If the case is referred to the ALJ pursuant to this subparagraph, he or she shall prepare a revised proposed decision based on the additional evidence and the transcript and other papers that are part of the record of the prior appeal hearing. A copy of the revised proposed decision shall be furnished and the decision shall be served to each party and his or her attorney.
  - v. Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties the Fire Chief may decide the case upon the record without including the transcript.
- I. **Decision:** The Fire Chief's decision will be reduced to writing and shall be final and binding on the parties. The Fire Chief's written decision shall be served on the parties in accordance with Code of Civil Procedure section 1094.6 and the

decision shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.5.