

RESOLUTION NO. 2010-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH
AMENDING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE
HUNTINGTON BEACH FIREFIGHTERS' ASSOCIATION, BY ADOPTING A SIDE LETTER
OF AGREEMENT REGARDING THE FIREFIGHTERS' PROCEDURAL BILL OF RIGHTS

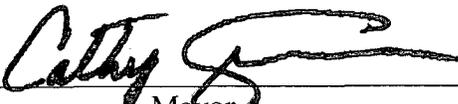
WHEREAS, the City Council of Huntington Beach adopted Resolution No. 2008-13 for the purpose of adopting the Memorandum of Understanding (MOU) between the City and the Huntington Beach Firefighters' Association (HBFA); and

Subsequent to the adoption of the MOU, the City of Huntington Beach and the HBFA agreed to changes to the MOU that are reflected in a Side Letter of Agreement between the City of Huntington Beach and the HBFA ("Side Letter of Agreement") attached hereto as **Exhibit A** and incorporated herein by this reference. The Side Letter of Agreement pertains to the Firefighters' Procedural Bill of Rights,

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Huntington Beach as follows:

1. The Side Letter of Agreement attached hereto as **Exhibit A** is approved and adopted.
2. The Side Letter of Agreement amends the MOU between the City of Huntington Beach and the HBFA.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 16th day of February, ~~200~~ 2010.



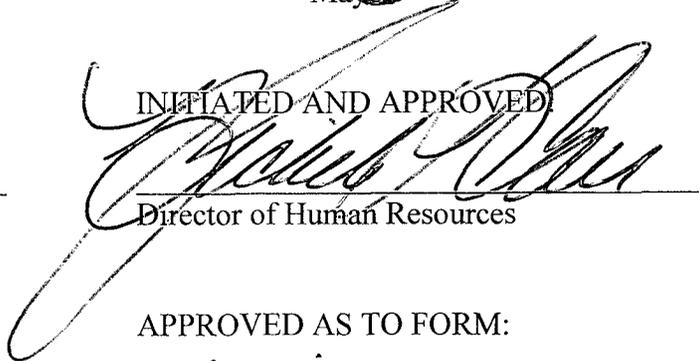
Mayor

REVIEWED AND APPROVED:



City Administrator

INITIATED AND APPROVED



Director of Human Resources

APPROVED AS TO FORM:

 2/1/2010

City Attorney MV-1-27-10

SIDE LETTER AGREEMENT

February, 2010

Representatives of the City of Huntington Beach and Huntington Beach Firefighters Association ("HBFA") met and conferred regarding the Firefighters' Procedural Bill of Rights ("FPBOR").

As a result of that meeting, Article XI C. of the MOU is amended with respect to discipline rules as follows:

ARTICLE XI - CITY RULES

A. Personnel Rules - All MOU provisions that supersede the City's Personnel Rules shall automatically be incorporated in the City's Personnel Rules.

B. Precedence of Agreement - In any case in which any provision of this Memorandum of Understanding is inconsistent with any City ordinance, rule, regulation, resolution, including provisions of any Fire Department Manual, the provisions of this MOU shall supersede and take precedence.

C. Discipline Rules - The procedure and practice regarding discipline as contained in Section 20 of the City's Personnel Rules, shall be amended in accordance with applicable provisions of the FBOR as set forth in Exhibit 1 to this Side Letter attached hereto and incorporated herein by reference.

HUNTINGTON BEACH FIREFIGHTERS ASSOCIATION (HBFA):

Darin Witt
President

Dated: 1/31/10

SILVER, HADDEN, SILVER, WEXLER & LEVINE

By: Howard A. Liberman
Howard A. Liberman, Esq.
Attorney for HBFA

Dated: 1/28/10

CITY OF HUNTINGTON BEACH:

[Signature]
City Administrator

Dated: 2-3-10

Approved as to form:

Jennifer McGrath 2/1/2010
Jennifer McGrath, City Attorney

Dated: _____

MV-2-1-10

COUNTERPART

SIDE LETTER AGREEMENT

February, 2010

Representatives of the City of Huntington Beach and Huntington Beach Firefighters Association ("HBFA") met and conferred regarding the Firefighters' Procedural Bill of Rights ("FPBOR").

As a result of that meeting, Article XI C. of the MOU is amended with respect to discipline rules as follows:

ARTICLE XI - CITY RULES

A. Personnel Rules - All MOU provisions that supersede the City's Personnel Rules shall automatically be incorporated in the City's Personnel Rules.

B. Precedence of Agreement - In any case in which any provision of this Memorandum of Understanding is inconsistent with any City ordinance, rule, regulation, resolution, including provisions of any Fire Department Manual, the provisions of this MOU shall supersede and take precedence.

C. Discipline Rules - The procedure and practice regarding discipline as contained in Section 20 of the City's Personnel Rules, shall be amended in accordance with applicable provisions of the FBOR as set forth in Exhibit 1 to this Side Letter attached hereto and incorporated herein by reference.

HUNTINGTON BEACH FIREFIGHTERS ASSOCIATION (HBFA):

CITY OF HUNTINGTON BEACH:

President

City Administrator

Dated: _____

Dated: _____

SILVER, HADDEN, SILVER, WEXLER & LEVINE

Approved as to form:

By: Howard A. Liberman
Howard A. Liberman, Esq.
Attorney for HBFA

Jennifer McGrath, City Attorney

Dated: _____

Dated: 1/28/10

COUNTERPART

FIREFIGHTER PROCEDURAL BILL OF RIGHTS TO BE ADDED TO THE HUNTINGTON BEACH PERSONNEL RULES AS APPLIED TO MEMBERS OF THE HUNTINGTON BEACH FIREFIGHTERS ASSOCIATION.

FIREFIGHTERS' RIGHTS TO APPEAL DISCIPLINARY ACTION

The following appeals procedures are adopted pursuant to Government Code § 3254.5 of the Firefighters Procedural Bill of Rights Act and supersede any personal rules to the contrary.

1. DEFINITIONS

a. The term "firefighter" means an employee who is considered a "firefighter" under Government Code § 3251(a).

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."

2. APPEAL OF A PUNITIVE ACTION NOT INVOLVING DISCHARGE, DEMOTION OR SUSPENSION OR REDUCTION IN 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 discharge, demotion, reduction in salary or suspension.

a. Notice of Appeal- Within fifteen (15) calendar days of receipt by a firefighter of notification of punitive action as set forth above, the firefighter shall notify the office of 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. 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. 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 City Administrator or his/her designee shall serve as the Presiding Officer. In such cases, the determination of the City Administrator shall be final. Written reprimands adjudicated following the informal process provided herein shall be removed from the employee's personnel file after two years if no similar occurrence takes place within that time. If a similar occurrence takes place (as determined by the Fire Chief) the discipline shall remain until two years have passed without such an occurrence.

c. Burden of Proof- The employer shall bear the burden of proof at the hearing.

1) If the action being appealed does not involve allegations of employee misconduct, the limited purpose of the hearing shall be to provide the officer the opportunity to establish a record of the circumstances surrounding the action. The Department's burden of proof shall be satisfied if the Department establishes by a preponderance of the evidence

that the action was reasonable. The Department's burden of proof may be satisfied even though reasonable persons may disagree about the appropriateness of the action.

- 2) However, if the punitive action involves charges of misconduct, the Department 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.

d. Conduct of Hearing-

- 1) 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.
- 2) The parties may present opening statements.
- 3) The parties may present evidence through documents and testimony.
 - aa. Witnesses shall testify under oath.
 - bb. Subpoenas may be issued pursuant to Government Code §§11450.05- 11450.50.
- 4) Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the hearing officer.

e. Recording of the Hearing- The hearing may be tape recorded or stenographically recorded by a Certified Court Reporter by either party . 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.

f. Representation- The firefighter may be represented by an association representative and/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.

g. Decision- The decision shall be in writing pursuant to Government Code §11425.50. The decision shall be served personally or by first class mail, postage pre-paid, 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.

3. APPEAL OF A DISCIPLINARY DECISION INVOLVING DISCHARGE, REDUCTION IN SALARY, DEMOTION OR SUSPENSION OF A FIREFIGHTER

- a. 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.

FIREFIGHTER PROCEDURAL BILL OF RIGHTS TO BE ADDED TO THE HUNTINGTON BEACH PERSONNEL
 RULES AS APPLIED TO MEMBERS OF THE HUNTINGTON BEACH FIREFIGHTERS ASSOCIATION.

- 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 section 3254, subsection (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. 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 notice of discipline.

- c. Notice of Defense/Request for Hearing- Within 15 calendar days after service of the accusation the respondent may file with the office of the Fire Chief a notice of defense in which the respondent may:

- 1) Request a hearing;
- 2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- 3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense;
- 4) Admit the accusation in whole or in part;
- 5) Present new matter by way of defense;
- 6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights;

Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to timely file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in Government Code Section 11506, all objections to the form of the accusation shall be deemed waived.

The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

- d. Administrative Law Judge- Pursuant to Government Code § 11512, the City has determined that appeals shall continue to be heard by the Personnel Commission

FIREFIGHTER PROCEDURAL BILL OF RIGHTS TO BE ADDED TO THE HUNTINGTON BEACH PERSONNEL
RULES AS APPLIED TO MEMBERS OF THE HUNTINGTON BEACH FIREFIGHTERS ASSOCIATION.

with the administrative law judge presiding at the hearing, pursuant to Government Code § 11512(b). The administrative law judge shall rule on the admission and exclusion of evidence and advise the Personnel Commission on matters of law. The Personnel Commission shall exercise all other powers relating to the conduct of the hearing pursuant to pre-established Huntington Beach Rules. The process contemplated in this subsection may be "reopened" for discussion after three years.

- e. Time and Place of Hearing- Pursuant to Government Code § 11508, unless otherwise decided by the Personnel Commission, a hearing shall be conducted at City Hall at a time to be determined by the Personnel Commission.
- f. Notice of the Hearing- Notice of the hearing shall be provided to the parties pursuant to Government Code § 11509.
- g. The Personnel Commission may recommend to sustain, reduce, or rescind the disciplinary action taken where evidence produced in the hearing warrants such recommendation. The standard at the hearing shall be "Just Cause." In all instances, the Personnel Commission shall certify copies of its findings and decision to the City Administrator, the department head from whose action the appeal was made, and the appellant employee. The Board's decision shall be final. Requests for reconsideration by the Personnel Commission shall be governed by Government Code §11527.

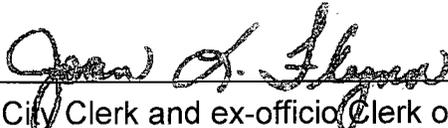
The decision shall be in writing. The decision shall be served personally or by first class mail, postage pre-paid, upon the firefighter as well as his/her attorney or representative, and shall be accompanied by an affidavit or certificate of mailing. Judicial review of the decision may be sought pursuant to Government Code § 11523 and the Code of Civil Procedure.

- h. In the event California Law cited herein is modified, these rules shall also be automatically modified in accordance thereto.

STATE OF CALIFORNIA
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)

I, JOAN L. FLYNN the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council at a **regular** meeting thereof held on **February 16, 2010** by the following vote:

AYES: Carchio, Coerper, Hardy, Green, Bohr, Dwyer, Hansen
NOES: None
ABSENT: None
ABSTAIN: None



City Clerk and ex-officio Clerk of the
City Council of the City of
Huntington Beach, California