

AN ORDINANCE amending 35.11: “Promotions; Certification of Eligible Members; Probation; Procedures” and 35.12 “Disciplinary Actions; Grounds; Hearing; Notice; Requisites; Procedures; Appeal” in Chapter 35: Fire Department, of the Fort Wayne Municipal Code of Ordinances

WHEREAS, the City of Fort Wayne Code of Ordinances (“FWCO”) §§ 35.01 – 35.17 promulgates the organization, operation, and powers of the Fire Merit Commission;

WHEREAS, promotion procedures are located in FWCO 35.11;

WHEREAS, disciplinary actions, ground, hearing, notice, requisites, procedures, and appeal are located in FWCO 35.12;

WHEREAS, Ind. Code § 36-8-3.5-1(f) authorizes a unit that adopted a merit system under Ind. Code § 36-8-3.5-3 to amend the merit system as long as at least one-third, or two members in the case of the five member Commission, of the merit system’s members are elected by the active members of the department;

WHEREAS, current provisions within the system of discipline and promotion have unnecessarily exacerbated tensions between members of the Fire Department and its leadership;

WHEREAS, Common Council desires to amend Section 35.11 of the FWCO in order to reflect the belief that promotion should be awarded to those members achieving the highest score; and

WHEREAS, Common Council desires to amend Section 35.12 of the FWCO in order to more specifically outline the disciplinary options of the Fire Merit Commission and its ability to opine on the executive’s decision to demote or terminate when that decision is not within the Fire Merit Commission’s purview.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA,

SECTION 1. That § 35.11: “PROMOTIONS; CERTIFICATION OF ELIGIBLE MEMBERS; PROBATION; PROCEDURES” in Chapter 35: Fire Department shall be amended and read as follows:

§ 35.11 PROMOTIONS; CERTIFICATION OF ELIGIBLE MEMBERS; PROBATION; PROCEDURES.

(A) When a vacancy in rank occurs, the commission shall certify to the Chief of the Fire Department the three members with the highest scores on the eligibility list for that

particular rank. Within six months the commission shall promote the member with the highest score.

- (B) All promotions are probationary for a period not to exceed one year. At the end of the period, a probationary member's superior shall review the member's performance and recommend to the commission that:

(1) The promotion be made permanent; or

(2) The promotion be revoked.

- (C) The commission shall prepare a rating chart for the superior's use in making the report. The commission shall review the report and decide what action should be taken. The probationary member is entitled to appear before the commission and be heard on any matter detrimental to the member in the member's superior's report. The member is also entitled to be represented by counsel or another representative of the member's choice. If the promotion is finally revoked the member may not be returned to a rank lower than that the member held before the probationary promotion.

- (D) Actions by the commission other than making the promotion permanent may be appealed within 30 days to the Circuit or Superior Court of Allen County, with the city being named as the sole defendant, as provided by IC 36-8-3.5-16(d).

SECTION 2. That § 35.12: "DISCIPLINARY ACTIONS; GROUNDS; HEARING; NOTICE; REQUISITES; PROCEDURES; APPEAL" in Chapter 35: Fire Department shall be amended and read as follows:

§ 35.12 DISCIPLINARY ACTIONS; GROUNDS; HEARING; NOTICE; REQUISITES; PROCEDURES; APPEAL.

- (A) The commission may take the following disciplinary actions against a member of the Fire Department:

(1) Suspension with or without pay of any member with the rank of Fire Chief and below.

(a) In addition to the Fire Merit Commission's authority to suspend a member with or without pay, the Merit Commission shall provide an opinion to the Executive of the City on Demotion or Dismissal.

(2) Demotion of any member with the rank of Battalion Chief and below.

(3) Dismissal of any member with the rank of Battalion Chief and below.

If a member is suspended under this subsection, the member is entitled to the member's remuneration and allowances for insurance benefits to which the member was entitled before the suspension. In addition, the city may provide the member's allowances for any other fringe benefits to which the member was entitled before the suspension. The commission shall determine if a member of the Fire Department who is suspended in excess of five days shall continue to receive the member's salary during suspension.

1 (B) A member may be disciplined by the commission if:

2 (1) The member is convicted of a crime; or

3 (2) The commission finds the member guilty of a breach of discipline,
4 including:

5 (a) Neglect of duty;

6 (b) Violation of commission rules;

7 (c) Neglect or disobedience of orders;

8 (d) Continuing incapacity;

9 (e) Absence without leave;

10 (f) Immoral conduct;

11 (g) Conduct injurious to the public peace or welfare;

12 (h) Conduct unbecoming a member; or

13 (i) Furnishing information to an applicant for appointment or promotion that
14 gives that person an advantage over another applicant.

15 (C) If the Chief of the Fire Department, after an investigation within the department,
16 prefers charges against a member of the department for an alleged breach of
17 discipline under subsection (B), including any civilian complaint of an alleged
18 breach of discipline under division (B)(2)(f), (B)(2)(g), or (B)(2)(h), a hearing
19 shall be conducted upon the request of the member. If a hearing is requested within
20 five days of the Chief preferring charges, the parties may by agreement designate a
21 hearing officer who is qualified by education, training, or experience. If the parties
22 do not agree within this five day period, the commission may hold the hearing or
23 designate a person or board to conduct the hearing, as provided in the commission's
24 rules. The designated person or board must be qualified by education, training, or
25 experience to conduct such a hearing and may not hold an upper level policy
26 making position. The hearing conducted under this subsection shall be held
27 within 30 days after it is requested by the member.

28 (D) Written notice of the hearing shall be served upon the accused member in person or
29 by a copy left at the member's last and usual place of residence at least 14 days
30 before the date set for the hearing. The notice must state:

31 (1) The time and place of the hearing;

32 (2) The charges against the member;

33 (3) The specific conduct that comprises the charges;

34 (4) That the member is entitled to be represented by counsel or another
35 representative of the member's choice;

36 (5) That the member is entitled to call and cross-examine witnesses;

- 1 (6) That the member is entitled to require the production of evidence; and
- 2 (7) That the member is entitled to have subpoenas issued, served, and executed.
- 3 (E) The commission may:
- 4 (1) Compel the attendance of witnesses by issuing subpoenas;
- 5 (2) Examine witnesses under oath; and
- 6 (3) Order the production of books, papers, and other evidence by issuing
- 7 subpoenas.
- 8 (F) If a witness refuses to appear at a hearing of the commission after having received
- 9 written notice requiring the witness's attendance, or refuses to produce evidence that
- 10 the commission requests by written notice, the commission may file an affidavit in
- 11 the Circuit Court of Allen County setting forth the facts of the refusal as provided in
- 12 IC 36-8-3.5-17(f).
- 13 (G) Disobedience of a summons constitutes contempt of the circuit court from which the
- 14 summons has been issued. Expenses related to the filing of an affidavit and the
- 15 issuance and service of a summons shall be charged to the witness against whom the
- 16 summons has been issued, unless the circuit court finds that the action of the
- 17 witness was taken in good faith and with reasonable cause. In that case, and in any
- 18 case in which an affidavit has been filed without the issuance of a summons, the
- 19 expenses shall be charged to the commission.
- 20 (H) A decision to discipline a member may be made only if the preponderance of the
- 21 evidence presented at the hearing indicates such a course of action.
- 22 (I) A member who is aggrieved by the decision of a person or board designated to
- 23 conduct a disciplinary hearing under subsection (C) may appeal to the commission
- 24 within ten days of the decision. The commission shall on appeal review the record
- 25 and either affirm, modify, or reverse the decision on the basis of the record and such
- 26 oral or written testimony that the commission determines, including additional or
- 27 newly discovered evidence.
- 28 (J) The commission, or the designated person or board, shall keep a record of the
- 29 proceedings in cases of suspension, demotion, or dismissal. The commission shall
- 30 give a free copy of the transcript to the member upon request if an appeal is filed.
- 31 (K) Notwithstanding the provisions of this Section 35.12, any disciplinary hearing,
- 32 whether held by the Fire Merit Commission, another person or board, may be
- 33 attended by members of Common Council, including those held in executive
- 34 session.
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1 **SECTION 3.** That this Ordinance shall be in full force and effect from and after its passage and
2 any and all necessary approval by the Mayor.

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Michael Barranda, Council Member
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11 APPROVED AS TO FORM AND PROCEDURAL LEGALITY
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Joseph G. Bonahoom, City Council Attorney
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