

3 **AN ORDINANCE AMENDING CHAPTER 35:**  
4 **FIRE DEPARTMENT OF THE CITY OF FORT**  
5 **WAYNE, INDIANA, CODE OF ORDINANCES.**

6 WHEREAS, the Common Council of the City of Fort Wayne (“Common  
7 Council”) established the Fire Merit Commission (“Commission”) in Chapter 35 of  
8 the City of Fort Wayne Code of Ordinances, pursuant to the authority granted  
9 under Indiana Code § 36-8-3.5 et seq; and

10 WHEREAS, in 2022, the Fire Administration and the IAFF Local 124  
11 (“Union”) conducted a comprehensive review of the Commission’s rules, codified  
12 by the Common Council in Chapter 35, governing the hiring, promotion and  
13 discipline of fire fighter members (“Members”) of the Fort Wayne Fire  
14 Department; and

15 WHEREAS, since that time, it has become clear that an additional, more  
16 extensive review is necessary, and the Fire Administration and the Union are  
17 currently engaged in developing comprehensive revisions that will be presented  
18 to the Common Council upon completion of that time-intensive process; and

19 WHEREAS, while that broader review is underway, the Commission, Fire  
20 Administration, and the Union recognize the need for the Commission to adopt  
21 interim amendments to its rules to address time-sensitive matters as they arise  
22 and desire to amend Chapter 35 to allow the Commission to approve  
23 amendments as needed.

24 **NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL**  
25 **OF THE CITY OF FORT WAYNE, INDIANA:**

26 **SECTION 1.** That CHAPTER 35: FIRE DEPARTMENT of the City of Fort  
27 Wayne, Indiana, Code of Ordinances be amended as follows:  
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**AMEND § 35.03 RULES OF PROCEDURE:**

(A) *Authority.* The Commission is created by and granted authority and jurisdiction as provided by the City of Fort Wayne Code of Ordinances, as amended, [Chapter 35](#), Fire Department. In considering any matter related to this ordinance, the Commissioners will consider state law, City Code, the collective bargaining agreement between the Union and the city, and orders, policies, notices and guidelines issued from time to time by the Fire Chief and the Fire Administration. Amendments to the provisions of this Chapter require approval by the Common Council. However, amendments may be implemented without Council approval when:

1. The Administration and the Union are in mutual agreement; and
2. The proposed amendment has been reviewed and approved by the Merit Commission.

An amendment approved by the Merit Commission shall remain in effect for one year from the date of its adoption, unless an amended Chapter 35 is approved by the Common Council prior to that date, in which case the exception shall terminate upon such passage.

**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Malak Heiny, City Attorney

## CHAPTER 35: FIRE DEPARTMENT

### Section

- [35.01](#) Fire Merit Commission; organization
- [35.02](#) Commissioners; terms; tenure
- [35.03](#) Rules of procedure
- [35.04](#) Upper-level appointments
- [35.05](#) Rules governing the hiring process
- [35.06](#) Reinstatement
- [35.07](#) Rules governing promotions
- [35.08](#) Probationary promotion procedures
- [35.09](#) Performance rating procedures
- [35.10](#) Rules governing discipline
- [35.11](#) Retirements
- [35.12](#) Leaves of absence
- [35.13](#) Notification of rules
- [35.14](#) Order of merit ranks

### **§ 35.01 FIRE MERIT COMMISSION; ORGANIZATION.**

(A) (1) The Fire Merit Commission (the “Commission”) shall consist of six Commissioners, five voting and one non-voting. The Commissioners are:

- (a) Two persons, who must be of different political parties, elected by the active fire fighter members (the “members”) of the Fort Wayne Fire Department (the “Department”);
- (b) Two persons, who must be of different political parties appointed by the Mayor;
- (c) One person appointed by the unit’s legislative body;
- (d) One person from the legislative body. This appointment will be a nonvoting member.

(2) Notwithstanding I.C. 36-1-8-10, political affiliation shall be determined through the voters’ registration records of the three most recent primary elections.

(B) Each Commissioner must have been a legal resident of the City of Fort Wayne (the “city”) for three consecutive years immediately preceding the Commissioner’s term and must be a person of good moral character. A Commissioner must be at least 21 years of age. A Commissioner may not be an active member of the Department and not more than two of the Commissioners may be past members of the Department. In addition, with the exception of the non-voting member set forth in division (A)(1)(d) above, a person may not serve on the Commission if the person receives any remuneration as salary from the city.

(C) Each Commissioner shall take an oath of office to conscientiously discharge the Commissioner’s duties. A signed copy of the oath shall be filed with the City Clerk.

(D) Commissioners shall not receive any compensation for service as a Commissioner.

(Ord. G-22-22, passed 12-13-22)

### **§ 35.02 COMMISSIONERS; TERMS; TENURE.**

(A) The term of a Commissioner is four years.

(B) A vacancy on the Commission shall be filled within 30 days by the appointing or electing authority. The selection is for the remainder of the unexpired term.

(C) A Commissioner serves at the pleasure of the appointing or electing authority and may be removed at any time. The process for election and removal of a Commissioner elected by the members of the Department shall be determined by IAFF Local 124 (the “Union”).

(Ord. G-22-22, passed 12-13-22)

### **§ 35.03 RULES OF PROCEDURE.**

(A) *Authority.* The Commission is created by and granted authority and jurisdiction as provided by the City of Fort Wayne Code of Ordinances, as amended, [Chapter 35](#), Fire Department. In considering any matter related to this ordinance, the Commissioners will consider state law, City Code, the collective bargaining agreement between the Union and the city, and orders, policies, notices and guidelines issued from time to time by the Fire Chief and the Fire Administration. ~~Unless otherwise stated herein, any change to the provisions of this chapter requires approval by the Common Council~~ [Amendments to the provisions of this Chapter require approval by the Common Council. However, amendments may be implemented without Council approval when:](#)

- [1. The Administration and the Union are in mutual agreement; and](#)

2. The proposed amendment has been reviewed and approved by the Merit Commission.

An amendment approved by the Merit Commission shall remain in effect for one year from the date of its adoption, unless an amended Chapter 35 is approved by the Common Council prior to that date, in which case the exception shall terminate upon such passage.:

(B) *Meetings.*

(1) *Annual organizational meeting.* The Commission shall meet annually on the first Tuesday of February at a time and place to be designated by the Commission. At the annual meeting the Commissioners shall select from their number a President, Vice-President, and Secretary.

(2) *Monthly meetings.* The Commission shall meet monthly on the first Tuesday of each month or as needed in order to transact the business of the Commission.

(3) *Special meetings.* Any Commission member may call special meetings of the Commission.

(4) *Executive session.* The Commission may meet in executive session consistent with the provisions of I.C. 5-14-1.5-6.1 as amended.

(5) *Meeting location.* The Commission shall establish a regular meeting location. The location shall be suitable to accommodate the business of the Commission, including appropriate access by the public, and must also accommodate remote electronic participation as permitted by state law.

(6) *Open meetings.* All meetings of the Commission, except executive sessions, shall be open to interested parties and members of the general public desiring to witness the proceeding or be heard by the Commission in accordance with this chapter.

(7) *Quorum.* Three voting Commissioners, including Commissioner participation remotely by electronic means, to the extent allowed by state law, constitute a quorum. A majority vote of all five voting Commissioners (and not simply a majority of the quorum) is necessary to transact the business of the Commission. The President shall have a vote on all matters coming before the Commission. Voting by proxy is not permitted. In any case where a vote of the Commission does not result in official action of the Commission, a subsequent meeting of the Commission shall be rescheduled and the decision reconsidered for action.

(8) *Order of business.* Each meeting of the Commission shall adhere to the following order of business:

- (a) Call to order;
- (b) Roll call of members and staff;
- (c) Adoption of agenda;
- (d) Review of minutes of previous meeting;
- (e) Unfinished business;
- (f) New business;
- (g) Miscellaneous business;
- (h) Fire Chief's report;
- (i) Commissioners' comments;
- (j) Public comment; and
- (k) Adjournment

(9) *Agenda.* Commissioners, the Fire Chief, the Union, and any member may propose Commission agenda items to be heard by the Commission. Proposed agenda items shall be submitted to the Secretary of the Commission no later than three days prior to the next scheduled meeting of the Commission. If a proposed agenda item relates to a specific document(s), the relevant portion of the document(s) shall be submitted with the proposal. The proposed agenda shall be distributed no later than three days prior to that meeting to the Fire Chief, the Union, and the media (according to the media distribution list). Documents referenced in the agenda or that will be addressed according to the agenda shall be made available in advance of that meeting on request unless otherwise restricted from distribution by applicable law. In accordance with the Commission's order of business, the Commission shall review and adopt an agenda from the proposed agenda items submitted.

(10) *Voting.* Except as otherwise required by state law, voting by the Commission shall be in the form of either a roll call vote or a voice vote. Generally, a voice vote shall be used in deciding all matters. In any instances in which a voice vote is used, any Commissioner of the Commission may make a motion requesting a roll call vote. Such roll call vote shall be taken if the motion receives a second from another Commissioner.

(11) *Minutes and record of proceedings.* The Secretary or their designee shall maintain minutes of all public Commission meetings. The minutes of each meeting shall be reviewed by the Commission at its subsequent meeting. No minutes shall be considered official until they are approved by a majority vote as provided in division (B)(10) above and

signed by all voting Commissioners present. The minutes shall remain on file with the Fire Department.

(12) *Orderly conduct required.* Every person appearing before the Commission shall abide by the order and direction of the Commission's presiding officer. Discourteous, disorderly, or contemptuous conduct shall be regarded as a breach of the privileges of the Commission and shall be dealt with as the President deems fair and proper.

(13) *Parties must appear in person.* At disciplinary hearings before the Commission, parties must appear in person (unless otherwise provided by law), but may bring an attorney or representative. However, Commissioners may participate remotely by electronic means to the extent allowed by state law.

(14) *Contacting any Commissioner regarding pending matters prohibited.* No person, firm, corporation, public employee, or body politic shall contact any Commissioner, nor shall a Commissioner solicit such contact, orally or in writing, in advance of a public hearing or executive session, on a matter then pending for decision by such Commission, for the purpose of attempting to influence any Commissioner's decision.

(C) *Miscellaneous provisions.*

(1) *Rules of procedure.* The most recent edition of Robert's Rules of Order shall govern the conduct of all meetings except to the extent that it conflicts with Indiana law or this chapter.

(2) *Suspension of rules.* The suspension of any rule of procedure may be ordered at any meeting of the Commission by unanimous vote of those members present.

(3) (a) *Conflict of interest.* A Commissioner shall not participate in any way, including in the discussion and the vote, in any matter involving a relative that is pending before the Commission. **RELATIVE** means any of the following:

1. Spouse;
2. Parent or step-parent;
3. Child or step-child;
4. Brother, sister, step-brother or step-sister;
5. Niece or nephew;
6. Aunt or uncle;
7. Daughter-in-law or son-in-law;

8. Cousin; or
9. Sister-in-law or brother-in-law.

(b) An adopted child of an individual is treated as a natural child of the individual. The terms **BROTHER** and **SISTER** include a brother or sister by the half blood. If Commissioners have a conflict of interest under this rule, they shall remove themselves physically from the room in which the matter is being discussed and/or voted upon, and similarly shall go off-line if participating in the meeting telephonically or digitally. Prior to removing themselves from the discussion and/or vote, the Commissioner shall disclose the conflict of interest for the record. In the case of an undisclosed conflict of interest subsequently discovered regarding a matter, any Commissioner or party to the matter can require by request that the matter be heard and/or voted upon again by the Commission in the absence of the Commissioner with the conflict of interest.

(Ord. G-22-22, passed 12-13-22)

#### **§ 35.04 UPPER-LEVEL APPOINTMENTS.**

(A) The Commission may appoint and remove members except for a member in an upper-level policymaking position. The Mayor shall appoint and may remove a member in an upper level policymaking position. For the purposes of this division, the term **UPPER-LEVEL POLICYMAKING POSITION** shall mean the Fire Chief and the two ranks below the Fire Chief. To the extent this is in conflict with any other definition contained in this chapter, this definition shall be controlling. However, with respect to the two ranks below the Fire Chief, members holding those two ranks are subject to the rules governing discipline described herein, with the exception of how disciplinary matters related to members holding these two ranks are processed. Allegations of misconduct filed against members holding those two ranks, unless resolved prior to a hearing, will be reviewed in a hearing by the Commissioners. If the matter is resolved prior to a hearing, the result will be distributed in the same manner as written reprimands, suspensions, or other conclusions of investigations (see § [35.10\(C\)](#) below). Any finding by each Commissioner shall result only in a written recommendation by each Commissioner separately to the Mayor. Each Commissioner will send their individual recommendation to the Administrative Secretary to the Commission who will then forward the recommendations to the other Commissioners and to the Commission's attorney. The Administrative Secretary will forward each recommendation along with the record of the proceedings to the Mayor for the Mayor's consideration and determination. Discipline based on those recommendations shall be at the Mayor's sole discretion. The Fire Chief will report the Mayor's determination to the Commission in a regular session. Any allegation of misconduct filed against

members holding those two ranks must be based only on actions or omissions alleged to have occurred after the effective date of this chapter.

(B) The removal of a member from an upper level policymaking position is removal from rank only and not from the Department. When the member is removed, the member shall be appointed by the Commission to the merit rank in the Department that the member held at the time of the member's upper-level appointment. If such a rank is not open, the member is entitled to the pay of that rank and shall be promoted to that rank as soon as an opening is available.

(Ord. G-22-22, passed 12-13-22)

### **§ 35.05 RULES GOVERNING THE HIRING PROCESS.**

(A) To be eligible for appointment to the Fire Department, an applicant must be:

- (1) A legal resident of the United States at the time of application;
- (2) A high school graduate or equivalent at the time of application;

(3) At least 21 years of age on the day that the application process closes, but under 36 years of age on the date of employment, which is the date that a member completes all of the conditions in the conditional offer of employment and is sworn in by the City Clerk. However, the age requirements do not apply to a person who has been previously employed as a member of a qualified fire department or who has prior military experience consistent with state law. A qualified fire department is one which participates in the Indiana State Pension Relief System (Act of 1977); and

(4) Accepted by the Indiana State Pension System (INPRS Act of 1977 for Fire and Police).

(B) No one may appeal any part of the hiring process, unless otherwise described herein.

(C) To be reappointed to the Department, persons must meet all the requirements for appointment. If they meet those requirements, they are automatically placed in the next Academy class.

(D) A person may not be appointed or reappointed if the person has a felony conviction of record.

(E) Applications for appointment or reappointment to the Department must be filed with the appropriate city agency. The applicant must produce satisfactory proof of the date and place of the applicant's birth.

(F) Applicants for appointment to the Department must pass the general aptitude test required under state law. The general aptitude test shall: (1) reflect the essential functions of the job; (2) be conducted according to procedures adopted by the Commission; (3) be administered in a manner that reasonably accommodates the needs of disabled applicants; and (4) the written test will be provided, validated and scored by a testing agency. The results of the general aptitude test shall be filed with the Fire Administration. A minimum score of 70% shall be required to be placed on the eligibility list.

(G) Applicants for appointment or reappointment shall successfully complete within the allotted time of ten minutes and 20 seconds the Candidate Physical Ability Testing ("CPAT"), which assesses a candidate's physical ability to perform the essential job functions of a firefighter consistent with the job description of a member. Applicants who fail to successfully complete the CPAT in under ten minutes and 20 seconds will be ineligible for hire.

(H) Applicants shall then be rated on the selection criteria and testing methods adopted by the Commission, which may include mental alertness, character, habits, and reputation. The Fire Administration shall place the names of applicants with passing scores on an eligibility list by the order of their scores on their general aptitude test and oral interview and shall submit the list to the Commission for approval.

(I) The following parameters shall be used to score and rank applicants:

(1) Diverse panels will be used to interview candidates to determine stress tolerance, ability to reason and solve problems, flexibility, ability to work as an effective team member, strength of interpersonal relations, support of diversity, service orientation, professional integrity, motivation and preparation for a public safety career, continuous learning and achievement striving, and strength of verbal communications.

(2) The panel will score the applicants based upon their answers to specific questions.

(3) A minimum score of 70% shall be required for placement on the eligibility list.

(J) The Fire Chief will determine the number of applicants to be given a conditional offer of employment. An average of the general aptitude test score and the oral interview score will be used to rank the applicants. Applicants will be placed on the eligibility list in the order of their ranking. Only those candidates who have passed the general aptitude test, the oral interview, and the CPAT will be placed on the eligibility list. Pursuant to state law, 5% will then be awarded to those applicants who have been honorably discharged from military service and children of professional municipal firefighters or police officers killed in the line of duty.

(1) Those on the eligibility list will be subject to a background investigation prior to proceeding with the required examinations identified in applicable state law.

(2) If an applicant reaches the applicant's thirty-sixth birthday while still on the eligibility list, the applicant's name shall be removed from the eligibility list, unless otherwise eligible under state law.

(3) The eligibility list remains effective for two years from the date of certification unless the Commission terminates or extends the expiration date of the list upon petition by the Fire Chief.

(K) When the Fire Chief deems it appropriate to fill vacancies in the Department, the Commission, upon request of the Fire Chief, shall direct the Fire Administration to administer the physical agility test required under state law to the appropriate number of applicants having the highest score on the eligibility list or to an applicant who completes a lateral transfer process established by the Fire Chief and approved by the Commission. If a selected applicant successfully completes the physical agility test, the applicant shall then be given a conditional offer of employment if:

(1) The applicant passes the required examinations identified in state law; and

(2) The applicant passes the background check.

(L) All appointments are probationary for a period not to exceed one year from the date of swearing in, unless extended by the Commission on petition by the Fire Chief or as otherwise stated herein. The Fire Chief has sole discretion to establish reasonable conditions and requirements for successful completion of the probationary period. Prior to the expiration of the probationary period, the Fire Chief may notify the member and the Union that the Fire Chief is investigating whether the member's performance is satisfactory. Such notice suspends the expiration of the probationary period for that probationary member. If the Fire Chief determines that a probationary member's conduct or capacity is not satisfactory or that a probationary member has not satisfied any of the conditions and requirements of successful completion of the probationary period, the Fire Chief may notify the Commission in writing of that determination, and make a recommendation that the probationary period be extended or that the probationary member be terminated from employment. The Fire Administration shall provide a copy of that notification and recommendation to the probationary member. The probationary member, within ten days of service of such notification, may request a hearing of the matter before the Commission, and that request shall be granted. The probationary period for the probationary member shall be extended until the Commission renders its decision regarding the Fire Chief's recommendation. In all other cases, at the end of the

probationary period, the member is considered regularly employed. In no case shall the probationary period extend beyond two years from the date of swearing in.

(Ord. G-22-22, passed 12-13-22)

#### **§ 35.06 REINSTATEMENT.**

A person ordered to be reinstated by a Court of competent jurisdiction must:

- (A) Qualify for acceptance into the state fire pension;
- (B) Not have a felony conviction of record; and
- (C) Meet training requirements, as determined by the Fire Chief.

(Ord. G-22-22, passed 12-13-22)

#### **§ 35.07 RULES GOVERNING PROMOTIONS.**

(A) The Fire Chief or Chief of Training shall announce the start of a promotional process through an official notice. The date of that notice is the “notice date” for the rank of Lieutenant, Captain, and/or Battalion Chief in the Operations Division as needed. This notice shall include instructions regarding submissions of applications.

(B) A panel of subject matter experts (the “SME”), comprised of three members (the “SME”), one selected by the Union and two selected by the Fire Administration, each of whom has held at least the rank which is the subject of promotion or is a current Assistant Chief or higher rank and has been certified as a Qualified Captain, as defined in Department policy, will:

(1) Recommend selection of testing materials subject to approval by the Commission. A representative of the Union may observe the SME’s process of selecting the testing materials;

(2) Serve as observers during each part of the process; and

(3) Review all appeals regarding the tests and provide a recommendation to the Commission for the Commission’s review and determination.

(C) Any member who has successfully completed a promotion process has met all of the prerequisites to participate in future promotional processes for that rank.

(D) *Prerequisites.* Promotions to a merit rank must be from the next lower rank.

(1) Lieutenant candidates must have completed seven years of service as a member with a minimum of five years in the Operations Division. A full seven years of service must be completed by the application date.

(2) Captain candidates must have served a minimum of two years at the rank of Lieutenant in the Operations Division of the Department. A full two years of service must be completed by the application date.

(3) Battalion Chief candidates must have served a minimum of one year at the rank of Captain and a combined total of seven years as a Lieutenant and Captain in the Operations Division of the Department by the time of the application date.

(4) To be eligible for promotion, a member must have achieved an overall rating of "satisfactory" or "competent" on each of their last five evaluations.

(5) The member must meet the following minimum training requirements prior to application date:

(a) *Lieutenant*. The member must have successfully completed the following courses certified by the State of Indiana:

1. Instructor I.
2. Fire Officer Strategy and Tactics.
3. Fire Officer I.
4. Incident Safety Officer (any member who holds a safety officer certification meets the requirements for the Incident Safety Officer).
5. Technical Rescue Awareness.

(b) *Captain*. The member must currently hold the merited rank of Lieutenant and have successfully completed the State of Indiana Fire Officer II and one of the following four classes certified by the State of Indiana:

1. Hazardous Materials (operations or technician level).
2. Vehicle/Machinery Rescuer (operations or technician level).
3. Rope Rescuer (operations or technician level).
4. Swift Water Rescue (operations or technician level).

(c) *Battalion Chief*. The member must currently hold the merit rank of Captain and have the following certifications:

1. ICS-300 FEMA certification.
2. ICS-400 FEMA certification.

(d) The Fire Administration will make reasonable efforts to provide prerequisite courses.

(6) In order to be eligible for the Assessment Center, a member may request and receive a variance from the Commission by establishing that the member has experience equivalent to the certification otherwise required. This is applicable only to the Indiana state certifications described herein.

(E) *Skills testing.* Once a member has been confirmed to meet the minimum eligibility requirements, the Chief of Training will schedule the candidates for the hands-on skills assessment.

(1) Each member must complete the same six hands-on skills from the Department's Joint Apprenticeship Training Program ("JATP") testing standard.

(2) There will be three mandatory skills selected by the Chief of Training from among the approved testing materials. Members will be informed of mandatory skills at the time of the drawing.

(3) The three random skills will be drawn by the members from the first testing group. The drawing will be supervised by the Chief of Training or their designee.

(4) The Chief of Training shall appoint at least two skill evaluators for the hands-on skills assessment. The same two evaluators shall be used for each testing group. The skill evaluators must be certified journeyman members. A **JOURNEYMAN MEMBER** is a member who has successfully completed all three years of the JATP.

(5) This will be a pass/fail test based on the following conditions:

(a) Members will be given 15 minutes to review the journeyman skill sheets prior to testing.

(b) If a member fails a skill, they will be told they failed and they will proceed to the next station. The member may only receive one failure for the entire skills testing. If the member fails a second skill, they are eliminated from the promotional process.

(F) The remaining components of the promotional process shall have the following percentage weights:

Written test - 25%
Assessment Center - 49%
Oral interview - 6%
Past performance - 16%
Length of service - 4%

(1) *Written test.* The written test will count 25% of the competitive exam.

(a) The written test for each rank of officer will be created, validated and administered by a professional testing agency hired by the Department.

(b) A representative from a professional testing agency will monitor the test.

(c) Members must attain a minimum score of 70% to pass. Members will proceed with the process pending the results of the written test.

(d) The identity of a member taking the written examination shall be withheld from the person or persons grading the examination and all written examinations are confidential. Members are entitled to examine these files upon request at any time.

(e) The member shall have four hours to review the questions scored as incorrect and challenge the answer considered correct by the examiner. A member who is aggrieved with the score received on the written examination may appeal to the Commission for review of the score. The appeal must be filed within ten days after notice of the score. The examination papers shall be retained in a manner consistent with Indiana law.

(f) A member can only appeal an answer scored as incorrect. The Commission's review is limited to a determination of whether another of the answers to the specific question could be considered correct. A successful appeal benefits all members who took that written test. If, after the Commission's determination, the member's score is below the required passing score, the member shall be eliminated from the process. The written test is the only component of the promotional process that may be appealed by a member.

(2) *Assessment Center.* The Assessment Center will count as 49% of the promotional process. All interaction between the Assessment Board and each member during the Assessment Center will be video and audio recorded.

(a) Eligible members appear before an Assessment Center Board. This Board will include a minimum of two assessors per exercise, including the structured-panel interview, with a minimum of six assessors total selected by the testing company. Assessors selected must be at least one merit rank, or equivalent, above the assessing rank and employed by a full-time professional fire department with a staffing level of equal or greater size to that of the City of Fort Wayne. For the Battalion Chief Assessment, the persons on the Assessment Center Board shall have held the merit rank of Battalion Chief, or equivalent, or above. A professional testing company will serve as the facilitator for the Assessment Center process.

(b) *Assessment Center - for all merited ranks.* The process for all merited ranks will consist of two oral tactical exercises and any two of the following:

1. Presentation;
2. Management exercise;
3. Problem analysis;
4. Simulated situation.

(3) The scores for the two oral tactical exercises shall be averaged, and the average must be at least 70% to be a passing score.

(a) *Descriptions of Assessment Center exercises.*

1. *Oral tactical exercise.* This exercise assesses a member's ability to apply their knowledge of firefighting techniques and tactics to a simulated emergency situation. In general, the member will be given visual and descriptive information regarding an emergency situation. The member must demonstrate how they would behave in this situation if they were in charge.

2. *Presenta tion.* In this exercise, a member is given a topic relevant to a firefighter's work. The member must prepare and deliver a short presentation on the assigned topic. These presentations are delivered to the Assessment Center Board. This exercise is meant to simulate job tasks which require that an officer teach, instruct or lecture subordinates or make presentations to citizen groups, department committees, and other audiences.

3. *Management exercise.* In this exercise, a member is given a series of memos and/or letters. Each memo or letter contains an example of a common situation that is typically faced by individual officers. The member must discuss their response to each memo or letter. The member may also be required to write their response in the form of a memo, letter, or report. The member's responses are scored by the Assessment Center

Board as to how well the member is able to identify and respond to critical issues. The score shall be based in part on grammar and organization.

4. *Problem analysis.* In this exercise, the member is given a problem to evaluate, either in written format or presented as a video scenario. The member will be required to identify and discuss the issues that the problem raises. This discussion will be presented orally or in writing to the Assessment Center Board.

5. *Simulated situation.* In this exercise, members are asked to role play their response to a situation involving interpersonal challenges. For instance, the member might be asked to meet someone who is role-playing a subordinate in trouble. The member must demonstrate how they would behave in this situation if they were a supervisor.

(b) The SME will be available and may be present during the Assessment Center exercises and the structured panel interviews (see below). If any of the SME, either on their own or in response to a concern raised by a member, believe there is an issue during the testing or the structured panel interview, the matter will be discussed with the testing company to try to resolve it. After the final score has been published, if an SME has an issue with the final score, the SME may present the issue to the Commission for resolution by the Commission in its discretion.

(4) *Oral competitive interviews.*

(a) The Fire Chief shall interview each eligible applicant but no points will be attributed to the Fire Chief's interviews.

(b) A structured panel interview may result in an award of a maximum of 6% of the promotional process.

(c) For the Battalion Chief Assessment, the persons on the Assessment Center Board shall have held the merit rank of Battalion Chief or above.

(5) *Past performance.* Past performance will count as 16% of the promotional process. The past performance score sheet will be based on the following for the 24 months prior to the notice date.

(a) Days late: 6%.

<b><i>Days Late</i></b>	<b><i>Points Awarded</i></b>
0	6

1	4
2	2
3	0
4 or more	-4

(b) Disciplinary actions - 10% of the promotional process.

1. Vehicle accidents that are determined to be “not at fault” are excluded.
2. Three points deducted for every suspension in accordance with FWFD disciplinary scale for five years prior to the notice date.
3. Based on the member performance for five years prior to the notice date.

(6) *Length of service.* The member's length of service will be given a weight factor of 4% according to the following table:

<i>Years of Service</i>	<i>Points Awarded</i>
23+	4
22	3.75
21	3.5
20	3.25
19	3
18	2.75
17	2.5
16	2.25
15	2

14	1.75
13	1.5
12	1.25
11	1
10	0.75
9	0.50
8	0.25

(G) The Commission shall certify that the eligibility list was created in accordance with this chapter. The eligibility list for a position consists of members who have been placed on the list in order of their cumulative score on all rating factors. The eligibility list shall be maintained for two years from the date of certification, after which time the list shall be retired and a new list established. The retired list shall be kept for five years and then destroyed in a manner consistent with state law.

(H) *Ancillary positions.* Ancillary positions are not merited positions and are not subject to the promotional process except as described in this division. Ancillary positions are subject to the probationary and disciplinary procedures and disciplinary procedures described in this chapter unless otherwise stated.

(1) *Ancillary positions - District Chief.*

- (a) District Chief - Special Operations.
- (b) District Chief - Health and Safety.
- (c) District Chief - System Administrator.
- (d) District Chief - Internal Affairs.
- (e) District Chief - Investigation.
- (f) District Chief - Training.
- (g) District Chief - Logistics.
- (h) District Chief - EMS.

(2) *Ancillary positions - Captain.*

- (a) Captain - Investigator.
- (b) Captain - Inspector.
- (c) Captain - Public Education.
- (d) Captain - Instructor.
- (e) Captain - Quartermaster.
- (f) Captain - EMS Coordinator.

(3) *Selection process for ancillary positions.*

- (a) Vacancies are determined by the Fire Chief.
- (b) Job descriptions are reviewed by the Commission and submitted to City Human Resources for accuracy.
- (c) Notice of any opening and procedures for selection will be posted to the field. The date of posting is the notice date and will include:
  - 1. Deadline for submission;
  - 2. Command staff acting as point of contact;
  - 3. Items to submit (resume, goal statements, certificates, and the like); and
  - 4. Components of process and scale.
- (d) All submissions are gathered and confirmed via email to the member.
- (e) Once posting closes, a past performance score sheet will be completed based on the following factors. Scores relative to days late are based on candidate performance for 24 months prior to the notice date. Scores relative to disciplinary actions are based on candidate performance for five years prior to the notice date:
  - 1. Days late; and
  - 2. Discipline.
- (f) Interviews are arranged individually with members with whom the position will collaborate or to whom the position will report. All interviews shall be audio and video recorded.

1. All candidate submissions (resume, goal statements, and the like) along with a past performance sheet are distributed to each interviewer.

2. Each interviewer will provide a separate score sheet.

(g) All interviewers meet to discuss individual results of the interview and make recommendations to the Fire Chief for a final decision by the Fire Chief.

(h) The member chosen is contacted and offered the position. If accepted, arrangements are made for promotion with the City Clerk and notification is made to the Commission.

(i) A member is probationary in that rank for a period of up to one year. The Fire Chief will make a recommendation during that period to the Commission as to whether the promotion shall stand or be revoked by the Commission. If the member's promotion is revoked by the Commission, the member shall return to their last merited rank.

(4) If it is necessary to eliminate an ancillary position or positions for reasons as determined by the Fire Chief, members holding those positions will be removed in order of reverse seniority. If an ancillary position is restored within 24 months from the date of elimination, members who held those positions shall be restored in order of seniority, provided the member still qualifies for the position or becomes qualified within a reasonable period of time.

(5) If the Fire Chief deems it necessary to reassign a member from their ancillary position temporarily, they will continue to receive pay at the ancillary position pay rate. The member will return to the ancillary position on completion of the temporary assignment, provided they remain qualified for the position or become qualified within a reasonable period of time.

(6) At any Class or offense count in the disciplinary process, the Fire Chief may petition the Commission for demotion of a member holding an ancillary position for violations of rules, regulations, policies, or procedures.

(Ord. G-22-22, passed 12-13-22)

### **§ 35.08 PROBATIONARY PROMOTION PROCEDURES.**

(A) When a vacancy in a merited rank occurs, the Fire Chief shall select from among the two members with the highest scores remaining on the eligibility list for that particular rank. If the Fire Chief selects a member other than the one ranking highest on the remaining eligibility list, the Fire Chief shall provide to the Commission a written statement of the reasons that support the decision. The Commission shall accept the Fire Chief's selection

and promote that member unless the Commission rejects the Fire Chief's selection by a vote of at least four Commissioners. In that event, the member with the higher score shall be promoted and the other member remains on that eligibility list.

(B) The probationary period begins on the date the Merit Commission approves a member's promotion. All promotions are probationary for a period not to exceed one year unless extended or the promotion is revoked. The Commission, upon request of the Fire Chief, may extend the probationary period, revoke the promotion, or affirm the promotion. At any time during the probationary period, the promotion may be revoked by the Commission upon request of the Fire Chief. The probationary period shall be completed in the division in which the member is being promoted. At the end of the probationary period, the Fire Chief shall review the member's performance and recommend to the Commission that the promotion be affirmed or revoked. Following a hearing, the Commission may uphold, deny, or modify the Fire Chief's recommendation.

(C) Actions regarding promotions by the Commission 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 I.C. 36-8-3.5-16(d).

(Ord. G-22-22, passed 12-13-22)

### **§ 35.09 PERFORMANCE RATING PROCEDURES.**

(A) The Commission shall approve rules for determining a performance rating. The rules must require that a performance rating for each member, including probationary members, be made at least once every 12 months provided that the Fire Chief and the two ranks below the Fire Chief shall not receive a rating or be involved in the performance rating process other than as stated below. The rating shall be made by one or more of the member's supervisors, as defined in these rules. The ratings shall be submitted to the Commission and kept on file in the Fire Chief's office under the Fire Chief's supervision. The supervisor shall submit the performance rating into the electronic system and to the member, at which time the appeal period starts. The Commission shall notify each member in writing of the rating that the member received. Appropriate city technology and resources shall provide reasonable support for the rating system adopted by the Commission.

(B) A member who is aggrieved with the performance rating given to the member by the member's supervisor may appeal to the Commission for a hearing to challenge the rating. The appeal must be filed within ten days after notice of the rating has been sent to the member. The Commission shall affirm, deny, or otherwise modify the rating.

(C) Probationary members shall be rated in accordance with the Joint Apprenticeship Training Program policy.

(Ord. G-22-22, passed 12-13-22)

### **§ 35.10 RULES GOVERNING DISCIPLINE.**

(A) The Fire Chief may initiate a disciplinary action if the Fire Chief believes that a member has violated any rule as enumerated herein, by providing written notice of the allegation of misconduct, including notice by email, to the member. Likewise, any Commissioner may initiate an investigation, in the same manner as required herein of the Fire Chief, if they believe that a member has violated a rule, by providing written notice of the allegation of misconduct to the Fire Chief, who shall then follow the procedural steps set forth herein. If the Fire Chief determines, following an investigation, that the act alleged to be a violation was a Class D, E or F violation committed more than five years prior to the date that the Fire Chief (or the Commissioner, if initiated by the Commission) had notice of the alleged misconduct, the matter is concluded and shall be reported to the Commission, although the Commission does not have authority to act further regarding the notice. There is no time limitation for an alleged Class A, B, or C violation.

(1) Within 20 days after the Fire Chief receives a written statement, in any form, from anyone who asserts alleged misconduct by a member, the Fire Administration shall notify the member in writing, with a copy to the Union, as to whether an investigation of the allegation will be initiated or not. Likewise, if the Fire Chief receives from any source, including an anonymous source, objective evidence such as a video or audio recording, a photo or similar graphic depiction, or a document from a public agency (such as the police, a prosecuting attorney's office, or the Bureau of Motor Vehicles), information upon which the Fire Chief reasonably might base an allegation of misconduct, the Fire Chief shall so notify the member, with a copy to the Union, within 20 calendar days as to whether an investigation will be initiated or not. However, when the Fire Chief receives notice from a representative of an officially-recognized criminal justice organization of alleged misconduct that could form the basis for a criminal charge against the member, the Fire Chief may defer the internal investigation, in the interest of preserving the integrity of a possible criminal investigation, until such time as is objectively reasonable, thus delaying the obligation to provide notice to the member under this provision.

(2) The notice shall include a brief statement of the allegations, the identity of the person(s) who submitted the allegations, and a copy of the written statement from that person and the date(s) of the alleged violation(s). In the case of objective evidence described above, a copy of the objective evidence will be included with this notice. In the

case of an allegation of sick time abuse (Rule 2-4.09), the Commission shall provide this notice.

(3) When the Fire Administration notifies members that they will be subjected to an interview under Garrity, the notice will be copied to the Union.

(4) In all disciplinary actions except those involving late for duty and sick time abuse, the Fire Chief shall cause a Garrity interview of the members subject to the disciplinary action to be conducted.

(5) An interviewer conducting a Garrity interview may not compel members or their union representative to disclose any conversation that occurred between the member and the Union representative, provided that the Union representative was acting in a representative capacity at the time of the conversation. In that case, a refusal to answer a question that would require disclosure of such a conversation will not be deemed disobedience of an order. If asked and a member declines to answer, the line of inquiry regarding such communications must stop. If the member wishes to disclose the substance of such communications, the interviewer may ask relevant follow-up questions. However, the member or the Union representative shall answer such a question in any of the following circumstances: when necessary to prevent crimes likely to result in a clear, imminent risk of serious injury or death; when the conversation involves criminal actions against the member or Union representative; or when there is a court order requiring disclosure. A question posed to a member must otherwise specifically, directly, and narrowly be related to the allegations of the pending disciplinary matter. Nothing in this section relieves a Union representative of the duty to report an infraction that they witnessed, and to testify during the investigation and/or at the hearing regarding the conduct that they witnessed. A member subject to disciplinary action shall have access to all Garrity transcripts created during the investigation.

(B) The Fire Chief, the Union and the member can resolve a disciplinary action at any time by agreement, which agreement must be reported to the Commission. If a member accepts a suspension without pay, the member waives their right to appeal and the Commission shall take no further action. If the member objects to the suspension, the Fire Chief may proceed with the disciplinary process based on the class and occurrence of the alleged violation(s). If the member appeals the suspension, the suspension does not take effect until the Commission determines to uphold the suspension.

(C) The Fire Chief will notify the Commission, with a copy to the Union, of all written reprimands (issued on the designated Departmental form), suspensions, and other conclusions of investigations of alleged infractions to the Commission within 48 hours of

conclusion. A failure to comply with this provision which does not prejudice a member subject to the disciplinary action may be corrected without affecting the disciplinary action.

(D) Prior to the conclusion of an investigation of an alleged disciplinary violation or in the absence of such investigation, the Fire Chief may relieve a member from duty with pay (for non-punitive administrative reasons) or suspend a member with pay pending investigation of an alleged disciplinary violation, which action shall not be appealable unless otherwise provided herein.

(E) The Fire Chief may issue a written reprimand to a member based on an allegation of misconduct and an investigation. Except as provided in section 2-4.09, a member may not appeal a written reprimand based on a Class F violation (unless the violation was a Class E violation or above that was decreased to Class F by the Fire Chief). A member may initiate an appeal to the Commission regarding any disciplinary action that would result in a suspension without pay, demotion or termination (an "appealable disciplinary action"). Any prior infraction that was a factor in progressive discipline may be addressed at the hearing on appeal.

(F) To appeal an appealable disciplinary action, members or their Union representative or attorney must file with the Administrative Secretary to the Commission within ten days of receipt of notice of the appealable disciplinary action a written notice of their intent to appeal the appealable disciplinary action. Notice transmitted by email satisfies the written notice requirement. The notice shall include a statement of the basis for the appeal.

(G) Upon receiving notice of appeal from a member, the Fire Chief shall cause notice of the appeal to be transmitted to the Commission's Secretary and/or attorney.

(H) The Commission shall consult with the Fire Chief and the member or their representative to determine the date(s) on which the hearing of the appeal will be held. The Commission shall use its best efforts to reasonably accommodate the schedules of both parties and their representatives. Unless the parties otherwise agree, the hearing will be held no sooner than 21 days from the date of the notice of appeal.

(I) Both parties are entitled to be represented by counsel or, in the case of the member, a Union representative. Both parties are entitled to produce evidence at the hearing. Both parties are entitled to require the Commission to cause subpoenas to be issued, served, and executed pursuant to I.C. 36-8-3.5-17(e).

(J) Unless otherwise agreed, the parties shall exchange exhibits and a list of witnesses at least five days prior to the hearing. The exhibits and list of witnesses shall be made available to the Commissioners at that time. In the absence of an agreement by the parties,

the Commissioners may determine an appropriate sanction for failure to timely disclose exhibits and witnesses.

(K) If a witness fails to comply with a subpoena issued pursuant to these rules, the Commission shall continue the hearing upon the request of the party that requested the subpoena. The Commission also may file an affidavit in the Circuit Court of Allen County stating the facts of the failure as provided in I.C. 36-8-3.5-17(f). Expenses related to the filing of an affidavit and the issuance and service of a summons shall be charged to the witness against whom the subpoena has been issued, unless the Circuit Court finds that the action of the witness was taken in good faith and with reasonable cause. In that case, the expenses shall be charged to the Commission.

(L) A decision to discipline a member may be made only if the preponderance of the evidence presented at the hearing supports the decision.

(M) The hearing pursuant to this section shall be conducted in executive session. The Commission shall order separation of witnesses other than the Fire Chief, the member, and their representatives, upon request of either party.

(N) The Commission shall record the hearing (either by its Secretary or a third-party qualified to record such hearings). The Commission shall provide a copy of the recording and a copy of the transcript of the record (if created) upon request to the member or their representative at no cost to the member.

(O) The Commission may affirm, modify, or dismiss the disciplinary action. The Commission's authority to charge a member with a disciplinary violation or to modify a disciplinary action shall be unlimited.

(P) *Judicial review process.* A member may appeal a decision of the Commission to suspend the member for a period greater than 96 hours or more for a 24 hour member or 64 hours or more for a 40 hour member or to dismiss the member as provided in I.C. 36-8-3.5-18 (or any successor statute), subject to the time limitations and procedural requirements set forth in said statute.

(Q) Written reprimands for the same offense shall cease to have effect in progressive discipline two years from the date of issue but shall be kept as part of a member's permanent record.

(R) Suspensions for the same offense shall have effect in progressive discipline four years from the date of issue but shall be kept as part of a member's permanent record. However, if appealed, when determining the level of discipline and penalty, the

Commission may consider a member's complete personnel record when addressing disciplinary matters.

(S) Suspensions shall be at the member's current rate of pay. Use of overtime, vacation, or holiday time in lieu of suspension shall not be allowed.

(T) Members may be charged with any or all disciplinary rule violation(s) that may apply to a single specific action or inaction but may be penalized for only one of the applicable rule violations. However, members who commit multiple violations based on two or more separate actions or inactions within a single, continuous incident may be penalized once (including where more than one type of rule violation may apply to a specific action or inaction, as stated above) for each separate action or inaction, resulting in a separate, single penalty for each action or inaction. Multiple instances of the same behavior during a single, continuous incident will not be the basis for escalation on the penalty schedule.

(U) The Fire Chief may increase or decrease the discipline given to a member (by one infraction occurrence on the penalty schedule or by one class of infraction), depending on the circumstances of the alleged offense. The circumstances that led to the increase or the decrease in discipline shall be stated in writing and conveyed to the member. Alternatively, the Fire Chief may petition the Commission to determine an appropriate penalty following a hearing.

(V) Members are entitled to a copy of any of their files held by the city subject to exceptions under applicable law, which will be provided within a reasonable time upon request. A denial of such request shall be grieved pursuant to the terms of the collective bargaining agreement.

(W) If a member is suspended, the member is entitled to the allowances for benefits as defined in the Collective Bargaining Agreement (with the exception of vacation accrual and pension payments made by the city on behalf of the member) to which the member was entitled before the suspension. To determine vacation suspension, the following calculation will be used: divide the number of suspended hours/days by 365, then multiply that number by the number of earned days for which the member is eligible. For example,  $20 \text{ days} / 365 = .054 \times 13 \text{ earned days} = 0.702 \text{ days}$ . Earned days less than .50 will be rounded down to the nearest whole day while earned days equal to or greater than .50 will be rounded up to the nearest whole day.

(X) In order to provide a similar financial impact for suspended time off between eight hour and 24 hour personnel, the following disciplinary step conversion table will be used:

<b>STEP</b>	<b>24-HOUR</b>	<b>40-HOUR</b>
.5	12	8
1	24	16
1.5	36	24
2	48	36
2.5	60	40
Petition for determinate suspension		

(Y) *Penalties.*

(1) *Infractions.* Multiple offenses refers to violations of the same rule.

<b>Class</b>	<b>Offense</b>	<b>Penalty</b>
<b>Class</b>	<b>Offense</b>	<b>Penalty</b>
Class A	1st offense	Petition for dismissal
Class B	1st offense	Petition for determinate suspension
	2nd offense	Petition for dismissal
Class C	1st offense	Step 2.5
	2nd offense	Petition for determinate suspension
	3rd offense	Petition for determinate suspension or dismissal
	4th or more offense	Petition for dismissal
Class D	1st offense	Step 1.5
	2nd offense	Step 2.5

	3rd offense	Petition for determinate suspension or dismissal
	4th or more offense	Petition for dismissal
Class E	1st offense	Step .5
	2nd offense	Step 1.5
	3rd offense	Step 2.5
	4th offense	Petition for determinate suspension or dismissal
	5th or more offense	Petition for dismissal
Class F	1st offense	Written reprimand
	2nd offense	Step .5
	3rd offense	Step 1.5
	4th offense	Step 2.5
	5th offense	Petition for determinate suspension or dismissal
	6th or more offense	Petition for dismissal

(2) At any Class or offense count in the disciplinary process the Fire Chief may petition the Commission for demotion of a member for violations of rules, regulations, policies or procedures.

(3) Any violation committed by members related to the performance of their duties that results in bodily injury to a person other than the member shall be treated as a Class C offense, subject to the Fire Chief's authority to increase or decrease the discipline. Any such violation that results in serious injury or death to a person other than the member shall be treated as a Class A offense, subject to the Fire Chief's authority to decrease the discipline.

(Z) *Disciplinary rules and regulations - table of contents.*

(1) *Section 1 - Neglect of duty.*

- (a) 2-1.01 - Reporting infractions of rules.
- (b) 2-1.02 - Criminal violations by members.
- (c) 2-1.03 - Quitting a post early.
- (d) 2-1.04 - Submission of reports.
- (e) 2-1.05 - Escape of penalties.
- (f) 2-1.06 - Personal business.
- (g) 2-1.07 - Failure to respond to calls for service.
- (h) 2-1.08 - Subpoenas.
- (i) 2-1.09 - Supervision.
- (j) 2-1.10 - Assistance.
- (k) 2-1.11 - Abuse of city property.
- (l) 2-1.12 - Disclosure of name and badge number.
- (m) 2-1.13 - Leaving of city-owned equipment.
- (n) 2-1.14 - Leaving station grounds.
- (o) 2-1.15 - Station work assignment.

(2) *Section 2 - Violation of rules of the Department.*

- (a) 2-2.01 - Communication.
- (b) 2-2.02 - Public statements.
- (c) 2-2.03 - Alcohol.
- (d) 2-2.04 - Use of tobacco/smoking.
- (e) 2-2.05 - Telephone and home address.
- (f) 2-2.06 - Accepting of gifts.
- (g) 2-2.07 - Assigned districts.
- (h) 2-2.08 - Personal use of Fire Department property.
- (i) 2-2.09 - Trading of time policy violation.

- (j) 2-2.10 - False reports.
- (k) 2-2.11 - Driver's license required.
- (l) 2-2.12 - EMS certification required.
- (m) 2-2.13 - Gear on apparatus.
- (n) 2-2.14 - Purchases and disbursements.

(3) *Section 3 - Neglect or disobedience of orders.*

- (a) 2-3.01 - Obedience of orders.
- (b) 2-3.02 - Emergency duty.
- (c) 2-3.03 - Senior officer at scene.
- (d) 2-3.04 - Incident numbers.
- (e) 2-3.05 - Safety equipment.
- (f) 2-3.06 - Answering station phones.
- (g) 2-3.07 - Statements while under Garrity.
- (h) 2-3.08 - Contact with complaining parties.
- (i) 2-3.09 - Obedience to Department policies and procedures.
- (j) 2-3.10 - Computer policies.
- (k) 2-3.11 - Weapon policies.

(4) *Section 4 - Incapacity.*

- (a) 2-4.01 - Fitness for duty.
- (b) 2-4.02 - Intoxicants.
- (c) 2-4.03 - Intoxicants (appearance on duty).
- (d) 2-4.04 - Submission to testing.
- (e) 2-4.05 - Intoxication.
- (f) 2-4.06 - Alcohol assessment.
- (g) 2-4.07 - Driving while intoxicated.
- (h) 2-4.08 - Possession and use of controlled substances.

- (i) 2-4.09 - Sick time abuse.
- (j) 2-4.10 - Outside employment or other activity while on medical leave.
- (k) 2-4.11 - Tattoos.

(5) *Section 5 - Absence without leave.*

- (a) 2-5.01 - Reporting late for duty.
- (b) 2-5.02 - Absent without leave and missed time.

(6) *Section 6 - Conduct injurious to the public peace or welfare.*

- (a) 2-6.01 - Emergency runs.

(7) *Section 7 - Conduct unbecoming.*

- (a) 2-7.01 - Sexual activity.
- (b) 2-7.02 - Improper conduct.
- (c) 2-7.03 - Physical altercation.
- (d) 2-7.04 - Harassment, discrimination, intimidation.
- (e) 2-7.05 - Misdemeanor conviction.
- (f) 2-7.06 - Administrative misdemeanor.
- (g) 2-7.07 - Felony charges.
- (h) 2-7.08 - Administrative felony.
- (i) 2-7.09 - Felony conviction.
- (j) 2-7.10 - Insubordination.
- (k) 2-7.11 - Patient confidentiality.
- (l) 2-7.12 - Compromising the hiring and promotion process.

(AA) *Disciplinary rules and regulations.*

(1) *Section 1 - Neglect of duty.*

(a) *2-1.01 Reporting infractions of rules, Class E.* Members shall report in writing any violations of these rules and/or general orders to their immediate supervisor, commanding officer, or the Fire Administration.

(b) *2-1.02 Criminal violations by members, Class C.* A member who is arrested for and/or charged committing a crime shall personally notify the Fire Administration of these events as soon as reasonably practical, but in any case prior to returning to duty after any such occurrence.

(c) *2-1.03 Quitting a post early, Class C.* Members shall remain at their assigned posts or duty stations during the hours assigned to them, until they are relieved by oncoming personnel or a supervisor.

(d) *2-1.04 Submission of reports, Class F.* Members shall submit all written reports as required before the completion of their tour of duty or when ordered to do so by a supervisory officer. The company officer shall ensure that all reports are completed before the end of a shift, unless authorized in writing by the Fire Administration.

(e) *2-1.05 Escape of penalties, Class C.* No member shall be a party to any promise, scheme, arrangement, or agreement as a conspirator in an attempt to help others avoid penalties or in an individual effort to escape penalties.

(f) *2-1.06 Personal business, Class F.* Members shall not conduct personal business while on duty that interferes with the performance of their duties or causes an injury or illness.

(g) *2-1.07 Failure to respond to calls for service, Class C.*

1. On duty members shall respond to a call for service when they are available and in reasonable proximity to respond.

2. When dispatched, members will acknowledge and respond to all assignments given them by the dispatcher immediately upon receipt of such assignments regardless of the location of the assignment within Allen County.

3. After being dispatched, if members encounter an emergency or serious situation that prevents them from responding to the dispatched assignment, they may change their assignment by advising the dispatcher as soon as possible.

(h) *2-1.08 Subpoenas, Class F.* Members receiving a subpoena in a Department related case shall notify the Fire Administration as soon as reasonably possible. Members subpoenaed for Department related cases shall be present at the place, date and time specified on the subpoena, unless other lawful arrangements are made by the member. Court appearances shall be made in the Class B uniform with tie.

(i) *2-1.09 Supervision, Class D.* Commanding and supervisory officers shall at all times properly supervise and evaluate their subordinates while on duty.

(j) *2-1.10 Assistance, Class C.* Members shall render necessary and proper assistance while on duty or in the performance of a duty when needed or requested.

(h) *2-1.11 Abuse of city property, Class F.* Members shall be responsible for the proper care of city property in their custody and shall properly report to their immediate supervisor the loss of the damage to, or the unserviceable condition of such property. Damage to city-owned vehicles caused by a vehicular accident is not covered under this rule.

(i) *2-1.12 Disclosure of name and badge number, Class F.* Members shall divulge their name and badge number to any person when requested. All reports submitted by members shall contain the name and badge number of the member submitting the report.

(j) *2-1.13 Leaving of city-owned equipment, Class F.* When any city-owned equipment is left any place that is not the normal storing area for that equipment, the member responsible for leaving that equipment shall record that circumstance in the station log for the oncoming members, stating the location, items, quantity, and the reasons for leaving such equipment. Such a report shall not be necessary if the equipment is recovered by the member before the end of their tour of duty.

(k) *2-1.14 Leaving station grounds, Class E.* Leaving the station grounds is prohibited without permission of the officer in charge. Before permission is granted, members shall report where they are going, the reason for leaving, and the estimated time of return.

(l) *2-1.15 Station work assignment, Class F.* Members shall complete station work assignments as assigned by the officer in charge.

(2) *Section 2 - Violation of rules of the Department.*

(a) *2-2.01 Communication, Class F.* Members shall maintain appropriate radio communication with the dispatcher at all times.

(b) *2-2.02 Public statements, Class E.* Members shall not convey information to anyone regarding Fire Department business or express personal opinions referencing the Department, under the pretense of representing Department, for publication or broadcast, without consent of the Fire Chief.

(c) *2-2.03 Alcohol, Class D.* Members shall not store or bring into any Department facility, or Department vehicle, alcoholic beverages. Department facilities shall be alcoholic beverage-free.

(d) *2-2.04 Use of tobacco/smoking, Class F.* Members shall comply with state and local ordinances regulating smoking in government buildings and vehicles. Smoking will be prohibited in all city-owned and or city-operated buildings, vehicles and transportation

equipment. Smoking is defined in I.C. 13-1-13-3 as "the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking equipment, or the inhalation or exhalation of smoke from any lighted smoking equipment." Pursuant to I.C. 13-1-13-9, this applies to all tobacco products including smokeless or chewing tobacco and vaping.

(e) *2-2.05 Telephone and home address, Class F.* Members shall have telephones and shall report as soon as reasonably possible any changes of telephone numbers to the Fire Chief's office, their Battalion Chief, and their station officer. Members shall have on file their current address and shall report as soon as possible any changes of address to the Fire Administration and the City Human Resources Department, using the "change of address" form obtained on the FWFD Intranet.

(f) *2-2.06 Accepting of gifts, Class E.* The accepting of money, rewards, gifts, or other valuable articles, unless of de minimus value of \$50 or less per member, from any person is prohibited unless permission is granted by the Fire Chief.

(g) *2-2.07 Assigned districts, Class F.* Members shall stay within the bounds of their assigned station territories unless assigned by the dispatcher, by permission of their superior officers or while assisting another unit.

(h) *2-2.08 Personal use of Fire Department property, Class E.* Members shall not remove Department property for personal use without permission of a Battalion Chief or rank above.

(i) *2-2.09 Trading of time policy violation, Class D.* Members shall not violate the Department's trading of time policy.

(j) *2-2.10 False reports, Class A.* A member shall not knowingly make a false report or knowingly omit to make an accurate report to the Department or knowingly enter or cause to be entered or knowingly omit to enter or cause to be entered in any Departmental books, records, or reports any inaccurate, false, or improper information. A member shall not knowingly withhold information from the Department, the Prosecutor of a case, or any Court in which the member is a witness in a matter related to the performance of their duties, unless otherwise allowed by law.

(k) *2-2.11 Driver's license required.* Members shall have and maintain a motor vehicle operator's license that lawfully entitles them to operate a Department vehicle.

1. Any change in status to a member's license not exceeding 30 days shall be subject to a Class E infraction.

2. Any change in status to a member's license exceeding 30 days but not greater than 180 days shall be subject to a Class C infraction.

3. Any change in status to a member's license exceeding 180 days shall be subject to a Class B infraction.

4. Members who fail to notify the Fire Administration immediately of a change in status to their license shall be subject to a Class C infraction.

(l) *2-2.12 EMS certification required, Class C.* Members shall have and maintain a valid EMS certification at or above the level required in their conditional offer of employment or at the time of hiring by the Department. This includes EMS-EMR, EMS-Emergency Medical Technician, EMS-Advanced Emergency Medical Technician, or EMS-Paramedic License.

1. Any change in EMS certification status must be reported by members to the Fire Administration before the member works her or his next shift.

2. Copies of current EMS certifications must be sent by members to the Fire Administration as directed by policy.

3. Failure by members to restore EMS certification to or above the level required at their time of hire within 90 days will result in a Class B violation.

4. When A-EMT or P-EMT certification is a condition of employment, members have two years from the date of employment within which to obtain such certification within the standards set by the Fire Administration. Violation of this provision is a Class A infraction.

(m) *2-2.13 Gear on apparatus, Class F.* Gear must be on the assigned apparatus by the assigned starting time. Members reporting for their assigned shift shall properly store the gear of the member they are relieving from duty. If relieving a member of a previous shift, their gear will be removed completely and stored properly.

(n) *2-2.14 Purchases and disbursements, Class C.* Members must have written approval from the Fire Chief designee or the Fire Chief prior to entering into any financial transaction on behalf of the Department.

(3) *Section 3 - Neglect or disobedience of orders.*

(a) *2-3.01 Obedience of orders, Class E.* Members shall obey orders, directions, and instructions of their superior officers. When members are acting under the orders of one supervisory officer and are then given an order by another supervisory officer, they shall immediately report the first order to the second supervisory officer and then abide by the decision of the second supervisory officer. A member who violates this rule while under Garrity commits a Class B violation.

(b) *2-3.02 Emergency duty, Class D.* Members shall be available for emergency duty, as defined by applicable state law or city ordinance, on notice by the Fire Chief or their duly authorized representative. Failure to respond to emergency duty shall be considered disobedience of orders.

(c) *2-3.03 Senior officer at scene, Class F.* Either the incident commander or highest-ranking officer on the scene shall assume overall responsibility.

(d) *2-3.04 Incident numbers, Class F.* Members shall log all incident numbers accordingly on incident reports regardless of disposition.

(e) *2-3.05 Safety equipment, Class E.* Members will make proper use of available safety equipment, including seat and shoulder restraints, when operating or riding any city vehicle. Members shall not disable any safety equipment.

(f) *2-3.06 Answering station phones, Class F.* All telephone calls received must be answered in a proper and courteous manner. When answering, members must state their name and the station number.

(g) *2-3.07 Statements while under Garrity, Class A.* When answering questions in an administrative matter under Garrity, members shall provide truthful responses. Failure to do so is a Class A offense. A refusal to answer constitutes a violation of 2-3.01.

(h) *2-3.08 Contact with complaining parties - Class D.* Once members are notified by the Fire Administration that a written and signed allegation of misconduct has been lodged against them, members shall use all reasonable means to avoid contact, of any nature, including contact through third parties, with the complaining party or parties. A member who is the subject of an allegation of misconduct who is unrepresented by an attorney or the Union must notify the Fire Administration in writing at least 24 hours in advance of contacting potential witnesses.

(i) *2-3.09 Obedience to Department policies and procedures, Class F.* Members shall follow all procedures and policies of the Department that pertain to the division to which they are assigned and those that, in general, pertain to all members that are not specifically covered anywhere else. Violation of policies and procedures is a Class F violation unless otherwise stated in these rules. Members are subject to all city employment policies that are not in conflict with a specific Department policy or the collective bargaining agreement between the Union and the city. The following Department policies have specific discipline sanctions other than a Class F violation:

<b>POLICY #</b>	<b>POLICY NAME</b>
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<b>POLICY #</b>	<b>POLICY NAME</b>
3-0001	Collision/accident review
3-0008	Anti-discrimination/harassment
3-0016	Hazardous material competency and certification
3-0034	Personal day
3-0036	Annual physical exam
3-0043	Sexual harassment
3-0049	Trade of time
3-0051	Vacation draw
3-0053	Possession of weapons
3-0056	Hireback program
3-0057	Joint Apprentice Training Program
3-0074	Emergency time off
3-0077	Computers and city technology
3-0078	Late for duty
3-0079	Medical absence
3-0080	Drug testing
3-0086	Fire Department vehicle use
3-0090	Recording equipment
3-0093	Automatic Vehicle Locator (AVL) system
3-0094	Request for patient information

(j) *2-3.10 Computer policies - Class B.* Members shall adhere to Department computer and technology policies.

(k) *2-3.11 Weapons policies - Class B.* Members shall adhere to Department weapons policies.

(4) *Section 4 - Incapacity.*

(a) *2-4.01 Fitness for duty, Class A.* Members shall maintain good physical and mental condition at all times. If circumstances reasonably indicate a need, the Fire Chief may order the member to take appropriate tests to determine the member's fitness for duty. If a member refuses such order, that refusal is a violation of this provision. In addition, a member who exhausts all paid sick time relief and is unable to return to active duty shall be in violation of this provision.

(b) *2-4.02 Intoxicants, Class B.* Members shall not consume intoxicating beverages while on duty. Members shall not consume intoxicating beverages in uniform without prior approval of the Fire Chief.

(c) *2-4.03 Intoxicants (appearance for duty), Class E.* Members shall not appear for duty, be on duty, or be in a city-owned vehicle with the odor of intoxicants on their breath or body. Blood concentration testing resulting in above 0.0 but less than .02 shall result in a violation of this section.

(d) *2-4.04 Submission to testing, Class B.* Members suspected of being under the influence of intoxicants while on duty will submit to a breath test on either a portable breath test unit or the current model of breathalyzer used by the Fort Wayne Police Department. Test results will be made a part of the member's disciplinary file.

(e) *2-4.05 Intoxication, Class B.* Members shall not have an alcohol concentration of .02 or greater while on duty.

(f) *2-4.06 Alcohol assessment, Class C.* Members who have incurred a final finding of a violation of 2-4.02, 2-4.03, 2-4.04, or 2-4.05 must submit to an assessment by a substance abuse counselor identified in the Employee Assistance Program.

(g) *2-4.07 Driving while intoxicated.*

1. Members, on or off duty, shall not operate a vehicle while under the influence of drugs or alcohol. Conviction of an offense related to driving while intoxicated under state law shall be sufficient evidence to sustain a charge under this section.

2. Members charged with driving while under the influence of drugs or alcohol will be automatically suspended without pay, without appeal, for a period of 240 hours for a 24 hour member and 172 hours for a 40 hour member.

3. If a member's driver's license is suspended in excess of 30 days for reasons related to a charge of driving while under the influence of drugs or alcohol, the member will be subject to additional penalties as provided in the rules regarding members' driver's license requirements.

4. Members also may be subject to additional penalties related to criminal or administrative charges following the completion or discontinuation of any criminal case related to driving while under the influence of drugs or alcohol.

*(h) 2-4.08 Possession and use of controlled substances, Class A.*

1. Members shall not possess or use any controlled substances, except as legally prescribed for the member by a health care provider. The charging of a member under this rule shall be undertaken only after the completion of an appropriate test as identified in the Department's drug testing policy.

2. Members, one time during their career, prior to taking a drug test, may self-report an issue with illegal drugs (that is, that they will likely fail the test) and then enter into a drug-cessation/recovery program at the city's expense. Members who invoke this option shall be on unpaid suspension for 240 hours for a 24 hour member and 172 hours for a 40 hour member and agrees to release to the Fire Administration their records related to the member's treatment and status in the drug-cessation/recovery program.

3. The Fire Chief may petition the Commission to extend the suspension period for reasonable cause.

*(i) 2-4.09 Sick time abuse, Class F.*

1. Members shall not abuse sick time. Examples of abuse shall include:

- a. Being denied paid leave, then calling in sick;
- b. Being unable to contract for time off, then calling in sick;
- c. Patterns of calling in sick on particular days of the week;
- d. Patterns of calling in sick on days before or after vacation days; or
- e. Five occurrences of sick time off within a 12 month rolling period.

2. A "pattern" is defined as three or more call-ins under the circumstances stated above in a 12 month rolling period. An "occurrence" is defined as one sick call-in, whether for one or multiple consecutive assigned shift days. An "occurrence" does not include injuries or illnesses sustained on duty or in the performance of a sworn duty.

3. Battalion Chiefs, Captains, and Lieutenants shall monitor use of sick time and report abuse in writing through the disciplinary process. However, allegations of misconduct based on sick time abuse shall be forwarded directly to the Commission rather than the Fire Chief. The Commission shall hold a hearing regarding the allegation in executive session and shall make its determination, considering any possible mitigating factors.

(j) *2-4.10 Outside employment or other activity while on medical leave - Class E.* Members may not engage in outside employment or other activity while on medical leave that would conflict with their regular Department work schedule if they were actively at work, unless otherwise allowed by Department SOP or applicable law. If the outside employment or other activity is determined by a medical professional to interfere with rehabilitation, the Fire Chief may require that members not work their outside employment or engage in the activity for the period recommended by the medical professional. The Fire Chief, at the Fire Chief's discretion, may require the member to submit to evaluation by a medical professional(s) selected by the city, at the city's expense.

(k) *2-4.11 Tattoos - Class B.* While wearing the Class B uniform, long sleeve shirt, tattoos shall not be visible. The only exception is a wedding band tattoo on a finger.

(5) *Section 5 - Absence without leave.*

(a) *2-5.01 Reporting late for duty, Class F.* Members shall report for work as scheduled on time unless excused by the Fire Chief or the Fire Chief's designee. Violations of this rule are subject to the SOP regarding reporting late for duty.

(b) *2-5.02 Absent without leave and missed time, Class C.* If Members are scheduled to work, regular or contract, and fail to report to work, they will be considered absent without leave as stated in the SOP regarding reporting late for duty.

(6) *Section 6 - Conduct injurious to the public peace or welfare.*

(a) *2-6.01 Emergency runs, Class E.* No emergency run shall be made unless emergency lights and siren are in use. Members shall proceed with due caution and not at excessive speeds in accordance with Indiana Code. If instructed to shut down early, both lights and siren shall be shut off.

(7) *Section 7 - Conduct unbecoming.*

(a) *2-7.01 Sexual activity, Class B.* While on duty, members shall not engage in any form of sexual activity.

(b) *2-7.02 Improper conduct, Class D.* Members shall not engage in any act or conduct that is unethical, or tends to harass, intimidate, demean, debase, ridicule, disgrace or degrade any other person.

(c) *2-7.03 Physical altercation, Class C.* Members shall not physically shove, strike, or engage in any physical altercation directly or indirectly with any person without legal justification.

(d) *2-7.04 Harassment, discrimination, intimidation, Class C.* Members shall not engage in sexual harassment, discrimination, or intimidation as prohibited by applicable city, state and federal laws and the Department's standard operating policies and procedures.

(e) *2-7.05 Misdemeanor conviction, Class B.* A member convicted of a crime that is a misdemeanor under Indiana law shall be charged with a Class B rule violation. A member charged with a crime that is a misdemeanor under Indiana law may be relieved of duty with pay, suspended without pay by the Commission upon petition by the Fire Chief, or temporarily placed in a non-investigative, non-operations position, except that a member charged with an OWI shall be subject to unpaid suspension as stated in 2-4.07.

(f) *2-7.06 Administrative misdemeanor, Class C.* A member found, after an internal investigation, to have engaged in an act that is a misdemeanor in Indiana and is not convicted of the misdemeanor shall be administratively charged for disciplinary purposes.

(g) *2-7.07 Felony charges, Class B.* A member shall be suspended with or without pay during any period the member stands charged with a felony criminal offense. The Fire Chief may petition the Commission to suspend the member without pay. Nothing in this section shall prevent the suspension or termination of a member for violation of any other rule or policy or the suspension or termination of the member in the event of a conviction.

(h) *2-07.08 Administrative felony, Class B.* A member found, after an internal investigation, to have engaged in an act that is a felony and is not convicted of the felony shall be administratively charged.

(i) *2-7.09 Felony conviction, Class A.* A member convicted of a felony shall be subject to a petition for dismissal. A certified copy of the judgment indicating conviction shall be considered prima facie evidence of a violation of this rule.

(j) *2-7.10 Insubordination, Class E.* Members shall at all times exhibit respectful and professional demeanor regarding supervisory officers.

(k) *2-7.11 Patient confidentiality, Class B.* Members shall not disclose protected patient health information.

(l) *2-7.12 Compromising the hiring and promotion process.*

1. Members who falsified their application materials presented during the hiring process or cheated on any element of the hiring process shall have committed a Class A offense.

2. Members who assisted a candidate for hire to cheat on any element of that candidate's hiring process shall have committed a Class A offense.

3. Members who cheated on any element of the promotion process shall have committed a Class C offense, shall be precluded from the promotion process immediately and for a period of five years and, if they hold rank, shall be demoted to the merit rank below.

4. Members who assisted a candidate for promotion to cheat on any element of the promotion process shall have committed a Class C offense, shall be precluded from the promotion process immediately and for a period of five years and, if they hold rank, shall be demoted to the merit rank below.

5. Candidates for promotion who receive information from a member or other source not legitimately available otherwise that would give them an unfair competitive advantage but who do not use such information in any way, whether to their advantage or not, shall not be subject to disciplinary action under this provision, provided that, prior to the element of the process for which the information might be used, the candidate discloses in writing to the Fire Administration the identity of the member or members who furnished the information and a description of the information furnished. In addition to not being subjected to disciplinary action, candidates shall not be eliminated from the promotional process unless for some other reason.

(Ord. G-22-22, passed 12-13-22)

#### **§ 35.11 RETIREMENTS.**

A member shall retire from the Department when the member reaches the member's seventieth birthday.

(Ord. G-22-22, passed 12-13-22)

#### **§ 35.12 LEAVES OF ABSENCE.**

(A) If it is necessary to reduce the number of members of the Department, the reduction shall be made by granting a temporary leave of absence, without pay or other financial obligation of the city, to the appropriate number of members. The last member appointed shall be put on leave first, with other members also put on leave in reverse hiring order, until the desired level is achieved.

(B) If the Department is increased in number again, the members who have been granted leaves of absence under this section shall be reinstated before an applicant on the eligibility list is appointed to the Department. The reinstatements begin with the last member granted a leave.

(C) A member on leave of absence shall keep the Fire Administration advised of the member's current address. A member shall be informed of the member's reinstatement by written notice. Within ten calendar days after a member receives notice of reinstatement, the member must advise the Fire Administration Commission that the member accepts reinstatement and will be able to commence employment on the date specified in the notice. All reinstatement rights granted to a member terminate upon the member's failure to accept reinstatement within that period.

(D) Nothing herein shall limit the Fire Chief's authority to grant, upon request by a member, temporary leaves of absence for other reasons. Leaves of absence granted for reasons other than as provided in the pension statute will be without pay, any other benefits, pension contributions, or accrual of seniority. A member may be subject to state pension system approval for reinstatement following a leave of absence.

(Ord. G-22-22, passed 12-13-22)

### **§ 35.13 NOTIFICATION OF RULES.**

The Department shall make available the most recent version of the merit ordinance and rules on the Department intranet. Any modification shall be effective ten days after the modification is approved by City Council and the Mayor.

(Ord. G-22-22, passed 12-13-22)

### **§ 35.14 ORDER OF MERIT RANKS.**

(A) The order of merit ranks will be as follows: Probationary Firefighter, Firefighter (or Private), Lieutenant, Captain, and Battalion Chief.

(B) Current Fort Wayne Fire Department Ancillary Positions:

(1) District Chief - Special Operations.

- (2) District Chief-Health and Safety.
  - (3) District Chief - System Administrator (Information/Technology).
  - (4) District Chief - Internal Affairs.
  - (5) District Chief - Investigations.
  - (6) District Chief - Training.
  - (7) District Chief - Logistics.
  - (8) District Chief - EMS.
  - (9) Captain - Investigator.
  - (10) Captain - Inspector.
  - (11) Captain - Public Education.
  - (12) Captain - Instructor.
  - (13) Captain - Quartermaster.
  - (14) Captain - EMS Coordinator.
- (Ord. G-22-22, passed 12-13-22)