

## **BINDING ARBITRATION OF ADMINISTRATIVE APPEALS**

The parties agree that the following Administrative Appeal Rules (“Appeal Rules”) shall apply for final disciplinary determinations by the Fire Commission on verified complaints filed by the Chief of the San Francisco Fire Department (“SFFD”). These Administrative Appeal Rules shall apply to any administrative appeal from any final Fire Commission decision issued after February 1, 2022, through one calendar year from the date the Fire Commission approves the Appeal Rules, unless the parties agree otherwise in writing. The Appeals Rules shall expire on the one year anniversary of the date the Fire Commission approves the Appeal Rules. The parties also agree that these Administrative Appeal Rules comply with the Firefighters Procedural Bill of Rights Act, Cal. Gov’t Code § 3250, *et seq.*

- 1. Accusation:** The Finding of Fact adopted by the Fire Commission shall serve as the Accusation as described in Government Code § 11500, *et seq.* The Fire Commission’s transmittal letter notifying the member of the Commission’s Findings of Fact shall include language specifying that a member has the right to an administrative appeal hearing by filing a Notice of Appeal. The letter shall also include a copy of the Findings of Fact and Government Code §§ 11507.5-11507.7.
  
- 2. Notice of Appeal.** The Notice of Appeal serves as the Notice of Defense under Government Code § 11506. The Notice of Appeal must: (a) be in writing; (b) contain a statement specifying each basis for the appeal; (c) be signed by or on behalf of the member; and (d) provide the member’s current mailing address. The member must file and serve the Notice of Appeal with the Commission Secretary and counsel for the SFFD no later than 30 calendar days after the Commission’s service of the Findings of Fact on the member, or within 90 calendar days after these Administrative Appeal Rules are fully-executed, whichever date is later. The date of service of the Findings of Fact shall be the date appearing on the proof of service accompanying the Findings of Fact. If the 30th calendar day following the date of service falls on a Saturday, Sunday, or legal holiday, the deadline to file the Notice of Appeal shall be the next business day. Filing and service of the Notice of Appeal must be by personal delivery, electronic delivery, or by other means calculated to effect delivery on or before the 30th day. Failure to file a timely Notice of Appeal shall constitute a waiver of the member’s right to an administrative appeal under the Firefighters Procedural Bill of Rights Act.
  
- 3. No Stay of Fire Commission Determination.** The filing of a Notice of Appeal shall not stay or delay implementation of the Fire Commission’s final decision.
  
- 4. Binding Arbitration.** The parties agree to submit all administrative appeals to binding arbitration. The arbitrator shall act as the Hearing Officer and shall be selected from the following panel of arbitrators: Najeeb Khoury, Ronald Hoh, Robert Steinberg, Andrea Dooley, and Robert Hirsch. The parties shall select an arbitrator by alternately deleting names from the above list of arbitrators until only one (1) name remains. If that person cannot serve, or parties agree not to use that person’s services, the parties shall start the selection over. The first party to delete a name shall be determined by lot.
  
- 5. Hearing Officer Authority:** Pursuant to California Code of Civil Procedure, sections 1282-1284.3, the hearing shall be presided over by a single neutral arbitrator (“Hearing Officer”). The Hearing Officer shall have the authority to make independent findings of fact and draw conclusions of law with respect to the Accusation, determine whether or not

the admitted evidence supports the stated misconduct of the employee, and if the penalty imposed is just and proper.

**6. Communications; Service on Other Party and Commission.**

- a. Unless otherwise specified in these Administrative Appeal Rules, once the parties have agreed on a Hearing Officer, the parties shall submit all written communications, briefs, and other filings to the Hearing Officer directly and concurrently serve the opposing party and Commission Secretary a copy of any and all communications, briefs, or other filings. Service shall be made by U.S. Mail, personal delivery, or other means agreed to by the parties. The parties shall provide a courtesy hard copy of all briefs and other filings to the Commission Secretary for the Commission file.
- b. The parties and their representatives shall not have any *ex parte* communications with the Hearing Officer. The Hearing Officer shall not have any *ex parte* communications with members of the Commission or SFFD regarding the matter or issues on appeal.

**7. Discovery.** The provisions of Government Code section 11507.6 shall provide the exclusive right to discovery.

**8. Transmission of Record on Appeal.** Within sixty (60) calendar days of the selection of a Hearing Officer, the Commission Secretary shall submit the Notice of Appeal and the following materials to the Hearing Officer by personal delivery or other means calculated to effect delivery within the sixty (60) day period, with copies to the parties by the same means:

- i. Decision letter from the Commission;
- ii. The Commission's Findings of Fact; and
- iii. Record of the Fire Commission proceedings, including the charging documents, the reporter's transcript, and all exhibits.

**9. Notice of Hearing.** The Commission Secretary shall confer with the parties and the Hearing Officer to determine available hearing dates. The Commission Secretary shall email a notice of hearing to all parties at least 10 days prior to the hearing date provided by the Hearing Officer. A party may seek to continue the hearing date for good cause. A party seeking such a continuance must submit a written request to the Hearing Officer as soon as reasonably possible after learning of the circumstances warranting a continuance. A written request to continue the hearing must set forth: (a) the circumstances demonstrating good cause with specificity; (b) the party's efforts to consult with all other parties on alternative dates for the hearing; and (c) propose three dates when all parties will be available, with the objective of setting the hearing for a date as soon as reasonably possible. Any party opposing a continuance may file a written response by the close of business three calendar days after the service of the request for a continuance, stating any objection to the request. The Hearing Officer shall decide whether the matter should be continued, and if so, set a new date for the hearing when the parties and representatives are available.

**10. Conduct of Appeal.** The Hearing Officer shall conduct the administrative appeal in accordance with the provisions of Government Code §§ 11500, *et seq.* All hearings shall be conducted in-person. Should a party to the hearing object to an in-person hearing, the

objecting party shall file and serve a motion, no later than thirty (30) calendar days prior to commencement of the hearing, demonstrating good cause, as to the reasons supporting why the hearing should be conducted remotely.

- a. “Good cause” means a substantial and compelling reason demonstrating a need for the hearing to be conducted remotely. Good cause shall be evaluated using the following factors and relevant issues and events beyond the party’s control, considering the length of delay, the diligence of the party making the request, and any potential prejudice to the other party. Such factors include: The in-person unavailability of a party, a party’s attorney, a party’s representative, or essential witness because of illness, medical condition (i.e., disability), or other excusable circumstances such as an essential witness having moved out of the area in which unreasonable cost may be incurred by such witness for hearing participation. The granting or denial of such excusable circumstances are solely in the discretion of the Hearing Officer.

**11. Closed/Open Hearing.** The administrative appeal hearing shall be conducted in closed (non-public) session unless the member requests open (public) session, in which case the administrative appeal hearing shall be open. If the member requests open session, the Hearing Officer shall close portions of the hearing to the extent necessary to protect the privacy interests of third parties, e.g., medical information, or to comply with other laws making some of the material in the record confidential.

**12. Representatives.** Each party may have a representative of the party’s choice at the administrative appeal hearing.

**13. Court Reporter.** The Commission shall provide a court reporter to record and prepare a stenographic transcript of the administrative appeal hearing. The Commission shall order the transcripts and provide a complete copy to both parties and to the Hearing Officer if requested.

**14. Decision by the Hearing Officer.** The Hearing Officer shall decide the administrative appeal on the Record on Appeal, arguments and evidence of the parties introduced into evidence at the administrative appeal hearing, and any briefs requested by the Hearing Officer. Not later than sixty (60) calendar days after the administrative appeal hearing, the Hearing Officer shall prepare and issue a written decision that finally determines the issues identified in the Notice of Appeal. The Hearing Officer shall submit the decision to the Commission Secretary, who shall serve the decision on the parties along with written notification that the decision is final, and binding upon the parties. (California Gov. Code § 3254.5(b).)

**15. Public Meeting Laws.** The administrative appeal hearing is not subject to public meeting requirements under the Ralph M. Brown Act, Government Code section 54950 *et seq.*, or the San Francisco Sunshine Ordinance, Administrative Code Chapter 67.

Adopted at the San Francisco Fire Commission Regular Meeting on September 13, 2023, with a vote of 4-1 (Ayes: Nakajo, Morgan, Fraser, Collins; Nays: Feinstein)