

**FIRE DEPARTMENT OF WESTFIELD
DISCIPLINE POLICY**

DATE ENACTED: JANUARY 16, 2012

This policy governs the discipline and/or removal (e.g. temporary suspension, ongoing suspension or permanent removal depending on the severity of the infraction) of any volunteer member or volunteer officer of the Fire Department of Westfield. This procedure IS IN ADDITION TO AND NOT IN THE PLACE OF ANY ACTION THE FIRE COMPANY MAY TAKE PURSUANT TO ITS OWN COMPANY BYLAWS.

Such officers and members of the department may not be removed by the municipality from office, or membership, as the case may be, by such authorities or by any other officer or body, except for incompetence or misconduct.

MISCONDUCT: Misconduct is defined to include, *but not limited to*:

- a. Insubordination to a Chief, Assistant Chief, Officer or any other member put in charge and/or to a member of the Board of Fire Commissioners or Village Board;
- b. Failing or refusing to obey the rules of the fire department;
- c. Failing or refusing to obey the policies of the fire department;
- d. Refusing an order of the Board of Fire Commissioners or Village Board;
- e. Failing to carry out the duties of office or membership in the Fire Department;
- f. Acting in a manner that brings disgrace upon the Fire Department;
- g. Conduct unbecoming of a member of the Fire Department;
- h. Plea to or conviction of a misdemeanor or felony;
- i. Engaging in harassing conduct of any nature of another volunteer, officer, BOFC member or Village Board member;
- j. Unprofessional conduct

INCOMPETENCE: Incompetence includes:

- a. A proven inability of any nature (such as lack of skill) to perform the role of an officer or member of the Fire Department;
- b. The physical or mental inability to perform the role of an officer or member.

TEMPORARY SUSPENSION: The Chief of the Department shall hold the members and/or officers of the fire department strictly to account for neglect of duty and may suspend the member for improper conduct, subject to the action of the BOFC at its next meeting. At its next meeting, or at a special meeting convened for such purpose, the BOFC may vote to suspend a member or officer for up to one year, or to seek dismissal (discharge) of the member or officer. The BOFC may also vote to overturn the suspension. If the BOFC makes an initial suspension term that is less than one year, and then subsequently desires to impose a longer suspension term to a maximum of one year, the BOFC may initiate such proceedings on its own motion.

All meetings are subject to the Open Meetings Law Requirements of New York State.

SUSPENDED MEMBER RESTRICTIONS: Members who are suspended may not, for the entire period of the suspension, attend any municipal, fire department or company function other than is related to the affiliated hearing or investigation. Suspended members shall not in any way identify themselves as being affiliated with the Fire Department or Company, such as by wearing insignia or other marked clothing. Such members may not be present on Fire Department property or in its vehicles at any time. No benefits or privileges of members may be exercised. Any violation of this rule shall permit the BOFC to continue the suspension for an appropriate period of time, up to an additional two months. Nothing shall prohibit a suspended member from exercising any rights available to him or her as a member of the public as if he were not a member of the Fire Department.

HEARING PANEL: The BOFC, an officer appointed by the BOFC, or a hearing panel appointed by the BOFC, shall serve as the fact finding panel. The BOFC, Officer, or Fact Finding Panel shall make a written record as to their findings of fact. No person that has particular knowledge or material disputed facts to the event(s) in question shall serve on the board for this purpose or on a hearing panel.

NOTICE OF CHARGES: The Chair of the BOFC, or his designee, shall provide the member with the notice of charges which provides all charges alleged with specific dates. The charges shall specifically state the charges and the specific conduct in question, as well as any specific rule violated if applicable. The notice and a copy of the charges shall be served personally. Such notice shall provide the member with at least ten (10) days and no more than thirty (30) days notice of an administrative hearing. The member shall be advised that they are

permitted to submit a written response at any time before the hearing. The notice shall also state the time and place of the hearing, and shall advise that the member may be represented by counsel. The notice shall also state the name of the hearing panel members. The member shall be afforded four days from receipt of the notice to object to the members of the hearing panel, but the only reasonable objection is that a member of the committee is biased or was a witness. Upon receiving an appropriate objection which the Chairperson deems reasonable, a new member may be added to a hearing panel or the individual will be removed from the decision hearing panel or the individual will be removed from the decision making body of the board members. There must be at least three remaining board members to vote on the discipline.

THE HEARING: There may be a prosecutor or officer charged with proving the charges. If no such position is filled, the board members or hearing panel will simply run the hearing. At a hearing, the member will be permitted to present a defense to the charges. The board or hearing panel will determine what the facts of the incident(s) are and will render a statement of facts for each charge. The member may present proof that could serve to mitigate any punishment if he desires. A stenographer may be employed to record the hearing if the board, hearing panel or officer appointed for this purpose would like one.

THE DECISION: The BOFC shall decide the facts of the matter if no hearing panel was used, and shall impose a suitable punishment that bears a rational relation to the offense. If an officer or hearing panel heard the facts of the matter, the record of the hearing shall be referred to the BOFC for review within ninety days from the close of such hearing together with recommendations for or against punishment. The BOFC need only consider the recommendations but need not adopt them. The BOFC must adopt the statement of facts, however. No BOFC member that was a witness to the material events in question shall vote on this matter or have a voice in the matter. There must be at least a quorum voting in favor of any punishment to impose punishment.

SUITABLE PUNISHMENT: A member or officer may be suspended up to but no longer than one year. An officer may be removed from the officer position for the remainder of the term. A member may be removed or discharged from membership.

APPEAL of the HEARING: A member has no right to appeal the hearing except in the time permitted and under the procedure permitted by Article 78 of the Civil Practice Laws and Rules (CPLR).

VIOLATIONS OF NON-WRITTEN POLICIES: Departments and/or the BOFC may not use an unwritten policy as a basis for discipline. Thus, if the department or BOFC desires to enforce a rule or policy, the rule or policy should be written down and effectively communicated to the members.