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Title:	Amending Title 21 "Miscellaneous", by adding a new Chapter 21-2700, entitled "Firefighters and Fire Service Paramedics Bill of Rights," that adopts minimum standards to protect the rights of uniformed fire personnel including but not limited to Firefighters and Fire Service Paramedics, beyond departmental procedures, in order to ensure equality and fairness of treatment among such personnel; all under certain terms and conditions.				
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2/20/2014	0	CITY COUNCIL	Introduced and Referred	Pass	

Amending Title 21 "Miscellaneous", by adding a new Chapter 21-2700, entitled "Firefighters and Fire Service Paramedics Bill of Rights," that adopts minimum standards to protect the rights of uniformed fire personnel including but not limited to Firefighters and Fire Service Paramedics, beyond departmental procedures, in order to ensure equality and fairness of treatment among such personnel; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. A new Chapter 21-2700 is added, to read as follows:

TITLE 21. MISCELLANEOUS.

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CHAPTER 21-2700. FIREFIGHTERS AND FIRE SERVICE PARAMEDICS BILL OF RIGHTS.

§21-2701. Short title. This act shall be known and may be cited as Firefighter and Fire Service Paramedic Bill of Rights Act.

§21-2702. Legislative intent. The City Council recognizes the need for minimum standards to protect the rights of uniformed Fire Department personnel beyond departmental procedures, in order to ensure safety, equality and fairness of treatment among such personnel.

§ 21-2703. Definitions. The following words and phrases when used in this act shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

(1) "Interrogation." The questioning of a uniformed fire department member accused in a complaint of

malfeasance, misfeasance or nonfeasance, or violation of a rule, regulation, policy, procedure, or directive, which may result in dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for punitive purposes.

(2) "Investigation." An action taken to determine whether a uniformed fire department member has engaged in malfeasance, misfeasance or nonfeasance, or has violated a rule, regulation, policy, procedure, or directive, which may include:

(a) asking questions of uniformed fire department members or other persons as part of an investigatory interview;

(b) conducting observations;

(c) seizing property;

(d) reviewing and evaluating reports, records, or other documents; and

(e) examining physical evidence.

(3) "Uniformed fire department member" or "member." A uniformed Firefighter or Fire Service Paramedic or uniformed supervisory officer within the Philadelphia Fire Department.

(4) "Malfeasance." The performance of an act which is unlawful.

(5) "Misfeasance." The improper performance of a lawful act.

(6) "Nonfeasance." The omission of an act which a person has a legal duty to perform.

(7) "Non-supervisory uniformed fire department personnel." Any uniformed fire department member holding the rank of Firefighter or Fire Service Paramedic.

(8) "Transfer seniority." The combination of uniformed fire department member service years within the fire department generally and within their current rank.

(9) "Specialized unit." Any of the following units within the fire department: special operations command, aviation operations, hazardous materials unit, fire marshal's office.

§ 21-2704. Work schedule and hours of uniformed fire department personnel.

(1) Except as provided in subsections (2) and (3), the work week for uniformed fire department personnel shall consist of two, ten-hour day shifts followed by two, fourteen-hour night shifts, followed by four days off, resulting in scheduled work hours of two thousand, one hundred and eighty-four hours per year. Day shifts shall begin at 0800 hours, and night shifts shall begin at 1800 hours. No uniformed fire department member may be required to perform continuous service for a longer consecutive period than twenty-four hours, except in a declared state of emergency.

(2) The work week for uniformed fire department personnel in the rank of Fire Service Paramedics may also consist of four, twelve hour day shifts, followed by four days off, resulting in scheduled work hours of two thousand, one hundred and eighty-four hours per year. Day shifts shall begin at 0800 hours and end at 2000

hours.

(3) *The work week for uniformed fire department personnel assigned to staff positions or for training may consist of day shifts only, subject to the same total number of scheduled hours as other uniformed fire department personnel.*

§ 21-2705. *Investigation and discipline of uniformed fire department personnel.*

(1) *Initiation of investigation of uniformed fire department personnel.*

(a) *Except as provided in subparagraph (b), an investigation of a uniformed fire department member based on a complaint from within or outside the Fire Department shall commence not later than 15 days after the receipt of the complaint:*

(.1) *by the Philadelphia Fire Department; or*

(.2) *by any law enforcement agency charged with investigating such a complaint.*

(b) *Exception. Subparagraph (i) above shall not apply if the Fire Department determines from the face of the complaint that each allegation does not constitute a violation of law; or the complainant fails to comply substantially with the complaint procedure of the Fire Department established under this Section.*

(2) *Conduct of investigation of uniformed fire department personnel. Whenever a uniformed fire department member is under investigation and subject to interrogation for any reason that could lead to disciplinary action, suspension, demotion, or dismissal, the following minimum standards shall apply:*

(a) *The member under interrogation shall be notified in writing of the investigation not less than two business days before the commencement of questioning or before otherwise being required to provide information to an investigating agency. Such notice shall include:*

(.1) *the nature and scope of the investigation;*

(.2) *a description of any allegation contained in a written complaint;*

(.3) *a description of each violation alleged in the complaint for which suspicion exists that the member may have engaged in conduct that may subject the member to disciplinary action;*

(.4) *the name, rank, and command of the Fire Department employee or any other individual who will be conducting the investigation; and*

(.5) *a statement of the member's right to have a union representative and legal counsel present during the interrogation.*

(b) *The member under interrogation shall be informed of the name, rank and command of the municipal employee or official in charge of the interrogation, and the name, rank and command of any and all persons who will be present during the interrogation, not less than two business days before the commencement of questioning. All questions directed to the member under interrogation shall be asked by or through one interrogator during any one investigative interrogation, unless specifically waived by the member under investigation.*

(c) *The member under interrogation shall be informed of the nature of the interrogation or interview and the name or names of the complainant or complainants no less than two business days in advance of the interrogation. The complaint, all witness statements, including all other existing subject member statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to the union and to the member who is the subject of the complaint not less than two business days before the commencement of questioning.*

(d) *The interrogation shall be conducted when the member is on duty unless the seriousness of the investigation is such that an immediate interrogation is necessary. If the interrogation is conducted when the member is off duty, the member will be provided two dates and select a date to attend. The member shall be compensated for time spent at an interrogation.*

(e) *The interrogation shall take place at the facility of the investigating officer or the facility in which the incident allegedly occurred.*

(f) *No complaint shall be entertained unless it is sworn to by the complainant or complainants before an official authorized to administer oaths, and delivered to a designated fire department official at the fire administration building.*

(g) *The interrogation shall be for a reasonable period and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.*

(h) *The member under interrogation shall not be subjected to offensive language or threatened with transfer, dismissal or disciplinary action either directly or indirectly.*

(i) *A written or mechanical record shall be made of the entire interrogation, and shall be provided to the member and their union upon request and at no cost within 72 hours of conclusion of the interrogation. To ensure the accuracy of the record, a member may also utilize a separate electronic recording device to record the interrogation.*

(j) *If prior to or during the interrogation it is deemed that the member may be arrested or charged with a criminal offense, the member shall be immediately informed of their constitutional rights. Disciplinary action based solely on criminal charges shall not be made final until the criminal investigation of such charges has been completed, and all court proceedings are concluded.*

(k) *The member under interrogation shall be informed in advance of their right to be represented by a union representative and counsel, who shall be present at all times during the interrogation. If the counsel or representative of the uniformed fire department member is not available within 24 hours of the time set for the commencement of any questioning of that member, the Fire Department shall grant a reasonable extension of time for the member to obtain counsel or representation. During the interrogation, the member shall be afforded the opportunity to consult privately with their union representative and counsel, if such consultation does not repeatedly and unnecessarily disrupt the questioning period.*

(l) *The Fire Department or employer shall not cause the member under interrogation to be subjected to visits by the press or news media without the express consent of the member, nor shall the name, home address, or photograph of the member be given to the press or news media without the member's express consent.*

(3) Conclusion of investigation of uniformed fire department personnel.

(a) Limitations period. An investigation of a uniformed fire department member based on a complaint from within or outside the Fire Department shall be completed within 90 days after commencement of the investigation. Unless waived in writing by the member under investigation, no disciplinary charge may be brought against a member if the investigation of the allegation is not completed within 90 days after commencement of the investigation.

(b) Notice of conclusion of investigation. Not later than 15 days after conclusion of an investigation of a uniformed fire department member, the investigating agency shall notify the member who was the subject of the investigation, in writing, of the investigative findings and any recommendations for disciplinary action, except as follows:

(.1) If the alleged misconduct is also the subject of a criminal investigation or prosecution, the time period shall be extended until 30 days after the completion of such investigation or prosecution.

(.2) If the member voluntarily waives the 15 day period in writing, the time period shall be extended for the period of time specified in the written waiver.

(.3) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(.4) If the member who is being investigated is incapacitated or is otherwise unavailable.

(.5) In the event of emergencies or natural disasters during the time period wherein the Governor has declared a state of emergency within the jurisdictional boundaries of the concerned agency.

(c) Opportunity for comment. Not later than 30 days after receipt of a notification of conclusion of an investigation, and before the filing of any charge seeking the discipline of such member or the commencement of any disciplinary proceeding, the uniformed fire department member who was the subject of the investigation may submit a written response to the findings and recommendations included in the notification. The written response, if any, shall be attached to, and shall accompany, the adverse comment, and will be entered into the member's personnel file.

(d) Access to evidence and investigatory file. Upon completion of an investigation into alleged misconduct, the member who was the subject of the investigation shall be provided, upon request, with a complete copy of the investigative file, including the final investigative report and all evidence, including but not limited to transcripts, records, written statements, written reports, analyses and video tapes pertinent to the case if they are exculpatory. The member shall also be provided with the opportunity to address the findings in the report with the Fire Department before imposing disciplinary action consisting of suspension with loss of pay, demotion, or dismissal.

(e) Fire board of investigation. Upon the filing of any charge seeking the discipline of such member, the Fire Department shall convene a Fire Board of Investigation disciplinary proceeding.

(.1) The member and their union shall be notified in writing of the Fire Board of Investigation not less than 5 business days before the scheduled hearing.

(.2) *The member shall be informed in advance of their right to be represented by a union representative and counsel, who shall be present at all times during the Fire Board of Investigation hearing. If the union representative or counsel of the member is not available within 24 hours of the time set for the hearing, the Fire Department shall grant a reasonable extension of time for the member to obtain union representation and counsel.*

(.3) *The member shall be afforded a full and fair opportunity to provide witnesses and other evidence in support of their position at the hearing.*

(.4) *The Fire Board of Investigation will include three members, two selected by the Fire Commissioner and one selected by the member's union.*

(.5) *Upon conclusion of the hearing, the Fire Board of Investigation shall provide a written recommendation to the Fire Commissioner and include all mitigating factors.*

(.6) *A Fire Board of Investigation recommendation that discipline be imposed shall be dispositive, and no discipline shall thereafter be imposed.*

(f) Confidentiality.

(.1) *All records compiled as a result of any investigation or Fire Board of Investigation hearing subject to the provisions of this Chapter and/or a contractual disciplinary grievance procedure shall be and remain confidential and shall not be released to the public.*

(.2) *The Fire Department shall not be required to disclose in any civil proceeding, other than those brought by a citizen against a uniformed fire department member alleging that the member breached the member's official duties and that such breach resulted in injury or other damage to the citizen, any personnel file, or any internal investigatory file compiled in connection with a uniformed fire department member under investigation or subjected to questioning for any reason which could lead to disciplinary action, demotion, or dismissal.*

(4) Imposition of disciplinary actions.

(a) *Except in cases involving felony criminal charges or other emergency, no dismissal, suspension or demotion shall be implemented pending conclusion of an administrative appeal or grievance arbitration process challenging the dismissal, suspension or demotion.*

(b) *In cases of dismissal, the administrative appeal and/or grievance arbitration hearing must be conducted within ninety days of issuance of the notice of disciplinary action.*

(c) *Except in cases involving felony criminal charges or other emergency, no member holding the ranks of Firefighter or Fire Service Paramedic will be subject to involuntary transfer.*

(d) *No member will be subject to a restriction on overtime eligibility based on any disciplinary action or their sick time usage.*

(5) *Civil suits by uniformed fire department personnel. A uniformed fire department member may initiate and maintain an action against any person or municipality for damages suffered or for the abridgment*

of civil rights when a complaint filed against the member is found to be without merit or is made with the intent to cause damage or loss of employment.

§ 21-2706. Vacancies, assignments and transfers of uniformed fire department personnel.

(1) Promotional vacancies within the fire department.

(a) Promotional vacancies within the fire department shall be filled within 10 days of occurrence of the vacancy from an active promotional eligible list.

(b) An eligible candidate for promotion who has received an overall rating of satisfactory or higher in their most recent annual performance report shall not be rejected by an appointing authority in favor of others on the same eligible list.

(2) Voluntary transfers of uniformed fire department personnel.

(a) Except as provided in subparagraph (b), transfers of all non-supervisory uniformed fire department personnel from one work assignment to another shall be voluntary. Requests for transfer submitted in writing by uniformed fire department members shall be answered within 30 days of submission and shall be granted where a vacancy exists in the requested assignment and the requesting member is otherwise qualified by rank and, where applicable, by special training or experience to fill that assignment. Where more than one uniformed fire department member have requested transfer to the same work assignment and are qualified for that assignment, the senior member shall be transferred to fill that assignment.

(b) Requests for transfer submitted by otherwise qualified non-supervisory uniformed fire department personnel may be rejected where transfer of the member would result in the following reduction in the permanently assigned staffing levels:

(.1) for engine companies, less than two Firefighters and one officer;

(.2) for ladder companies, less than three Firefighters and one officer;

(.3) for medic units, less than one Fire Service Paramedic.

(3) Involuntary transfers of uniformed fire department personnel.

(a) Except in cases involving criminal charges or other emergency, non-supervisory uniformed fire department personnel shall not be involuntarily transferred from one work assignment to another.

(b) Involuntary transfers of all supervisory uniformed fire department personnel shall occur on a rotating basis every three years, subject to the following procedure and exceptions:

(.1) The fire department shall produce annually a list of supervisory vacancies from which members may select their new work assignment based on their transfer seniority.

(.2) With the exception of members holding the rank of deputy chief, no supervisory uniformed fire department member may select a new work assignment within their current company, provided however, that supervisory members in staff positions may select their current assignment if no other supervisory member has selected that assignment.

(.3) Supervisory uniformed fire department members assigned to specialized units shall not be subject to involuntary transfer, but may, however, elect to participate in the transfer process on the same basis as other supervisory members.

§21-2707. Retaliation for exercising rights. No uniformed fire department member shall be discharged, disciplined, demoted or denied promotion, transfer or reassignment, or be discriminated against in regard to his employment, or be threatened as a result of the exercise of constitutional rights.

§ 21-2708. Personal privacy.

(1) Disclosure. No uniformed fire department member shall be required for purposes of job assignment or personnel action to disclose information as to property, income, assets, source of income, debts, personal or domestic expenditures, including those of any member of his family or household, unless the information is obtained under proper legal procedure.

(2) Search of lockers.

(a) No member shall have their locker, or other space for storage that may be assigned to them, searched except in their presence, and with their consent in writing, or unless a valid search warrant has been obtained.

(b) Any person from whom consent is requested shall be told that they have the right to deny the consent.

(c) This subsection shall apply only to a locker or other space for storage that is owned by the Fire Department.

§ 21-2709. Collective bargaining agreements. Nothing in this Section may be construed to:

(1) preempt any provision in a mutually agreed upon or awarded collective bargaining agreement that provides for substantially the same or a greater right or protection for uniformed fire department personnel than that afforded under this Section; or

(2) prohibit the negotiation of any additional rights or protection for a uniformed fire department member who is subject to any collective bargaining agreement.

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SECTION 2. This Ordinance shall take effect in sixty (60) days.

Explanation:

Italics indicate new matter added.