

BILL NO. G-08-04-15 (as amended; as amended)

GENERAL ORDINANCE NO. ^{G-}09-09

**AN ORDINANCE ENACTING AND ADOPTING
A MERIT SYSTEM FOR THE CITY OF
FORT WAYNE FIRE DEPARTMENT**

WHEREAS, the Common Council of the City of Fort Wayne believes that it would be in the best interest of the City, the Fort Wayne Fire Department, and the Fort Wayne Firefighters to adopt a merit system for the hiring, promotion, evaluation and discipline of the firefighters in the City of Fort Wayne Fire Department; and,

WHEREAS, currently no merit system has been adopted by the City of Fort Wayne, the Common Council, or the Fort Wayne Fire Department pursuant to any Indiana statute or otherwise; and

WHEREAS, IC §36-8-3.5-1 et seq. permits the Common Council to adopt a merit system in accordance with the provisions of that statute, subject to such amendments as Common Council deems appropriate in accordance with IC §36-8-3.5-1(f); and

WHEREAS, pursuant to I.C. Sections 36-8-3.5-3 and 36-8-3.5-4, City Council recognizes that the adoption of the merit system to the City of Fort Wayne is subject to the approval of at least a majority of the active members of the Fort Wayne Fire Department which approval must be obtained by secret written ballot and which notice of said meeting to vote on said approval must be given to the active members within 60 days after the adoption of the ordinance; and

WHEREAS, Fort Wayne City Council also recognizes that all of the provisions of 36-8-3.5-4 with regard to approval or rejection of the proposed ordinance must be complied with and that if said ordinance is subsequently approved by a majority of

the active members of the Fort Wayne Fire Department, then the merit system will take effect on January 1st following the vote.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Fort Wayne, State of Indiana:

Section 1. Purpose. The purpose of this Ordinance is to propose a merit system for the Fire Department patterned after the merit system outlined in I.C. 36-8-3.5.

Section 2. Notice Requirements and Voting Procedures for Approval or Rejection of Proposed Fire Department Merit System. Within sixty (60) days after the adoption of this ordinance, the Board of Public Safety shall give at least three (3) weeks' notice to all active members of the Fire Department that a vote will be held to approve or reject the proposed merit system. The notice shall be given by posting it in prominent places in all stations of the Fire Department. The notice must designate the times, places, and purpose of the vote. A copy of this ordinance also shall be distributed to each active member of the Fire Department at least one (1) week before the first date of the vote. All voting must be by secret written ballot. The other procedures for holding the vote may be determined by the Board of Public Safety and notice of said voting procedures also shall be posted in prominent places in all stations of the Fire Department and distributed to each active member of the Fire Department at least one (1) week before the first date of the vote.

Section 3. Eligibility to Vote. Only active members of the Fire Department may vote on the proposed merit system.

Section 4. Effective Date. If a majority of the active members of the Fire Department vote to approve the proposed merit system, the merit system shall take effect on January 1, 2009.

Section 5. Initial Appointments. If a majority of the active members of the Fire Department vote to approve the proposed merit system, initial appointments to the merit commission shall be made by March 1, 2009.

Section 6. Effect of Rejection of Proposed Merit System by Active Firefighters. If a majority of the active members of the Fire Department vote to reject the proposed merit system, another proposal for a Fire Department merit system may not be put to a vote within one (1) year after the day the vote is held.

Section 7. Amendment of Chapter 35 of the City of Fort Wayne Code of Ordinances.

If a majority of the active members of the Fire Department vote to approve the proposed merit system proposed in this Ordinance, Chapter 35 of the City of Fort Wayne Code of Ordinances shall be amended, effective January 1, 2009, to read:

Section 35.01 FIRE MERIT COMMISSION; ORGANIZATION

(A) The Fire Merit Commission, hereinafter referred to as the Commission, shall consist of five (5) commissioners. The commissioners are:

- (1) three (3) persons appointed by the Mayor; and,
- (2) two (2) persons, who must be of different political parties, elected by the active members of the department.

Notwithstanding IC 36-1-8-10, political affiliation shall be determined through the voters' registration records of the three (3) most recent primary elections.

(B) Each commissioner must have been a legal resident of the City of Fort Wayne for three (3) consecutive years immediately preceding the commissioner's term and must be a person of good moral character. A commissioner must be at least twenty-one (21) years of age. A commissioner may not be an active member of the Fire Department and not more than two (2) of the commissioners may be past members of the Fire Department. In addition, a person may not serve on the commission if the person receives any remuneration as salary from the City of Fort Wayne.

(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 Board of Public Safety and the City Clerk.

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

Section 35.02 COMMISSIONERS; TERMS; TENURE

(A) The term of a commissioner is four (4) years. However, one (1) of the Mayor's initial selections and one (1) of the Fire Department members' initial selections are for terms of two (2) years.

(B) A vacancy on the commission shall be filled within thirty (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. In the case of a commissioner elected by the active members of the Fire Department, the Board of Public Safety shall schedule a vote by the active members of the Fire Department if a recall petition signed by a majority of the active members is submitted to the Board. The Board of Public Safety shall give at least three (3) weeks' notice to all active members of the Fire Department that a vote will be held on the recall petition. The notice shall be given by posting it in prominent places in all stations of the Fire Department. The notice must designate the times, places, and purpose of the vote. The notice shall also be read during shift roll calls. Only active members of the Fire Department may vote on the recall petition. All voting must be by secret written ballot. The other procedures for

holding the vote may be determined by the Board of Public Safety and notice of said voting procedures also shall be posted in prominent places in all stations of the Fire Department and read during shift roll calls at least one (1) week before the first date of the vote.

Section 35.03 ELECTIONS; NOTICE

In the case of a commissioner to be elected by the active members of the Fire Department, the Board of Public Safety shall schedule a vote by the active members of the Fire Department. The Board of Public Safety shall give at least three (3) weeks' notice of the scheduled election to all active members of the Fire Department. The notice shall be given by posting it in prominent places in all stations of the Fire Department. The notice must designate the times, places, and purpose of the vote. The notice shall also be read during shift roll calls. Only active members of the Fire Department may vote on the recall petition. All voting must be by secret written ballot. The other procedures for holding the vote may be determined by the Board of Public Safety and notice of said voting procedures also shall be posted in prominent places in all stations of the Fire Department and read during shift roll calls at least one (1) week before the first date of the vote.

Section 35.04 RULES GOVERNING COMMISSION; TRANSACTION OF BUSINESS; SELECTION OF OFFICERS; BUDGET

(A) Within thirty (30) days after the commission is selected, the commission shall adopt rules to govern the commission, including the time and place of regular monthly meetings and special meetings that are necessary to transact the business of the commission. A majority of the commissioners constitutes a quorum, and a majority vote of all the commissioners is necessary to transact the business of the commission. Each year the commissioners shall select from among their number a president, vice president, and secretary. The commission shall keep a permanent record of its proceedings.

(B) The commission shall submit a proposed annual budget as other budgets of the City are submitted. The Common Council shall include in its budget an amount sufficient for the necessary expenses of the commission.

Section 35.05 RULES; ADOPTION; NOTICE AND HEARING

(A) Within ninety (90) days after the commission is selected, the commission shall adopt rules governing:

(1) the selection and appointment of persons to be employed as members of the Fire Department, subject to applicable pension statutes;

(2) promotions and demotions of members of the Fire Department;

and

(3) disciplinary action or dismissal of members of the Fire Department.

(B) Before the rules required by this Section are adopted by the commission, the commission must hold a public hearing to consider the adoption of the proposed rules. At least ten (10) days before the public hearing, the commission must have a notice of the hearing published in accordance with IC 5-3-1. The notice must state the time

and place of the hearing and give briefly the subject matter of the proposed rules.

(C) At least ten (10) days before the hearing, one (1) copy of the proposed rules must be placed on file in the office of the City Clerk for inspection by residents of the unit.

(D) At least ten (10) days before the hearing, three (3) copies of the proposed rules must be forwarded to the Chief of the Fire Department and retained on file in the Chief's office for inspection at all times by members of the Fire Department.

(E) At the hearing, any interested resident of the City and any member of the Fire Department must be afforded an opportunity to present both oral and written evidence on any matter relating to the adoption of the proposed rules. The commission shall give due consideration to this evidence in making its final decision concerning the adoption of the proposed rules.

Section 35.06 DEPARTMENT MEMBERS; TENURE; CHIEF; APPOINTMENT AND QUALIFICATIONS

(A) The commission may appoint and remove members of the department, 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 subsection, the term "upper level policymaking positions shall mean the fire chief and the two ranks below the fire chief. To the extent this in conflict with any other definition contained in this Chapter, this definition shall be controlling.

(B) The removal of a member from an upper level policymaking position is removal from rank only and not from the Fire Department. When the member is removed, the member shall be appointed by the commission to the rank in the Fire Department that the member held at the time of the member's upper level appointment or to any rank to which the member had been promoted during the member's tenure in the upper level position. If such a rank is not open in either case, the member is entitled to the pay of that rank and shall be promoted to that rank as soon as an opening is available.

Section 35.07 DEPARTMENT MEMBERS; APPOINTMENT; QUALIFICATIONS; APPLICATION; GENERAL APPTITUDE TEST; RATINGS; ELIGIBILITY LIST; VACANCIES; PHYSICAL AGILITY TEST; PROBATION

- (A) To be appointed to the Fire Department, an applicant must be:
- (1) a citizen of the United States;
 - (2) a high school graduate or equivalent; and
 - (3) at least twenty-one (21) years of age, but under thirty-six (36) years of age.

However, the age requirements do not apply to a person who has been previously employed as a member of the Fire Department.

(B) A person may not be appointed, reappointed, or reinstated if the person has a felony conviction on the person's record.

(C) Applications for appointment or reappointment to the Fire Department must be filed with the commission. The applicant must produce satisfactory proof of the date and place of the applicant's birth.

(D) Applicants for appointment or reappointment to the Fire 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; and
- (3) be administered in a manner that reasonably accommodates the needs of disabled applicants.

The results of the general aptitude test shall be filed with the commission. If the commission finds that the applicant lacks the proper qualifications, it shall reject the applicant.

(E) The 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 commission shall adopt rules for grading the applicants, including the establishment of a passing score. The commission shall place the names of applicants with passing scores on an eligibility list by the order of their scores and shall certify the list to the City Board of Public Safety.

(F) If an applicant for original appointment reaches the applicant's thirty-sixth birthday, the applicant's name shall be removed from the eligibility list. Applicants remain on the list for two (2) years from the date of certification. After two (2) years a person may reapply as an applicant.

(G) When a vacancy occurs in the department, the commission, upon a written request of the chief of the department, shall administer the physical agility test required under state law to the applicant having the highest score on the eligibility list. After the first four (4) applicants with the highest test scores have been administered the physical agility test, the Chief may choose an applicant for agility testing that the Chief feels is particularly worthy. However, at no time may the Chief's choices exceed twenty percent (20%) of applicants selected to take the physical agility test. If the appointed applicant successfully completes the physical agility test, the applicant shall then be enrolled as a member of the Fire Department to fill the vacancy if:

- (1) the applicant is still of good character; and

(2) the applicant passes the required examinations identified in state law.

(H) All appointments are probationary for a period not to exceed one (1) year from being sworn in. If the commission finds, upon the recommendation of the Fire Department during the probationary period, that the conduct or capacity of the probationary member is not satisfactory, the commission shall notify the probationary member in writing that the probationary member is being reprimanded, that the probationary member is being suspended, or that the probationary member will not receive a permanent appointment. If a probationary member is notified that the probationary member will not receive a permanent appointment, the probationary member's employment immediately ceases. Otherwise, at the expiration of the probationary period the member is considered regularly employed.

Section 35.08 PROMOTIONS; RULES; REQUISITES; ELIGIBILITY LIST

(A) Rules governing promotions must provide that the following factors be considered in rating a member of the department for a promotion:

- (1) The score received by the member on a written competitive examination.
- (2) The score received by the member on an oral competitive interview.
- (3) The performance record of the member in the Fire Department.
- (4) The member's length of service.

The commission shall determine the weight to be given to each of the factors. However, neither a member's length of service nor the score received on the oral interview may comprise more than twenty percent (20%) each of the rating.

(B) Promotions to a rank must be from the next lower rank. In addition, the member being promoted must have served at the lower rank for a period determined by the commission.

(C) Only members who are qualified in rank and length of service may be given the competitive examinations and placed on an eligibility list. 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

(2) 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 (5) years and then destroyed.

Section 35.09 PROMOTIONS; COMPETITIVE EXAMINATIONS; PROCEDURES

(A) Before a written competitive examination may be held to fill a current or expected vacancy in the ranks, the members eligible to take the examination must be notified of the written materials from which the questions will be taken. The

commission may employ instructors, purchase materials, and make other expenditures to provide information for applicants for promotion examinations.

(B) 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. The commission shall notify each member in writing of the score that the member received on the examination. The score received by a member on the written examination becomes a part of the permanent file of the member, and the member is entitled to access to this file for examination at any time.

(C) The examination papers shall be kept under the commission's supervision. 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 (10) days after notice of the score has been sent to him. The member may review the questions incorrectly answered by the member and challenge the answer considered correct by the examiner. The commission shall either affirm the score or correct the score according to the findings of a review. The examination papers shall be retired after the two (2) year period during which the eligibility list is valid. The retired papers shall be kept for five (5) years and then destroyed.

Section 35.10 PERFORMANCE RATINGS; RULES; APPEAL

(A) The commission shall adopt rules for determining a performance rating. The rules must require that a performance rating be made at least once every twelve (12) months for each member of the department, including probationary members. The rating shall be made by one (1) or more of the member's superiors, as defined in the commission's rules. Probationary members shall be rated in the same manner as other members of the department. The ratings shall be submitted to the Chief of the Fire Department and kept on file in the Chief's office under the Chief's supervision. The Chief shall notify each member in writing of the rating that the member received.

(B) A member who is aggrieved with the performance rating given to the member by the member's superior may appeal to the commission for a review of the rating. The appeal must be filed within ten (10) days after notice of the rating has been sent to the member. The commission shall either affirm or correct the rating.

Section 35.11 PROMOTIONS; CERTIFICATION OF ELIGIBLE MEMBERS; PROBATION; PROCEDURES

(A) When a vacancy in rank occurs, the commission shall certify to the Chief of the Fire Department the three (3) members with the highest scores on the eligibility list for that particular rank. Within six (6) months the commission, upon the recommendation of the Chief, shall promote one (1) of those members to fill the vacant position.

(B) All promotions are probationary for a period not to exceed one (1) year. At the end of the period, a probationary member's superior shall review the member's performance and recommend to the commission that:

- (1) the promotion be made permanent; or
- (2) the promotion be revoked.

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

(D) Actions by the commission other than making the promotion permanent may be appealed within thirty (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).

Section 35.12 DISCIPLINARY ACTIONS; GROUNDS; HEARING; NOTICE; REQUISITES; PROCEDURES; APPEAL

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

- (1) Suspension with or without pay.
- (2) Demotion.
- (3) Dismissal.

If a member is suspended under this subsection, the member is entitled to the member's remuneration and allowances for insurance benefits to which the member was entitled before the suspension. In addition, the City may provide the member's allowances for any other fringe benefits to which the member was entitled before the suspension. The commission shall determine if a member of the Fire Department who is suspended in excess of five (5) days shall continue to receive the member's salary during suspension.

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

- (1) the member is convicted of a crime; or
- (2) the commission finds the member guilty of a breach of discipline, including:
 - (a) neglect of duty;
 - (b) violation of commission rules;
 - (c) neglect or disobedience of orders;
 - (d) continuing incapacity;
 - (e) absence without leave;
 - (f) immoral conduct;
 - (g) conduct injurious to the public peace or welfare;
 - (h) conduct unbecoming a member; or

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

(C) If the Chief of the Fire Department, after an investigation within the department, prefers charges against a member of the department for an alleged breach of discipline under subsection (B), including any civilian complaint of an alleged breach of discipline under subsection (B) (2) (f), (B) (2) (g), or (B) (2) (h), a hearing shall be conducted upon the request of the member. If a hearing is requested within five (5) days of the Chief preferring charges, the parties may by agreement designate a hearing officer who is qualified by education, training, or experience. If the parties do not agree within this five (5) day period, the commission may hold the hearing or designate a person or board to conduct the hearing, as provided in the commission's rules. The designated person or board must be qualified by education, training, or experience to conduct such a hearing and may not hold an upper level policy making position. The hearing conducted under this subsection shall be held within thirty (30) days after it is requested by the member.

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

- (1) the time and place of the hearing;
- (2) the charges against the member;
- (3) the specific conduct that comprises the charges;
- (4) that the member is entitled to be represented by counsel or another representative of the member's choice;
- (5) that the member is entitled to call and cross-examine witnesses;
- (6) that the member is entitled to require the production of evidence; and
- (7) that the member is entitled to have subpoenas issued, served, and executed.

(E) The commission may:

- (1) compel the attendance of witnesses by issuing subpoenas;
- (2) examine witnesses under oath; and
- (3) order the production of books, papers, and other evidence by issuing subpoenas.

(F) If a witness refuses to appear at a hearing of the commission after having received written notice requiring the witness's attendance, or refuses to produce evidence that the commission requests by written notice, the commission may file an affidavit in the Circuit Court of Allen County setting forth the facts of the refusal as provided in I. C. 36-8-3.5-17(f).

(G) Disobedience of a summons constitutes contempt of the circuit court from which the summons has been issued. 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 summons 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,

and in any case in which an affidavit has been filed without the issuance of a summons, the expenses shall be charged to the commission.

(H) A decision to discipline a member may be made only if the preponderance of the evidence presented at the hearing indicates such a course of action.

(I) A member who is aggrieved by the decision of a person or board designated to conduct a disciplinary hearing under subsection (C) may appeal to the commission within ten (10) days of the decision. The commission shall on appeal review the record and either affirm, modify, or reverse the decision on the basis of the record and such oral or written testimony that the commission determines, including additional or newly discovered evidence.

(J) The commission, or the designated person or board, shall keep a record of the proceedings in cases of suspension, demotion, or dismissal. The commission shall give a free copy of the transcript to the member upon request if an appeal is filed.

Section 35.13 APPEAL TO COURT; SUSPENSION OR DISMISSAL; PROCEDURE

A member who is aggrieved by a decision of the commission to suspend the member for a period greater than ten (10) calendar days, demote the member, or dismiss the member may seek judicial review of any such decision as provided in I. C. 36-8-3.5-18, subject to the time limitations and procedural requirements set forth in said statute.

Section 35.14 SUMMARY DISCIPLINARY ACTIONS; REPRIMAND OR SUSPENSION

(A) In addition to the disciplinary powers of the commission, the Chief of the Fire Department, may, without a hearing, reprimand or suspend without pay a member, for a maximum of five (5) working days. For the purposes of this subsection, eight (8) hours of paid time constitutes one (1) working day.

(B) If the Chief reprimands a member in writing or suspends a member, the Chief shall, within forty-eight (48) hours, notify the commission in writing of the action and the reasons for the action. A member who is reprimanded in writing or suspended under this section may, within forty-eight (48) hours after receiving notice of the reprimand or suspension, request in writing that the commission review the reprimand or suspension and either uphold or reverse the Chief's decision. At its discretion, the commission may hold a hearing during this review. If the board holds a hearing, written notice must be given either by service upon the member in person or by a copy left at the member's last and usual place of residence at least fourteen (14) days before the date set for the hearing. The notice must contain the information listed under Section

35.12(D) of this Chapter. If the decision is reversed, the individual who was suspended is entitled to any wages withheld as a result of the suspension.

Section 35.15 RETIREMENT AGE

A member of the Fire Department shall retire from the Fire Department when the member reaches the member's seventieth birthday. However, a member of the Fire Department who is seventy (70) years of age or older on January 1, 2009 may serve until the end of calendar year 2009.

Section 35.16 TEMPORARY LEAVE OF ABSENCE; SENIORITY; REINSTATEMENT

(A) If it is necessary for the Board of Public Safety to reduce the number of members of the Fire Department, the reduction shall be made by granting a temporary leave of absence, without pay or financial obligation to 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 Fire Department is increased in number again, the members of the Fire Department who have been granted leaves of absence under this section shall be reinstated before an applicant on the eligibility list is appointed to the Fire Department. The reinstatements begin with the last member granted a leave.

(C) A member on leave of absence shall keep the commission advised of the member's current address. A member shall be informed of the member's reinstatement by written notice. Within ten (10) calendar days after a member receives notice of reinstatement, the member must advise the 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.

Section 35.17 RULES; PRINTING; COPIES TO DEPARTMENT MEMBERS; EFFECTIVE DATE

The Fire Department shall print all rules of the commission and furnish a copy to each member of the Fire Department. Amendments to the rules take effect thirty (30) days after their adoption if copies have been furnished to all members of the Fire Department within that period. Otherwise, they do not take effect until copies are furnished to all members of the Fire Department.

Section 8. That members of the Department who hold the rank of firefighter (or private), lieutenant, captain and battalion chief as of the date of the adoption of this Ordinance shall retain that rank and be considered merit firefighters or fire

officers. Years of service in the rank of firefighter shall accrue from the firefighter's date of hire. The years of service as an officer will accrue from the officer's date(s) of promotion.

Section 9. That the order of merit ranks will be as follows: probationary firefighter, firefighter (or private), lieutenant, captain, and battalion chief. Firefighters or firefighter/engineers with sufficient years of service as determined by the merit commission are eligible to test for a lieutenant position. Only lieutenants with sufficient years of service as lieutenants as determined by the merit commission are eligible to test for captain. Only captains with sufficient years of service as captains as determined by the merit commission are eligible to test for battalion chief.

Section 10. That hiring and promotional lists in effect as of the date of adoption of this Ordinance shall remain in effect for two (2) years from the date on which it/they were first accepted.

Section 11. Repeal of Section 35.01 of Chapter 35 of the City of Fort Wayne Code of Ordinances. Section 35.01 of Chapter 35 of the City of Fort Wayne Code of Ordinances is repealed, effective December 31, 2008, if the merit system proposed by this Ordinance is approved by a majority of the active members of the Fire Department.

Section 12. Effective Date. This Ordinance is effective upon its passage, all necessary approval by the Mayor, any and all publications necessary. Subsequent to the Ordinance becoming effective, the establishment of a merit system as outlined in this Ordinance is subject to the approval of the merit system by a majority of the active members of the Department by secret ballot vote pursuant to notice and other terms set forth in this Ordinance.

Tommy Be

Council Member

APPROVED AS TO FORM AND LEGALITY

Joseph G. Bonahoom

Joseph G. Bonahoom, Attorney for City Council



CITY OF FORT WAYNE

August 19, 2008

Tom Didier, President
Fort Wayne
Common Council
1 Main Street
Fort Wayne, Indiana 46802

Dear Council President Didier:

On August 12, 2008, Common Council passed Bill no. G-08-04-15 establishing a merit system for the Fort Wayne fire department.

It is my intention by way of this letter, and the authority granted to me by Indiana Code 36-4-6-16, to veto this ordinance and return it to council. The reasons for my veto are outlined below.

The Board of Public Safety has done an outstanding job acting as the citizen oversight for both the police and fire departments. In recent years the board has made extensive revisions to the rules and regulations of both departments to ensure consistency amongst the public safety departments. As you may know, I recently expanded the public safety board to include retired firefighter Bob Elder and retired police officer Steve Boerger. This allows for even more representative citizen oversight of public safety and eliminates many of the concerns sought to be addressed by the establishment of a merit commission. The establishment of a fire merit commission adds an unnecessary layer of bureaucracy to city government and effectively divides jurisdiction and administration over the police and fire departments.

It is of grave concern to me that the proposed merit commission may have jurisdiction over rules and regulations governing the fire department. The language in the ordinance states that the Commission shall adopt rules governing "disciplinary action or dismissal of members of the fire department". While some council members have maintained that this ordinance does not give the Commission the authority to establish rules and regulations for the department, this is at best unclear. At worst, the fire department would be engaging in a form of self-governance.

This ordinance was intended to codify the promotion process and limit the Fire Chief's ability to arbitrarily alter the process. While it has accomplished the latter, it has also

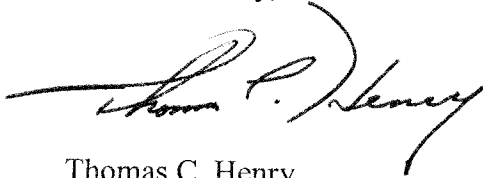
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built discretion into the system that allows for the possibility of both patronage and discrimination complaints.

For the foregoing reasons, I am vetoing Bill G-08-04-15. It is my sincere hope that we can reach a compromise which allows for the establishment of a fire merit commission that governs evaluation and promotion and allows the Board of Public Safety to continue in its current role.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thomas C. Henry". The signature is fluid and cursive, with a large initial "T" and "H".

Thomas C. Henry
Mayor

January 21, 2009

Legal Sales Coordinator/Classified Advertising
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, Indiana 46802

Please give the attached full coverage on the date of January 24, 2009, in both the News Sentinel and Journal Gazette.

Bill No. G-08-04-15 (as amended) (as amended)
Fire Merit System
Bill No. G-08-11-06
Amending Chapter 51

Thank you.

Please send us 3 copies of the Publisher's Affidavit from both newspapers.

Thank you.

Sincerely yours,

Sandra E. Kennedy
City Clerk

LEGAL NOTICE

Notice is hereby give that the 9th day of August, 2008, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-08-04-15 (as amended) (as amended) General Ordinance No. G-09-08

BILL NO. G-08-04-15 (as amended; as amended)

GENERAL ORDINANCE NO. G-09-08

**COMMON COUNCIL VOTED TO
OVERRIDE THE MAYOR'S VETO BY A
2/3RD VOTE ON SEPTEMBER 9, 2008**

**AN ORDINANCE ENACTING AND ADOPTING
A MERIT SYSTEM FOR THE CITY OF
FORT WAYNE FIRE DEPARTMENT**

WHEREAS, the Common Council of the City of Fort Wayne believes that it would be in the best interest of the City, the Fort Wayne Fire Department, and the Fort Wayne Firefighters to adopt a merit system for the hiring, promotion, evaluation and discipline of the firefighters in the City of Fort Wayne Fire Department; and,

WHEREAS, currently no merit system has been adopted by the City of Fort Wayne, the Common Council, or the Fort Wayne Fire Department pursuant to any Indiana statute or otherwise; and

WHEREAS, IC §36-8-3.5-1 et seq. permits the Common Council to adopt a merit system in accordance with the provisions of that statute, subject to such amendments as Common Council deems appropriate in accordance with IC §36-8-3.5-1(f); and

WHEREAS, pursuant to I.C. Sections 36-8-3.5-3 and 36-8-3.5-4, City Council recognizes that the adoption of the merit system to the City of Fort Wayne is subject to the approval of at least a majority of the active members of the Fort Wayne Fire Department which approval must be obtained by secret written ballot and which notice of said meeting to vote on said approval must be given to the active members within 60 days after the adoption of the ordinance; and

WHEREAS, Fort Wayne City Council also recognizes that all of the provisions of 36-8-3.5-4 with regard to approval or rejection of the proposed ordinance must be complied with and that if said ordinance is subsequently approved by a majority of the active members of the Fort Wayne Fire Department, then the merit system will take affect on January 1st following the vote.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Fort Wayne, State of Indiana:

Section 1. Purpose. The purpose of this Ordinance is to propose a merit system for the Fire Department patterned after the merit system outlined in I.C. 36-8-3.5.

Section 2. Notice Requirements and Voting Procedures for Approval or Rejection of Proposed Fire Department Merit System. Within sixty (60) days after the adoption of this ordinance, the Board of Public Safety shall give at least three (3) weeks' notice to all active members of the Fire Department that a vote will be held to approve or reject the proposed merit system. The notice shall be given by posting it in prominent places in all stations of the Fire Department. The notice must designate the times, places, and purpose of the vote. A copy of this ordinance also shall be distributed to each active member of the Fire Department at least one (1) week before the first date of the vote. All voting must be by secret written ballot. The other procedures for holding the vote may be determined by the Board of Public Safety and notice of said voting procedures also shall be posted in prominent places in all stations of the Fire Department and distributed to each active member of the Fire Department at least one (1) week before the first date of the vote.

Section 3. Eligibility to Vote. Only active members of the Fire Department may vote on the proposed merit system.

Section 4. Effective Date. If a majority of the active members of the Fire Department vote to approve the proposed merit system, the merit system shall take effect on January 1, 2009.

Section 5. Initial Appointments. If a majority of the active members of the Fire Department vote to approve the proposed merit system, initial appointments to the merit commission shall be made by March 1, 2009.

Section 6. Effect of Rejection of Proposed Merit System by Active Firefighters. If a majority of the active members of the Fire Department vote to reject the proposed merit system, another proposal for a Fire Department merit system may not be put to a vote within one (1) year after the day the vote is held.

Section 7. Amendment of Chapter 35 of the City of Fort Wayne Code of Ordinances.

If a majority of the active members of the Fire Department vote to approve the proposed merit system proposed in this Ordinance, Chapter 35 of the City of Fort Wayne Code of Ordinances shall be amended, effective January 1, 2009, to read:

Section 35.01 FIRE MERIT COMMISSION; ORGANIZATION

(A) The Fire Merit Commission, hereinafter referred to as the Commission, shall consist of five (5) commissioners. The commissioners are:

- (1) three (3) persons appointed by the Mayor; and,
- (2) two (2) persons, who must be of different political parties, elected by the active members of the department.

Notwithstanding IC 36-1-8-10, political affiliation shall be determined through the voters' registration records of the three (3) most recent primary elections.

(B) Each commissioner must have been a legal resident of the City of Fort Wayne for three (3) consecutive years immediately preceding the commissioner's term and must be a person of good moral character. A commissioner must be at least twenty-one (21) years of age. A commissioner may not be an active member of the Fire Department and not more than two (2) of the commissioners may be past members of the Fire Department. In addition, a person may not serve on the commission if the person receives any remuneration as salary from the City of Fort Wayne.

(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 Board of Public Safety and the City Clerk.

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

Section 35.02 COMMISSIONERS; TERMS; TENURE

(A) The term of a commissioner is four (4) years. However,

one (1) of the Mayor's initial selections and one (1) of the Fire Department members' initial selections are for terms of two (2) years.

(B) A vacancy on the commission shall be filled within thirty (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. In the case of a commissioner elected by the active members of the Fire Department, the Board of Public Safety shall schedule a vote by the active members of the Fire Department if a recall petition signed by a majority of the active members is submitted to the Board. The Board of Public Safety shall give at least three (3) weeks' notice to all active members of the Fire Department that a vote will be held on the recall petition. The notice shall be given by posting it in prominent places in all stations of the Fire Department. The notice must designate the times, places, and purpose of the vote. The notice shall also be read during shift roll calls. Only active members of the Fire Department may vote on the recall petition. All voting must be by secret written ballot. The other procedures for holding the vote may be determined by the Board of Public Safety and notice of said voting procedures also shall be posted in prominent places in all stations of the Fire Department and read during shift roll calls at least one (1) week before the first date of the vote.

Section 35.03 **ELECTIONS; NOTICE**

In the case of a commissioner to be elected by the active members of the Fire Department, the Board of Public Safety shall schedule a vote by the active members of the Fire Department. The Board of Public Safety shall give at least three (3) weeks' notice of the scheduled election to all active members of the Fire Department. The notice shall be given by posting it in prominent places in all stations of the Fire Department. The notice must designate the times, places, and purpose of the vote. The notice shall also be read during shift roll calls. Only active members of the Fire Department may vote on the recall petition. All voting must be by secret written ballot. The other procedures for holding the vote may be determined by the Board of Public Safety and notice of said voting procedures also shall be posted in prominent places in all stations of the Fire Department and read during shift roll calls at least one (1) week before the first date of the vote.

Section 35.04 **RULES GOVERNING COMMISSION; TRANSACTION OF BUSINESS; SELECTION OF OFFICERS; BUDGET**

(A) Within thirty (30) days after the commission is selected, the commission shall adopt rules to govern the commission, including the time and place of regular monthly meetings and special meetings that are necessary to transact the business of the commission. A majority of the commissioners constitutes a quorum, and a majority vote of all the commissioners is necessary to transact the business of the

commission. Each year the commissioners shall select from among their number a president, vice president, and secretary. The commission shall keep a permanent record of its proceedings.

(B) The commission shall submit a proposed annual budget as other budgets of the City are submitted. The Common Council shall include in its budget an amount sufficient for the necessary expenses of the commission.

Section 35.05 **RULES; ADOPTION; NOTICE AND HEARING**

(A) Within ninety (90) days after the commission is selected, the commission shall adopt rules governing:

(1) the selection and appointment of persons to be employed as members of the Fire Department, subject to applicable pension statutes;

(2) promotions and demotions of members of the Fire Department;
and

(3) disciplinary action or dismissal of members of the Fire Department.

(B) Before the rules required by this Section are adopted by the commission, the commission must hold a public hearing to consider the adoption of the proposed rules. At least ten (10) days before the public hearing, the commission must have a notice of the hearing published in accordance with IC 5-3-1. The notice must state the time and place of the hearing and give briefly the subject matter of the proposed rules.

(C) At least ten (10) days before the hearing, one (1) copy of the proposed rules must be placed on file in the office of the City Clerk for inspection by residents of the unit.

(D) At least ten (10) days before the hearing, three (3) copies of the proposed rules must be forwarded to the Chief of the Fire Department and retained on file in the Chief's office for inspection at all times by members of the Fire Department.

(E) At the hearing, any interested resident of the City and any member of the Fire Department must be afforded an opportunity to present both oral and written evidence on any matter relating to the adoption of the proposed rules. The commission shall give due consideration to this evidence in making its final decision concerning the adoption of the proposed rules.

Section 35.06 **DEPARTMENT MEMBERS; TENURE; CHIEF; APPOINTMENT AND QUALIFICATIONS**

(A) The commission may appoint and remove members of the department, 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 subsection, the term "upper level policymaking positions shall mean the fire chief and the two

ranks below the fire chief. To the extent this in conflict with any other definition contained in this Chapter, this definition shall be controlling.

(B) The removal of a member from an upper level policymaking position is removal from rank only and not from the Fire Department. When the member is removed, the member shall be appointed by the commission to the rank in the Fire Department that the member held at the time of the member's upper level appointment or to any rank to which the member had been promoted during the member's tenure in the upper level position. If such a rank is not open in either case, the member is entitled to the pay of that rank and shall be promoted to that rank as soon as an opening is available.

**Section 35.07 DEPARTMENT MEMBERS; APPOINTMENT;
QUALIFICATIONS; APPLICATION; GENERAL APPTITUDE TEST;
RATINGS; ELIGIBILITY LIST; VACANCIES; PHYSICAL
AGILITY TEST; PROBATION**

(A) To be appointed to the Fire Department, an applicant must be:

- (1) a citizen of the United States;
- (2) a high school graduate or equivalent; and
- (3) at least twenty-one (21) years of age, but under thirty-six (36) years of age.

However, the age requirements do not apply to a person who has been previously employed as a member of the Fire Department.

(B) A person may not be appointed, reappointed, or reinstated if the person has a felony conviction on the person's record.

(C) Applications for appointment or reappointment to the Fire Department must be filed with the commission. The applicant must produce satisfactory proof of the date and place of the applicant's birth.

(D) Applicants for appointment or reappointment to the Fire 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; and
- (3) be administered in a manner that reasonably accommodates the needs of disabled applicants.

The results of the general aptitude test shall be filed with the commission. If the commission finds that the applicant lacks the proper qualifications, it shall reject the applicant.

(E) The 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 commission shall adopt rules for grading the applicants, including the establishment of a passing score. The commission shall place the names of applicants with passing scores on an eligibility list by the order of their scores and shall certify the list to the City Board of Public Safety.

(F) If an applicant for original appointment reaches the applicant's thirty-sixth birthday, the applicant's name shall be removed from the eligibility list. Applicants remain on the list for two (2) years from the date of certification. After two (2) years a person may reapply as an applicant.

(G) When a vacancy occurs in the department, the commission, upon a written request of the chief of the department, shall administer the physical agility test required under state law to the applicant having the highest score on the eligibility list. After the first four (4) applicants with the highest test scores have been administered the physical agility test, the Chief may choose an applicant for agility testing that the Chief feels is particularly worthy. However, at no time may the Chief's choices exceed twenty percent (20%) of applicants selected to take the physical agility test. If the appointed applicant successfully completes the physical agility test, the applicant shall then be enrolled as a member of the Fire Department to fill the vacancy if:

- (1) the applicant is still of good character; and
- (2) the applicant passes the required examinations identified in state law.

(H) All appointments are probationary for a period not to exceed one (1) year from being sworn in. If the commission finds, upon the recommendation of the Fire Department during the probationary period, that the conduct or capacity of the probationary member is not satisfactory, the commission shall notify the probationary member in writing that the probationary member is being reprimanded, that the probationary member is being suspended, or that the probationary member will not receive a permanent appointment. If a probationary member is notified that the probationary member will not receive a permanent appointment, the probationary member's employment immediately ceases. Otherwise, at the expiration of the probationary period the member is considered regularly employed.

Section 35.08 **PROMOTIONS; RULES; REQUISITES; ELIGIBILITY LIST**

(A) Rules governing promotions must provide that the following factors be considered in rating a member of the department for a promotion:

- (1) The score received by the member on a written competitive examination.
- (2) The score received by the member on an oral competitive interview.
- (3) The performance record of the member in the Fire Department.
- (4) The member's length of service.

The commission shall determine the weight to be given to each of the factors. However, neither a member's length of service nor the score received on the oral interview may comprise more than twenty percent (20%) each of the rating.

(B) Promotions to a rank must be from the next lower rank. In addition, the member being promoted must have served at the lower rank for a period determined by the commission.

(C) Only members who are qualified in rank and length of service may be given the competitive examinations and placed on an eligibility list. 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 (2) 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 (5) years and then destroyed.

Section 35.09 **PROMOTIONS; COMPETITIVE EXAMINATIONS; PROCEDURES**

(A) Before a written competitive examination may be held to fill a current or expected vacancy in the ranks, the members eligible to take the examination must be notified of the written materials from which the questions will be taken. The commission may employ instructors, purchase materials, and make other expenditures to provide information for applicants for promotion examinations.

(B) 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. The commission shall notify each member in writing of the score that the member received on the examination. The score received by a member on the written examination becomes a part of the permanent file of the member, and the member is entitled to access to this file for examination at any time.

(C) The examination papers shall be kept under the commission's supervision. 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 (10) days after notice of the score has been sent to him. The member may review the questions incorrectly answered by the member and challenge the answer considered correct by the examiner. The commission shall either affirm the score or correct the score according to the findings of a review. The examination papers shall be retired after the two (2) year period during which the eligibility list is valid. The retired papers shall be kept for five (5) years and then destroyed.

Section 35.10 **PERFORMANCE RATINGS; RULES; APPEAL**

(A) The commission shall adopt rules for determining a performance rating. The rules must require that a performance rating be made at least once every twelve (12) months for each member of the department, including probationary members. The rating shall be made by one (1) or more of the member's superiors, as defined in the commission's rules. Probationary members shall be rated in the same manner as other members of the department. The ratings shall be submitted to the Chief of the Fire Department and kept on file in the Chief's office under the

Chief's supervision. The Chief shall notify each member in writing of the rating that the member received.

(B) A member who is aggrieved with the performance rating given to the member by the member's superior may appeal to the commission for a review of the rating. The appeal must be filed within ten (10) days after notice of the rating has been sent to the member. The commission shall either affirm or correct the rating.

Section 35.11 PROMOTIONS; CERTIFICATION OF ELIGIBLE MEMBERS; PROBATION; PROCEDURES

(A) When a vacancy in rank occurs, the commission shall certify to the Chief of the Fire Department the three (3) members with the highest scores on the eligibility list for that particular rank. Within six (6) months the commission, upon the recommendation of the Chief, shall promote one (1) of those members to fill the vacant position.

(B) All promotions are probationary for a period not to exceed one (1) year. At the end of the period, a probationary member's superior shall review the member's performance and recommend to the commission that:

- (1) the promotion be made permanent; or
- (2) the promotion be revoked.

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

(D) Actions by the commission other than making the promotion permanent may be appealed within thirty (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).

Section 35.12 DISCIPLINARY ACTIONS; GROUNDS; HEARING; NOTICE; REQUISITES; PROCEDURES; APPEAL

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

- (1) Suspension with or without pay.
- (2) Demotion.
- (3) Dismissal.

If a member is suspended under this subsection, the member is entitled to the member's remuneration and allowances for insurance benefits to which the member was entitled before the suspension. In addition, the City may provide the member's allowances for any

other fringe benefits to which the member was entitled before the suspension. The commission shall determine if a member of the Fire Department who is suspended in excess of five (5) days shall continue to receive the member's salary during suspension.

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

- (1) the member is convicted of a crime; or
- (2) the commission finds the member guilty of a breach of discipline, including:
 - (a) neglect of duty;
 - (b) violation of commission rules;
 - (c) neglect or disobedience of orders;
 - (d) continuing incapacity;
 - (e) absence without leave;
 - (f) immoral conduct;
 - (g) conduct injurious to the public peace or welfare;
 - (h) conduct unbecoming a member; or
 - (i) furnishing information to an applicant for appointment or promotion that gives that person an advantage over another applicant.

(C) If the Chief of the Fire Department, after an investigation within the department, prefers charges against a member of the department for an alleged breach of discipline under subsection (B), including any civilian complaint of an alleged breach of discipline under subsection (B) (2) (f), (B) (2) (g), or (B) (2) (h), a hearing shall be conducted upon the request of the member. If a hearing is requested within five (5) days of the Chief preferring charges, the parties may by agreement designate a hearing officer who is qualified by education, training, or experience. If the parties do not agree within this five (5) day period, the commission may hold the hearing or designate a person or board to conduct the hearing, as provided in the commission's rules. The designated person or board must be qualified by education, training, or experience to conduct such a hearing and may not hold an upper level policy making position. The hearing conducted under this subsection shall be held within thirty (30) days after it is requested by the member.

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

- (1) the time and place of the hearing;
- (2) the charges against the member;
- (3) the specific conduct that comprises the charges;
- (4) that the member is entitled to be represented by counsel or another representative of the member's choice;
- (5) that the member is entitled to call and cross-examine witnesses;
- (6) that the member is entitled to require the production of evidence; and
- (7) that the member is entitled to have subpoenas issued, served, and executed.

(E) The commission may:

- (1) compel the attendance of witnesses by issuing subpoenas;
- (2) examine witnesses under oath; and
- (3) order the production of books, papers, and other evidence by issuing subpoenas.

(F) If a witness refuses to appear at a hearing of the commission after having received written notice requiring the witness's attendance, or refuses to produce evidence that the commission requests by written notice, the commission may file an affidavit in

the Circuit Court of Allen County setting forth the facts of the refusal as provided in I. C. 36-8-3.5-17(f).

(G) Disobedience of a summons constitutes contempt of the circuit court from which the summons has been issued. 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 summons 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, and in any case in which an affidavit has been filed without the issuance of a summons, the expenses shall be charged to the commission.

(H) A decision to discipline a member may be made only if the preponderance of the evidence presented at the hearing indicates such a course of action.

(I) A member who is aggrieved by the decision of a person or board designated to conduct a disciplinary hearing under subsection (C) may appeal to the commission within ten (10) days of the decision. The commission shall on appeal review the record and either affirm, modify, or reverse the decision on the basis of the record and such oral or written testimony that the commission determines, including additional or newly discovered evidence.

(J) The commission, or the designated person or board, shall keep a record of the proceedings in cases of suspension, demotion, or dismissal. The commission shall give a free copy of the transcript to the member upon request if an appeal is filed.

Section 35.13 APPEAL TO COURT; SUSPENSION OR DISMISSAL; PROCEDURE

A member who is aggrieved by a decision of the commission to suspend the member for a period greater than ten (10) calendar days, demote the member, or dismiss the member may seek judicial review of any such decision as provided in I. C. 36-8-3.5-18, subject to the time limitations and procedural requirements set forth in said statute.

Section 35.14 SUMMARY DISCIPLINARY ACTIONS; REPRIMAND OR SUSPENSION

(A) In addition to the disciplinary powers of the commission, the Chief of the Fire Department, may, without a hearing, reprimand or suspend without pay a member, for a maximum of five (5) working days. For the purposes of this subsection, eight (8) hours of paid time constitutes one (1) working day.

(B) If the Chief reprimands a member in writing or suspends a member, the Chief shall, within forty-eight (48) hours, notify the commission in writing of the action and the reasons for the action. A member who is reprimanded in writing or suspended under this

section may, within forty-eight (48) hours after receiving notice of the reprimand or suspension, request in writing that the commission review the reprimand or suspension and either uphold or reverse the Chief's decision. At its discretion, the commission may hold a hearing during this review. If the board holds a hearing, written notice must

be given either by service upon the member in person or by a copy left at the member's last and usual place of residence at least fourteen (14) days before the date set for the hearing. The notice must contain the information listed under Section 35.12(D) of this Chapter. If the decision is reversed, the individual who was suspended is entitled to any wages withheld as a result of the suspension.

Section 35.15 **RETIREMENT AGE**

A member of the Fire Department shall retire from the Fire Department when the member reaches the member's seventieth birthday. However, a member of the Fire Department who is seventy (70) years of age or older on January 1, 2009 may serve until the end of calendar year 2009.

Section 35.16 **TEMPORARY LEAVE OF ABSENCE; SENIORITY; REINSTATEMENT**

(A) If it is necessary for the Board of Public Safety to reduce the number of members of the Fire Department, the reduction shall be made by granting a temporary leave of absence, without pay or financial obligation to 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 Fire Department is increased in number again, the members of the Fire Department who have been granted leaves of absence under this section shall be reinstated before an applicant on the eligibility list is appointed to the Fire Department. The reinstatements begin with the last member granted a leave.

(C) A member on leave of absence shall keep the commission advised of the member's current address. A member shall be informed of the member's reinstatement by written notice. Within ten (10) calendar days after a member receives notice of reinstatement, the member must advise the 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.

**Section 35.17 RULES; PRINTING; COPIES TO DEPARTMENT MEMBERS;
EFFECTIVE DATE**

The Fire Department shall print all rules of the commission and furnish a copy to each member of the Fire Department. Amendments to the rules take effect thirty (30) days after their adoption if copies have been furnished to all members of the Fire Department within that period. Otherwise, they do not take effect until copies are furnished to all members of the Fire Department.

Section 8. That members of the Department who hold the rank of firefighter (or private), lieutenant, captain and battalion chief as of the date of the adoption of this Ordinance shall retain that rank and be considered merit firefighters or fire officers. Years of service in the rank of firefighter shall accrue from the firefighter's date of hire. The years of service as an officer will accrue from the officer's date(s) of promotion.

Section 9. That the order of merit ranks will be as follows: probationary firefighter, firefighter (or private), lieutenant, captain, and battalion chief. Firefighters or firefighter/engineers with sufficient years of service as determined by the merit commission are eligible to test for a lieutenant position. Only lieutenants with sufficient years of service as lieutenants as determined by the merit commission are eligible to test for captain. Only captains with sufficient years of service as captains as determined by the merit commission are eligible to test for battalion chief.

Section 10. That hiring and promotional lists in effect as of the date of adoption of this Ordinance shall remain in effect for two (2) years from the date on which it/they were first accepted.

Section 11. Repeal of Section 35.01 of Chapter 35 of the City of Fort Wayne Code of Ordinances. Section 35.01 of Chapter 35 of the City of Fort Wayne Code of Ordinances is repealed, effective December 31, 2008, if the merit system proposed

by this Ordinance is approved by a majority of the active members of the Fire Department.

Section 12. Effective Date. This Ordinance is effective upon its passage, all necessary approval by the Mayor, any and all publications necessary. Subsequent to the Ordinance becoming effective, the establishment of a merit system as outlined in this Ordinance is subject to the approval of the merit system by a majority of the active members of the Department by secret ballot vote pursuant to notice and other terms set forth in this Ordinance.

Martin A Bender
Council Member

Read the third time in full and on motion by Bender. and duly adopted, placed on its passage. Placed on passage to override the Mayor's Veto

AYES: Six
Brown., Didier, Goldner,
Harper, Shoaff, Smith
NAYS: Three
Bender, Hines, Pape
ABSTAINED: None
ABSENT: None

DATED: 9-9-08

Sandra E. Kennedy
City Clerk

COMMON COUNCIL VOTED TO OVERRIDE THE MAYOR'S
VETO BY A 2/3RD VOTE

I, the Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-09-08 passed by the Common Council on the 9th day of September, 2008 and now remains on file and on record in my office.

WITNESS, my hand and the official seal of the City of Fort Wayne, Indiana this 9th day of September, 2008

Sandra E. Kennedy
City Clerk

ORDINANCE VETOED BY THE MAYOR

**BILL NO. G-08-04-15
(AS AMENDED) (AS AMENDED)
GENERAL ORDINANCE NO. G-09-08**

**THE ABOVE ORDINANCE WAS VETOED BY MAYOR HENRY AUGUST 19,
2008**

**A 2/3 RD VOTE IS NEEDED TO OVERRIDE THE MAYOR'S
VETO**

**AN ORDINANCE ENACTING AND ADOPTING A MERIT SYSTEM FOR THE
CITY OF FORT WAYNE FIRE DEPARTMENT**

Joseph G.

THIS ORDINANCE WILL BE VOTED ON AUGUST 26, 2008

Read the first time in full and on motion by Pape and duly adopted, read the second time by title and referred to the Committee on Regulation (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 2008, at _____ o'clock _____ M., E.S.T.

DATED: _____

Read the third time in full and on motion by Bender placed on its passage. PASSED LOST and duly adopted, by the following vote: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>6</u>	<u>2</u>	_____	<u>1</u>
<u>BENDER</u>	_____	<u>✓</u>	_____	_____
<u>BROWN</u>	<u>✓</u>	_____	_____	_____
<u>DIDIER</u>	<u>✓</u>	_____	_____	_____
<u>GOLDNER</u>	<u>✓</u>	_____	_____	_____
<u>HARPER</u>	<u>✓</u>	_____	_____	_____
<u>HINES</u>	_____	<u>✓</u>	_____	_____
<u>PAPE</u>	_____	_____	_____	<u>✓</u>
<u>SHOAFF</u>	<u>✓</u>	_____	_____	_____
<u>SMITH</u>	<u>✓</u>	_____	_____	_____

DATED: 8-12-08

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE (RESOLUTION) NO. D-29-08 on the 12th day of August, 2008

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Thomas F. Didier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 18th day of August, 2008, at the hour of 1:30 o'clock P. M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____ 2008, at the hour of _____ o'clock _____ M., E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR

*Bill No. D-08-04-15 (as corrected, as amended)
General Ordinance to D-09-08 was vetoed
by Mayor Henry on August 19, 2008 at 2:30
This is needed to override the Mayor's veto.*

G-08-04-15 *Fire Merit*
Veto Vote

Read the first time in full and on motion by _____, and duly adopted, read the second time by title and referred to the Committee on _____, (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 2008, at _____ o'clock _____ M., E.S.T.

DATED: _____

Sandra E. Kennedy
 SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by _____, and duly adopted, placed on its passage. PASSED LOST
 by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>4</u>	<u>3</u>		
<u>BENDER</u>		<input checked="" type="checkbox"/>		
<u>BROWN</u>	<input checked="" type="checkbox"/>			
<u>DIDIER</u>	<input checked="" type="checkbox"/>			
<u>GOLDNER</u>	<input checked="" type="checkbox"/>			
<u>HARPER</u>	<input checked="" type="checkbox"/>			
<u>HINES</u>	<input checked="" type="checkbox"/>			
<u>PAPE</u>		<input checked="" type="checkbox"/>		
<u>SHOAFF</u>		<input checked="" type="checkbox"/>		
<u>SMITH</u>	<input checked="" type="checkbox"/>			

DATED: 9-9-08

Sandra E. Kennedy
 SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) (ORDINANCE) (RESOLUTION) NO G-08-04-15 on the 9th day of September, 2008

ATTEST:
Sandra E. Kennedy
 SANDRA E. KENNEDY, CITY CLERK

SEAL
Thomas F. Didier
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 2008, at the hour of _____ o'clock _____ M., E.S.T.

Sandra E. Kennedy
 SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____, 2008, at the hour of _____ o'clock _____ M., E.S.T.

THOMAS C. HENRY, MAYOR