



RISK MANAGEMENT INFORMATION  
**FIRE DEPARTMENT BYLAWS**  
*WHO'S IN CHARGE?*

Fire department bylaws have been around for as long as organized fire suppression in communities. For many fire departments, the bylaws represent not only a set of operating guidelines and rules about fire department activities, but also the spirit and camaraderie of firefighters.

Typical provisions of fire department bylaws include things like how many members a fire department has, how far away from the fire hall a firefighter should live, when and how department meetings will be conducted, how new fire department members and officers will be selected, and how firefighter discipline will be handled.

The purpose of this memo is to discuss alternatives for handling items typically found in fire department bylaws and the appropriateness of fire department bylaws, generally. For purposes of this discussion, we'll focus on city fire departments—not independent joint powers or not-for-profit fire departments.

*It's important to note that the existence of bylaws does not establish a separate fire department agency. Only a joint powers agreement or articles of incorporation can accomplish this goal.*

**Bylaw provisions better stated as HR policies**

Fire department bylaws often address personnel matters and establish employment policies for firefighters. Regardless of a firefighter's status—whether full-time paid, paid-on-call, or volunteer—firefighters are considered city employees for most purposes, including things such as workers' compensation insurance and various employment laws.

For the most part, firefighter personnel policies are better housed with the city's human resources (HR) practices and policies. While there may be certain policies that apply only to firefighters, this does not mean the fire department personnel policies should be kept separate from all other city personnel policies. Maintaining all HR practices and policies in one place will assure adequate policy updates, necessary training, and consistency among employees.

There are a few types of personnel policies in typical fire department bylaws that bear additional discussion:

This material is provided as general information and is not a substitute for legal advice.  
Consult your attorney for advice concerning specific situations.

### *Age requirements*

Bylaws often establish a minimum and maximum age for firefighters. A minimum age standard can be established; in fact, there may be special considerations for hiring someone under age 18 to be a firefighter, due to the hazardous nature of firefighting duties.

Establishing a maximum age for firefighters is more questionable. Federal law allows mandatory retirement for public safety officials, including firefighters, at age 55 or after. Minnesota laws are ambiguous regarding a mandatory retirement age for firefighters. A city interested in establishing a mandatory retirement age for firefighters should seek legal advice prior to implementing such a policy.

Note that a city may lawfully establish a maximum age for entry into employment as a firefighter. And it's important to distinguish between minimum and maximum age limits allowed in conjunction with employment practices vs. those that may be allowed by Minnesota statutes governing relief association benefits and eligibility.

### *Response distance*

Bylaws sometimes establish a radius within which firefighters are expected to live. Cities are prohibited from requiring residency as a condition of employment. This includes and applies to volunteer firefighters. Cities can impose a reasonable response time, but it should be based on minutes rather than miles.

Remember that Minnesota law requires firefighters responding to an emergency to follow all traffic laws, including posted speeds. Policies related to response time should be based on normal driving behavior.

### *Minimum run standards*

Fire department bylaws might include a minimum number of runs firefighters need to attend in order to remain "eligible." The key question here is: Eligible for what?

If this provision means eligibility for continued employment, this provision belongs with the city's other HR policies. If this means eligibility for relief association benefits, the policy should be part of relief association documentation rather than fire department bylaws.

### *Selection criteria and election practices*

Some departments still elect new firefighters and/or officers. The election process may require that certain minimum criteria be met before an election takes place among qualified candidates.

The election process in fire departments needs to be eliminated altogether. While this process may be deeply established in fire department practices, in most cities only the city council is authorized

to hire employees, including volunteer firefighters. In some cities, the city manager or administrator might be authorized to hire employees. But in no case may employees be hired by a vote of other employees.

In addition, an election process cannot be defended in the face of a lawsuit alleging discrimination. If a 30-year-old is elected rather than a 60-year old, and the 60-year-old claims age discrimination, there's simply no way to prove that it *wasn't* a discriminatory decision if all you have is the election result.

It's perfectly fine—and even desirable—to have firefighters give input as to who might make a good fire department employee or officer, but ultimately the hiring decision rests outside of the firefighters, themselves.

Selection criteria for firefighters—such as written exams, minimum certifications, physical fitness or agility requirements, and oral interviews—are entirely appropriate and strongly encouraged. These criteria belong with the city's other HR requirements and hiring policies.

Note that elections for relief association officers are also entirely appropriate. The process being discussed here is specific to fire department elections.

#### *Job duties*

Any definition of firefighter job duties belong with the city's other job descriptions, in HR policies. There's no reason to have job duties defined or described in fire department bylaws.

#### *Code of conduct and behavior standards*

Bylaw provisions sometimes include appropriate behavior for firefighters, whether on- or off-duty. These standards are typically ill-defined and hard to measure, such as language requiring firefighters to “perform in a manner likely to support efficient fire operations” while on-duty; or act “appropriately” when off-duty and in public.

Performance standards established in a code of conduct need to be measurable and applied consistently among all members of the department; and any resulting discipline needs to be handled in accordance with city policy. In short, these bylaw provisions are really employee performance criteria and belong with the city's HR policies.

#### *Discipline*

Many bylaws contain provisions allowing some group—maybe the executive committee of a fire department, officers, or even the whole of fire department members—to administer discipline against a firefighter for failure to follow bylaw rules or for other inappropriate behavior.

It's very important that employee discipline policies be clear and applied fairly and justly across the board. Similar to hiring, only a city council or its delegee is authorized to discipline employees. Discipline by other measures needs to be eliminated unless it's part of an authorized

city HR policy. Under no circumstances should the discipline of a firefighter be determined by a vote of other firefighters.

### *Officer roles*

Fire department bylaws may provide for election of officers and may define the roles of such officers. The first issue here relates back to department elections. Fire department elections need to be eliminated altogether, whether it is the election of new firefighters or officers.

The issue of establishing and defining officer roles is perhaps more difficult to consider. Bylaws often set forth the typical roles of chief, assistant chief, captain, etc., but then also provide for a president, vice-president, secretary and treasurer.

If there is a fire department president or vice-president, how does that role differ from the chief and assistant chief? If there is need for both roles, then job descriptions should clearly define these roles and prevent overlapping duties. And the proper place for all job descriptions is with the city HR department, not in fire department bylaws.

If the purpose of these bylaw provisions is to address officers of the relief association, the appropriate place to document the roles is in relief association materials. The relief association, unlike the fire department, is a separate legal entity. Descriptions of officer positions related to the relief association should not be intermingled with matters related to the fire department.

Establishing the role of a fire department treasurer is particularly concerning. Some fire departments have operated somewhat autonomously from the city. For example, some fire departments receive funds into their own checking accounts and independently authorize the expenditures of public funds. Such practices, however, are not legal. Fire departments are not allowed to have separate checkbooks under state laws governing expenditures of public funds. Accordingly, a fire department treasurer is truly unnecessary.

### **Bylaw provisions representing management policies and practices**

Fire department bylaws are often used to codify policies and practices related to how the department is managed, such as how many firefighters are on the roster and how department meetings are conducted. While it may be entirely appropriate to seek input and support from firefighters on these kinds of decisions, there isn't a need to have these practices formalized in department bylaws.

### *Membership numbers*

Bylaws might contain a minimum and maximum number of firefighters to be on the fire department. This provision was probably implemented with a number of considerations in mind, such as the area to be served, the kinds of equipment used, whether or not the department runs EMS, etc.

The problem with having a minimum and maximum number of firefighters delineated in the bylaws is that it forces a bylaw change every time there's an emerging need, and may not allow the department adequate flexibility to manage in the community's best interest. For instance, a new person may move to town with existing training and availability for day and night fires. If the fire department is at its maximum roster size, how will the new firefighter be added?

There may also be concerns about dropping below the stated minimum roster size. Someone in the community could make a negligence claim based on the city's fire response if it operates below the minimum stated in bylaws.

The decision about adequate roster size is certainly one to pay attention to, and to adjust accordingly with any community changes or response needs. These decisions are most appropriately made by the fire chief and city council as part of overall department management.

Roster size may have different implications for the relief association membership and assets. It's important to keep the considerations of relief association business separate from fire department management and operations.

#### *Department meetings*

Fire department bylaws frequently establish a regularly scheduled meeting of firefighters and the agenda format to be followed at each meeting. Some bylaws are detailed enough to specify start and end times of department meetings, and even provide for posting of fire department meetings to the public.

The fire department is a part of the city, not a stand-alone governing body or corporate entity. The open meeting law does not apply to fire department meetings. In addition, there are no requirements that a fire department make decisions by majority vote, use a formal agenda for meetings, or operate according to Robert's Rules of Order.

By way of contrast, the relief association is a separate entity that is subject to the open meeting law (as well as other laws and regulations, such as the data practices act) and makes decisions by vote of the board of directors.

Certainly a fire department needs adequate communication among members and from the fire chief. If the chief wants to establish a regular meeting time and agenda, that's probably a good idea. If the chief wants to poll firefighters on their opinions about a particular issue, that's fine too. But these are management tools and techniques, not required bylaw provisions.

#### *Response and scene management*

Some bylaws include pretty specific scene management details, such as how many firefighters need to respond on which kind of truck, what the incident command structure should be at different types of fires, and what certain roles should be on-scene.

These are, of course, very important considerations for adequate response to fires and good scene management, and critical decisions for firefighter safety. The appropriate place for these details is in the fire department standard operating procedures or guidelines (SOPs or SOGs)—not in fire department bylaws.

### **What does this mean for fire department bylaws?**

Generally speaking, bylaws are the fundamental rules that define an organization, such as a non-profit entity. A city fire department is not a separate organization. Rather, it is a part or department of the city. The fire department therefore does not need its own bylaws. Bylaws may create confusion and establish unclear expectations about how the fire department is run or whether the fire department is a stand-alone agency.

*This does not mean that fire department policies currently contained in the bylaws are necessarily inappropriate.* It may simply mean that some provisions are better placed somewhere else.

The most important considerations are removing those bylaw provisions that are better placed within the city's HR policies, SOPs or SOGs. It's worth noting that if the city has a collective bargaining agreement in place for firefighters, some of these items may also be subject to contract language.

It's probably true that when bylaw items have been removed and placed somewhere else, there won't be much left.

### **Additional resources**

The League has a number of associated memos and materials discussing some of these items in more detail, which may be useful as you consider options for your fire department bylaws. All of these materials are available on the League's website. Additional resources and sample materials may also be available by calling the League.

- *HR Reference Manual.* An online guidebook for city HR matters, including detailed information on minimum / maximum age requirements, response distance requirements, selection and election, job duties, codes of conduct, discipline, and more.
- *Selection v Election: The Choice is Clear.* A memo on selection criteria for firefighters and election practices.
- *HR Issues for Cities and Fire Departments.* An article on important HR considerations.
- *Discipline and Termination in the Public Sector.* A memo including information on mandatory retirement provisions.
- *Off-duty Conduct: Legal Issues and Practical Solutions.* A memo about off-duty conduct expectations.
- *Managing Fire Funds.* An article on managing relief association and city fire department funds.

## **Questions**

The League can help you determine where your existing bylaw provisions should be housed, whether any need to be changed, or what the impact may be of certain language. If you require additional help or have any questions about bylaws in city fire departments, you can contact a member of our research department, Ann Gergen, or Tracie Chamberlin at the League offices.

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