

**CITY OF NEWPORT BEACH
CIVIL SERVICE BOARD STAFF REPORT**

Agenda Item No _____
March 8, 2010

TO: HONORABLE CHAIR AND MEMBERS OF THE CIVIL SERVICE BOARD

FROM: Terri L. Cassidy, Human Resources Director
Ext. 3300 tcassidy@NewportBeachCA.gov

SUBJECT: CIVIL SERVICE BOARD AND SYSTEM - CHARTER UPDATE

RECOMMENDATION:

Consider issues related to Civil Service Board and System in the City Charter and make any recommendations regarding same.

DISCUSSION:

At the March 1, 2010 Board meeting, City Attorney David Hunt submitted a report requesting the Board state their position on the issues that have been raised with respect to modernizing the Civil Service System (see attached report). As a method of continuing the conversation we would like to focus on the City Charter as that is the reason the Charter Update Commission was established. This report discusses Articles VII and VIII from the City Charter (Civil Service) and provides consideration points to guide the Board in your discussion. We feel that by making recommendations on specifics in the Charter first, then hearing from recognized association leaders or other interested parties, the Board will be able to answer the questions posed by the City Attorney on March 1.

ANALYSIS:

**CHARTER OF THE CITY OF NEWPORT BEACH
Article VII
Appointive Boards and Commissions**

Section 710. Civil Service Board.

The Civil Service Board shall consist of five members, none of whom while a member of the board, or for a period of one year after he has ceased for any reason to be a member, shall occupy or be eligible for appointment to any salaried office or employment in the service of the City.

The members of the Civil Service Board shall be nominated and appointed in the following manner. Two members shall be appointed by the City Council from a list of five persons to be nominated by vote of the employees in the Classified Service, two members shall be appointed by the City Council directly, and the fifth shall be appointed by the City Council from a list of three persons nominated by a majority of the four thus

appointed. The successor of any member of the board shall be nominated and appointed in the same manner as such member was nominated and appointed.

Considerations:

- Keep the Civil Service Board as outlined above.
- Change the number of members.
- Change the process of nominations and appointments.
- "Classified Service" has been interpreted to mean employees within the Police and Fire Departments, but it has not been defined in the Charter or Ordinance. When originally established, and prior to the Police Employees' Association including non-sworn employees, this could have meant only Sworn Safety Employees. Change the language to clarify.
- Eliminate the Board and remove Article VII from the Charter.

Section 711. Civil Service Board. Powers and Duties.

The Civil Service Board shall have the power and duty to:

- (a) Recommend to the City Council, after a public hearing thereon, the adoption, amendment or repeal of civil service rules and regulations.

Considerations:

- No changes.
- Change the language to have the recommendation go to City Manager for submission to Council (See Article V, City Manager, Section 504 (a) & (h) attached).

- (b) Act in an advisory capacity to the City Council on problems concerning personnel administration.

Considerations:

- No changes.
- Change the language to have the Board be advisory to the City Manager on problems.

- (c) Hear appeals of **any person** in the City employment relative to any suspension, demotion or dismissal and make findings and recommendations thereon.

Considerations:

- No Changes.
- Change the language to clarify "any person in City employment who is currently not excluded from Civil Service as outline in the Charter."

- (d) Make any investigation concerning the administration of personnel in the municipal service and report its findings to the City Council and City Manager when requested to do so by the City Council, the City Manager or by any organized City Employees' association.

Considerations:

- No Changes.
- Change the language to allow requests by City Manager "or designee."
- Change the language to clarify those who can make the request (i.e. "organized City Employees' Association" should be replaced by "Exclusively Recognized Bargaining Unit").

- (e) Perform such other duties as may be prescribed by ordinance.

Considerations:

- No Changes.
- Change the language to state as may be prescribed "by resolution or ordinance approved by the City Council."

CHARTER OF THE CITY OF NEWPORT BEACH
Article VIII
Civil Service System

Section 800. Continuance of Present System.

The civil service system existing at the time this Charter takes effect, to the extent that the same is not inconsistent with any of the provisions of this Charter, is hereby continued in existence subject to all of the terms and provisions of this Charter and subject to amendment by proper authority as in this Charter provided.

Section 801. System to Be Maintained.

The City Council shall by ordinance continuously maintain a civil service system for the selection, employment, classification, advancement, suspension and discharge of those appointive officers and employees who shall be included in the system. The system shall comply with all other provisions of this Charter.

Considerations:

- Keep the Civil Service System as outlined above.
- Change the language in regard to inconsistencies to add "or other applicable law."
- Eliminate the System and remove Article VIII from the Charter.

Section 802. Positions Included in the System.

The civil service system shall include all full time, regular and permanent positions or employment on the Police and Fire Department of the City and may, by ordinance, include any other appointive officers or positions in the service of the City except the following:

1. All elective officers.
2. City Manager, Assistant City Manager, if any, one private secretary to the City Manager, City Attorney, Assistant City Attorney, if any, City Clerk, Director of Finance, City Engineer, all Department Heads, and all employees of the Library Department, including the Librarian.
3. All members of boards and commissions.
4. Positions in any class or grade created for a special or temporary purpose and which may exist for a period of not longer than six months in any one calendar year.
5. Persons employed to render professional, scientific, technical or expert service.
6. Persons who render part-time service without pay or who are paid on an hourly or per diem basis. (As amended effective January 20, 1959)

Considerations:

- No Changes.
- Change the language from "full time, regular and permanent positions" to "Regular Full Time positions in the employment of the Police and Fire Department(s)" in order to clarify the type of employee included in the system.
- Change/add exemption language to the following:

2. City Manager, Assistant City Manager, Executive Assistant to the City Manager City Attorney, Assistant City Attorney, City Clerk, and all Department Heads, Assistant and Deputy Directors.
3. Members of appointive boards, commissions and committees.
7. Such other positions as the city council shall designate, by resolution.

Section 803. Withdrawal From System.

After inclusion in the system, any departments or appointive officers or employees shall not be withdrawn therefrom, either by an outright repeal of the civil service ordinance or otherwise, unless such withdrawal has been submitted to the city electors at a special or regular municipal election and approved by a majority of two-thirds of those electors voting on the proposition.

Considerations:

- No Changes.
- Change the language to give Council the power to withdraw a department, appointive officers or employees by resolution or ordinance instead of going to the electorate.

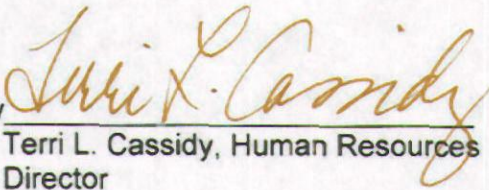
CONCLUSION:

The Charter Update Commission will be meeting on March 16, 2010 to review sections of the City Charter relative to the Civil Service System and Board. Included in the report to the Commission will be the Civil Service Board's recommendation(s) as well as City staff's alternatives regarding these issues. The purpose of this item is to facilitate the discussion and to reach consensus among the Board on the potential changes to City Charter sections.

With regard to Ordinance 866 (Civil Service), City staff recommends the ordinance be repealed and a new ordinance be written reflecting current law, professional personnel practices and to ensure the protection of employees' rights, such as the right to privacy, liberty and property interests and those afforded by collective bargaining. If the Board concurs that Ordinance 866 should be repealed, a thorough analysis of the current ordinance will need to be completed in order to draft a product that will serve the City and its employees into the future.

Submitted by:

HUMAN RESOURCES DEPARTMENT

By 
Terri L. Cassidy, Human Resources
Director

Attachment 1: March 1, 2010 CSB Staff Report

Attachment 2: Charter of the City of Newport Beach, Article V, City Manager

Attachment 3: City of Newport Beach Municipal Code, Chapter 2.24, Civil Service System

ATTACHMENT 1

March 1, 2010 CSB Staff Report

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**CITY OF NEWPORT BEACH
CIVIL SERVICE BOARD STAFF REPORT**

Agenda Item No. _____
March 1, 2010

TO: HONORABLE CHAIR AND MEMBERS OF THE CIVIL SERVICE BOARD

FROM: David R. Hunt, City Attorney
ext. 3131, dhunt@newportbeachca.gov

SUBJECT: Recommendation for Modernization of City Personnel System
Specifically Addressing Civil Service Modernization

ISSUE:

What, if any, recommendation does the Civil Service Board ("Board") have for modernization of the Civil Service System ("System") of the City of Newport Beach ("City")?

RECOMMENDATION:

Staff recommends the Board give its express recommendations on the issues that have been raised with respect to possible modernization of the System. In order to achieve this end, staff recommends the Board address by express motion the following issues specifically, and any other issues it believes are important.

1. Should the Charter be amended to eliminate the requirement there be a System within the City?

If the answer to question No. 1 is "no," proceed to question No. 2. If the answer is "yes" then no further questions need be addressed.

2. Should the System's ordinance enacted in 1958 be replaced with an ordinance enacted by the City Council thus allowing for updating the System on an ongoing basis without the need for a voter initiative?

If the answer to question No. 2 is "no," proceed to question No. 3. If the answer is "yes," proceed to question No. 4 skipping Question 2 entirely.

3. Should ordinance No. 866 be amended to modify any of the following?

- a. Bring it into consistency with the California and Federal Constitutions;

- b. Modify or eliminate any of the four functions performed by the Board in the context of the ordinance;
- (1) Overseeing the recruitment process for all civil service employees, as well as performing a role in the selection of the Police Chief and Fire Chief and acting as an appellate body on recruitment issues;¹
 - (2) Functioning as a discipline appeals board, reviewing any decision to discipline civil service employees, and also for non-civil service employees under the City's Employee Policy Manual ("EPM"), that are appealed to its level;
 - (3) Conducting investigations as requested by either by the City Council, the City Manager, or an organized employee's association within the System; and/or
 - (4) Overseeing the System as a whole and making recommendations to the City Council as to any changes the Board believes are appropriate.

Once Question No. 3 is answered, you may skip to Question No. 5.

4. *If the existing System ordinance should be replaced with a new ordinance, what role/functions do you recommend the Board continue to perform?*

You may recommend no change, modification of the roles, or elimination of any of the four roles played by Board:

- a. Overseeing the recruitment process for all civil service employees, as well as performing a role in the selection of the Police Chief and Fire Chief and acting as an appellate body on recruitment issues;
- b. The functioning as a discipline appeals board, reviewing any decision to discipline civil service employees and also for non-civil service employees under the City's EPM that are appealed to its level;
- c. Conducting investigations as requested by either by the City Council, the City Manager, or an organized employee's association within the System; and/or;

¹ You have recommended that the candidate appeals issue be modified and that recommendation has been accepted by the Council. That will be processed no matter of the outcome of the Charter update process.

- d, Overseeing the system as a whole and making recommendations to the City Council as to any changes the Board believes are appropriate.
5. Should the Charter be updated to create an Assistant/Deputy Chief position or positions for Police and the Fire Departments outside of the System and outside of organized bargaining units?

This ends the specific questions.

Whatever the Board's recommendations regarding the maintenance of the System or it's modification, staff recommends at least two changes for the purposes of modernization and efficiency;

1. Replacement of initiative passed Ordinance No. 866 with an ordinance passed by the City Council to allow for updates and modernization without having to go to a vote of the people as personnel procedures and laws change; and
2. Creation of a management buffer outside of the System to assist the chief officers in performing their duties and running their organizations.

DISCUSSION:

We are seeking your recommendations on the policy decisions dealing with the City's personnel system, specifically the review of the Civil Service System. We ask you to address the broad policy questions and give specific direction on those questions.

1. Ongoing Civil Service System.

Our System has been in place since 1958. As outlined in our staff report to you for your January 2010 meeting, many changes have developed in personnel law dealing with public employees in California since that time. Modern personnel practices must comply with all those changes in the law or subject the City to potential liability.

Additionally, the City has adopted a City Manager/Council form of government. In effect, this form of government puts the personnel decisions of the City under the direct responsibility of the City Manager and not the City Council. Thus, City personnel, with the exception of the City Manager, City Clerk, and City Attorney, are buffered from the political process and can be selected and promoted on the basis of merit. The System adds to this protection by giving an overlay of further process on top of this fundamental protection in the division of authority.

The most fundamental change in the law dealing with public personnel issues in California rests in the conclusion by the California Supreme Court in *Skelly vs. State Personnel Board*, (1975) 15 Cal. 3d 194, that public employees have a property interest in their employment. As such, a public employee must be provided due process of law before that property interest can be changed or taken. As a result, whether or not there is a System in place, no public employee may be substantially disciplined or discharged without being provided procedural due process recognized under the California and United States Constitutions. Civil Service Systems such as ours provide an added layer of process and protection to public employees on top of the already substantial protection afforded public employees by the California Supreme Court in its decision.

Additionally, the City has its own EPM, which was approved by the Council through adoption of a resolution on December 11, 2001. The EPM also provides protection to all City personnel, and it specifically provides procedural protections to non-Civil Service employees of the City, thus carrying out the dictates of the Supreme Court under the *Skelly* decision.

Additional protection is also provided by labor agreements. All city Civil Service employees have representation through their labor organizations. All organizations have Memorandums of Understanding ("MOU")² with the City. These MOUs have protections built into them, including grievance procedures for addressing issues arising out of the agreement.

Further, employees' are also protected by anti-discrimination laws enacted by the State of California and the United States. Thus, there is a complex web of laws providing protections for City employees with at least four separate elements.

In light of the substantial protection either instituted by the courts or enacted by the legislature, the trend in California is for either the elimination of the civil service systems or modifications of the system so they do not duplicate in overly complicated and already complex area of the law.

Staff recommends the Board finalize this issue by asking itself the question as to whether or not it feels the System provides a substantial benefit to the City. If it does, the System should remain in effect and it would be your recommendation to not repeal Article VIII of the Charter. If the System does not provide a substantial benefit to the City, then Article VIII of the Charter should be placed before the voters for possible repeal.³

² This term is simply a "term of art" in the area of employment law that is used to describe a contract between a labor organization and an employer.

³ As we have reported in the past the Civil Service System is enabled and based upon Article VIII of the Charter. It is then given substance by Ordinance 866 (Newport Beach Municipal Code ("NBMC") Chapter 2.24).

2. Modification of System.

Assuming the answer to the question of whether or not the System should be eliminated is "no," the Board then needs to face the question of whether or not the System should be modified in order to modernize it for efficient government purposes. If modernization is appropriate, staff recommends the consideration should focus on retaining the core protections the Board feels are important while making the System easier to administer. Thus, the Board should address the question of whether each of the functions performed by the System provides substantial benefit to the City. The Board can recommend keeping all roles that provide a substantial benefit and recommend eliminating those roles that do not provide such a benefit.

As discussed, there are four roles to consider.

a. Recruitment Oversight.

Civil Service System provides rules for recruitment and promotion within the City. The Board oversees every recruitment process and promotional process provided to Civil Service departments. It performs this function by approving testing procedures and advertisement prior to the process beginning. The Board then certifies any employment list created by the process and hears any appeals from the process. It is noted that the City's EPM also provides for recruitment, appointment and promotion with substantial protection for the employees in the process and protections of the merit based nature of the personnel system. (EPM sections 5 and 6.)

Review of the Board's records over the last five years reveals that it has not modified substantially any recommendation regarding any recruitment process presented by staff. It has not ever refused to certify an employment list.

b. Discipline Appeals Board Function.

The Board is charged with hearing appeals from disciplinary decisions within the System, and also has a role outside of the System pursuant to the EPM to hear such appeals. In this capacity the Board serves as an objective fact finding body determining contested issues and appropriateness of discipline in the System's setting. The Board's decisions on appeals from discipline in the System are final. It has performed role of a discipline appeals board up to six times over the course of the fifteen years.

Employee procedural due process rights are also protected under section 13 of the EPM. It is also noted that the Board acts as a recommending appeals board for all non-Civil Service employees in the City, making a recommendation to the City Manager in matters of contested discipline. (EPM section 13.4.) The final decision, however, rests with the City Manager in the context of non-civil service employees.

c. Investigative Function.

The Board performs its investigative function when requested by the City Manager, the City Council or a recognized labor organization. It looks into issues arising under the System to make recommendations, if any, for modification of the System or to address issues as needed to accomplish the purpose of the System.

Our review of City records indicates that that function has only been performed once in the Board's history. That one time arises from the Police Management Association's request for an investigation arising out of the promotional processes of the Police Department that went forward last year. The Board played an important role in assisting and addressing the issues raised in that investigation. To date, it appears that the resolution achieved has been accepted by all interested parties as at least appropriate.

d. System Oversight.

The Board oversees the implementation of the System in the City and makes recommendations to the City Council for its modification. Multiple recommendations have been made for modification arising from the business of the Board last year. One such modification is the Board's recommendation to eliminate a candidate's right to appeal a decision to not hire that individual. In addition, several recommendations were made in the context of the police promotional investigation.

3. Updating Existing Ordinance.

Staff recommends against updating the existing ordinance. To perform this task, we would need to go through and identify each individual problem area, draft appropriate language, and recommend an update of the ordinance be placed on the ballot of November 2010. The process of updating an initiative ordinance is time consuming and costly. It puts complex issues regarding personnel law of the City into the voting box. It would be difficult and unfair to ask the electorate to analyze all of the complex issues that would be raised with respect to updating the System.

Alternatively, staff recommends replacement of the ordinance, keeping the portions that provide substantial benefits to the City, with an ordinance adopted by the City Council. This approach would allow for the modification of the ordinance as the law changes and personnel practices develop.

Should the replacement ordinance option be chosen, staff will proceed to draft a replacement ordinance for consideration by the City Council that incorporates the functions of the System that benefit the City. The replacement of our ordinance will be presented to the Council prior to the election in November. If adopted by the Council, the replacement ordinance will take effect only if the former ordinance is repealed by the voters. In this manner, we could update and modify the System, bringing it current

with existing law and providing for efficient government, while allowing for subsequent modification as needed by the City Council action.

5. Assistant/Deputy Chief Level.

Staff recommends modification of the Charter to allow for creation for what in effect is an Assistant/Deputy Chief position or positions in each public safety department, regardless of the name assigned to it. The position or positions would not be in the System nor represented by organized labor. At present the two Chief Officers are the only persons in their departments not organized and not in the System. They have no backup at their executive management level that does not have any potentially competing interest to the interests of the departments who can act fully in their place.

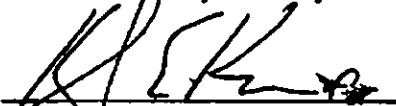
Based upon the above, staff recommends modification of the Charter so that there can be an exemption from the System of an Assistant/Deputy Chief level of executive management officers between the two Chief Officers in fulfilling their roles as within their departments. This exemption would be consistent with the existing Charter provisions that exempt out Assistant City Managers and Assistant City Attorneys. (Charter section 802.)

CONCLUSION:

Staff seeks the recommendation of the Board with respect to the above complicated issues. We have tried to break them down into their component parts so you can address them one at a time. We ask that you take action on each specific question so we can give express recommendation as to the Charter Update Commission and to the City Council.

Prepared and submitted by:

Office of the City Attorney



David R. Hunt
City Attorney

cc: Dave Kiff, City Manager
Terri Cassidy, Human Resources Director
Teri Craig, President, City Employees Association
Chad Ponegalek, President, Firefighters Association

Honorable Chair and Members of the Civil Service Board
March 1, 2010
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Dave Mais, President, Fire Management Association
James Randal, President, League Employees Association
Brent Jacobsen, President, Lifeguard Management Association
David Syvock, President, Police Employees Association
Tom Gazsi, President, Police Management Association
Mel Fleener, President, Professional/Technical Association
Josh Yocam, President, Association of Newport Beach Ocean Lifeguards
President, Part-Time Unit

(A09-00229) - Mar01-Modernization

ATTACHMENT 2

Charter of the City of Newport Beach,

Article V, City Manager

Article V City Manager

Section 500. City Manager.

There shall be a City Manager appointed by the City Council who shall be the chief administrative officer of the City. In the selection of a City Manager the City Council shall screen all qualified applicants and other qualified persons known by the Council to be available. It shall appoint by a majority vote, the person that it believes to be best qualified on the basis of his executive and administrative qualifications, with special reference to his experience in, and his knowledge of, accepted practice in respect to the duties of the office as set forth in this Charter. The City Manager shall serve at the pleasure of the City Council.

Section 501. Residence.

The City Manager need not be a resident of the City at the time of his appointment, but he shall establish his residence within the City within ninety days after his appointment, unless such period is extended by the City Council, and thereafter maintain his residence within the City during his tenure of office.

Section 502. Eligibility.

No person shall be eligible to receive appointment as City Manager while serving as a member of the City Council nor within one year after he has ceased to be a City Councilman.

Section 503. Compensation and Bond.

The City Manager shall be paid a salary commensurate with his responsibilities as chief administrative officer of the City, which salary shall be established by ordinance or resolution. The City Manager shall furnish a corporate surety bond in such form and in such amount as may be determined by the City Council.

Section 504. Powers and Duties.

The City Manager shall be the head of the administrative branch of the City government. He shall be responsible to the City Council for the proper administration of all affairs of the City. Without limiting the foregoing general grant of powers, responsibilities and duties, the City Manager shall have power and be required to:

- (a) Appoint, and he may suspend or remove, subject to the provisions of this Charter, all department heads and officers of the City except elective officers and those department heads and officers the power of whose appointment is vested by the Charter in the City Council, and approve or disapprove all proposed appointments and removals of subordinate employees by officers or department heads.
- (b) Prepare the budget annually, submit such budget to the City Council and be responsible for its administration after its adoption.
- (c) Prepare and submit to the City Council as of the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding fiscal year.
- (d) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem to him desirable.
- (e) Establish a centralized purchasing system for all City offices, departments and agencies.
- (f) Prepare rules and regulations governing the contracting for, purchasing, storing, distribution, or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the City Council for adoption by it.
- (g) See that the laws of the State pertaining to the City, the provisions of this Charter and the ordinances of the City are enforced.
- (h) Exercise control of all administrative offices and departments of the City and of all appointive officers and employees except those directly appointed by the City Council and prescribe such general rules and regulations as he may deem necessary or proper for the general conduct of the administrative offices and departments of the City under his jurisdiction.
- (i) Perform such other duties consistent with this Charter as may be required of him by the City Council.

Section 505. Meetings.

The City Manager shall be accorded a seat at the City Council table and at all meetings of boards and commissions and shall be entitled to participate in their deliberations, but shall not have a vote.

Section 506. Removal.

The City Manager shall not be removed from office during or within a period of ninety days next succeeding any municipal election at which a member of the City Council is elected. At any other time the City Manager may be removed only at a regular meeting of the City Council and upon the affirmative votes of a majority of the members of the City Council.

Section 507. Manager Pro Tempore.

The City Manager shall appoint, subject to the approval of the City Council, one of the other officers or department heads of the City to serve as Manager Pro Tempore during any temporary absence or disability of the City Manager. If he fails to make such appointment, the City Council may appoint an officer or department head to serve as such Manager Pro Tempore.

ATTACHMENT 3

City of Newport Beach Municipal Code,

Chapter 2.24, Civil Service System

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**Chapter 2.24
CIVIL SERVICE SYSTEM***

Sections:

- 2.24.010 Definitions.
- 2.24.020 Inclusion in System.
- 2.24.030 Purpose of System.
- 2.24.040 Board Established.
- 2.24.050 Responsibilities and Authority of Board.
- 2.24.060 Responsibilities and Authority of City Manager.
- 2.24.070 Appointments.
- 2.24.080 Recruitment and Selection.
- 2.24.090 Employment Lists.
- 2.24.100 Selection of Fire and Police Chiefs.
- 2.24.110 Examination Announcements.
- 2.24.120 Inspection of Examination Papers.
- 2.24.130 Conditions for Employment.
- 2.24.140 Employee Appeals.
- 2.24.150 Grounds for Demotion, Suspension or Discharge.
- 2.24.160 Board Hearings.
- 2.24.170 Political Activities.
- 2.24.180 Status of Prior Employees.
- 2.24.190 Conflicts with City Charter.
- 2.24.200 Codification Conditions—Amendments.
- 2.24.210 Penalty for Violation.

* Ordinance 866 from which this chapter was derived is an initiative ordinance and may be repealed or amended only as provided in Section 2.24.200.

2.24.010 Definitions.

The following terms, whenever used in this chapter shall be construed as follows:

Acting Appointment. The term "acting appointment" shall mean the temporary appointment of a person to a position in a class for which there is no employment list; to a position occupied by a regular employee on suspension as provided in Section 2.24.070; or to a position occupied by a probationary or regular employee who is on a leave of absence.

Allocation. The term "allocation" shall mean the assignment of a single position to the proper class in accordance with the specifications for that class.

Applicant. The term "applicant" shall mean a person whose application for employment has been accepted, but who has not yet taken part in the selection procedure for a class.

Board. The term "board" shall mean the Civil Service Board established pursuant to this chapter and the Newport Beach City Charter.

Candidate. The term "candidate" shall mean an applicant who is participating in the selection procedure for a class.

Certification. The term "certification" shall mean the act of notifying a department head of the candidates whose names appear on employment lists as set forth in Section 2.24.090.

City. The term "City" shall mean the City of Newport Beach.

City Charter. The term "City Charter" shall mean the City Charter of the City of Newport Beach.

City Council. The term "City Council" shall mean the City Council of the City of Newport Beach.

Class. The term "class" shall mean a group of positions sufficiently similar in duties, responsibilities, authority, and minimum qualifications for employment to permit combining them under a common title and the equitable application of common standards of selection and compensation.

Class Specifications. The term "class specifications" shall mean a written description of a class, setting forth factors and conditions which are essential characteristics of positions in the class.

Continuous Service. The term "continuous service" shall mean the service without break or interruption of an employee having a probationary or regular appointment.

Copyrighted or Standardized Tests. The phrase "copyrighted or standardized tests" shall mean written

examinations which are used by agencies other than the City of Newport Beach.

Demotion. The term "demotion" shall mean the reduction of an employee from a position in one class to a position in another class which has a lower maximum rate of compensation.

Department Head. The term "department head" shall mean an employee who is the head of an established office or department.

Discharge. The term "discharge" shall mean the termination of a regular employee pursuant to Section 2.24.140.

Eligible. The term "eligible" shall mean a person whose name appears on an employment list.

Employee. The term "employee" shall mean a person legally occupying a position.

Employment Lists. The term "employment lists" as described in Section 2.24.090 shall mean a list of the names of candidates who are eligible for probationary appointments to positions in a particular class.

Entrance-Level Position. The term "entrance-level position" shall mean a position in the first or beginning class in a series of classes which have increasingly responsible duties and progressively higher minimum qualifications and compensation.

Exempt Position. The term "exempt position" shall mean those positions which either are specifically excluded by the City Charter from the Civil Service System or which are not included in the system in accordance with Section 2.24.020.

Layoff. The term "layoff" shall mean, as an economy measure, the separation of an employee because of lack of work or lack of funds.

Open Recruitment. The term "open recruitment" shall mean a recruitment that is not restricted to City employees.

Original Appointment. The term "original appointment" shall mean a person's first appointment as an employee of the City of Newport Beach.

Permanent Position. The term "permanent position" shall mean a position that is expected to exist indefinitely.

Position. The term "position" shall mean a combination of current duties and responsibilities assigned to a single employee and performed on either a full-time or part-time basis.

Probationary Status. The term "probationary status" shall mean the status of a person who has acquired a probationary appointment.

Probation Period. The term "probation period" shall mean a working test period that is part of the selection process and during which an employee is required to demonstrate his fitness for the duties of the position to which he has been assigned by actual performance of such duties.

Promotion. The term "promotion" shall mean the advancement of an employee from a position in one class to a position in another class which has a higher maximum rate of compensation.

Promotional Recruitment. The term "promotional recruitment" shall mean a recruitment that is restricted to City employees.

Reallocation. The term "reallocation" shall mean the reassignment of a single position in a class to a different class on the basis of a change in the duties and responsibilities of the position.

Reassignment. The term "reassignment" shall mean the change of an employee by a department head from a position in a class to another position in the same class.

Recruitment. The term "recruitment" shall mean the process of attracting qualified persons to participate in a selection process for a class.

Regular Employee. The term "regular employee" shall mean an employee who has successfully completed his probationary period in a position.

Regular Status. The term "regular status" shall mean the status of an employee who has acquired a regular appointment.

Reinstatement. The term "reinstatement" shall mean the reemployment of a former employee.

Rejection. The term "rejection" shall mean separation from the City service of an employee who does not successfully complete his probation period in a position and who does not have regular status in another position in a different class; or, the reduction of an employee who did not successfully complete his probation period in a position to another position in a different class in which he has acquired regular status.

Resignation. The term "resignation" shall mean an employee's voluntary separation.

Rules and Regulations. The term "rules and regulations" shall mean the Civil Service rules and regulations adopted pursuant to this chapter.

Selection. The term "selection" shall mean the process of evaluating the qualifications of candidates through one or more techniques.

Separation. The term "separation" shall mean the termination of an employee's service with the City.

Suspension. The term "suspension" shall mean the temporary separation of an employee as a disciplinary action.

System. The term "system" shall mean the Civil Service System created in accordance with this chapter and the Newport Beach City Charter, and including only those positions to which the provisions of this chapter apply.

Temporary Position. The term "temporary position" shall mean a position of limited duration.

Transfer. The term "transfer" shall mean a change of an employee from one position to another position in the same class or in another class having the same maximum salary rate, involving the performance of basically similar duties, and requiring substantially the same minimum qualifications.

Vacancy. The term "vacancy" shall mean a position that is not occupied by an employee having either a probationary or regular appointment. (Ord. 866 § 1; November 24, 1958)

2.24.020 Inclusion in System.

Pursuant to Article VIII of the City Charter, all full-time, regular, and permanent positions and employment in the Police and Fire Departments are included in the system, except those positions excluded by Section 802, of the City Charter. The City Council, by ordinance, may include in the system positions in other departments. (Ord. 866 § 2; November 24, 1958)

2.24.030 Purpose of System.

The purpose of the system is to establish an equitable and uniform procedure for dealing with personnel matters; to attract to the City service the most competent persons available; to assure that the appointment and promotion of employees will be based on merit and fitness; and to provide reasonable security for employees. (Ord. 866 § 3; November 24, 1958)

2.24.040 Board Established.

There is hereby established a Civil Service Board consisting of five members to be appointed by the City Council in accordance with the City Charter. Each of the members shall be a person of good repute in his business, profession or occupation and known to support civil service principles in the public service. (Ord. 866 § 4; November 24, 1958)

2.24.050 Responsibilities and Authority of Board.

The functions of the Board shall be:

A. **Meetings.** To determine the order of business for the conduct of its meetings; to hold regular meetings at least once a month and such special meetings as are necessary on call of the chairman or a majority of the members of the Board, and to keep a record of its proceedings and transactions. A majority of the members of the Board shall constitute a quorum for the transaction of business.

B. **Rules and Regulations.** To recommend to the City Council, after approval by the City Attorney and after a public hearing thereon, the adoption, amendment, or repeal of rules and regulations to implement the provisions of this chapter. After adoption by motion of the City Council, such rules and regulations shall have the force and effect of law.

C. **Appeals.** To receive and hear appeals submitted by any person or any applicant or candidate for a position in the City employment relative to original appointment, promotion, dismissal, demotion, suspension and other disciplinary actions; the alleged violation of this chapter or the rules and regulations; and to certify its finding and recommendations as provided in this chapter.

D. **Advisory Role.** To act in an advisory capacity to the City Council on personnel administration in the City service.

E. **Recruitment and Selection.** Subject to the provisions of this chapter and the rules and regulations, to establish policies and approve procedure for the recruitment and selection of Civil Service personnel, including, but not limited to, the posting of recruitment notices, the preparation and scoring of examinations, and the establishment and certification of employment lists.

F. **Investigations.** To make any investigation concerning the administration of personnel in the City service and report its finding to the City Council and City Manager when requested to do so by the City Council, the City Manager or by any organized City employee's association.

In any investigation or hearing it conducts, the Board shall have the authority to examine witnesses under oath and to compel their attendance or the production of evidence before it by subpoenas issued in the name of the City and attested by the City Clerk. It shall be the duty of the Police Chief to cause all such subpoenas to be served, and refusal of a person to attend or to testify in answer to such subpoenas shall subject said person to prosecution in the same manner set forth by law for failure to appear before the City Council. Each member of the Board shall have the power to administer oaths to witnesses. (Ord. 866 § 5; November 24, 1958)

2.24.060 Responsibilities and Authority of City Manager.

The City Manager shall be responsible for the following:

A. Rules and Regulations. Preparation of amendments to the rules and regulations for recommendation to the Board. The City Attorney shall approve the legality of such amendments prior to their submission by the Board to the City Council for its approval. Rules and regulations shall be adopted by motion of the City Council.

B. Class Specifications. Subject to approval by the Board, the preparation and revision of class specifications for positions included in the system.

C. Personnel Procedures. Administration of Board policies and procedures within the framework of this chapter and the rules and regulations, including:

1. Public announcement of vacancies and examinations and the review of applications for employment.
2. Preparation and conduct of examinations and the establishment and use of employment lists.
3. Certification and appointment of eligibles.
4. Evaluation of employees during probation periods and periodically thereafter.
5. Appointment, transfer, promotion, demotion, rejection, layoff, dismissal and reinstatement of employees.
6. Allocation of positions to classes on the basis of duties, responsibilities and minimum qualifications.
7. Maintenance and use of personnel records.
8. Maintenance of effective communications between employees and their supervisors; between employees and the City Manager; and between employees and the Board relative to conditions of employment. (Ord. 866 § 6; November 24, 1958)

2.24.070 Appointments.

A. General Policy. Appointments shall be based on merit and fitness to be ascertained so far as practicable by competitive examination. Appointments shall be made from employment lists by the department head on approval of the City Manager.

B. Employment Lists. Subject to the provisions of this chapter with respect to reemployment lists and the selection of the Police and Fire Chiefs, when an appointment is to be made the names of the highest three eligibles willing to accept appointment shall be certified to the department head in the order which they appear on the appropriate employment list and the appointment shall be limited to these eligibles.

C. Acting Appointments. In the absence of an employment list for a class, a vacant position in that class may be filled by an acting appointment. No credit shall be allowed in any examination or the establishment of any employment list for service rendered under an acting appointment.

D. Temporary Positions. Appointments to temporary positions need not be made from employment lists.

E. During Suspension. During the period of suspension of a regular employee from a position or pending final action on proceedings to review the suspension, demotion, or dismissal of a regular employee, the position may be filled only by an acting appointment.

F. Transfers. With the approval of the City Manager, an employee may be transferred from one position to another. Transfers shall not affect in any way the status, rights and privileges of an employee under this chapter.

G. Reinstatement. Provisions governing the reinstatement of a former employee shall be provided in the rules and regulations. (Ord. 866 § 7; November 24, 1958)

2.24.080 Recruitment and Selection.

A. Recruitment. Recruitment shall be specified by the Board as promotional or as open. Insofar as practical and consistent with the best interests of the City service, all vacancies shall be filled by promotion.

B. Selection.

1. The scope of an examination for a class shall be approved by the Board and stated in the examination announcement. It may consist of any one or a combination of the following techniques: written, oral, and demonstration tests; and appraisal of education and experience; and any test of manual skills or physical fitness which fairly evaluates the candidates;

2. A probation period as established in the rules and regulations shall apply to all appointments to positions included in the system, except acting appointments. Successive probation periods in a position shall not be allowed. In the event of promotion to a position in a higher class and at any time within his probation period in that position, an employee may be rejected by the department head and reduced to the position he occupied prior to such promotion without right of appeal to the Board, provided he had acquired

regular status in such former position. If the employee had not acquired regular status in the system prior to such promotion, he may be discharged without right of appeal to the Board. (Ord. 866 § 8; November 24, 1958)

2.24.090 Employment Lists.

A. **Priorities.** Priority for consideration for employment shall be given to employment lists in the following order: reemployment lists, promotional employment lists, and open employment lists.

B. **Reemployment Lists.** The reemployment list for a class shall consist of the names of the following:

1. **Layoff.** Regular employees who have been laid off for lack of work or lack of funds.
2. **Position reallocation.** Regular employees whose positions in a class have been reallocated to a class with a lower maximum rate of compensation.

Such names shall be placed on the list in reverse order of layoff or position reallocation. The order of layoff or position reallocation shall be on the basis of inverse employee seniority in the class.

C. **Promotional Employment Lists.** Promotional employment lists shall consist of the names of City employees who have been successful in a promotional recruitment and examination.

D. **Open Employment Lists.** Open employment lists shall consist of the names of all candidates who have been successful in an open recruitment and examination.

E. **Layoffs.** The names of probationary employees who are laid off or reduced in rank for lack of work or lack of funds shall be restored to the same promotional or open employment list from which the original appointment was made and in the same order as when the original appointment was made.

F. **Certification.** Certification shall be made in conformance with the following provisions:

1. If a reemployment list exists for the class, the highest name on such list shall be certified for each vacancy to be filled. Names on promotional or open employment lists shall not be certified if a reemployment list for the class exists.

2. Except for acting appointments, no person may be appointed or transferred to any position in the system unless he possesses the minimum qualifications set forth in the class specifications for that position.

G. **Duration.** The duration of employment lists shall be as prescribed in the rules and regulations. (Ord. 866 § 9; November 24, 1958)

2.24.100 Selection of Fire and Police Chiefs.

A. **Intent.** It is the intent of this section that vacancies in the position of Police Chief and Fire Chief be filled by the best qualified persons available as determined by competitive examination. Qualifications being substantially equal, preference shall be given to candidates in the Newport Beach Fire and Police Departments who qualify under the selection process herein described.

B. **Not Included in System.** This section shall not be construed to include the positions of Police Chief and Fire Chief in the system.

C. **Selection Process.** The selection of the Police Chief and Fire Chief shall be made by the City Manager from among the candidates whose names appear on an open employment list for the class. Such list shall be created as a result of an examination consisting of a written test weighted at fifty percent and qualifications appraisal weighted at fifty percent. The minimum qualifying score on each phase of the examination shall be seventy percent.

D. **Preparation of Written Test.** The written test shall be prepared by a professional personnel agency designated by the City Manager with the approval of the Civil Service Board.

E. **Qualifications Appraisal Board.** The qualifications appraisal board which interviews candidates successful on the written test shall consist of the following:

1. The Chairman and one other Board member selected by the Board.
2. Two chiefs selected by the Board from other Police or Fire Departments in cities with populations comparable to Newport Beach.
3. One person selected by the City Manager.

F. **Establishment of Qualification Factors.** The scope of the written test and the factors to be rated by the qualifications appraisal board shall be jointly established by the City Manager and the Board.

G. **Conformance to Minimum Qualifications.** In order to be eligible to compete in the selection process for Police Chief or Fire Chief, all candidates must possess the minimum qualifications set forth in the class specifications. Such class specifications shall be prepared by the City Manager with the approval of the Board. (Ord. 866 § 10; November 24, 1958)

2.24.110 Examination Announcements.

Examination announcements shall be posted not less than two weeks prior to the final date for submitting applications. Such posting shall be in a conspicuous place at the City Hall, at the office of the appropriate

department, and at such other places as the Board deems appropriate. (Ord. 866 § 11; November 24, 1958)

2.24.120 Inspection of Examination Papers.

A. In General. The examination papers of candidates are not subject to inspection by the public. Upon request made within seven days after the notices of the examination results have been mailed, any candidate may inspect his own examination papers, including the questions and his answers, excepting copyrighted or standardized tests. On copyrighted or standardized tests the candidate may review the accuracy of scoring and computations by comparing his answer sheet with the key answer sheet. The written comments of a qualifications appraisal board and the written evaluation of a psychiatrist, if any, shall not be reviewed by the candidate. On request of the candidate, his rating by the qualifications appraisal board shall be summarized for his information.

B. Review Procedure. If the candidate believes an error has been made in the grading of his examination or in the credit given to him, he may, within twelve days after the mailing of examination results, make written application to the Board for a review; provided, however, that in such application he must state specifically and particularly wherein he believes an error has been made.

Upon receipt of such application and in no case later than its next regular meeting, the Board shall examine the candidate's papers and grades. Any error or injustice shall be corrected, and any change in the order of standing of candidates as a result thereof shall be made by the Board. No appointments shall be made from the employment lists until the Board has acted upon such application. The Board's decision shall be final. (Ord. 866 § 12; November 24, 1958)

2.24.130 Conditions for Employment.

A. Applications. The Board shall have the right to require all applicants to submit applications, agreements, or statements pertinent to their employment.

B. Exempt Positions. Where there is no actual break in continuous service, an employee having probationary or regular status in a position in the system who is appointed to an exempt position, shall retain such status in the Civil Service position. Upon vacating the exempt position, the employee shall on his request be restored to his former status in the position unless the reason for such vacating is sufficient grounds for discharge from the City service as described in this chapter.

This provision shall not apply to an employee who resigns from a position in the system and, without a break in his continuous service with the City, is appointed to an exempt position. (Ord. 866 § 13; November 24, 1958)

2.24.140 Employee Appeals.

The Board shall convene in regular or special meetings for the purpose of reviewing appeals of regular employees as follows: Any regular employee in the system who has been suspended, demoted, or discharged may, within a period of five days after such action, request of the department head a written statement of the reasons for such action. The department head shall furnish such statement within five days thereafter. The employee may, within ten days thereafter, file a written answer to such reason with the Board. The Board shall within fifteen days investigate the case, and shall schedule a hearing. The hearing shall be a closed hearing at the request of the employee. (Ord. 866 § 14; November 24, 1958)

2.24.150 Grounds for Demotion, Suspension or Discharge.

Employees in the system may be demoted, suspended, or discharged only on the following grounds: Incompetency; inefficiency; dishonesty; misconduct; insubordination; or failure to observe departmental or City rules and regulations. (Ord. 866 § 15; November 24, 1958)

2.24.160 Board Hearings.

A. In General. Board hearings need not be conducted according to technical rules relating to evidence and witnesses.

B. Right to Counsel. The employee may be represented by counsel and shall have the right to produce witnesses to testify in his behalf. The Board shall issue subpoenas and compel the attendance of all witnesses.

C. Modification of Disciplinary Action. The Board may modify or revoke a disciplinary action only on the following grounds:

1. The facts do not justify the action taken.
2. Substantive violation or omission of procedure was made.
3. The action taken was unreasonable, capricious or arbitrary in view of the offense, the

circumstances surrounding the offense, and the past record of the employee.

D. Reimbursement. An employee shall be reimbursed for a loss of pay arising from a disciplinary action against him to the extent that it is subsequently revoked or modified by the Board. Reimbursement shall be confined to the period of time between the date of such disciplinary action and the date of the Board's final decision as set forth in Section 2.24.160.

E. Findings. The Board shall certify copies of its findings and decisions to the City Manager, the department head from whose action the appeal was made, and the appellant employee. The Board's decision shall be final. (Ord. 866 § 16; November 24, 1958)

2.24.170 Political Activities.

A. Prohibited. Any person occupying a position included in the system shall not:

1. Take an active part in a County of Orange or City political campaign.
2. Act as a worker at the polls or distribute badges, pamphlets, dodgers, or handbills of any kind favoring or opposing any candidate for election or nomination to a County of Orange or City office.

B. Unaffected. This chapter does not prohibit any person occupying a position included in the system from:

1. Becoming or continuing to be a member of a political club or organization.
2. Attending a political meeting.
3. Enjoying complete freedom from interference of any kind in casting his vote.
4. Seeking or accepting election or appointment to a public office while on leave of absence.
5. Seeking signatures to any initiative or referendum petition directly affecting his rates of compensation, hours of work, retirement, or other conditions of employment.
6. Distributing badges, pamphlets, dodgers or handbills, or other activities in connection with such petition if not carried on during his hours of work or when he is dressed in the uniform required in his City department. (Ord. 866 § 17; November 24, 1958)

2.24.180 Status of Prior Employees.

Any employee who, prior to November 29, 1958, attained probationary or regular status in the system shall retain such status. Employees in permanent positions in the Police and Fire Departments on such date who had not previously been considered as being in the system shall on such date be presumed to have completed their probation periods and shall acquire regular status in the system. (Ord. 866 § 18; November 24, 1958)

2.24.190 Conflicts with City Charter.

In the event of any conflict between this chapter and the City Charter, the provisions of the City Charter shall prevail. (Ord. 866 § 20; November 24, 1958)

2.24.200 Codification Conditions—Amendments.

Ordinance 866 may be codified by the City Council in a single chapter of the Newport Beach Municipal Code, but may not be repealed or amended except by a majority vote of the electors voting thereon at any general or special municipal election. A majority of two-thirds of the electors voting thereon is necessary for the approval of any amendment or repeal that withdraws any department, officer or employee from the system. (Ord. 866 § 21; November 24, 1958)

2.24.210 Penalty for Violation.

Any person who violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in Section 1.04.010. (Ord. 866 § 22, 1958)

This page of the Newport Beach Municipal Code is current through Ordinance 2009-32, passed January 12, 2010.

Disclaimer: The City Clerk's Office has the official version of the Newport Beach Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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**CIVIL SERVICE BOARD
MEETING MINUTES**



DATE: March 8, 2010
8:00 AM – 10:05 AM

BOARD: Doug Coulter, Chairperson
Hugh Logan, Vice Chairperson
James "Mickey" Dunlap, Board Member
Debra Allen, Board Member
Maiqual "Mike" Talbot, Board Member

STAFF: Terri L Cassidy, Human Resources Director/Secretary to the Board
David Hunt, City Attorney
Jyll C Ramirez, Administrative Assistant to the HR Director

1. FLAG SALUTE

The Pledge of Allegiance was led by Board Member Allen.

2. ROLL CALL

All Board Members were present.

3. CONTINUED DISCUSSION FROM THE MARCH 1, 2010 CSB MEETING ON CIVIL SERVICE BOARD AND SYSTEM – CHARTER UPDATE

Vice Chairperson Logan asked Mr. Hunt if he is recommending to the City Council that he wants the City of Newport Beach to be governed by general law instead of the City Charter.

Mr. Hunt replied that he is a strong advocate of the Charter. Mr. Hunt reiterated that his job is to research and obtain information for the City Council so that they may make the best decisions for the City of Newport Beach and to make sure that they function within the laws.

Ms. Cassidy explained that the Charter Update Commission (CUC) is charged with deciding which City governing documents should be updated and need to come into compliance with current State and Federal laws. The primary question is how do we continue to work under the Charter in a Civil Service System so that it is fair, non-discriminatory, respectful of sound practices, cooperative and reasonable in light of all of the changes that have occurred since 1958. Although the question has been posed on whether or not the Civil Service System should be disbanded, it has never been recommended by staff. Human Resources has researched 54 different cities and discovered that five of them have chosen to dissolve their Civil Service System. However, a majority of them have different variations of the System, which include a

span from covering Police and Fire employees only to covering all City employees. Some other options include a stronger System with additional responsibilities or eliminating monthly meetings.

Ms. Cassidy told the Board that eliminating the Civil Service Board will not be her or Mr. Hunt's recommendation to the CUC and requested that the Board not focus on Mr. Praet's recommendation for this meeting and to concentrate on modifying the Charter and Ordinance 866, which was first created in 1942 depicting the Civil Service Board as a trial board before being modified in 1958. Ms. Cassidy requested the Board's recommendation.

Chairperson Coulter asked Mr. Hunt if he agreed with Ms. Cassidy's statement.

Mr. Hunt replied that he did and has never said anything different.

Board Member Coulter stated for the record:

The Civil Service Board functions as a fair and impartial governing board designed to assist both the City employees as well as the citizens of Newport Beach. It offers a professional group of experienced business people who are carefully selected to help guide successful resolutions of personnel and policy issues, all without charge to the City itself. The Board fulfills a vital role, especially considering the current lack of employee performance reviews.

Board Member Coulter directed the focus to Section 710, which explains how the Board is selected.

Board Member Logan shared some of his opinions:

- He prefers a five-member Board.
- He is in favor of two Board Members being included in the interviews for the Fire and Police Chiefs.
- He raised the question of who else could be chosen that may have better knowledge of the function.
- He would prefer to not have the City Manager pick the interviewers so that there would be no perception of conspiracy or having too much power.
- He would like to see all Safety Employees in the City covered by the Board.
- He does not advocate a role in the hiring of the Department Directors.
- He does not want to eliminate the Civil Service Board, because he believes the Board protects the City from litigation.
- He concluded by stating that the Civil Service Board is fair and has integrity.

Board Member Talbot asked what is the significant requirement that should be recognized to fall within the System, as the "Classified Service" appoints two of the members.

Ms. Cassidy explained that, as it currently exists, it is not clear who can come before the Board. She continued to inform the Board that there are both sworn and non-sworn employees in the same bargaining unit (e.g. Police Association), and because of the wording, they may all come before the Board and be included in the System. She told the Board that if they believe it is clear enough, it does not need to be addressed.

Board Member Dunlap understands that there are others areas of the Charter that also need to be changed, but have nothing to do with the CSB. He is in favor of having another upper-level management position in a department that is not in an employee association. In addition, he believes Ordinance 866 should be the prevailing document and pointed out that the City's Employee Policy Manual can be changed by the City Council at any time, whereas Ordinance 866 may only be changed by majority vote of the people. Therefore, if the City Council could change the integrity of Ordinance 866 by a vote of four members, they could change the protection for the Safety Employees which could be used as a bargaining tool during meet and confer.

Board Member Allen asked the Association Representatives for input. She suggested that the Motion include a change in the language from "classifications" to naming the five bargaining units protected by the Board (NBPA, PMA, LMA, FMA and NBFA).

Ms. Cassidy cautioned the Board that the names of the Associations could change under Meyers-Milias-Brown, and the purpose in defining the Classifications is only to determine who is making the nomination of the two Board Members.

Chairperson Coulter opened the discussion to the public.

No comments were made.

Board Member Talbot asked what the procedure was to incorporate the Board's suggested changes.

Mr. Hunt explained that he would draft the changes recommended by the CSB and present it to the City Council, who would have to put it on the ballot to vote in June 2010.

Board Member Dunlap requested to address Ordinance 866, and explained that he is in favor of updating it to comply with current laws, but still provide protection through the initiative process.

Board Member Allen suggested that they go over Ms. Cassidy's staff report before addressing Ordinance 866.

Ms. Cassidy agreed with Board Member Allen's suggestion, because any changes to the sections in the Charter could affect Ordinance 866.

A Motion was made by Board Member Dunlap to make no changes to Section 710 (Civil Service Board) of the Charter, with the understanding that changing the language from "Classified Service" to "Associations" will be addressed in a different document. Chairperson Coulter seconded the Motion. It was approved 5 Ayes, 0 No.

A Motion was made by Board Member Talbot to make no changes to Section 711, A through E, (Civil Service Board. Powers and Duties.) of the Charter. Board Member Dunlap seconded the Motion. It was approved 5 Ayes, 0 No.

Ms. Cassidy advised the Board that they may change their own rules, so that any changes or concerns may be addressed later.

A Motion was made by Board Member Dunlap to make no changes to Section 801 (System to Be Maintained.) of the Charter and keep the Civil Service System as outlined. Vice Chairperson Logan seconded the Motion. It was approved 5 Ayes, 0 No.

Chairperson Coulter requested that the Board move forward to Section 802 (Positions Included in the System).

Ms. Cassidy described a scenario for the Board in which a Department Director or Chief is out for a period of time. Typically, the Director would designate an employee to act on their behalf and make decisions based on what is in the best interest for the department and City. When that designee is also holding a key position in a bargaining unit, a division of loyalty may occur.

Vice Chairperson Logan asked if this person would be an outside professional or a person that has been selected by the Chief or Director with domain knowledge.

Ms. Cassidy explained that the details have not been worked out, but that the individual's position and knowledge would ideally be similar to the Chief. They would have to step in and be able to direct the department in the Chief's absence.

A Motion was made by Board Member Dunlap to accept the recommended changes to Section 802.2 to read: *City Manager, Assistant City Manager, Executive Assistant to the City Manager, City Attorney, Assistant City Attorney, City Clerk, all Department Heads, and Assistant and Deputy Directors.* Section 802.3 to read: *All Members of appointive boards, commissions and committees.* Section 802.7 to read: *Such other positions, outside the system, as the City Council shall designate, by resolution.* The Motion was seconded by Chairperson Coulter.

Chairperson Coulter opened the discussion to the public.

Lifeguard Management Association (LMA) President Brent Jacobsen addressed the Board to emphasize the importance of specifying who is included in the System by job titles and/or what the duties are of the positions. He explained that during his career the name of his Association (currently LMA) has changed three times and includes part-time employees and public safety employees. His second comment addressed the Deputy or Assistant Chief position discussion, and he stated that he feels strongly that this position be occupied by a current staff member that holds institutional knowledge, instead of going outside the City.

Board Member Allen responded to Captain Jacobsen by letting him know that she is apprehensive to put specific titles in the Charter, since job titles may change. She is more comfortable with "safety employees."

Fire Management Association (FMA) Vice President Ralph Restadius also expressed his concern of how the Assistant or Deputy position will be picked (i.e. internal or external) and whether it will be an at-will position similar to the Chiefs.

Ms. Cassidy explained that the person would be selected through a process and would be at-will.

Firefighters Association (NBFA) President Chad Ponegalek believes that the position would be desirable, but is concerned about the position being at-will. He explained that he thinks some qualified candidates will be less inclined to apply for the position because they will lose their protection. He is also not in favor of this person being an outside candidate.

Vice Chairperson Logan would like the particulars of the Assistant/Deputy position before he will vote for or against it.

Board Member Dunlap reminded Vice Chairperson Logan that the Board is only making a recommendation to the City Council whether or not to consider revising it for the Charter, and he expressed his favor and believes it presents a positive promotional opportunity.

Board Member Allen agrees with Board Member Talbot's philosophy in that the Departments can already create a Assistant/Deputy Chief position that is still protected by CSB. She doesn't see the need to take them out of the System/Associations.

Ms. Cassidy explained that mixed loyalties may exist when a senior management staff member steps into the role of Director, while serving on an Association Board.

Chairperson Coulter brought it back to vote. The Motion did not carry 2 Ayes, 3 No (Logan, Allen and Talbot).

Board Member Allen made a recommendation to change the language for Section 802 from "*all full-time, regular and permanent positions or employment in the Police and Fire Department...*" to "*all safety positions.*"

The Board requested that staff re-draft, and bring back to the Board, Section 802 to include all safety employees including all Police and Fire Department employees. This language would include Lifeguard safety employees should they ever separate from the Fire Department, which has been done in the past.

A Motion was made by Vice Chairperson Logan to make no changes to Section 803 (Withdrawal From System) of the Charter. Board Member Allen seconded the Motion. It was approved 5 Ayes. 0 No.

Chairperson Coulter opened discussion of Ordinance 866. He informed Ms. Cassidy that the Board is not in agreement with staff's recommendation to repeal the Ordinance.

Board Member Dunlap re-stated his remarks from the March 1, 2010 meeting (included in the March 1 Minutes).

Board Member Talbot favors necessary corrections only to the Ordinance.

A Motion was made to retain Ordinance 866 with the exceptions of any updates due to State, Federal and local laws and reserve conflicts as long as they don't dilute the CSB protection through the initiative process by Board Member Dunlap. Board Member Talbot seconded the Motion.

LMA President Brent Jacobsen commented that he believes it is of utmost importance that the CSB be impartial and maintain disciplinary protection. The second important point is that the perception of the ethical wall is problematic.

NBFA Vice President Brian McDonough agrees that updates need to be made while still providing the protection of the CSB. He has found that some of the Charter restrictions have bound HR and unnecessarily slowed down the recruitment processes. He believes it can and should be streamlined.

PMA President Tom Gazsi expressed his support of separating and defining the codes, because of the added burden to already complex situations, like the PMA Investigation. He also advised the Board that it was never his interpretation that Mr. Hunt was recommending or wanting to move towards a general law. Mr. Gazsi expressed his appreciation for the protection of the Civil Service Board.

Chairperson Coulter brought it back to the Board to vote. It was approved 5 Ayes, 0 No.

4. BOARD MEMBER COMMENTS

Chairperson Coulter asked Mr. Hunt how he could uphold an ethical wall when the Board and he have different opinions with regard to the Charter Update.

Mr. Hunt explained that an ethical wall has nothing to do with this position. He reiterated that he has never recommended that the CSB be disbanded and that his motive has always been to seek the Board's recommendation for the Charter Update Commission.

Board Member Dunlap explained to Mr. Hunt that the Board is uncomfortable with him being their representative because they feel that they have a different view than Mr. Hunt.

Mr. Hunt explained that he represents the City as a whole, not just the Civil Service Board. He continued to explain that his job is not to advise the Board as to what recommendations they should make, but to provide legal assistance to the Board so that *they* may make a decision or recommendation.

Board Member Allen informed Mr. Hunt that she does not believe an ethical wall can exist within his office when all of the other staff members work for Mr. Hunt and that he can not remain impartial when it comes to his employees.

Mr. Hunt explained that he and all of the Attorneys in his office work for the City. Mr. Hunt continued to explain his function/role as the City Attorney and does not take a position or decide who is right or wrong in a disciplinary issue. His job is to set the boundaries and advise what is legal.

5. ITEMS FOR FUTURE AGENDAS

None

6. PUBLIC COMMENTS

None

7. ADJOURNMENT

The Civil Service Board meeting adjourned at 10:05 AM

Terri L Cassidy, HR Director
Secretary to the Board