

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

Agenda Item No. _____
February 1, 2010

TO: HONORABLE CHAIR AND MEMBERS OF THE CIVIL SERVICE BOARD

FROM: Terri L. Cassidy, Human Resources Director
Ext. 3300 tcassidy@NewportBeachCA.gov
David R. Hunt, City Attorney
Ext. 3131, dhunt@NewportBeachCA.gov

SUBJECT: CIVIL SERVICE SYSTEM - CHARTER/ORDINANCE UPDATE

RECOMMENDATION:

Continue to review issues related to Civil Service update and prepare to make recommendations regarding same.

DISCUSSION:

At the January Board meeting, staff suggested to the Board that it might be prudent to become familiar with various issues related to modernizing the City's personnel system, including possible modification of the Civil Service System itself. We have outlined some of the issues that have arisen over the last year as well as issues that exist due to independent review. We seek your input to pass on to the Charter Update Commission that is scheduled to hear these matters in March.

1. **Existing Board Recommendations for Modification.**

You have made several recommendations for modification over the last year. Most, though not all, have arisen in the context of Police Promotional Investigation. We list the recommendations you have made below:

- ❖ **Candidate Appeals:** You recommended to the City Council that the provisions of the Civil Service ordinance that allowed candidates to appeal denial of employment be removed from the ordinance.
- ❖ **Police Promotional Investigation Recommendations:** You made the following recommendations to address the findings in the Police Promotional Investigation, all of which may, or may not, be appropriate for amendment to the Civil Service Ordinance:
 - **Recommendation No. 1:** If there is an interest by the City Council in maintaining the PMA Continued Employment Agreement, require a thorough review of the individual agreements by the City Attorney's Office and approval of each agreement by the City Manager.
 - The Board further recommends that if the City Council chooses to maintain a Continued Employment Agreement that it does so in a manner avoiding the isolation of the Police Department through the handling of such agreements

by having Human Resources and the Office of the City Attorney included in the process.

- Recommendation No. 2. Review the concept of "Whole Number Scoring" to determine its effectiveness in future promotional processes and whether or not its continued use is consistent with the purpose of the Civil Service System. If there is no confidence in the concept, it should be abandoned.
 - The Board supports abandoning the use of "Whole Number Scoring."
- Recommendation No. 3. Implement an employee "annual performance review tracking system" designed to ensure the timely completion of evaluations.
 - The Board further recommends the City Council adopt policies that create consequences for the failure of supervisory and management personnel to prepare personnel evaluations in a timely manner.
- Recommendation No. 4. Review the "fitness evaluation" phase of the promotional process to ensure each candidate's annual performance evaluations are an integral part of that process and receive due consideration from the evaluators. If the "Continued Employment Agreement" is going to be retained for retired PMA employees, then obtain a NBPMA endorsement acknowledging the propriety of the allowing retired captains and lieutenants working under a CEA to participate as fitness evaluators. If no such endorsement is obtained, reconsider allowing these practices to continue.
- Recommendation No. 5. Modify the Civil Service Rules relevant to "employment lists" to eliminate any possible ambiguities related to issues associated with the duration of lists, suspension of lists, vacation of lists, and expiration of lists.
 - The Board further recommends clarifying the policy in a manner such that it is clear that employment lists can be extended for less than a year, utilizing language consistent with the Employee Manual indicating that employment lists may be extended for "up to" one year.
- Recommendation No. 6. Prohibit the appointing authority from participating in an evaluator/rater in any future promotional processes within the Police Department. Allowing the appointing authority to evaluate candidates in the preliminary phases of a promotional process is problematic for the following reasons: It creates an opportunity for individuals to exercise undue influence over the process; it sets the stage for grievances and other legal challenges by the candidates based on allegations of bias and unfairness; and it is inconsistent with the stated purpose of the Civil Service System, which is to "assure that the appointment and promotion of employees will be based on merit and fitness."
 - The Board further recommends potentially limiting the choices as to who sits on an interview panel as a rater, restricting who makes the choices, and requiring that Human Resources approve appointments to interview panels.
- Recommendation No. 7. Ensure the City Manager complies with Civil Services Rules relevant to the selection of chief of police, i.e., recruitments are open and competitive, or consider modifying the rules by expanding the City Manager's discretion to hold closed, or internal recruitments, after obtaining City Council approval.
- Recommendation No. 8. Develop a Police Department "succession plan" for the purpose of projecting future vacancies and for determining when promotional processes should be conducted. While there is no way to determine the exact date of any employee's retirement or termination, identifying projected retirement dates will do much to eliminate the disruptions created by unplanned vacancies. Consider the concept of "over hiring" as a means of mitigating the impacts of potential retirements by officers who are approaching their thirty year anniversary with the Department.

- Recommendation No. 9. Define a career development plan applicable to the ranks of sergeant, lieutenant, and captain. Such a plan should be available to anyone who expresses an interest in promoting to mid-management positions and meets, or will meet, the minimum qualifications required to promote to the next rank.
- Recommendation No. 10. Review the responsibilities and potential conflicts of interest involved in the police legal advisor position, as well as the cross-designation of deputy city attorney, to determine if it is in the best interests of the City to retain such a position.
 - The Board Notes the position of Police Legal Advisor has already been eliminated from job descriptions and its relationship with the Office of the City Attorney has been severed. The Board supports and approved that change.

2. Staff Review and Recommendations for Modification.

City staff is now in the process of reviewing City Charter and Ordinance 866 to determine those areas that are obsolete, might be unnecessary, or would be in conflict with laws passed since the 1950's. Below we are providing the Board with a few examples of sections in the system that might be included in a substantive revision.

a) City Charter, Article VIII Civil Service System, Section 802.2.

- This speaks to exempt positions from the Civil Service System. Some changes are needed in subsections below:
 - "one private secretary to the City Manager" – This position does not now exist; it is called Executive Assistant to the City Manager and is not "private" but confidential.
 - "Department Heads" - This does not include Assistant/Deputy Directors or designees, and this omission might cause a conflict of interest if these positions are assigned to represent the Department Head. We would recommend these be added.
 - "City Engineer" – This position is no longer at a Director level. References should be more generic such as Director or such other positions as adopted or designated by City Council Resolution.
 - "all employees of the Library Department, including the Librarian" – We no longer call the Director of that department "Librarian" and we have three levels of Librarians, a Library Manager, and a Director. We could examine why this Department is specifically listed as exempt.

b) Newport Beach Municipal Code Sections 2.24.170 re Political Activities:

- This section prohibits Civil Service employees from engaging in several political activities. Regrettably, however, the prohibitions in the section are largely unconstitutional and, therefore, have not been enforced for several years. As a result, this section needs to be repealed or modified in order to be brought into conformance with state and federal law.

The items listed above are examples of obsolete references.

c) Ordinance 866, Section 5. Responsibilities and Authority of Board. Subsection (e) Recruitment and Selection.

- This section speaks to establishing policy and approving procedures for the recruitment and selection of Civil Service personnel.
 - Since the adoption of this ordinance, in 1958, the City organization has changed and we now have a professional Human Resources

Department with the ability to conduct recruitment and selection activities. The requirement that the Board approve opening recruitments might be unnecessary because the policy and procedures for the recruitment are outlined for Human Resources to follow. This could eliminate the conflict between the Board approving a process then hearing an appeal against the same process they approved.

- According to Section 6. Responsibilities and Authority of City Manager. Subsection (c).3 includes the certification and appointment of eligibles. We would recommend the City Manager, or designee, certify and approving the lists which eliminates the conflict of the Board approve an eligibility list then possibly hearing an appeal from a candidate who was not selected.
- Currently, recruitments and candidate appointments are scheduled around the Board's monthly meetings; the possible changes listed above would allow the recruitments to be conducted in a more timely manner.

The items above are examples of possibly unnecessary references.

d) Ordinance 866, Section 10. Selection of Police and Fire Chiefs. Subsection (b) Selection Process.

- This section speaks to the examination process for these positions and that it must consist of a written exam weighted at 50% and a qualifications appraisal weighted at 50%.
 - Written examinations for Chiefs are no longer standard and would require the City spend a large amount of money for a custom exam to be created.
 - The requirement of these two assessments, each weighted equally, limits the ability to create a selection process which meets the needs of the City. We would like to examine changes to this section to allow relevant processes and to leave decisions on components to experts (Executive Recruiters) or Human Resources to determine along with the City Manager.

The items above are examples of conflict with current industry practices.

3. Ultimate Recommendation.

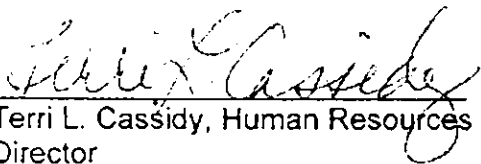
Staff recommends that the Civil Service Ordinance be updated to address these issues. In addition, however, staff recommends that Ordinance 866 be repealed and a new ordinance reflecting the current state of the law and the circumstances facing the City be adopted by the City Council. In this fashion, the City will have an ordinance that can be more easily modified to address changing conditions over time. The new ordinance would address the issues above and any other the Board wishes to address as well as any others the City Council directs the staff to address.

In addition, staff recommends modification of the Charter provisions so that at least one additional non-civil service position be created in each Civil Service department. For example, staff recommends there be created Assistant Chief positions, or the functional equivalent of the same, in both the Police Department and the Fire Department that are at-will, non-civil service positions. This will allow each chief officer to have support in dealing with represented employees within the departments.

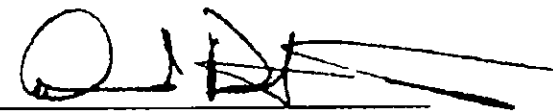
CONCLUSION:

The goal is to update the Civil Service System into one that is clearer and relevant to this organization now and into the future and also one that can be managed more efficiently in the face of changing laws. We hope you will keep an open mind to changes and we welcome your suggestions and feedback to prepare a better report for the Charter Update Commission.

Submitted by:
HUMAN RESOURCES DEPARTMENT

By 
Terri L. Cassidy, Human Resources
Director

Submitted By:
OFFICE OF THE CITY ATTORNEY

By 
David R. Hunt
City Attorney

**CIVIL SERVICE BOARD
MEETING MINUTES**



DATE: February 1, 2010
5:00 pm – 6:00 pm

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 Vice Chairperson Logan.

2. ROLL CALL

Chairperson Coulter, Vice Chairperson Logan and Board Members Dunlap and Talbot were present. Board Member Allen was absent (excused).

3. APPROVAL OF THE JANUARY 4, 2010 MINUTES

A Motion was made by Board Member Dunlap to approve the January 4, 2010 Minutes. Vice Chairperson Logan seconded the Motion. It was approved 4 Ayes, 0 No.

4. MONTHLY REPORT FROM THE SECRETARY TO THE BOARD

HR Director Terri Cassidy reported to the Board:

- At the January 12, 2010 City Council Meeting, the Council adopted the findings for the PMA Investigation as recommended by the Civil Service Board.
- HR Manager Gwen Bouffard held three EPE Committee meetings before her last day with the City on January 29, 2010, and with the retirement of Ms. Bouffard, the responsibility of organizing and leading the group has shifted to HR Analyst Maggie Williams-Dalgart. The recommendations, thus far, from the Committee were presented to City Manager Dave Kiff. HR will work with IT to update the online form and train staff appropriately.

Mayor Pro Tem Henn has indicated that he is going to make timely employee performance evaluations a Council priority.

- As of January 31, 2010, the remaining 22 employees that chose to participate in the Early Retirement Incentive Program (ERIP) have retired. Some of the retirees have been temporarily hired back during the interim through Council-approved contracts. Due to the ERIP and City-wide restructuring, HR is experiencing high recruitment activity, including reviewing job specs and classification studies, even though we are technically still in a hiring freeze.
- Some upcoming executive recruitments are Assistant City Manager, Chief of Police and Assistant to the City Manager. HR and Chief Luman will work together on the COP recruitment, which is expected to take approximately 90 – 120 days, with the facilitation of Eric Middleton, Alliance Resource Consulting.

Board Member Talbot asked for the ratio of the retired employees that chose the ERIP to active employees.

Ms. Cassidy answered that before the ERIP, there were approximately 835 Full-Time Employees, and of the 52 employees that have retired using this program, approximately 30 equivalent positions will be filled in some manner. The ERIP's cost savings was \$1.8 million dollars for Fiscal Year 2010.

5. CIVIL SERVICE SYSTEM – CHARTER/ORDINANCE UPDATE

Ms. Cassidy explained to the Board that through the review of the Civil Service System in the Charter by Bruce Praet, and from a professional standpoint, some issues have been identified as outdated, obsolete or not current practice. Additionally, some of the provisions governing staff cause unnecessary difficulty and/or cause delay in carrying out specific duties. It is not the intent of staff to recommend to the Charter Review Commission that the Civil Service System is flawed. One of the examples, pointed out by Ms. Cassidy was Ordinance 866 section two – Selection of Police and Fire Chiefs. This provision, written in 1952, mandates a written test and qualifications appraisal, both weighted at 50%. A more current practice is to facilitate an assessment center, which includes more viable, hands-on exercises to determine the most qualified candidate.

Ms. Cassidy assured the Board staff values the CSB; however, they believe modifications are needed for the Charter's Civil Service System provisions. She encouraged open dialogue from the Board before the research and data are presented to the Council.

Mr. Hunt explained that he hopes to have several, thorough discusses over the next three months with the Board regarding the ordinance and the modifications needed. He pointed out that the current ordinance can only be changed by a vote of the people, and an ordinance that could be updated and managed without going to vote would be more conducive. He believes this flexibility would allow for a more efficient personnel system that would better meet the needs of the employees, unions and City. It is restrictive to abide by outdated, and sometimes illegal, provisions that can not be changed unless they go to vote of the people. Staff can either go forward and address the issues individually, through a vote of the people, or get the ordinance repealed and replaced with one inacted by the City Council. The CSB would not be dissolved, because it is still required by the Charter.

Board Member Dunlap asked which body will be presented the Board's recommendation.

Mr. Hunt answered that the City Council selected and convened a Charter Update Commission to focus on this task. Therefore, the CSB recommendation would go the Committee and then the CSB and Committee's recommendations would go to Council.

Board Member Dunlap is concerned with Mr. Praet's recommendation to disband the CSB and having a single, outside hearing officer, and he credited the Board with the positive outcome of the PMA Investigation.

Mr. Hunt explained that when he wrote the recommendation, it was not to disband the CSB. The Board could only be dissolved if the Charter is repealed, which is not the recommendation.

Mr. Hunt asked the Board what they thought should be the function of the CSB.

Ms. Cassidy explained that Mr. Praet was here as an expert and staff asked for his opinion and analysis, which he gave at the January 4, 2010 CSB meeting. Staff is requesting input from the Board of its roles and functions, so that going forward there is unambiguous direction.

Vice Chairperson Logan stated that he understood and supported helping staff modernize the ordinance. He also expressed his concern for sworn employees not having a Civil Service Board to keep things fair. He also values community involvement with our safety system.

Board Member Dunlap said he is concerned that the Charter Update Commission does not know the function of the Civil Service System, and asked if the Board Members would have an opportunity to speak with them face-to-face.

Mr. Hunt notified the Board that the Charter Update Committee will meet two times in March, and he will get them the dates. He encouraged Board Members to attend.

6. FIRE DEPARTMENT STATUS REPORT

The Board wished Chief Lewis the best in retirement. Chief Lewis thanked the Board for personal and professional relationships. He then addressed the Board with his status report:

- Fire Support Services Manager, Terry Ulaszewski, retired on January 29, 2010. Chief Lewis thanked Terry for his years of service.
- Deputy Fire Chief, Dave Mais, will be delivering the Fire Department's Status Report to the Board following the Chief's retirement at the end of February 2010.
- On March 6, six probationary firefighters will have passed their probation.
- With the state of this economy, the Fire Department is hoping to not have to open the recruitment for Seasonal Lifeguards this summer. He anticipates that most will return from last year.

Board Member Dunlap wished Chief Lewis well in his retirement. Ms. Cassidy thanked Chief Lewis for his presence and for working with her and Human Resources.

7. REQUEST APPROVAL OF THE FIRE PARAMEDIC ELIGIBILITY LIST

Chairperson Coulter requested to combine the Fire Paramedic and Fire Engineer Eligibility Lists under one vote.

A Motion was made by Vice Chairperson Logan to combine and approve the Fire Paramedic and Fire Engineer Eligibility Lists. Board Member Talbot seconded the Motion. It was approved 4 Ayes, 0 No.

8. REQUEST APPROVAL OF THE FIRE ENGINEER ELIGIBILITY LIST

* See the Motion for Item Number 7.

9. POLICE DEPARTMENT STATUS REPORT

Captain Gazsi addressed the Board:

- The Police Department is actively recruiting for six Lateral and Entry-Level Police Officer positions.
- On January 27, the Police Dispatcher position opened for recruitment.
- The Crime Scene Investigator position is scheduled to open February 5, 2010.
- Open House for various classifications will be February 16, and the testing will be on the following Saturday, February 20.
- The Promotional Eligibility List for Senior Animal Control Officer will come before the CSB at the March 2010 meeting to request approval.
- Recruitments.
- Three recruits are attending the Orange County Sherriff's Academy. All three recruits are currently at the top of their class.
- Officer Glen Garity will retire on February 22, 2010.
- Currently in background is one Lateral Police Officer and four Police Recruits.
- Wednesday, February 3, the Police Department will promote three staff members. Jon Lewis will promote to Police Liuetenant and Steve Rasmussen and Joe Cartwright will promote to Police Sergeant.

10. REQUEST APPROVAL OF THE UPDATED SR ANIMAL CONTROL OFFICER JOB DESCRIPTION

A Motion was made by Chairperson Coulter to combine and approve the updated Senior Animal Control Officer and Animal Control Officer job descriptions. Board Member Dunlap seconded the Motion. It was approved 4 Ayes, 0 No.

11. REQUEST APPROVAL OF THE UPDATED ANIMAL CONTROL OFFICER JOB DESCRIPTION

* See the Motion for Item Number 10.

12. BOARD MEMBER COMMENTS

Logan expressed his sentiments to Mr. Ulaszewski and Fire Chief Lewis.

13. ITEMS FOR FUTURE AGENDAS

None

14. PUBLIC COMMENTS

Chairperson Coulter requested that Terry Ulaszewski address the Board.

Terry thanked the Board for their hospitality, and he complimented the Human Resources Department and HR Specialist II Jill Camille Ortiz.

15. ADJOURNMENT

The Civil Service Board meeting adjourned at 6:00 PM.


Terri L Cassidy, HR Director
Secretary to the Board