

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

Agenda Item No. _____
(January 4, 2010)

TO: HONORABLE CHAIR AND MEMBERS OF THE CIVIL SERVICE BOARD

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

SUBJECT: Review and Possible Update of Civil Service System

ISSUE:

Should the City Council take action to update the Civil Service System of the City of Newport Beach through placing a measure on the November, 2010 ballot to that end; and if so, what does the Civil Service Board recommend be the scope of that measure?

RECOMMENDATION:

Staff recommends the Board begin to familiarize itself with the various issues related to the possible modernization of the City's personnel system, including possible modification of the Civil Service System in preparation for giving input to the City Council through the Charter Update Commission. No action is needed from the Board at its January meeting. Staff is simply bringing information forward to the Board so that it can be an active participant in the Charter update process begun by the City Council at its December 8, 2009 meeting.

DISCUSSION:

Over the course of the last year a number of issues have arisen with respect to the implementation of the Civil Service System within the City. As a result, the City Council directed that a comprehensive review be conducted of the City's Civil Service System with an eye to eliminating confusion and ambiguity. The City retained Bruce Praet, Esq., of Ferguson, Praet, & Sherman, a recognized legal expert in California Public Employment law, to review the applicable City regulations related to its personnel system and to make recommendations on updating the regulations.

1. Historical Background.

The City's Civil Service System dates back to the adoption of the City's Charter in 1954. Article VIII of the Charter authorized the creation, and directed the maintenance of, a Civil Service System ("System") within the City. According to section 801 of the Charter, the System is "for the selection, employment, classification, advancement, suspension and discharge of those appointive officers and employees who shall be included in the system."

Section 802 of the Charter expressly included "all full time, regular and permanent positions or employment on the Police and Fire Department," while expressly excluding elected and appointed officials, executive management positions and others. The System was then given form through the voters' adoption of Ordinance Number 866 in 1958.¹

2. Changing Laws.

The landscape of California public labor and employment law has evolved dramatically since the creation of the City's Civil Service System in 1958. It has moved from a relatively simple environment to a complex set of interlacing laws protecting the interests of public employees.

Some of the changes, though certainly not all, are listed as follows:

- **1961:** federal Fair Labor Standards Act, governing terms of compensation and some working conditions, applied to cities;
- **1961:** Meyers-Milias-Brown Act (*Government Code section 3500 et. seq.*) enacted to promote and protect public employee associational rights;
- **1964:** Title VII of the federal Civil Rights Act, enacted to prohibit invidious discrimination in employment;
- **1967:** First Amendment protections extended to public employees;
- **1974:** Workers Compensation Act (*Labor Code section 3200 et. seq.*) enacted addressing work related injuries;
- **1975:** Public employees found to have a property right in their employment and thus awarded procedural due process rights under the California and United States constitutions (*Skelly v. State Personnel Board* (1975) 15 Cal.3d 194);
- **1976:** Public Safety Officer Bill of Rights (*Government Code section 3300 et. seq.*) enacted affording peace officers substantial procedural rights in dealing with employment and discipline issues;
- **1979:** Public employees found to have a liberty interest in their public employment (*Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340);
- **1980:** California Fair Employment and Housing Act (*Government Code section 12900 et. seq.*) enacted providing a state basis to address invidious discrimination in employment; and
- **2007:** Firefighter Procedural Bill of Rights (*Government Code section 3250 et. seq.*) enacted giving firefighters similar procedural rights as peace officers.

3. Interlacing City Regulations and Obligations.

In this environment, the City now has multiple sets of documents that deal with personnel related issues.

The City's Employee Policy Manual ("EPM") is the overarching City regulation on personnel matters. Its current version was adopted by the City Council via Resolution 2001-100 on

¹ Ordinance No. 866 is codified in the City's Municipal Code in Chapter 2.24, section 2.24.010 *et. seq.* All further citations to the ordinance shall be to its codified version. Chapter 2.24, the Chapter of the Municipal Code addressing the Civil Service System can only be amended by a vote of the people. (Newport Beach Municipal Code ("NBMC") section 2.24.200.)

December 11, 2001. Its provisions were developed over more than two years of effort. The City Manager and the Human Resources Director engaged in thirty (30) months of meeting and conferring with all of the City's bargaining units, as well as un-represented employees, before presenting the EPM to the Council for adoption. Additionally, the Civil Service Board was reviewed and commented on the proposed policies. The EPM developed a "system of uniform and equitable personnel rules and procedures, based on principles of fairness and merit." (Resolution 2001-100, p.1, third "Whereas.")

The EPM addresses all of the issues addressed in the Civil Service Ordinance and the System and more. By way of example, the EPM addresses Recruitment and Selection (Section 5), Appointments (Section 6), Probationary Period (Section 7), Performance Evaluations and Salary Adjustments (Section 9), Disciplinary Actions (Section 12), Disciplinary Procedures (Section 13), Grievances (Section 14), and much more. As one can see, the EPM addresses all of the issues addressed in the System.

In addition, there are two other sources of potentially conflicting personnel provisions or regulations. Many departments, but certainly Police and Fire, have their own Standard Operating Procedures. Additionally, each of the City's ten recognized bargaining units have an MOU, many of which deal with discipline and grievance matters already covered by the EPM or the System. These documents add to the confusing mix of regulations and provisions governing public employment with the City.

4. Bruce Praet's Report and Recommendations.

Mr. Praet has completed an initial review of the many of the documents governing the terms and conditions of public employment within the System. He issued a report to the Human Resources Director, a copy of which is appended as Attachment "A" to this staff report. Mr. Praet identifies many issues that exist in the current regulations within the City that need to be modified. His listing is not intended to be, nor is it, a comprehensive catalog of issues arising from the current documents that govern our personnel system.

In summary, Mr. Praet recommends a simplification of our rules and regulations and consideration of significantly modifying the Civil Service System or simply eliminating it as being unnecessary in the current public employment legal environment in California. Under Mr. Praet's analysis there are essentially three possible options for simplifying the rules and regulations governing public employment within the City. Those are:

- Comprehensively reviewing the fixing all of the conflicting provisions and bringing them up to date with existing law;
- Modifying the System to limit its role to that of essentially an appellate body on personnel issues; or
- Elimination of the System completely and relying on the current law and other authoritative personnel rules and provisions within the City.

5. Charter Update Commission.

As stated earlier, the City Council has commenced a work program for update and modernization of the City's Charter. It began the effort with a study session held on November 24, 2009 and formally constituted and charged a Charter Update Commission at its meeting

on December 8, 2009. We have appended the staff report from the December 8, 2009 meeting, which incorporates the staff report from the November 24, 2009 meeting, as Attachment "B" to this report. The Council adopted the proposed resolution creating the Commission and a signed copy of the Resolution 2009-91 is appended to this staff report as Attachment "C."

Environmental Review

Adoption of procedural guidelines is not a project as defined in the California Environmental Quality Act (CEQA) Implementing Guidelines.

Public Notice

Notice has been given consistent with the Ralph M. Brown Act. No other public notice is required by this item.

Alternatives

No action is currently required.

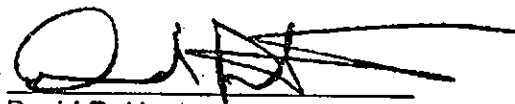
CONCLUSION:

The City Council has embarked on an effort for Charter update. It has included the Civil Service System as an issue to be addressed in that process. This Board will be looked to for recommendations on the topic. We begin the effort of briefing the Board on these issues so that it can weigh in on any possible changes that may be proposed to the System and make any recommendations it has in the effort.

Prepared and Submitted by:
OFFICE OF THE CITY ATTORNEY

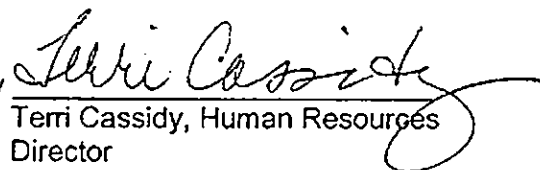
Submitted By:
HUMAN RESOURCES DEPARTMENT

By



David R. Hunt,
City Attorney

By



Terri Cassidy, Human Resources
Director

Attachments:

- Attachment "A": Bruce Praet's Report
- Attachment "B": City Council Staff Report dated December 8, 2009
- Attachment "C": Resolution 2009-91

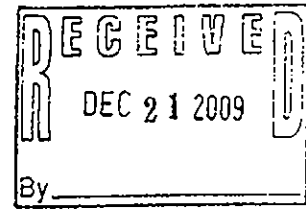
ATTACHMENT “A”

CSB January 4, 2010 Staff Report

Bruce Praet's Report

This page intentionally left blank

LAW OFFICES
FERGUSON, PRAET & SHERMAN
A PROFESSIONAL CORPORATION
1631 EAST 18TH STREET
SANTA ANA, CALIFORNIA 92705-7101
TELEPHONE (714) 953-5300
FAX (714) 953-1143



December 16, 2009

Terri L. Cassidy, J.D.
Director of Human Resources
3300 Newport Blvd., Bldg. B
Newport Beach, CA 92663-3884

Re: Review of City-wide System and Rules

Dear Terri:

In July, you asked me to review the Charter, Municipal Code, Council Policy, Civil Service Rules, Department Policy, City Policy and MOU's of various bargaining groups. Having now completed this task, it was not surprising to discover that these multiple sources have led to a system which is inherently flawed and which is not at all uncommon in many public entities and even larger private corporations. While these sorts of multi-level governmental systems tend to breed conflicts and often inadvertently create ambiguities which may complicate otherwise straightforward personnel matters, it is often healthy to undertake a system-wide review which may result in small or even major changes.

Thus, as outlined more fully below, my first recommendation will be that the City take every reasonable step to consolidate as many of these sources as possible. The need to research and reference multiple sources for a single question is not only unduly burdensome, but it often leads to confusion or even erroneous answers. It will therefore be equally important to create a system in which each provision and source is able to stand alone as much as possible without the frustrating and often confusing need to cross-reference some other source in order to find the answer to a particular issue.

Although I found many problems with the current Police Policy Manual as outlined below, the good news is that the Police Department has joined the other 94% of the law enforcement agencies in California by subscribing to the Lexipol policy manual system. This new system should solve most, if not all, of the problems discovered in the current manual. The Police Department has made the adoption of the Lexipol system a top priority and anticipates

Terri L. Cassidy, JD
Re: Rules Review
December 16, 2009
Page 2

completing the transition to Lexipol by the end of the year. This will not only bring NBPD online with the latest policies and legal standards, it will continue to provide them with complete updates to the policy manual every six months to insure that all policies are kept current. Once the Department customizes and adopts the Lexipol system, it will substantially reduce potential liability exposure for the City and insure that the procedural rights of employees and citizens are adequately protected. To the extent that policies provided within the Lexipol system are duplicated or cross-referenced elsewhere within City departments, the entire City may also benefit from utilizing the Lexipol standard for uniformity and updating.

While I have carefully reviewed all of the materials you provided and discovered many conflicts, I also cannot guarantee that I have found them all. However, in an effort to try to simplify the areas of concern I have identified, I will attempt to divide my observations and recommendations into subject matter groups:

The Disciplinary Process [NOTE: *It is anticipated that all issues identified within NBPD Policy will be remedied with the adoption of Lexipol.*]

- **NBPD Policy 3/740** - the current version of this policy only provides for a so called *Skelly* hearing if discipline in excess of 27 hours is recommended. This is in direct conflict with *Government Code § 3304(b)* and its progeny which clearly permit the right to be heard regardless of the level of discipline when a property interest (i.e. loss of pay) is at issue. The policy is regrettably silent on any remedy for any recommended discipline below 27 hours.

Recommendation: Although Civil Service Rules (501.3, et seq.) and NBMC 2.24.140 correctly provide for an evidentiary appeal for all suspensions, they do not address the pre-disciplinary process (i.e. *Skelly*). Since NBPD policy seems to be the only place where this pre-disciplinary process is addressed, it is anticipated that the new Lexipol policy will be revised so as to allow for a *Skelly* hearing without regard to any arbitrary hourly value. [NOTE: If the City or Department wishes to create some lower level of pre-disciplinary review for recommended discipline below a certain level (e.g. at a captain level, etc.), such may be legally possible as long as that rank is empowered to act on the recommendation. On the other hand, since it is unlikely that the limited number of suspensions would impose a huge burden on the Chief, it would probably be simpler and more streamlined to provide for *Skelly* review of ALL recommended suspensions at the level of the Chief.] As an aside, the Lexipol discipline policy will also provide the Department with an optional (but recommended) separate and limited form of due process for written reprimands.

- **NBPD Policy 3/740.22** - permits the employee to file notice of appeal with the Civil Service Board within 21 days of imposed discipline. This is in direct

Terri L. Cassidy, JD
Re: Rules Review
December 16, 2009
Page 3

conflict with Civil Service Rule 501.3.2 and NBMC 2.24.140 which require filing of the notice of appeal within 10 days.

Recommendation: Obviously, the new Lexipol version of the NBPB policy manual will simply be modified to correspond with the 10 day limitation set forth by the Board. Otherwise, a failure to amend this policy could and likely would provide an employee with a valid defense if an otherwise untimely notice of appeal was filed between 10 and 21 days.

- **Civil Service Rule 501.3.2** - this Rule states that an employee may request a written statement from a Department Director seeking reasons for any suspension, demotion or discharge within five days of the action. Recognizing that these Rules were written about twenty years before *Skelly*, this section has likely been rendered moot in view of the Department Director's legal obligation to now give a written statement for the reasons for such action *before* the action is ever taken.

In the same section, it indicates that the Board will "investigate" the matter and then schedule a hearing.

Recommendation: On the presumption that all Department Directors are well aware of the pre-disciplinary process in existence for the past thirty years, this Rule should simply be amended to remove the first few sentences. It should commence with "*An employee may, within ten (10) days after imposition of discipline by a Department Director, file a written request for a hearing with the Board. . .*" [Note: Any reference to "investigating" these matters prior to hearing should also be eliminated so that the parties enter the hearing process on the same level.

In order to avoid potential conflicts or even the appearance of a conflict, it is highly recommended that the Board should remain completely impartial by avoiding any "investigation" and simply scheduling a hearing. The Board should exclusively retain its role as a neutral hearing body and recuse itself from any investigative role in any matter which could potentially involve any sort of administrative appeal. Alternatively, the Board should simply eliminate its function as an "investigative" body.

- **Civil Service Rule 501.2.3.3(D)(1)** - purports to permit the discharge of probationary employees without cause and *without any right to appeal*. Whether or not this is true, the section is mysteriously silent on what happens to a probationary employee who is discharged for cause. Similarly, subsection (D)(2) also erroneously states that promoted employees may be reduced in rank *without any right to appeal*.

Terri L. Cassidy, JD
Re: Rules Review
December 16, 2009
Page 4

Recommendation: While it might be technically correct that probationary employees may be legally discharged without any right to appeal if in fact they are being released *without cause*, the discharge of probationary employees presents several potential risks. These situations are wrought with problems ranging from potential due process violations to discrimination allegations to regrettably passing along bad employees to other unsuspecting public entities.

With regard to the release of probationary employees, I would recommend that subsection (D)(1) be amended to the effect that it provides: *If it is determined by a Department Director that an employee is failing to meet established standards while serving an initial probationary period, the employee may be discharged without the right to appeal to the Civil Service Board. The right to appeal of an employee discharged for cause during the initial probationary period shall be limited to an opportunity to clear his/her name with the Department Director. The decision of the Department Director shall be final.* Language such as this would bring the City up to speed with the due process requirements of *Lubey v. San Francisco (1979) 98 Cal.App.3d 340*, without exposing the Board to full evidentiary hearings for probationers.

As written, subsection (D)(2) is simply outdated. It would probably be best to simply delete (D)(2).

- **Civil Service Rule 501.2.3(B)(1)(b)** - states that laid off probationary employees shall be restored to a list in the same order as appointment. At the same time, PEA MOU § 5(A)(5) states that laid off employees shall be placed on a list in reverse order of layoff. These two provisions seem to have been written without regard to each other and their convoluted language is confusing at the very least.

Recommendation: Since I believe that the MOU is up for renegotiation in the very near future, it would probably be easiest to simply seek to adopt the same language in both the new MOU and the existing CSR Rule.

- **NBPD Policy 3/770.01** - this section and the current MOU outline a grievance procedure in accordance with the provisions of "*Resolution No. 71-73*". Once again, the multi-level nature of the system has resulted in the incorporation of a reference to a Resolution which is outdated and is likely no longer applicable.

Recommendation: This is another example of two ongoing problems (not unique to Newport Beach): (1) All too often, authors of policies and rules blindly incorporate pre-existing language without regard to what it is or whether it continues to apply, and (2) As noted above, effort should be made to insure that all rules stand on their own without cross-reference to other sources. This is not only much more efficient and user friendly, but it tends to minimize the potential for continuing to cite sources which either no longer exist or cannot be found.

Terri L. Cassidy, JD
Re: Rules Review
December 16, 2009
Page 5

- NBMC 2.24.070(G) - declares that the provisions for reinstatement shall be provided in the Rules and Regulations set forth in *Ordinance 866 § 7*. This is another case in which the Municipal Code, Civil Service Rules and other sources within the City continue to reference a fifty year old Ordinance.

Recommendation: Frankly, almost all provisions of the 1958 Ordinance 866 have long since been incorporated into the more recent NBMC and it would be in everyone's best interest if Ord. 866 was either repealed or simply deleted from all reference in all current City resources. This is another example of my concern that so many provisions cross-reference other sources which simply breeds confusion, if not outright conflicts.

- NBMC 2.24.130(B) - whether or not it was intended by the authors, this section could be construed to give exempt employees (e.g. Police and Fire Chiefs) continuing civil service protection when promoted from within the organization. Such an interpretation could extend huge protections to them which they are not otherwise entitled to (e.g. *Government Code § 3304c*) and which were seemingly not contemplated under the Civil Service System (e.g. Civil Service Rule 700 exempts Chief from system).

Recommendation: If the intent was to provide for so-called reversion rights to exempt employees promoted from within, this section should state exactly that. Although it might grammatically create a rather long sentence, this impact could probably be achieved by simply combining the first two sentences and deleting "*retain such status in the Civil Service position*".

- NBMC 2.24.170(A)(1) - not directly related to the disciplinary system, but this section purports to (illegally) prohibit employees from actively participating in a county or city political campaign, without key limitations pertaining to the course of their official capacity. Notwithstanding constitutional issues, *Government Code § 3302(a)* prohibits restricting peace officers from engaging in off duty political activities.

Recommendation: As with so many outdated provisions, this municipal code section simply needs to be updated by limiting only those political activities in which an employee is either using or representing the City in an official capacity.

Overall Recommendation Regarding Personnel Issues: In addition to reconciling existing conflicts and consolidating various sources so that each is self-contained as much as possible, the dilemma remains as to the future scope of the Civil Service Board. As more fully set forth below, it might become more efficient if the Board was limited to hearing disciplinary appeals rather than embroiling itself in the selection process, investigations and other collateral duties. Moreover, notwithstanding the Board's historical role in disciplinary appeals, many entities are

Terri L. Cassidy, JD
Re: Rules Review
December 16, 2009
Page 6

moving away from a multi-member Board concept to the greater efficiency afforded by retaining a single arbitrator for such appeals. However, if the City is inclined to retain the Civil Service Board as the hearing body for disciplinary appeals, it will be necessary to make the aforementioned changes as well as insuring that all procedural guarantees established post-1958 (e.g. POBR, etc.) are incorporated into the appeal process.

The Selection Process

- **Civil Service Rule 701 (NBMC 2.24.100)** - although these sections designate that the selection of Police and Fire Chiefs shall be by the City Manager, it is interesting that subsection (B) provides that the Board shall assign two of its own to sit on the appraisal board. In other words, after having seemingly been removed from the selection process, the Board is nonetheless inserted right back into the process. This "participation" creates the illusion of, if not an actual, conflict of interest between the Board, the City Manager and the eventual Chief. Once again recognizing that these Rules were first enacted in 1958, the testing process itself is also outdated by providing 50% weight to a written test for these positions. Most entities now provide for outside assessment centers to select such high ranking and critical positions.

Recommendation: Recognizing that any substantive modification to the Civil Service System would need to be presented to the electorate, the Board would certainly become much more efficient and less controversial if its function (e.g. Rule 801, et seq.) was modified to a limited and exclusive role as a disciplinary appeal board with no role in the selection process. Given that the City has elected to delegate these selections to the City Manager by Charter, such an amendment would also eliminate any need to modify the aforementioned and outdated testing process. If the role of the Board is not modified, it would then be recommended that the testing process be modified and updated to adopt a more modern assessment center concept administered either by the City Manager, the Board or any of the many refined outside groups providing such services.

- **Charter § 504(a)** - in conjunction with the City Manager's authority to appoint the Police Chief, he/she correspondingly has the authority to remove the Chief. However, in 1958, the provisions of *Government Code § 3304(c)* did not exist and now provide a police chief with certain statutory rights (e.g. notice and opportunity for a public hearing) before removal.

Recommendation: Section 504(a) and all related provisions simply need to be conformed to the provisions of the POBR with respect to the Chief of Police.

• **Charter § 504(g)** - this next issue is probably one of the most convoluted of all the provisions addressed in that this section of the Charter empowers the City Manager to "see that the laws of the state pertaining to the City. . . are enforced." Similarly, NBPDP Policy 2/010 mirrors this language by reference. However, NBMC 2.12.110 expressly states that the Police Department is under the supervision of the Police Chief who is responsible for the apprehension of offenders (e.g. enforcing the laws of the state). Similarly, NBPDP Policy 2/025.05, in conjunction with 2/025.015, dictate that the Police Chief is responsible for fulfilling the mandates of Charter § 607 which empowers the Chief with the authority to appoint, etc. personnel as well as the aforementioned responsibilities set forth in 2.12.110 [However, notably silent on authority to adopt policy]. While NBMC 2.24.190 provides that the Charter will prevail, this confusing maze of authority can create unintended adverse consequences as well as placing undue legal obligations of the City Manager when the City Manager selects the Chief pursuant to 2.24.100 (c) and Civil Service Rule 701.

Recommendation: While the Charter establishes the City Manager as the head of government in Newport Beach, enforcement of laws (even by delegation to a Police Chief) is not traditionally within that role. Different than general law cities, in which the authority to run a police department is statutorily granted to a police chief, California Constitution, Article XI, §5 (b) grants charter cities with the authority to establish police departments. While the City Manager (or City Council) frequently retain the authority to hire/fire the Police Chief, there are valid reasons for insuring that the ultimate authority and responsibility for the Police Department remain with the Chief rather than the City Manager.

For example, certain statutory immunities such as that provided by *Vehicle Code § 17004.7* (pursuit immunity) are contingent upon the "adoption" of a policy which conforms to the very specific requirements of the code. If the police chief in a charter city is responsible for the Police Department and its policies, he/she has the legal authority to "adopt" such a policy and avail the agency of this critical immunity. [Cf. *Brumer v. City of Los Angeles* (1994) 24 Cal.App.4th 983] However, this "adoption" requirement of 17004.7 is most recently becoming the basis for attempting to undermine the immunity and many plaintiff's attorneys are now digging into the hierarchy of the entity's structure. Thus, as a precaution and extra layer of protection in these and other instances, I would recommend that all involved provisions be amended and coordinated to provide that the Police Chief establishes and enforces not only policy for the department, but also has responsibility for enforcing state and local laws. Of course, this is not to suggest that the Police Chief will be able to create an island of authority as he/she will always answer to the City Manager. As with every other aspect of this analysis, it will also be important to streamline the path for determining such authority without having to consult multiple (often potentially conflicting) sources.

Terri L. Cassidy, JD
Re: Rules Review
December 16, 2009
Page 8

Overall Recommendation: As noted above, the fifty year tradition of involving the Civil Service Board in the selection and testing process may have outlived its time. In the interest of simplifying the entire Civil Service process and keeping them truly impartial, it may be time to remove them from the selection and testing process so that their role becomes exclusively that of a disciplinary appeals board.

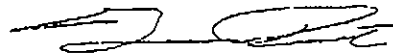
Newport Beach Police Policy Manual

Although many issues and conflicts were identified within the somewhat outdated NBPD Policy Manual, it is anticipated that virtually all of these will be remedied by the department's commitment to adopt and finalize the new Lexipol policy manual system. This new customized manual system will not only bring the NBPD in line with 94% of the rest of the California law enforcement agencies currently subscribing to the Lexipol system, it will provide the department with ongoing semi-annual updates to ensure that the policy manual is kept current with statutory changes, applicable case law and best practices.

Conclusion

Fortunately, it would appear that many of the aforementioned problems have been identified without serious adverse consequences to the City and it is hoped that solutions can be quickly implemented to create a more efficient and legally sound system. I appreciate the opportunity to have conducted this review and analysis and I remain available to discuss these issues further or if you should have any questions.

Cordially,



Bruce D. Praet
Attorney at Law

BDP/cs

ATTACHMENT “B”

CSB January 4, 2010 Staff Report

City Council Staff Report dated December 8, 2009

This page intentionally left blank

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

Agenda Item No. 8
December 8, 2009

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

Dave Kiff, City Manager
ext. 3000, dkiff@newportbeachca.gov

SUBJECT: Resolution 2009-___; Adoption of Charter Update Commission

ISSUE:

Does Council wish to create a commission to consider possible updates to the City Charter and to City Ordinances that have been adopted by initiative measure so that update measures can be placed on the November of 2010 ballot?

RECOMMENDATION:

Per direction provided at the November 24, 2009, study session, staff recommends the Council confirms the number of individuals it wishes to have on the Commission; confirms and appoints the Councilmembers to the subcommittee who review applications for recommended appointment to the Commission; and adopts the resolution as presented creating and instructing the Commission.

DISCUSSION:

The Council considered the appointment of a Charter Update Commission at its November 24, 2009 Study Session. We attach a copy of that staff report for your ease of reference. The Council directed staff to come back with a resolution creating the Commission, establishing the issues it will address, and establishing the timeline for its task. We have attached a proposed resolution for your review and approval.

We believe we had direction from the November 24, 2009 Study Session, but there was no formal action taken by the Council. We need confirmation of the following:

- The number of members on the Commission, which we set at seven based upon discussions of Council;
 - Appointment of the subcommittee for reviewing and recommending appointment to the Commission; and
-

- Directing the work program of the Commission. We understand the Council directed us to have a focused work program for the Commission, but to leave room for it to recommend further issues to the Council for review, but that it could only take up those further issues upon approval and direction by the Council. That is how we drafted the resolution.

Environmental Review

Addressing procedural issues within city government is not a project as defined in the California Environmental Quality Act (CEQA) Implementing Guidelines.

Public Notice

Notice has been given consistent with the Ralph M. Brown Act. No other public notice is required by this item.

CONCLUSION


We recommend that you adopt the resolution either as drafted or as you provide further direction. Alternatively, you can choose not to proceed or to modify the work program or resolution in any way you choose.

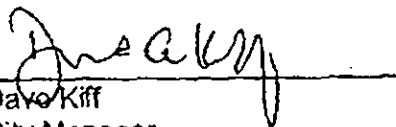
Prepared and Submitted by:

Submitted By:

OFFICE OF THE CITY ATTORNEY

CITY MANAGER'S OFFICE

By 
David R. Hunt
City Attorney

By 
Dave Kiff
City Manager

Attachment 1: November 24, 2009, Study Session Staff Report
Attachment 2: Proposed Resolution

ATTACHMENT 1

Consideration of Creation of a Charter Update Commission

November 24, 2009 Study Session Staff Report

This page intentionally left blank

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

Agenda Item No. SS 5
November 24, 2009

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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

Dave Kiff, City Manager
ext. 4030, dkiff@NewportBeachCA.gov

SUBJECT: Consideration of Creation of a Charter Update Commission

ISSUE:

Does Council wish to create a commission to consider possible updates to the City Charter and to City Ordinances that have been adopted by initiative measure so that update measures can be placed on the November of 2010 ballot?

RECOMMENDATION:

Review the issues and give direction.

DISCUSSION:

The City Charter was originally adopted effective January 7, 1955. The Charter is in effect the constitution of the City of Newport Beach. It governs and sets the parameters of all powers and regulation that occur within the City. While it has been periodically amended, there are currently provisions that are not consistent with California or United States laws. As such, it may be appropriate to appoint a citizens' commission to look at specific issues for possible update, clarification, and/or amendment to make them consistent with the current dictates of state and federal law and to modernize the Charter's dictates in order to make municipal government more efficient.

In addition to Charter update, there are ordinances that have been passed by initiative measures that could be updated as well. For example portions of our Civil Service Ordinance are not enforceable under state and federal law. Those issues, and any other issue arising from the Civil Service Ordinance can be addressed by the citizens' commission, should the Council so direct.

Should the Council wish to proceed in this manner we recommend that the scope of work for a citizens' commission be focused on a limited range of issues. The time between now and the last day to put an Issue on the 2010 General Election is relatively short. Any city

measure must be adopted by an appropriate enabling resolution and forwarded to the County Clerk/Elections Official no later than June 28, 2010 for inclusion on the ballot. Working backwards, there is little more than six months in which a commission can be appointed, staff can research and analyze issues, the commission can discuss the issues, a report can be prepared by staff, and a final recommendation can be adopted by the City Council. As such, we recommend focusing the commission on issues of concern to the Council and providing a scheduled work program that can achieve the desired results within the limited time available.

Charter Issues to Be Reviewed

Staff has reviewed the Charter and various initiative measures that may be of interest to the Council for review. We have appended as Attachment "A" a listing of issues that has been developed. Some of the issues are simple and some are more complex. The listing is not intended to be comprehensive, or mandatory, in any way. You can choose to assign issues to the commission in any manner you wish and you can add to the issues listed if you desire. The number of issues you choose will simply affect the intensity of the process during the six months available.

We also note that this list is not intended to be an exhaustive expression of issues that could be addressed. There may be many more issues worthy of consideration. We have attempted to focus on a set of issues that can be addressed in the limited time available for consideration. The Council may wish to direct consideration of other issues after having the issues listed in this report reviewed and addressed.

The issues described in more detail in Attachment A have been placed, for convenience of discussion, into one of the following three categories:

Category C: *Clean-up (Those matters in which the Charter or initiative measures are inconsistent with existing law)*

Issues:

1. City Manager residency requirement
2. Redistricting committee
3. Tax limits
4. Sale of Bay front property
5. Gender references

Category M: *Modernization and Efficiency (Those matters in which the Charter is not consistent with current municipal practice and in which efficiency in government can be achieved through modernization)*

Issues:

1. Contracting authority
2. Civil Service System
3. Ordinance publication requirements
4. Publication of legal notices

5. Time for contracting
6. Franchise procedures
7. Centralized purchasing

Category P: Policy changes

Issues:

1. Appointment to vacant Council seat

Proposed Process

We have drafted a proposed timeline (shown below), to lay out a potential work plan for the project. In summary, the plan we recommend, should you direct that we engage in the effort, starts with adopting a resolution creating a Charter Update Commission and soliciting applications for participation on the commission. We then recommend that the final report of the Commission, with whatever recommendations it adopts, be finalized by May 4 and brought to the Council at the last meeting in May of 2010 in a study session. That deadline will allow the Council to review the recommendations and schedule final action on the matter in time for placing any issues on the ballot. We also recommend that the Council not require the commission's recommendations be unanimous, but instead allow for any dissenting portion of the commission to prepare a dissenting report. This approach will allow for the issues to move more quickly, a requirement that is necessary based upon the limited amount of time available for deliberations.

We recommend that a commission be supported by the staff of the City. Staff would provide the commission with background information, analysis, and where appropriate, their recommendations based upon their professional experience, background, and training.

We would recommend that the items for review and consideration by the Commission be clearly established by the Council so that the Commission understands the Council's interests and the limits of the Commission's purview. Additionally, given the limited time frame for this project, and the fact that capacity is limited in the organization for this new, but important endeavor, engaging an outside project manager is proposed. The City Manager will engage an individual to assist the City Attorney, City Manager and Commission in ensuring timely completion of the task. The anticipated cost of the contract project manager is \$15,000.

For efficiency of this process, given the short time frame, we recommend that applicants for commission appointments be required to confirm that they are available to attend all of the meetings, which will be set in advance, according to the schedule shown below. A total of six meetings, with a possible seventh meeting, of the commission would be held between February 2nd (first meeting of the commission) and May 4. Meetings would be tentatively set for 4 - 6:30 pm on each of the days shown on the schedule.

A summary of the proposed schedule is shown below:

November 24, 2009	Council Gives Direction on Possible Commission
December 8, 2009	Council Adopts Resolution Creating Commission, Identifying Issues to be Addressed, and Soliciting Applications; Mayor Appointing Council Subcommittee
December 12, 2009	City Clerk Advertises for Applications for Appointment to Commission
January 8, 2010	Application Period Closes
January 11 – 15, 2009	Council Subcommittee Conducts Interviews of Applicants
January 26, 2009	Commission Appointed
February 2, 2010	First Meeting of the Commission – Work Plan Discussed
February 16, 2009	Commission Meeting – Discuss Issues
March 2, 2009	Commission Meeting – Discuss Issues
March 16, 2009	Commission Meeting – Discuss Issues
April 6, 2009	Commission Meeting – Discuss Issues
April 20, 2009	Commission Meeting – Action on Recommendations
May 4, 2009	Commission meeting – Action on Recommendations (meeting held only if needed)
May 12, 2009	Complete staff report for Council meeting of May 25, 2009
May 25, 2009	Council study session: Present staff report with Commission recommendations to Council
June 8, 2009	Council discussion and possible action on Resolutions on Ballot Measures
June 22, 2009	Final Council discussion and adoption of Resolutions re Ballot Measures (if action is not taken on June 8)

Environmental Review

Addressing procedural issues within city government is not a project as defined in the California Environmental Quality Act (CEQA) Implementing Guidelines.

Public Notice

Notice has been given consistent with the Ralph M. Brown Act. No other public notice is required by this item.

Alternatives

You may choose to:

1. Direct staff to proceed with preparing the documents necessary to create the commission and bring them back to the next meeting of the Council, or any future meeting; and
2. Direct staff as to which, if any, or what other issues you wish to have reviewed by a commission; and
3. Direct staff as to the timeline proposed; and
4. Reject the idea in its entirety; and
5. Give direction for any other approach to the issue you deem appropriate.

Should you direct the creation of a commission, we will bring formative documents to you at the agenda directed by you.

CONCLUSION

This matter is on your study session agenda for consideration and direction. We shall execute any direction you provide.

Prepared and Submitted by:

Submitted By:

OFFICE OF THE CITY ATTORNEY

CITY MANAGER'S OFFICE

By 
David R. Hunt
City Attorney

By 
Dave Kiff
City Manager

Attachments:

- Attachment "A": List of Possible Issues to Address

This page intentionally left blank

CHARTER UPDATE: LIST OF ISSUES TO ADDRESS

Issue	Detail	Context
Clean-Up: Those matters in which the Charter or Initiative Measure is inconsistent with Existing Law.		
C1. <u>City Manager Residency Requirement:</u>	Charter section 501 requires that a City Manager become a resident of the City.	As determined during the recent recruitment process, this requirement is now inconsistent with federal law.
C2. <u>Redistricting Committee:</u>	Charter section 1005 requires the City Council to appoint a committee to study and report on possible redistricting.	This section has not been uniformly followed and creates an administrative burden. Statewide redistricting takes place every ten years when the census results are published. It may be appropriate to clean-up this section to be consistent with current practice and statewide practice. <i>[We should retain the ability to redistrict after annexations.]</i>
C3. <u>Tax Limits:</u>	Charter section 1107 sets limitations on the taxing authority of the City.	These limitations have been largely, if not entirely, superseded by state law through Proposition 13 and Proposition 218 as well as other statewide initiative measures. Duplication of restrictions can cause confusion and a trap for the unwary.
C4. <u>Sale of Bay Front Property:</u>	Charter section 1402 provides that Bay Front property, except with limited exceptions, cannot be sold.	Several times in the past the City has enacted Charter amendments in order to allow for the sale of Bay Front property. This procedure can be avoided simply by amending the prohibition to allow for the sale upon an affirmative vote of the electorate.
C5. <u>Gender References:</u>	Several sections of the Charter refer to the City Manager, City Attorney, City Clerk, Finance Director, department heads, "Chairmen," or City Council as males. (Section	These references could be exchanged with the person's title instead of a gender reference.

	500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611, 704.	
<i>Modernization and Efficiency: Those matters in which the charter is not consistent with current municipal law and the City Government can be better served through modernization.</i>		
M1. <u>Contracting Authority:</u>	Charter section 1110 requires all Public Works' projects with total expenditures over \$30,000.00 go to formal bid.	Should the City revise this amount in light of the substantial increase of construction costs and then provide for adjustment based upon CPI?
M2. <u>Civil Service System:</u>	Charter sections 800 through 803 provide for a Civil Service System within the City and Ordinance 866, passed by the voters on November 4, 1958 (codified as Municipal Code Chapter 2.24).	Currently the City's Civil Service System is administered by the City's Civil Service Board that was created via ordinance adopted in 1958 and has not been updated in over fifty years. The entire law governing public employment has changed dramatically in that time leaving some of the provisions of our system inconsistent with state and federal law (for example section 2.24.170 prohibiting political activities by employees is now unconstitutional based upon appellate case authority from the state and federal courts) and at least one requirement of the ordinance, the provision of appellate rights to candidates for original employment with the City, has been recommended for change by the Civil Service Board. These concerns may warrant a review and modernization of the system.
M3. <u>Ordinance Publication Requirements:</u>	Charter section 414 requires that an ordinance be published at least once in the official newspaper.	Publication of ordinances in their entirety can be extremely expensive. State law (Government Code section 36933) allows for summaries of ordinances to be published as a cost savings device.

M4. <u>Publication of Legal Notices:</u>	Charter section 419 requires the City Clerk to go to bid annually for contracting out publication of legal notices.	Annual bid process has not produced any noticeable savings and has created a difficult administrative burden on the City Clerk's Office.
M5. <u>Time for Contracting:</u>	Charter section 420, with some exceptions, restricts the length of time for municipal contracting to not in excess of 25 years.	This requirement potentially limits the City's ability to enter into modern financial transactions.
M6. <u>Franchise Procedures:</u>	Article XIII of the Charter creates franchising procedures and requirements.	Franchising procedures are now governed by the municipal code. Allowing for municipal code regulation of the procedures as opposed to Charter regulation provides for flexibility in a changing economic environment.
M7. <u>Centralized Purchasing:</u>	Charter section 1106 requires the City to continue a process of centralized purchasing.	Centralized purchasing may work in some cases, but not in all. Advances in technology and controls may make decentralized purchasing less expensive.
Policy: Those matters in the charter that need to be reviewed and updated for policy reasons.		
P1. <u>Appointment to Vacant Council Seat:</u>	Charter section 403 directs that vacancies on the Council shall be filled by appointment within thirty days, or set an election, and the appointee shall sit until the next general municipal election and his or her successor is qualified.	Does the Council wish to address this issue, either to clarify how this provision falls within term limits or to otherwise modify the provisions?
P2. <u>Review Mechanics of Restrictions on Oil Drilling within the City:</u>	Charter 1401 effectively provides that there is to be no new oil exploration, drilling, production, or refining in the City that was not in existence at the effective date of the Charter or on the effective date of newly annexed properties.	Consider ways to make these provisions more flexible in order to allow for modification of existing drilling while not opening the City as a whole for new oil exploration or drilling.

This page intentionally left blank

ATTACHMENT 2

Consideration of Creation of a Charter Update Commission

Proposed Resolution

This page intentionally left blank

RESOLUTION NO. 2009- __

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH CREATING A CHARTER UPDATE
COMMISSION OF LIMITED DURATION AND FOCUSED
JURISDICTION**

WHEREAS, the Charter of the City of Newport Beach was passed and adopted by the citizens of the City of Newport Beach effective January 7, 1955;

WHEREAS, substantial changes have occurred in the law since the approval and adoption of the Charter leaving some of its provisions outdated and unenforceable;

WHEREAS, modern municipal government has moved forward in many ways to allow more efficiency in addressing the needs of the City and the Charter should not be an impediment to efficient municipal government;

WHEREAS, it is appropriate to appoint a citizens' commission for review of Charter update and modernization issues in order to maximize the benefit to the City and its citizens and to move the work program for such an update and modernization forward in a limited period of time;

WHEREAS, the Charter cannot be amended without a vote of the people;

WHEREAS, the next general election currently scheduled in the County of Orange is on November 2, 2010 and its general election is the most cost efficient manner to bring issues to the voters of the City of Newport Beach and it is recommended that all necessary ballot measures that must be voted upon be forwarded to the County of Orange no later than June 28, 2009;

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as

follows:

Section 1: A Charter Update Commission is hereby created and enabled in order to carry out the tasks of updating the City of Newport Beach Charter and modernizing it in order to maximize the efficiency of municipal government.

Section 2: The Commission shall be made up of seven members of the public appointed by the City Council. The City Council shall make an effort to appoint one member from each district of the City, but if there are no qualified applicants from any district that position can be filled by an applicant from another district.

Section 3: The Commission is empowered and instructed to review the issues set forth on Exhibit "A" for the purpose of updating and modernizing the Charter. The Commission may also review the Charter and initiative enacted ordinances the City and make recommendations to the City Council for expanding the list of issues to be addressed. The Commission shall not, however, expend resources on pursuing issues that have not been approved for review by the City Council.

Section 4: Due to the limited amount of time available, the work program for this effort, allowing for reasonable flexibility, shall proceed on the following schedule:

Date	Action
December 8, 2009	Council Adopts Resolution Creating Commission, Identifying Issues to be Addressed, and Soliciting Applications; Mayor Appoints Council Subcommittee
December 12, 2009	City Clerk Advertises for Applications for Appointment to Commission
January 8, 2010	Application Period Closes

January 11 - 15, 2009	Council Subcommittee Conducts Interviews of Applicants
January 26, 2009	Commission Appointed
February 2, 2010	First Meeting of the Commission - Work Plan Discussed
February 16, 2009	Commission Meeting - Discuss Issues
March 2, 2009	Commission Meeting - Discuss Issues
March 16, 2009	Commission Meeting - Discuss Issues
April 6, 2009	Commission Meeting - Discuss Issues
April 20, 2009	Commission Meeting - Action on Recommendations
May 4, 2009	Commission meeting - Action on Recommendations (meeting held only if needed)
May 12, 2009	Complete staff report for Council meeting of May 25, 2009
May 25, 2009	Council study session: Present staff report with Commission recommendations to Council
June 8, 2009	Council discussion and possible action on Resolutions on Ballot Measures
June 22, 2009	Final Council discussion and adoption of Resolutions re Ballot Measures (if action is not taken on June 8)

Based upon this work program schedule, the Commission shall complete its final report to the City Council with the Commission's recommendations on or before May 4, 2010. The final report of the Commission shall be presented to the City Council at the Council's May 25th, 2010 Council meeting. The final report does not need to be unanimous. Minority opinions or reports may be presented on any given issue.

Section 5: The Commission shall conduct its meetings consistent with the Ralph M. Brown Act (California Government Code sections 54950 *et. seq.*). A presiding officer shall be appointed to preside over the meetings of the Commission. The

Commission shall be supported by the City Manager's Office and the Office of the City Attorney. An analysis shall be provided to the Commission by staff on all issues being considered by the Commission and staff shall assist the Commission in preparing the majority report and recommendations.

Section 6: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this _____ day of _____, 2009.

Edward D. Selich, Mayor

ATTEST:

Leilani Brown,
City Clerk

ATTACHMENT “C”

CSB January 4, 2010 Staff Report

Resolution 2009-91

This page intentionally left blank

RESOLUTION NO. 2009-91

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH CREATING A CHARTER UPDATE
COMMISSION OF LIMITED DURATION AND FOCUSED
JURISDICTION

WHEREAS, the Charter of the City of Newport Beach was passed and adopted by the citizens of the City of Newport Beach effective January 7, 1955;

WHEREAS, substantial changes have occurred in the law since the approval and adoption of the Charter leaving some of its provisions outdated and unenforceable;

WHEREAS, modern municipal government has moved forward in many ways to allow more efficiency in addressing the needs of the City and the Charter should not be impediment to efficient municipal government;

WHEREAS, it is appropriate to appoint a citizens' commission for review of Charter update and modernization issues in order to maximize the benefit to the City and its citizens and to move the work program for such an update and modernization forward in a limited period of time;

WHEREAS, the Charter cannot be amended without the vote of a people;

WHEREAS, the next general election currently scheduled in the County of Orange is on November 2, 2010 and its general election is the most cost efficient matter to bring issues to the voters of the City of Newport Beach and it is recommended that all necessary ballot measures that must be voted upon be forwarded to the County of Orange no later than June 28, 2009;

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: A Charter Update Commission is hereby created and enabled in order to carry out the tasks of updating the City of Newport Beach Charter and modernizing it in order to maximize the efficiency of municipal government.

Section 2: The Commission shall be made up of seven members of the public appointed by the City Council. The City Council shall make an effort to appoint one member from each district of the City, but if there are no qualified applicants from any district that position can be filled by an applicant from another district.

Section 3: The Commission is empowered and instructed to review the issues set forth on Exhibit "A" for the purpose of updating and modernizing the Charter. The Commission may also review the Charter and initiative enacted ordinances of the City and make recommendations to the City Council for expanding the list of issues to be addressed. The Commission shall not, however, expend resources on pursuing issues that have not been approved for review by the City Council.

Section 4: Due to the limited amount of time available, the work program for this effort, allowing for reasonable flexibility, shall proceed on the following schedule:

Date	Action
December 8, 2009	Council Adopts Resolution Creating Commission, Identifying Issues to be Addressed, and Soliciting Applications; Mayor Appointing Council Subcommittee
December 12, 2009	City Clerk Advertises for Applications for Appointment to Commission
January 8, 2010	Application Period Closes
January 11 - 15, 2009	Council Subcommittee Conducts Interviews of Applicants
January 26, 2009	Commission Appointed
February 2, 2010	First Meeting of the Commission - Work Plan Discussed
February 16, 2009	Commission Meeting - Discuss Issues

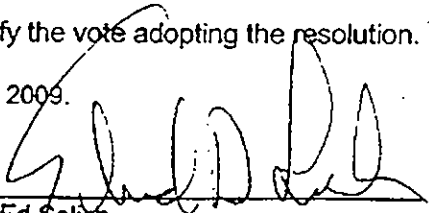
March 2, 2009	Commission Meeting – Discuss Issues
March 16, 2009	Commission Meeting – Discuss Issues
April 6, 2009	Commission Meeting – Discuss Issues
April 20, 2009	Commission Meeting – Action on Recommendations
May 4, 2009	Commission meeting – Action on Recommendations (meeting held only if needed)
May 12, 2009	Complete staff report for Council meeting of May 25, 2009
May 25, 2009	Council study session: Present staff report with Commission recommendations to Council
June 8, 2009	Council discussion and possible action on Resolutions on Ballot Measures
June 22, 2009	Final Council discussion and adoption of Resolutions re Ballot Measures (if action is not taken on June 8)

Based upon this work program schedule, the Commission shall complete its final report to the City Council with the Commission's recommendations on or before May 4, 2010. The final report of the Commission shall be presented to the City Council at the Council's May 25th, 2010 Council meeting. The final report does not need to be unanimous. Minority opinions or reports may be presented on any given issue.

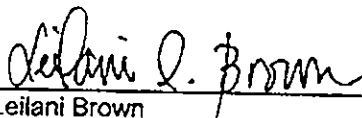
Section 5: The Commission shall conduct its meetings consistent with the Ralph M. Brown Act (California Government Code sections 54950 *et. seq.*) A presiding officer shall be appointed to preside over the meetings of the Commission. The Commission shall be supported by the City Manager's Office and the Office of the City Attorney. An analysis shall be provided to the Commission by staff on all issues being considered by the Commission and staff shall assist the Commission in preparing the majority report and recommendations.

Section 6: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 8th day of December, 2009.


Ed Selich
Mayor

ATTEST:


Leilani Brown
City Clerk



STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF NEWPORT BEACH)

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2009-91 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 8th day of December, 2009, and that the same was so passed and adopted by the following vote, to wit:

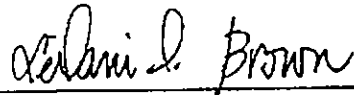
Ayes: Henn, Rosansky, Curry, Webb, Gardner, Daigle, Mayor Selich

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 9th day of December, 2009.



City Clerk
Newport Beach, California

(Seal)



This page intentionally left blank

**CIVIL SERVICE BOARD
MEETING MINUTES**



DATE: January 4, 2010
5:00 pm – 6:01 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 Board Member Dunlap.

2. ROLL CALL

All Board Members were present.

Chairperson Coulter recognized and welcomed former CSB Members Paula Godfrey and Bert Carson. He also announced that Ms. Godfrey is the Chairperson of Speak Up Newport. *"Speak Up Newport is a non-partisan city-wide residents group organized to promote the common good and general welfare of the Newport Beach community (www.speakupnewport.org)."*

3. APPROVAL OF THE DECEMBER 7, 2009 MINUTES

A Motion was made by Board Member Dunlap to approve the Minutes. Vice Chairperson Logan seconded the Motion. It was approved 5 Ayes, 0 No.

4. MONTHLY REPORT FROM THE SECRETARY TO THE BOARD

HR Director Terri Cassidy wished the Board a Happy New Year and continued her report by addressing the following items:

- The City Hall Campus participated in a holiday closure from December 24, 2009 through January 1, 2010, as one of the approved measures to address the City's fiscal climate.

- To address the City's late performance evaluations, HR has organized a committee consisting of a representative in each department to gather feedback and problems associated with the online Employee Performance Evaluation system. City Manager Dave Kiff has requested that HR consider shortening or simplify the form and addressing the technology challenges.
- In the month of December, thirty-one (31) employees chose to participate in the Early Retirement Incentive Program (ERIP). Tammie Frederickson, Executive Assistant to the City Manager, and Jyll Ramirez, Administrative Assistant to the HR Director, organized a time-saving, single retirement celebration for all 31 employees which was attended by staff members, Executive Management and City Council Members. By the end of this month, twenty (20) more staff members plan to retire under the ERIP. In addition to the cost savings of this program, the City Manager is also using this opportunity to evaluate and administer a City-wide restructure and reorganization plan.
- With the conclusion of the ERIP, Human Resources will now begin multiple and various recruitments to help achieve the restructuring goals and maintain public services.
- The Human Resources Department will lose two staff members after Friday, January 29, 2010. After 30+ years of public service (seven with the City of Newport Beach), HR Manager Gwen Bouffard chose to retire by participating in the ERIP and the Recruitment Division's Department Assistant, Mai Tajima, is going back to school to pursue her Master's Degree.

Chairperson Coulter recognized that the City Attorney's Office, City Clerk's Office and Recreation and Senior Services have no late employee performance evaluations. Therefore, in his opinion, the success of these departments validate that the online system is not flawed and nullifies the claim given by many departments that the online system is to blame for the late evaluations.

5. REPORT FROM CITY ATTORNEY ON ATTORNEY BRUCE PRAET'S COMPREHENSIVE RULES REVIEW AND RECOMMENDATION

Mr. Hunt informed the Board:

- No action is needed by the CSB tonight on this item.
- This report is for information only.
- Through the PMA Investigation inconsistencies in the City's various governing documents became apparent.

- The Council authorized and instructed the City Attorney's Office to hire a specialist to do a comprehensive review, including the Civil Service System and the rules related to it.
- The City Attorney's Office hired Bruce Praet, Ferguson, Praet, & Sherman and founder of Lexipol, to conduct the comprehensive rules review.

Mr. Praet addressed the Board:

- Lexipol is a firm that he founded a few years ago, and it is the Country's leading provider of risk management resources for public safety organizations including production of policy manuals. Ninety-four (94) percent of California cities use the Lexipol system.
- Newport Beach Police Department is now a part of the Lexipol system which resolves many of their conflicting policy issues.
- Current City Charter, Municipal Code, CSB Rules, Ordinances, Policies, MOUs provide too many avenues of reference for people, provides conflicting information and requires too much cross referencing.
- His primary recommendation is to consolidate all of the various documents into one system.
- The secondary recommendation is to adjust the CSB's role and function, so that it is not representing a conflict of interest. A conflict could arise because the current role of the CSB is multi-faceted and includes the selection, investigation and discipline of employees. If the function was to address just one of these tasks, such as operating as an appeal board, it would not impart controversy.
- Several City agencies have chosen to use an outside, single hearing officer that does not require City staff as an advisory role. Since the hearing officer operates individually, it does not involve coordinating multiple calendars and schedules, and therefore may be heard and resolved more quickly.

Board Member Allen supports consolidating the various governing documents into one source to streamline the process; however, she has some serious concerns regarding some of the recommended CSB systemic changes. She requested input from the Police and Fire Associations regarding the recommendation to desolve the investigative function of the CSB.

Vice Chairperson Logan requested comments from the public.

The public had no comment.

Vice Chairperson Logan also supports the consolidation of the different Policy and Rule sources into one.

Mr. Hunt explained to the Board that their recommendation will go to Council in March, and if the City Council wants to go forward with any changes, it would go to the ballot to be voted on by the community.

Vice Chairperson Logan commented that he is uncomfortable with the CSB losing their appellant role.

Board Member Dunlap said that the Police Management Association spent nearly two years trying to resolve their issues, and it was not until the CSB approved the investigation that it was resolved.

Board Member Talbot admitted that he does not have a thorough enough understanding of the rules and ordinances to know what the best options were for the Board within the City's infrastructure. It is his understanding that it would be Council's function to determine what the Board should govern.

6. CHARTER UPDATE COMMISSION – SCOPE OF WORK AND TIMELINE

Mr. Hunt assured the Board that he will get as much information to the them as quickly as possible. The issue will be brought to the City Council in March 2010.

7. FIRE DEPARTMENT STATUS REPORT

Fire Support Services Manager Terry Ulaszewski addressed the Board:

- On Christmas Eve, there was a fatal traffic collision on Pacific Coast Highway.
- December 28, there was a residential fire on Paper Lane. The roof of the house collapsed just as the firefighters got out.
- In December 2009, Lifeguard Battalion Chief Mareen "Reenie" Boyer retired after 25 years of service.
- Testing will be held next week for Fire Engineer recruitment at Station 7.

8. POLICE DEPARTMENT STATUS REPORT

Captain Gazsi addressed the Board:

- Recruitments and orientations have been placed on hold temporarily.
- On November 30, Beau Rains started at the Orange County Police Academy and is expected to graduate in March 2010.
- Lieutenant Craig Frizzell and Sergeant Joe Thrasher retired in December 2009, and both had 30 years of public service.

- Police Officer Dave Moon is expected to retire in April 2010.
- The Police Department is working with Human Resources to open the recruitment for a Senior Animal Control Officer position.
- There is currently no eligibility lists for Dispatcher, Community Services Officer, or Police Cadets, but these recruitments will be considered in the near future.
- Currently in the background process and on hold are four Police Laterals, four Police Recruits and one, part-time MIS Technician.
- On behalf of the Police Department, he thanked HR Manager Gwen Bouffard and Department Assistant Mai Tajima for their hard work and dedication to the City.

9. HR DIRECTOR/CHIEF OF POLICE COMMENTS REGARDING RECENT POLICE PROMOTIONAL EXAM PROCESS

Chief Luman commented on a few things regarding the recent Police Promotional Exam Process.

- He did not receive ANY negative feedback regarding the process or the raters and only received positive comments from the candidates.
- The process with relevant and pertinent to Newport Beach and rank of the position (Sergeant or Lieutenant) for which was being tested.
- He was pleased with Donnoe and Associates who administered the tests under the supervision of the Human Resources Department.
- The individual raters gave of their time during the holiday season, and the Police Department expressed their gratitude.
- The candidates listed on the Lieutenant and Sergeant eligibility lists will provide the Police Department with quality personnel who are ready and suitable for promotion.
- He thanked HR Director Terri Cassidy, HR Supervisor Rebecca Redyk and HR staff for their contribution towards a professional and significant process, City Attorney David Hunt and staff for assisting with the ancillary work associated with the process and the CSB for wisdom, insight and guidance.

Ms. Cassidy informed the CSB the process was a resounding success. From a HR perspective, the measure of a good examination process is whether or not it mirrors the actual job. The goal was to make sure the Chief obtained a viable list based on the demonstrated performance of the candidates. In addition to being a test, it was also a training tool. HR will provide feedback to all candidates whether they were successful or not. Even the unsuccessful candidates took the time to comment and tell her that they believed the process was fair, challenging, non-discriminatory and had integrity. As a result of the Police Promotional

Committee, the Blaylock Report, PMA Investigation and the guidance of the CSB, the candidates had the full experience of a comprehensive examination process. This process will be a positive experience for candidates and make a stronger Police Department with more individuals who are prepared and ready for promotion.

Ms. Cassidy thanked HR Supervisor Rebecca Redyk, HR Analyst Sarah Rodriguez, Police Chief Luman, Captain Dale Johnson and all of the subject-matter experts who gave input making this test more relevant.

Vice Chairperson Logan commended Ms. Cassidy and Chief Luman for a successful Promotional Process and asked how they determined if the process was relevant and pertinent.

Chief Luman answered that the process was relevant and pertinent because the candidates were tested on situations that they are likely to encounter in Newport Beach and at the rank for which they were testing.

10. REQUEST APPROVAL OF THE POLICE SERGEANT ELIGIBILITY LIST

A Motion was made by Board Member Dunlap to approve the Police Sergeant Eligibility List. Board Member Talbot seconded the Motion. It was approved 5 Ayes, 0 No.

11. REQUEST APPROVAL OF THE POLICE LIEUTENANT ELIGIBILITY LIST

A Motion was made by Board Member Dunlap to approve the Police Lieutenant Eligibility List. Vice Chairperson Logan seconded the Motion. It was approved 5 Ayes, 0 No.

12. BOARD MEMBER COMMENTS

Board Member Dunlap commented that he will miss HR Manager Gwen Bouffard's bright smile and that he has enjoyed working with her. The Board Members shared their appreciation for Gwen's hard work.

13. ITEMS FOR FUTURE AGENDAS

None

14. PUBLIC COMMENTS

PEA Representative and candidate of the Promotional Process, David Syvock, told the Board that the testing processes gave the perception of fairness and he thanked Ms. Redyk and Ms. Rodriguez for doing a great job in administering the tests.

15. ADJOURNMENT

The Civil Service Board meeting adjourned at 6:01 PM.


Terri L Cassidy, HR Director
Secretary to the Board