

**CITY OF NEWPORT BEACH  
CHARTER UPDATE COMMISSION STAFF REPORT**

Agenda Item No. 2  
March 16, 2010

**TO:** HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

**FROM:** Human Resources Department  
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**SUBJECT: CHARTER SECTIONS 710-711 – CIVIL SERVICE BOARD  
CHARTER SECTIONS 800-803 – CIVIL SERVICE SYSTEM  
ORDINANCE 866 (NBMC Chapter 2.24) AND THE CIVIL SERVICE  
SYSTEM GENERALLY**

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**RECOMMENDATION:**

Recommend that the Charter Update Commission consider the documentation previously provided by the Office of the City Attorney and the Human Resources Department on the Civil Service Board, Civil Service System and Ordinance 866, input received from the Civil Service Board at their meetings of March 1 and March 8, 2010 and additional documents provided. No decision is being requested at today's meeting, but rather a request that a second meeting of the Commission be scheduled to determine the appropriate recommendation to submit to City Council.

**DISCUSSION:**

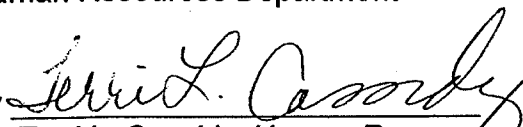
Attached is a "white paper" with relevant background information and a binder including all documents (Charter Sections, Ordinance Sections and Civil Service Board agendas and staff reports) for the Charter Update Commission's reference.

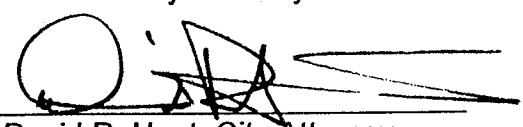
**CONCLUSION:**

Please ask questions or give direction so that we can bring this matter back to you for potentially final recommendation at your next meeting.

Prepared and Submitted By:  
Human Resources Department

Submitted By:  
Office of the City Attorney

By   
Terri L. Cassidy, Human Resources  
Director and Secretary to the Civil  
Service Board

By   
David R. Hunt, City Attorney

## Civil Service Board & System

(Charter Sections 710-711, 800-803, and Ordinance 866)

### STATEMENT OF THE ISSUE:

Should the City modify the Sections of the Charter and/or Ordinance 866 to modernize the City's personnel system and conform to local, state and federal laws that have been enacted since 1942 (when Ordinance 511 established the Civil Service System) or 1954 or 1958 (Charter (1954) and Ordinance 866 (1958) discussing and outlining the roles/responsibilities of the Civil Service Board and System)?

### RELEVANT BACKGROUND:

#### **1. Genesis of the Issue.**

As a result of the recent Police Management Association initiated investigation under the auspices of the Civil Service Board into the practices of recruitment/selection and other employment practices within the Police Department, the City of Newport Beach had the opportunity to research and review many documents related to our personnel practices and Civil Service system.

The relevant documents reviewed include City Council Policy, the City Charter, Ordinances, Civil Service Rules, Memoranda of Understanding (i.e., collective bargaining agreements), the City's Employee Policy Manual, and Standard Operating Procedures for the Police and Fire Departments. Upon closer examination of these documents by the Office of the City Attorney, the Human Resources Department, outside special legal counsel (Bruce Praet of Ferguson, Praet & Sherman), the Civil Service Board and its Investigator, James Blaylock, it became apparent that the system governing the City's Personnel System, especially as it pertains to employees of the Police/Fire Departments is complex, inherently contradictory, contains illegal provisions and is cumbersome to work with.

The review of the charter, ordinance and in the case of Bruce Praet, the "SOPs" of the Police Department, have highlighted for us, and we hope to do the same for the Charter Update Commission, the complexity of our personnel system. It is our desire to make the system more consistent and manageable, more easily understandable and in compliance with the best practices of personnel/employee relations administration and the laws of the city, state and federal government.

The City Council placed the possible modernization of the Civil Service System into the work program for the Charter Update Commission to address these issues. This is the first time in the history of the City of Newport Beach that a comprehensive look at this area under the Charter is being proposed.

## **2. Historical and Factual Background.**

The Civil Service System was enacted by Ordinance 511 in 1942. Following the outline established in that document, the Charter Articles (VII and VIII) and the enabling Ordinance 866 that superseded Ordinance 511, adopted in 1958, have remained essentially unchanged for 52 years. Of the 456 cities in California, 116 of those are Charter cities. Of the 54 charter cities in Southern California, 28 have a Civil Service or Personnel System addressed in the city Charter. Most of these cities have updated their system at some point to incorporate more current practices related to personnel administration and the disciplinary appeal protections now afforded under case law, or to adapt to the changes in rights given to public safety employees by local, state or federal law. The background information above is presented to the Commission in an accompanying binder.

## **3. Reasons to Address the Issue.**

The primary reason to closely review the Charter/Ordinance is that the City is operating using highly complex personnel regulations, thus causing confusion and unnecessarily high transaction costs. There is also increased potential for litigation for failure to follow many of the contradictory rules and policies. Many of the protections created by the Civil Service System duplicate guaranteed protections under the state and federal Constitutions and case law that supersede some provisions of the City's documents.

Further, the functions of the Civil Service System (outlined below) may not be consistent with other aspects of the Charter, such as the roles/responsibilities of the Council-Manager form of government that places personnel decisions of the City under the direct responsibility of the City Manager. In addition, some of these functions are now delegated to a professional Human Resources Director, who serves also as Secretary to the Civil Service Board.

Through the PMA Investigation and changes that have occurred in the manner by which the Police Department and Human Resources collaborate on recruitment/selection activities, it was determined that some of the requirements of the System may no longer be necessary (such as a 50% written test for Chief of Police, or bringing a job flyer or examination components to the Civil Service Boards for approval). Further, the broad right of candidates for positions to appeal exclusion from testing seems to be excessive and undermines the determination of a department director, working with Human Resources to include only those best qualified to take part in testing for particular positions.

The supporting binder presented to the Commission contains a wealth of information about some of the difficulties existing under the present system. City Attorney David Hunt has outlined a number of laws that afford similar or greater protections to employees that have been adopted and applied to the City's rules since 1958. Some cases you might be familiar with include the Skelly decision (due process protections),

the Lubey decision (liberty interest or right to a name-clearing hearing), the Firefighters Procedural Bill of Rights, the Public Safety Officers' Procedural Bill of Rights and the Weingarten decision (allowing an employee union representation with management if discipline is being contemplated). The entire area of collective bargaining changed with the adoption in 1968 of the Meyers-Milias-Brown Act (Government Code Sections 3500 et. seq.) and many federal laws have been enacted addressing rights against discrimination and rights protecting privacy.

#### **4. Process for Bringing the Issue Forward and Association Comments Received.**

Prior to bringing the Civil Service issue to the Charter Update Commission for consideration, employee associations and the Civil Service Board have been engaged in discussion and have been asked for their viewpoints about it. You are being provided with the draft minutes from the Civil Service Board meetings of March 1 and March 8 on this subject and some of these parties may be present at this meeting of the Commission to offer testimony. As you will see, there are many opinions on how best to move forward.

Several of the recognized Employee Associations have testified in the process indicating that, while they wish to maintain the protections of Civil Service, they also realize many things have changed since 1958 and understand the need for consolidation and/or revision.

We currently have meetings scheduled with representatives of the Exclusively Recognized Police, Fire and Lifeguard Associations, to provide them with an opportunity to discuss their concerns and questions regarding the goals involved in this matter.

#### **5. Purpose and Functions of the Civil Service System.**

The purpose of the Civil Service System was enacted in Ordinance No. 866, and was codified as Newport Beach Municipal Code section 2.24.030, stating:

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

The City's Civil Service Board currently performs the following functions in order to carry out the purpose as defined under Ordinance No. 866:

- 1) Oversees the recruitment process for all civil service employees including a role in the selection of the Police/Fire Chief and acts as an appellate body on recruitment/selection issues;

- 2) Functions as a discipline appeals board, reviewing any decision to discipline civil service employees, and also for non-civil service employees under the City's Employee Policy Manual that are appealed to its level;
- 3) Conducts investigations as requested by either the City Council, City Manager, or an organized employee's association within the System and/or;
- 4) Oversees the System as a whole and makes recommendations to the City Council as to any changes the Board believes are appropriate.

#### **6. Civil Service Board Recommendation.**

The Civil Service Board has discussed this issue four times, three times at its regular meetings held January 4, 2010, February 1, 2010, and March 1, 2010, and one time at a special meeting held March 8, 2010. The Board rendered its final recommendation on the matter at its March 8, 2010 meeting. The minutes from all of these meetings are presented in your binder, though the meeting minutes from the March 1 and March 8 meetings are still in draft and unapproved form.

In summary, the Board made the following strong recommendations:

- **On Keeping or Not Keeping the System:** Do *not* eliminate the system and keep it fundamentally the same.
  - The Board also recommends bringing back the definition of "classified service" to eliminate ambiguities and potentially extending it to all sworn and unsworn employees of the Police and Fire Departments, as well as preserving the protections of lifeguards regardless of whether they are in the Fire Department or some other department in the future.
  - The Board concludes the System is necessary to provide employees with fundamental protections and an objective, final resource prior to potentially filing a lawsuit.
- **On the Issue of What Functions of the System That Should be Maintained:** All functions of the Board, those being recruitment oversight, disciplinary appeals, conducting investigations and system oversight, should be kept in place.
  - The Board is, however, recommending more flexibility in recruitment oversight so long as employee protections are not diluted in any way.
  - It is noted that FFA, FMA, and LMA were represented at the meeting. They expressed concern about maintaining protections for employees. The PMA was also represented and sentiments regarding simplifying the overly complex system were shared, though overall protections of the employees should not be diluted.

- **As to Citizen Initiative Ordinance No. 866:** Ordinance No. 866, the citizen's initiative that gave the system its "guts," should be kept in place as a citizen's initiative measure, but be updated to bring it into compliance with state and federal law. Additionally, conflicts with other City regulations should be eliminated and more flexibility should be built into the ordinance to allow the City Manager and the HR Department to conduct recruitment in a streamlined fashion, so long as employee protections are not diluted.
  - The Board concluded that having the operative, implementing regulations of the System in place through citizen initiative protects the System, and thus the City's civil service employees, from possible action by a City Council.
  
- **Assistant/Deputy Chief Issue:** No express recommendation was made on adding an Assistant/Deputy Department Head, a motion to that effect having failed 2-3.
  - The concerns we were able to note from the discussion were that it was too early to take such an action and that we did not need to go that far ("using a hammer where a screw driver will do").
  - The Board expressed further concerns over how such positions might (1) promote cronyism; (2) limit or adversely affect promotional opportunities; and (3) the potential "at-will" status of the positions.

## 7. Analysis of Issue and Alternatives.

There are many alternatives that could be considered in addressing the Civil Service System. Staff suggests the Commission make recommendations on the policy issues underlying the overall "modernization" issue. Staff does not recommend the Commission engage in "wordsmithery" at this juncture. Staff has prepared the following decision tree to provide the Commission with an analytical framework for addressing the policy issues.

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

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

2. Should Ordinance No. 866 enacted in 1958 be replaced with an ordinance enacted by the City Council thus allowing for updating the System on an ongoing basis without the need for a voter initiative?

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

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

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

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

4. *If the existing Ordinance No. 866 should be replaced with a new ordinance, what role/functions do you recommend the Board continue to perform?*

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

- (1) Overseeing the recruitment process for all civil service employees, as well as performing a role in the selection of the Police Chief and Fire Chief and acting as an appellate body on recruitment issues;
  - (2) The functioning as a discipline appeals board, reviewing any decision to discipline civil service employees and also for non-civil service employees under the City's EPM that are appealed to its level;
  - (3) Conducting investigations as requested by either by the City Council, the City Manager, or an organized employee's association within the System; and/or;
  - (4) Overseeing the system as a whole and making recommendations to the City Council as to any changes the Board believes are appropriate.
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5. Should the Charter be updated to create an Assistant/Deputy Department Head position or positions for Police and the Fire Departments that are outside of the System and outside of organized bargaining units?

You may recommend "No" or "Yes" on this issue.

This ends the specific questions.

6. **Staff Recommendations.**

No staff recommendations are being offered to the Charter Update Commission at this juncture. We look forward to the Commission's deliberations and ultimate recommendations at its next meeting.

**CONCLUSION**

Staff is available to discuss with the Commission the materials in the binder, the input from the Employee Associations, the research conducted by Human Resources of the charter and general law cities with a Civil Service/Personnel System and how they have evolved over time, the Civil Service Board's position. City Manager Dave Kiff is also available to provide input on his perceptions and opinions of the System as the City's Chief Personnel Officer. It is our mutual desire that the City of Newport Beach and its employees currently under Civil Service be afforded the security and protections of their rights as public safety and public employees.

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