



MEMORANDUM

TO: Honorable Chair Bergeson & Members of the Charter Update Commission

FROM: Dave Kiff, City Manager

DATE: March 16, 2010

RE: About the Civil Service System

The economic times have been both a challenge and an opportunity. The City's budget problems have encouraged us to re-think what we do to modernize our processes and making them more efficient. I believe we can achieve greater efficiency in managing personnel by improving our Civil Service System to tailor its role to the unique functions it can serve within our personnel system.

2009 has highlighted some areas where we can improve the system. Last year's investigation and promotional processes in the NBPD showed that we have an overly complex web of personnel regulations that are often in conflict or create ambiguities. This complexity results in confusion and can increase our legal expense. There are many regulations within the City to be realigned in order to act consistently with state and federal law. The City can whittle down the amount of regulations while administering our personnel system consistent with state and federal law and preserving appropriate protections for City employees.

Our Civil Service ordinance is a fifty-two year old document that cannot be updated without a vote of the people. Some of its provisions are inconsistent with existing law and are outdated in the face of modern personnel practices. Some aspects of the system simply do not serve a purpose in the context of current law. For these reasons, I respectfully request your assistance to help delete unnecessary provisions and to make the ordinance more manageable.

To achieve these goals, I recommend two specific steps toward modernization:

1. **Affirm Core CSB Functions.** Amend Ordinance No. 866, the initiative enacted measure that sets the duties and functions of the system. The amendments would update the ordinance as well as asking the voters to return the authority to make further amendments to it to their elected representatives. The ordinance would retain the core functions that can be best performed by the Civil Service Board. Experience has shown that the Board serves the City and the employees best as:

- a. An administrative appeals body for disciplinary actions and promotional questions, in order to protect the merit-based goals of the system; and
 - b. As an overseer of independent investigations into the administration of the Civil Service System (such has occurred with respect to the Police Department's promotional investigation); and
 - c. An advisory body to the City Council as to employee-related matters (evaluation progress, etc) that the Council may affirmatively direct to the CSB.
2. **Assistant Chiefs.** It does not make sense to me that the Police Chief and Fire Chief have deputy chiefs who are not "at-will" employees. While these positions still have rights under POBAR and FBAR, the nature of top management involves confidential information and critical decisions that require managers to think outside of a represented role. What if, for instance, a police chief needs operational advice on an issue currently on the negotiations table? He or she has no one to turn to who is not, in some way, affected by the negotiations.

Let's look back a bit in history. City government is more complicated than it was in 1958. Our organization had 277 employees at the time of the passage of the Civil Service ordinance. Presently we have about 800 employees. Our Police Department had 58 employees and our Fire Department had 40 employees in 1958. Currently, the Police Department has about 255 employees and Fire has 156 employees (plus 35.26 seasonal FTEs). As a result, the jobs of department heads have become vastly more difficult.

Department heads need a second level of management available to them that can stand in their place when they are not available and provide them support without the potential complications of other interests. The Charter already provides such support to the City Manager and to the City Attorney. Department heads simply should be placed in the same position with respect to this issue as the City Manager and the City Attorney.

I have consulted with the Police Chief, Robert Luman, on this matter. Chief Luman believes that an at-will assistant department head would improve his ability to manage the department. I have attached a copy of a memorandum from him on this issue.

The duties, job qualifications, and job description of an assistant department head position would need to be formulated based upon the specific needs of the Fire Department and the Police Department. Generally, however, I see the position as being at-will. The position would be filled by the respective chiefs following the recruitment guidelines under our Employee Policy Manual and as administered by the Human Resources Department. I could envision the CSB assisting in the development and review of the job qualifications and job description, but the hiring decision needs to be made by the chiefs.

I do not believe the positions will adversely affect promotional opportunities for internal department personnel. We have good staff here who can make the leap to the at-will chief's position – I can't see how they might be reluctant to compete for the next step of their professional growth if that is an at-will *assistant* chief's position. What better way to learn the challenging role of a chief than to be an assistant subject to the same challenges that the chief is subject to?

The City Attorney tells me that the only way to create this level of assistant department head position outside of Civil Service is through a Charter amendment.

I welcome your thoughts and those of the CSB. Please feel free to contact me if you have any questions or concerns at 949-644-3000 or dkiff@newportbeachca.gov.

Thanks for considering my views in this matter.

Attachment: Memorandum from Robert Luman, Chief of Police

cc: Mayor and Members of City Council
David R. Hunt, City Attorney
Terri Cassidy, Director, Human Resources Dept.
Robert Luman, Chief of Police



CITY OF NEWPORT BEACH OFFICE OF THE CHIEF OF POLICE

March 15, 2010

TO: Dave Kiff, City Manager

FROM: Robert M. Luman, Chief of Police

**SUBJECT: "AT WILL" ASSISTANT CHIEF POSITION FOR THE NEWPORT BEACH
POLICE DEPARTMENT**

I would like to begin by stating that I believe establishing an at-will Assistant Chief of Police position in the Newport Beach Police Department will strengthen the Department's ability to best serve the Community.

That being said, I will provide some context for my belief, which is based on personal experience with at-will positions. I began my career in Long Beach as a Police Officer in 1968. I was fortunate and progressed through the ranks. In 1985, while serving in the "represented rank" of Lieutenant, I had to make a decision about competing for an at-will Commander position. I ultimately made the decision and entered into the Commander promotional process. In 1986, I was promoted to Police Commander and served the Long Beach Police Department for the next 14 years in an at-will capacity while promoting to the positions of Deputy Chief and, ultimately, to Chief of Police.

This "Long Beach Model," as I will call it, provided police executives in the organization that were not conflicted between their allegiance to the City/Police Department and their allegiance to an employee group. In other words, the Chief of Police had a group of Command Officers in the organization with whom he could discuss any and all police-related matters.

In reflecting back on my time in Long Beach, I realized that being unrepresented gave me a sense of freedom and a clearer perspective on the role of a police executive. I became even more focused on what was in the best interest of the City, the Department, and its employees, while remaining unencumbered by the pressures of group think. I felt free of any fiduciary expectation to do what was in the best interest of an employee group. I found myself concentrating more on implementing the best practices to provide police service to the community, which included special attention to the safety of our personnel.

I have worked almost 20 years in an at-will capacity for several different cities and police organizations. The following observations are based on my personal experience at police departments other than Newport Beach; although the same principles apply here. That experience has reinforced the wisdom of the "Long Beach Model." As an example, a natural conflict of interest develops during contract negotiations where the Chief may need to collaborate on labor issues with a Command Officer who is

represented by the labor group. This is not a day-to-day occurrence; however, during these times, there is no one in the organization to whom a Chief can turn. He is unable to go to those most familiar with the issues for their thoughts related to the pros and cons of contract proposals or changes. Discussing these issues with represented Command Officers places the Command Officer in a compromised position of trying to serve the Chief and the Department while overlooking their affiliation with the employee group of which they are a member.

On a more regular basis, however, items come up that effect wages, hours, and working conditions. These items or issues are covered under the purview of employees groups and may be considered "meet and confer" items. Any one of these items could impact all employees in the organization. In resolving these items, a Chief should confer with other Command Officers who are familiar with the issues prior to making important operational or administrative decisions. Asking represented subordinates to weigh in on such matters, again, places them in a position of compromising their obligation to their employee group. The problem is only exacerbated if the Command Officer is serving on the labor group's Board of Directors.

The promotion of an at-will Assistant Chief of Police clearly mitigates the above concerns. It provides the Chief of Police a confidant. It gives the Chief someone to work with that can provide input and feedback that is unfettered by ties to an employee group. Additionally, it provides a clear Chain of Command, which provides unquestioned leadership in the absence of the Chief of Police. It eliminates a potential area of dissent among peer level Command Staff who may all feel entitled to lead the organization. The Assistant Chief position also facilitates succession planning in the organization by providing a clear stepping stone, above the rank of Captain, to the position of Chief of Police.

For the above reasons, I would like to reiterate my support for the "at-will" Assistant Chief of Police position to establish a second in command within the Newport Beach Police Department. I am confident the City of Newport Beach and its Police Department will find it beneficial to implement such a position.