

**CHARTER UPDATE COMMISSION
MINUTES
Council Chambers
Tuesday, March 16, 2010
2:00 p.m.**

I. ROLL CALL

Present: Commissioners Rush Hill, Richard Luehrs, Dennis O'Neil, Karen Rhyne, Larry Tucker, Paul Watkins, Chairwoman Marian Bergeson, and Mayor Pro Tem Henn
Absent: None

II. APPROVAL OF MARCH 2, 2010 MEETING MINUTES

1. **Motion by Commissioner O'Neil, seconded by Commissioner Watkins**, to waive reading of subject minutes, approve as amended, and order filed.

The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Absent: None

III. CHARTER SECTION DISCUSSIONS (COUNCIL-APPROVED PROVISIONS)

2. **CHARTER SECTIONS 710-711 – CIVIL SERVICE BOARD; CHARTER SECTIONS 800-803 – CIVIL SERVICE SYSTEM; ORDINANCE NO. 866 (NBMC CHAPTER 2.24) AND THE CIVIL SERVICE SYSTEM GENERALLY.**

Project Manager Standiford reiterated the Charter Update Commission's duties and noted that the Commission's recommendations will be evaluated by Council to assist in updating and modernizing the City's Charter.

City Manager Kiff provide a handout regarding the Civil Service System and pointed out that the System is outdated as it relates to recruitments. He affirmed the role of the Civil Service Board and discussed the reasons to include new Police and Fire Assistant Chief positions as non-represented employees. He noted that Police Chief Luman provided an opinion on this topic which was attached to his handout. Project Manager Standiford added that the City follows a Council/City Manager form of government and that personnel authority is vested with the City Manager.

Human Resources Director Cassidy provided an overview of the City's Civil Service System and its purpose when implemented. She reported that the System has not been updated since 1958. She noted that, since that time, many of the protections the System was intended to ensure have now been addressed through State and Federal law, case law, Memorandums of Understandings (MOU), Standard Operating Procedures (SOP), and meet and confer decisions. She stated that the City Manager is the appointing authority for the City. She reported that the issues with the System were brought to light due to the investigation by the Police Management Association (PMA).

In response to Chairwoman Bergeson's question, Human Resources Director Cassidy indicated that the City has not conducted an analysis on whether consolidating any of

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the policy documents would be feasible, especially since it has not been determined whether Ordinance No. 866 will to be amended.

The Commission began to discuss the questions from the staff report as follows.

Analysis of Issue and Alternatives

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

Human Resources Director Cassidy reported that both the Civil Service Board and City Manager recommended that the System not be eliminated.

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?

Chairwoman Bergeson suggesting changing “replaced” with “amended.” Project Manager Standiford noted that the Commission has the option to recommend either, depending on the amount of changes being proposed. Should the recommendation be to replace Ordinance 866, the City Council will have the opportunity to adopt a replacement ordinance in advance of the November election so the voters have the chance to consider the new ordinance before making a decision.

Commissioner Tucker discussed the duties of the Civil Service Board (CSB) and noted that they agreed that some portions of the ordinance need changing, but did not want it repealed in order for the employees not to lose any protections. He asked for information about the specific protections that are at risk that are not covered someplace else, like State or Federal law and the MOUs.

Mickey Dunlap, Civil Service Board (CSB), agreed that the ordinance needs to be amended relative to recruitment and the Council/Manager form of government. However, he indicated that the Board is concerned with the possibility that the City or a future Council may repeal the ordinance. He pointed out that the white paper does not include a staff recommendation but one was provided in the February 1 Civil Service Board report.

City Manager Kiff pointed out that the Employee Policy Manual (EPM) discusses the appeal process currently in Ordinance No. 866. He also confirmed that the bargaining units are handled through MOUs and that amendments to the EPM are done through the meet and confer process. Human Resources Director Cassidy noted that the current appeals process for hiring decisions gives the same rights to applicants and candidates as it does to employees. Board Member Dunlap agreed that the appeal provision regarding candidates and applicants should be removed. He noted that the EPM is important and approved by the CSB, but Council can amend it at any time. He indicated that the CSB does not deal with the meet and confer process for the MOUs.

In response to Chairwoman Bergeson’s question, Board Member Dunlap commended staff on how they have dealt with internal issues and that the CSB has not seen many appeals.

Debbie Allen, Civil Service Board, stated that she has not seen an analysis of what Commissioner Tucker has been requesting and indicated that she would also like to see

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what protections are not already covered. She believed that a protection that is covered by the EPM, an SPO, or CSB rule that can be easily changed is a different issue that probably does not always need to go to a vote. She reported that Section 711 of the Charter is written in generalities and that the ordinance is more specific, but should be brought up to date. She noted that the CSB also has subpoena powers in Section 711. In response to Commissioner Rhyne's question, Human Resources Director Cassidy indicated that CSB decisions for non-civil service employees are advisory with appeal to the City Manager, but is final in civil service employee decisions.

Commissioner Hill believed that there should be an attempt to reduce confusion and not have the same rules in various locations. He suggested that rules and regulations be removed from the Charter and be placed under Council purview, and that the important elements in the ordinance that are important to the Civil Service System be placed in the Charter. He noted that both documents currently require a vote, but believed that only the important issues should require a vote. Commissioner Tucker agreed and indicated that the change should be considered "amended and restated," not "repealed." Chairwoman Bergeson believed that staff needs to provide input relative to the consolidation, revision, and/or elimination of redundancies.

Commissioner O'Neil asked how much detail the Commission will be involved in writing the ordinance and questioned whether the ordinance should continue to go before a vote if the protections are covered by the Charter or law. Mayor Pro Tem Henn stated that Council will want the Commission to weigh in on at least one version of the analysis in order to ensure that the ordinance and Charter include what the Commission intended qualitatively.

5 – Should the Charter be updated to create an Assistant/Deputy Department Head position or positions for Police and Fire Departments that are outside of the System and outside of organized bargaining units?

Deputy Chief Dave Mais, Fire Management Association (FMA) President, indicated that the association needs more information about the at-large position, whether the person will be hired through an outside recruitment, if the person will lose their job if they were hired from within and did not work out, and if there are other alternatives.

In response to Commission questions, Deputy Chief Mais indicated that the Fire Chief has spoken to him about department issues and Fire Employees Association (FEA) issues; however, not FMA issues. He stated that, when he was Acting Fire Chief, he did not participate in any FMA discussions and the Vice President of the association led the association. He noted that, in Fire Department positions, people generally apply from within the organization. City Manager Kiff noted that this position could also be a part of someone's career growth, but does not necessarily have to come from within the department. Human Resources Director Cassidy pointed out that the job description has not been written.

Police Sergeant Mark Hamilton, Police Management Association (PMA) President, indicated that the PMA has not reviewed Chief Luman's memorandum, but their concerns are similar to that of the FMA. However, they would also like to know what the function of the Assistant Police Chief will be, if one of the three Captain positions will be eliminated, and whether the three year requirement for Police Chief be changed to two years for the Assistant Police Chief position.

Commissioner Luehrs emphasized that Council needs flexibility so that Charter issues are not brought back to the voters frequently due to the Charter sections being too specific.

3 – Should Ordinance No. 866 be amended?

Regarding the recruitment process, Civil Service Board Member Allen indicated that the CSB has faith in the Human Resources Department, but the CSB allows employees a public forum in the event they have a problem. She noted that two CSB members are involved on the interview committee and suggested that the other three be the appellant body.

Human Resources Director Cassidy reviewed the process for the selection of Police and Fire Chiefs, but emphasized that the appointment is made by the City Manager. City Manager Kiff questioned whether the process needs to be so specific, although it is probable that he would follow it anyway.

Project Manager Standiford reported on how CSB's involvement with the recruitment process could cause delays in the hiring process. She stated that there could be a concern if the same board involved in the appointment and selection process may be involved in hearing appeals for that selection process. She indicated that she is not sure the Commission will be involved in this issue since it is not part of the Charter, but is discussed in Ordinance No. 866.

City Manager Kiff indicated that, in light of CSB Member Allen's comments, he requested the chance to review the issues further and bring back a recommendation to the Commission. Human Resources Director Cassidy pointed out that the responsibility for the entire recruitment process rests with the City Manager.

Without objection, Project Manager Standiford summarized that it was the consensus of the Commission to direct staff to provide an analysis of the protections provided in Ordinance No. 866 that are covered elsewhere and at what level the protection is provided. Further, the City Manager will analyze the role of the Civil Service Board and how to maintain the value of the CSB without unduly interfering with his authority as City Manager.

Without objection, Commissioner O'Neil requested that this issue be discussed and a decision be made on April 20 instead of April 6 since Commissioner Tucker, who has been doing a great deal of research on the issue, will not be in attendance. Project Manager Standiford indicated that the postponement should not jeopardize the schedule or compromise Council's ability to make their decisions. Commissioner Rhyne indicated that she will not be in attendance on May 4.

IV. COMMISSION WORK PLAN

Regarding questions posed by the Commission at previous meetings, Project Manager Standiford reported that Administrative Services Director McCraner reported that the City is authorized to collect a Library Tax, but has neither collected it nor anticipates collecting it. She also reported that, based on a review of the language in Ordinance 866, it only takes a simple majority of the voters to amend the Charter and amend or repeal Ordinance No. 866. However, it would take a two-thirds vote to remove a position from the Civil Service System. She noted that staff will adjust the Work Plan and provide the Commission with an updated version.

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Chairwoman Bergeson asked if it takes a simple majority to place an item on the ballot to amend the Charter.

Commissioner Watkins noted that some of the Commissioners serve in various capacities with the Chamber of Commerce and asked whether the Commissioners would need to recuse themselves when discussing the issue of non-profit organizations requesting funding from the City. Project Manager Standiford indicated that the matter is not germane specifically to the Chamber of Commerce, although the issue was raised due to a letter from the Chamber of Commerce. She stated that, at the next meeting, the Commission will be provided with a report regarding the Special Events Advisory Committee, but the matter is whether the Charter should be amended to encompass giving rights to non-profits, not specifically the Chamber of Commerce, to apply for funding from the City. In that regard, she indicated that the Commissioners do not have a conflict of interest.

V. **PUBLIC COMMENTS** – None

VI. **ADJOURNMENT** – Adjourned at 3:58 p.m. to Tuesday, April 6, 2010, at 2:00 p.m. in the Friends Room at the Newport Beach Central Library, 1000 Avocado Avenue, Newport Beach.

The agenda was posted on March 11, 2010, at 11:05 a.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Recording Secretary

Chairperson

City Clerk