

CIVIL SERVICE BOARD MEETING MINUTES



DATE: March 1, 2010
5:00 pm – 6:17 pm

BOARD: Doug Coulter, Chairperson
Hugh Logan, Vice Chairperson
James “Mickey” Dunlap, Board Member
Debra Allen, Board Member
Maiqual “Mike” Talbot, Board Member

STAFF: Terri L Cassidy, Human Resources Director/Secretary to the Board
David Hunt, City Attorney
Jyll C Ramirez, Administrative Assistant to the HR Director

1. FLAG SALUTE

The Pledge of Allegiance was led by Vice Chairperson Logan.

2. ROLL CALL

All Board Members were present.

3. APPROVAL OF THE FEBRUARY 1, 2010 MINUTES

A Motion was made by Board Member Dunlap to approve the February 1, 2010 Minutes with a few grammatical changes. Board Member Talbot seconded the Motion. It was approved 4 Ayes, 0 No and 1 Abstain (Board Member Allen was absent for the February 1, 2010 CSB meeting).

4. MONTHLY REPORT FROM THE SECRETARY TO THE BOARD

HR Director Terri Cassidy reported to the Board:

- She was pleased to see the support of the Civil Service Board and Employee Association Members at the Mayor’s State-of-the-City Address Dinner.
- As a follow-up to ERIP (Early Retirement Incentive Program), Human Resources has been organizing and coordinating a high-volume of recruitment activity requests and is playing a key role in the strategic planning of the City-wide restructuring progression.
- HR is preparing to open the Police Chief recruitment.
- The City and HR welcomed Interim Fire Chief Steve Parker.

- Deputy Fire Chief Dave Mais has been appointed as the Acting Fire Chief due to the retirement of Fire Chief Steve Lewis until Chief Parker begins his assignment on March 15, 2010.
- The City was shocked and saddened by the sudden passing of Recreation Leader Cara Lee, whose father, IT Specialist III Randy Lee, is a long-time employee of the City as well. City employees really pulled together in support of the Lee family and the Recreation & Senior Services Department.
- On March 4, HR will participate and help educate a local high school student on how a local government functions during the City's Youth in Government day.
- HR has been keeping up with training regarding pension reform and changes in the laws, such as Firefighters Bill of Rights and Peace Officer Bill of Rights.

5. CITY ATTORNEY ROLE AND "ETHICAL WALL"

Mr. Hunt informed the Board that the City Attorney's Office is now divided between two functions on the personnel level. Some of the staff members are assigned to give support to HR and other City departments in the context of discipline. He and the other staff members represent the Board in HR discipline issues to protect the due process procedural rights of an employee who comes before the Board. He is not involved in any recommendations to the Department Directors regarding discipline. He explained that there are now enough attorneys in his office to create Ethical Walls. He would only ask for outside help if he was directly involved in the discipline.

Vice Chairperson Logan expressed his concern to Mr. Hunt on being able to uphold ethical walls when all staff members in the City Attorney's Office report directly to him.

Mr. Hunt assured Vice Chairperson Logan that he was functioning within the case law.

Chairperson Coulter asked how many attorneys Mr. Hunt has in his office.

Mr. Hunt answered that he has 5.7 Full-Time Equivalent (FTE) employees.

Board Member Allen expressed that it is her understanding that the case law to which he is referring is meant for public offices with more than 5.7 staff members, and she is also concerned about the perception of ethical walls between a boss and subordinates in a litigation context.

Mr. Hunt understands their concerns and reassures the Board that he would not do anything to put the City at risk.

6. CONTINUED DISCUSSION OF THE CIVIL SERVICE SYSTEM – CHARTER UPDATE COMMISSION

Board Member Dunlap expressed his concern and questioned if there would be a conflict of interest for Mr. Hunt between his role in representing the CSB and providing his own professional recommendation to the Charter Update Commission (CUC), if the two recommendations were not the same or in agreement.

Mr. Hunt responded by letting the Board know that it will not be a conflict of interest. He continued to explain that his job is to do, or advise, what is in the best interest of the City. He assured the Board that he will actively submit the Board's recommendation in addition to providing the CUC with his own professional recommendation. He encouraged the Board Members to attend the March 16 Charter Update Commission meeting.

Chairperson Coulter asked Mr. Hunt if they were expected to take action on this item during this meeting.

Mr. Hunt clarified to the Board that he was seeking their direction and comments to bring before the Charter Update Commission. He continued to explain that the goal is to seek policy direction for the CSB, not craft an ordinance at this time.

Chairperson Coulter proposed a study session.

Vice Chairperson Logan said he would like to talk to the other Board Members in closed session without violating the Brown Act.

Mr. Hunt responded that it needs to be discussed in an open setting.

Chairperson Coulter made a Motion to call a public study session at a date to be determined. The Motion was seconded by Board Member Dunlap.

Board Member Allen requested that we refer to the study session as a meeting, so that they Board may vote if they wish to do so.

Mr. Hunt replied that we will call it a Special Meeting, unless he determines that it needs to go into closed session following a conversation with Vice Chairperson Logan.

Board Member Dunlap stated for the record:

I have no concerns that the Charter Update Commission or the City Council will consider removing the Civil Service System completely. Article VIII, Section 803 requires a 2/3 vote of the people to remove or repeal the Civil Service System. With

expected strong opposition to this from the Safety Employee Associations, it would not likely pass and would doom to failure the positive changes that need to be made to the Charter and to the Civil Service rules.

With regard to Section 711 of the Charter, I believe that the provisions of 711, A through E, must be maintained as written.

With regard to Ordinance 866, I do not believe that it should be replaced, but that certain provisions of 866 must be changed. Specifically . . .

- Anything not consistent with State and Federal law.*
- Those notifications made redundant by “Skelly.”*
- Those sections that refer to “investigations” by the Civil Service Board in personnel appeals to be done prior to the start of a formal Board personnel hearing.*
- Those sections that are too specific regarding what is involved in the testing process and who determines the content.*
- And, if it is a fact that there is a strong exposure to liability existing, remove the requirement for Civil Service Board Members to sit in on interviews for Police And Fire Chiefs.*
- I believe a strong argument can be made for each of the other functions of the Board, including those in which the Board routinely approves job descriptions and promotion lists, and I can explain that in detail at the proper time.*
- I do not believe that it would be burdensome for City staff to draw the appropriate changes in a timely manner. Staff certainly has the talent to do that.*

Further, there have been numerous references to the City Employee Manual and to the supposed protections it offers to City employees. That manual, which was written with input from the Civil Service Board and approved by it as supplementary to the Civil Service Rules, was never designed to replace those rules. It can be changed at any time by a simple majority vote of the City Council and thus does not guarantee Civil Service protection of due process to City Safety Employees.

To answer Mr. Hunt’s comment, I do not believe the City electorate will be concerned about complex issues involving personnel matters. They will approve with a majority vote if the initiative is unopposed and the System will be brought into compliance with current law and the protections inherent in the system will be preserved.

I do not favor replacing Ordinance 866 with one that can allow a future City Council, by majority vote, to alter employee protections and I do not believe that the Safety Associations will support an ordinance that could erode their present protections.

Vice Chairperson Logan expressed concern regarding Mr. Praet's recommendation that the Civil Service Board be disbanded. He feels Mr. Praet's approach to have only one level of documents may read better, but is unrealistic. Additionally, the role of the CSB is an independent body that is unbiased and is a way to solve problems without litigation.

Board Member Allen reminded all that the CSB provides an open, transparent forum and believes the PMA Investigation would have gone to litigation in the absence of a Civil Service Board. In regard to the Charter, she doesn't see any conflict with current laws for Sections 711, 800, 801, 802 and 803, and she did not see any details outlined in the staff report referring to staff's concerns and why staff feels that these provisions, which guarantee the continuance of the Civil Service System to protect the rights of the employees, should be abandoned.

Mr. Hunt said he hasn't made any recommendations, including abandoning Article VIII.

Vice Chairperson Logan expressed that he believes Mr. Hunt's views to be the same as Bruce Praet's, of Lexipol, since he was the person who hired Mr. Praet.

Ms. Cassidy reminded the Board that Mr. Praet was hired specifically for the PMA Investigation and because many of the City's governing documents are in contradiction with each other, difficult to work with and sometimes illegal. Mr. Praet's comments were his own recommendations, and she asked that the Board not focus on just Mr. Praet's recommendation, but the larger picture before them. Disbanding the Civil Service System was only one option of several, and she felt it would be more productive to address the other issues since staff was aware that the Board does not agree with Mr. Praet's recommendation.

Chairperson Coulter opened it to public comment.

There were none.

Chairperson Coulter brought it back to vote for a Special Meeting. 5 Ayes, 0 No.

7. REQUEST APPROVAL OF THE UPDATED POLICE CHIEF JOB SPECIFICATIONS

Ms. Cassidy announced that Chief Luman's contract will expire on June 30, 2010, and she explained that we are ready to start recruiting for a Police Chief. The updated Police Chief job specifications include the industry standard with emphasis on leadership traits. In addition, HR incorporated suggested statements from the Police Association(NBPA) and Police Management Association (PMA), and Eric

Middleton, Alliance Resource Consulting, will be the executive recruiter, if approved. Ms. Cassidy asked Chairperson Coulter to select a second Board Member to serve on the Appraisal Board with him. Chairperson Coulter selected Board Member Dunlap, and asked that Board Member Allen be selected as an alternate in the event that Board Member Dunlap was familiar with an applicant. In addition, Ms. Cassidy requested approval to authorize the City Manager to obtain outside Police Chiefs to also serve on the Appraisal Board.

A Motion was made by Board Member Allen to approve the updated Police Chief job specifications. Vice Chairperson Logan seconded the Motion. It was approved 5 Ayes, 0 No.

8. REQUEST APPROVAL TO OPEN THE POLICE CHIEF RECRUITMENT

A Motion was made by Board Member Dunlap to approve opening the Police Chief recruitment. Board Member Allen seconded the Motion. It was approved 5 ayes, 0 No.

9. REQUEST TO VACATE THE FIREFIGHTER ELIGIBILITY LIST

Ms. Cassidy explained to the Board that the current eligibility list is two years old, and updated testing processes are being discussed. In addition, the Fire Department is working more closely now with HR and together are coming up with a more viable and appropriate testing process.

Chairperson Coulter opened the discussion to the public.

There were no comments.

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

10. REQUEST TO APPROVE SENIOR ANIMAL CONTROL OFFICER ELIGIBILITY LIST

A Motion was made by Board Member Logan to approve the Senior Animal Control Officer eligibility list. Board Member Dunlap seconded the Motion. It was approved 5 Ayes, 0 No.

11. FIRE DEPARTMENT STATUS REPORT

Acting Fire Chief Dave Mais welcomed Fire Chief Steve Parker and recognized retired Fire Chief Steve Lewis for his three years of service. He continued and informed the Board that:

- The Junior Lifeguards have been testing for the last four weekends of February.
- This weekend, the Seasonal Lifeguard pre-certification training will start and pick-up again in June.
- Battalion Chief training was held in the Council Chambers for two Fire Engineers and one Fire Paramedic.

Fire Chief Parker introduced himself to the Board and expressed his excitement for the opportunity to serve Newport Beach as the interim Fire Chief.

12. POLICE DEPARTMENT STATUS REPORT

Captain Gazsi addressed the Board:

- On February 20, approximately 400 candidates participated in the Police Lateral recruitment testing process.
- Written tests for the Animal Control Officer, Police Dispatcher and Crime Scene Investigator positions occurred on February 27.
- There were three graduates for the Orange County Sheriff's Academy on February 22.
- A Police Recruit Officer is anticipated to graduate on May 19 from the Police Academy.
- Police Officer Dave Moon is expected to retire this year.
- Police Officer Glen Garrity, assigned to the Detective Division, retired on February 22.
- Two Police Recruit Officers are anticipated to start the Academy on March 22.
- Currently in the background process is one Lateral Police Officer and four Police Recruit Officers.

13. BOARD MEMBER COMMENTS

Vice Chairperson Logan thanked staff for their good work and welcomed Chief Parker.

Board Member Dunlap recognized and thanked City Manager Dave Kiff and Police Chief Bob Luman for their presence.

14. ITEMS FOR FUTURE AGENDAS

Mr. Hunt will work with the Board Members to set up a Special Meeting, which was later determined to be Monday, March 8, 2010 at 8:00 a.m. in the City Council Chambers.

15. PUBLIC COMMENTS

None

16. ADJOURNMENT

The Civil Service Board meeting adjourned at 6:17 PM.

Terri L Cassidy, HR Director
Secretary to the Board