

# Cantrell's proposed changes

## ORDINANCE 2023-06

**AN ORDINANCE OF MADEIRA BEACH, FLORIDA, AMENDING DIVISION 4 (CIVIL SERVICE COMMISSION) OF ARTICLE III (BOARDS, COMMITTEES, COMMISSIONS) OF CHAPTER 2 (ADMINISTRATION) OF THE CODE OF ORDINANCES RELATED TO THE DUTIES AND OPERATION OF THE CIVIL SERVICE COMMISSION; AND PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Division 4 of Article III of Chapter 2 of the City of Madeira Beach Code of Ordinances provides for certain procedures related to the operation of the City's Civil Service Commission; and

**WHEREAS**, Section 5.7(C) of the City Charter provides that the Madeira Beach Civil Service Commission is responsible for the preparation of the City's personnel rules and that, once such proposed rules are concurred with by the City Manager, the same shall be proposed to the Board of Commissioners for consideration, which may adopt same with or without amendment by ordinance. These rules shall include, but are not limited to:

1. The classification of all classified City positions, based upon the duties, authority and responsibility of each position, with adequate provisions for classification of any position whenever warranted by circumstances;
2. A pay plan for all classified City positions;
3. Methods for determining the merits and fitness of candidates for appointment or promotions;
4. The policies and procedures regulating reduction in force, demotion, suspension and removal of employees;
5. The hours of work, attendance regulation and provisions for sick and vacation leave;
6. Grievance procedures, including procedures for the hearing of grievances by the Civil Service Commission, which may render advisory opinions based on its findings to the City Manager with a copy to the aggrieved employee. In this respect the Civil Service Commission shall have the power to issue subpoenas to compel attendance by witnesses and to administer oaths;
7. Other practices and procedures necessary to the administration of the City personnel system;
8. In connection with the aforementioned personnel rules, the Civil Service Commission shall inquire into the implementation of such personnel rules as considered necessary to ensure compliance therewith.; and

**WHEREAS**, Section 5.7(D) of the City Charter provides that the Board of Commissioners may provide for the duties and powers of the Civil Service Commission by ordinance; and

**Commented [JC1]:** Can this statement follow this sentence? "Grievances against Charter Officers shall be heard by the Civil Service Commission and its findings shall be provided to the Board of Commissioners, the City Manager, and the aggrieved employee by the Civil Service Commission."

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**WHEREAS**, the Board of Commissioners has received recommendations from the City Attorney regarding revising the current substantive and procedural operations of the Civil Service Commission to reflect the intent of the City and to ensure prevailing caselaw and statutory law regarding the function of such bodies is adequately addressed; and

**WHEREAS**, the City Attorney has reviewed best practices and has recommended the provisions contained in this Ordinance to provide the policy specificity the Board of Commissioners desires; and

**WHEREAS**, the Board of Commissioners finds that it is in the best interests of the City to adopt the policy provisions set forth in this Ordinance; and

**NOW, THEREFORE, BE IT ORDAINED** by the Board of City Commissioners of City of Madeira Beach, Florida, that:

**SECTION 1.** Division 4 (Civil Service Commission) of Article III (Boards, Committees, Commissions) of Chapter 2 (Administration) of the City of Madeira Beach Code of Ordinances is hereby amended as follows:

#### **DIVISION 4. - CIVIL SERVICE COMMISSION**

**Sec. 2-126. - Intent:** appellate jurisdiction.

Commented [JC2]: Why is this here?

(a) The intent of this division is to provide for the scope of authority of the civil service commission and to establish procedural and organizational rules related to its exercise of that authority~~ereate a civil service commission in order to review, prepare, and recommend rules for the city's personnel policies and procedures with regard to classified employees.~~

(b) The civil service commission shall preside over appeals of disciplinary terminations of regular all classified, non-probationary~~hear grievance for classified employees, but shall not consider appeals of disciplinary actions against employees who are classified as at-will, or who are otherwise made ineligible by the city's adopted personnel policy to file such appeals who believe they have a grievance arising from their employment and render recommendations as provided in the Charter § 6.6C-6. In performing this role, the jurisdiction of the civil service commission is to interpret the city's personnel policy and any other relevant city policies, and to ultimately find if the city had factual and legal just cause to impose the discipline. In reaching its decision, the civil service commission sits in an appellate advisory capacity. The civil service commission does not have jurisdiction over, and may not rule upon, or make findings about, any allegations of a violation of a county, state or federal law. Employees seeking to assert such violations should do so by way of the appropriate statutory procedures.~~

Commented [JC3]: This should read "hear grievance for classified..."

(c) ~~The civil service commission members also recommend cost of living increases and employee pay adjustments to the board of commissioners for consideration.~~

Commented [JC4]: Restore this clause.



Sec. 2-127. - Appointment and membership~~Organization~~.

- (a) In addition to any charter provisions concerning the appointment and membership of the civil service commission, unless doing so would result in the inability to have a fully-appointed commission, membership and appointment shall be as provided in Charter § 6.6B. The term of each person appointed to the commission shall be staggered so that not more than two terms expire within any one year. Any civil service commission member may be reappointed by the board of commissioners. Appointments to fill vacancies shall be for the unexpired term of office.
- (b) Members of the civil service commission shall be residents of the city at the time of their appointment and throughout the term of office. Any member who is no longer a resident of the city shall be automatically removed, and that vacancy filled as provided in this division.
- (c) Members of the civil service commission may be shall be suspended or removed for cause upon the filing of written charges by the mayor. The written charges shall be served by hand delivery or certified mail upon the member being charged. The member being charged shall have 15 days to appeal the charges to the board of commissioners. If the charges are appealed, the member of the civil service commission being charged shall be afforded a prompt public hearing on the matter. The member shall be ~~Retained,~~ suspended or ~~be~~ removed by majority vote of the board of commissioners.
- (d) The failure of any member of the civil service commission to attend two of three successive meetings without cause and without prior approval of the commission chairman shall result in; the member's seat becoming vacant and the city clerk, serving as ex officio secretary to the civil service commission, shall report then declare the member's seat vacancy to and the board of commissioners, which shall promptly fill such vacancy. The failure of any individual civil service commission member to attend four meetings of the civil service commission in any contiguous 12-month period shall be cause for removal.
- (e) Appointments shall be made, consistent with the Charter on the basis of demonstrated experience or interest in the subject matter.
- (f) The members of the civil service commission shall, in November-October of each year, elect a chairman and a vice-chairman from among its members who shall be voting members. The chair, and in his or her absence the vice-chair, shall preside over meetings and hearings and shall, subject to the will of the entire commission, make rulings on points of order and procedure, and in quasi-judicial hearings shall rule on motions and objections.
- (g) Members of the civil service commission shall schedule in advance quarterly meetings. However, if the chair, in consultation with the city manager ex officio secretary, determines that there are no agenda items requiring a scheduled meeting, the chair is

Commented [JC5]: Restore this clause.

Commented [JC6]: We need to add a statement that all terms expire on September 30th.

Commented [JC7]: It should never be the City Manager. This must be the Ex Officio Secretary.

authorized to cancel the scheduled meeting, and to instruct the city clerk, acting as ex officio secretary, to notify the members of the cancellation. In addition to its scheduled quarterly meetings, the civil service commission shall promptly schedule hearings on employee post-termination ~~appeals~~ complaints and grievances, ~~and when grievances are filed. Any other unscheduled meetings may be requested by the city manager or his or her designee~~ the Ex Officio Secretary, through the civil service commission chair to discuss personnel matters which cannot wait until the next regularly-scheduled meeting will be at the behest of staff, in collaboration with the chair of the civil service board.

**Commented [JC8]:** I believe this should be "grievance" so that it complies with the terminology within the Charter.

**Commented [JC9]:** The CSC holds the meetings and should approve all unscheduled meetings.

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~~(g)(h) The city manager shall coordinate with the civil service commission chairperson and the human resources coordinator to choose and set meeting dates and time before a meeting is noticed; and~~

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**Commented [JC10]:** The city manager and the hr representative may not schedule meetings without approval from the CSC.

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~~(h)(i)~~ Pursuant to the city charter, the city clerk shall serve as the civil service commission's ex officio secretary. In that role, the clerk shall ensure board meetings are noticed and minutes are recorded and maintained so as to ensure compliance with the state's sunshine law. The clerk shall also provide civil service members with electronic copies of agenda materials and keep and maintain the official records of the commission. The clerk shall also serve as the hearing clerk for any quasi-judicial post-termination appeal hearings and in that role shall swear in all witnesses and keep the official record of the hearing, including all exhibits admitted or proffered into evidence. The City Clerk shall also utilize a court reporter for quasi-judicial post-termination appeal hearings.

~~(i)(j)~~ ~~(2)~~ The ~~city manager~~ ex officio secretary and the chairperson of the civil service commission shall coordinate and agree on all agenda items prior to the civil service commission meetings, except that the civil service commission cannot refuse to promptly set for hearing a timely-filed post-termination ~~appeal~~ grievance.

**Commented [JC11]:** The city manager should never decide the content of a CSC meeting. He may request items to add through the chair or ex officio secretary, and if they agree on it, then it is added to the agenda.

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~~(j)(k)~~ ~~(3)~~ Human resources staff or ~~such other staff as may be designated by the city manager's designee~~ shall serve as staff person(s) for the civil service commission and shall attend all meetings of the civil service ~~commission~~ board. In this role, the assigned staff person(s) shall assist the civil service commission by providing it with information, reports, historical data, surveys, or such other information or materials as the civil service commission may reasonably request to assist it in performing its duties of advising on possible policy changes, providing advice and recommendations on policy implementation, and making recommendations, determinations and decisions related to compensation and classification plans, to the extent these matters are within the scope of the civil service commission's duties as set forth in the city charter.

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**Commented [JC12]:** This troubles me. The HR representative and the City Manager should both be available for the CSC, when requested. However, they should not be permanent members of the CSC.

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~~(k)(l)~~ The city attorney shall be the primary legal advisor to the civil service commission on all matters of municipal law. However, in the event the civil service commission may require specialized labor or employment counsel ~~of a nature the city attorney is not able to provide, the city may, within established budgets, provide additional specialized counsel. Prior to each civil service commission meeting, the city manager ex officio secretary and commission chair shall confer on the agenda and determine if the city attorney's attendance would or an employment lawyer for the city~~



~~may attend civil service commission meetings as may be necessary or desired, and if so, shall request the city attorney's presence.~~

~~(m)(4)~~ Notwithstanding the foregoing, if, in the sole judgment of the ~~city manager chair and the ex officio secretary~~, the nature and complexity of the ~~appeal grievance~~ requires that an assistant city attorney to assist the disciplining director in the prosecution of the appeal hearing by presenting arguments and evidence and calling and questioning witnesses, the city attorney shall ensure such attorney is assigned to that role. In no circumstances may the attorney assigned to be the civil service commission's neutral legal advisor also serve as the attorney presenting the disciplining director's case and making argument before the commission.

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~~(n)(5)~~ As set forth in the Charter, the civil service commission is an advisory board that makes ~~non-binding~~ advisory recommendations to the city manager and the board of commissioners. In its quasi-judicial role hearing post-termination appeals, the civil service commission will make written findings of fact and conclusions as to the application of those facts to the city's policies. The written recommended order may be rendered by the civil service commission immediately upon the conclusion of a hearing or, if adequate time is required to draft a suitable order, may be rendered at a subsequent meeting to occur in a reasonable time after the conclusion of the hearing. ~~Grievances against Charter Officers shall be heard by the Civil Service Commission and its findings shall be provided to the Board of Commissioners and the aggrieved employee by the Civil Service Commission.~~

Commented [JC13]: This is troubling. The City Manager should not request legal counsel for the CSC. This request should be made through the members of the CSC. Input and advice from the City Manager should be welcomed.

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Commented [JC14]: This must also reference the BOC. Should it include that the findings are rendered to the employee, the City Manager, and the BOC?

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~~(o)~~ Civil service commission members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by board of commissioners or as otherwise provided by law.

#### Sec. 2-128. - ~~Procedural matters~~ Conduct a meeting/hearing.

(a) ~~The city clerk, serving as ex officio secretary to the civil service commission, shall ensure all notices of Notification. When and at such time a meeting is scheduled the city administration shall post a notice of the time and place when the civil service commission are posted in a manner compliant with the state's sunshine law shall meet and the topics on their agenda.~~

(b) ~~Meetings and /public hearings. At all regular meetings the hearing of the civil service commission, the chair shall afford any interested person the ability to address the commission on any matter to be voted upon by the commission prior to the vote being taken may be heard upon the subject matter. In addition, the civil service commission may, in its adopted rules of procedure, afford time on its agenda for any city employee or citizen to address the commission on any matter within the commission's duties and responsibilities. However, when the civil service commission is sitting in its quasi-judicial capacity during post-termination appeal hearings, it shall not afford such opportunity for comments, but rather shall only base its findings and conclusions on the~~

Commented [JC15]: Should we have a time designation for responses?

documents and testimony admitted into evidence during the hearing, and any arguments the parties or their attorneys may make.

- (c) Recommendations. The civil service commission, by majority vote, may make~~shall conclude~~ recommendations to the city board of commissioners on any matter within the scope of its jurisdiction. Such recommendations may take the form of motions recorded in the minutes, adoption of a written report, or for quasi-judicial appeals, adoption of a written recommended order.

**Commented [JC16]:** Our findings and decisions must go before the BOC. It is important that that is stated in this rule

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- (d) Written records. Minutes shall be kept of all meetings and hearings by the civil service commission, and all hearings shall be open to the public. Pursuant to the city charter, the city clerk shall serve as the ex officio secretary of the civil service commission, and shall perform the duties associated with that role, as set forth in the city code, including the maintenance of the commission's official record. The board of commissioners shall provide clerical and administrative personnel as may be reasonably required by the civil service commission for the proper performance of its duties. The official written record shall include the vote of each member of the civil service commission upon each question, or if absent or failing to vote, indicating such fact. The minutes of all proceedings, decisions and/or recommendations of the civil service commission shall be made public record on file in the office of the city clerk. The City Clerk shall also utilize a court reporter for quasi-judicial post-termination appeal hearings.

- ~~(d)~~ (e) The civil service commission may adopt such procedural rules to regulate the conduct of its meetings as may be deemed to be necessary and desirable. In developing such rules, the civil service commission shall consult with the city attorney to ensure they comply with the state's sunshine and records laws and, to the extent that they will govern the commission's quasi-judicial post-termination hearings, to ensure they comply with applicable due process standards. Notwithstanding the foregoing, the civil service commission's procedural rules may not place any specific duty or assignment upon any city official or employee and may not be inconsistent with any provision of the city charter or code, or state law.

**Commented [JC17]:** This sentence is NOT a requirement of the charter. How does this interact with the charter's requirement that the CSC conduct inquiries regarding the implementation of the Personnel Policy? We will have to task personnel with minor items with respect to questions and response?

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**Commented [JC18]:** The CSC is charged with this responsibility. The City Manager has no place in it with respect to the Charter.

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**Commented [JC19]:** The Charter does not reflect this language.

#### Sec. 2-129. - Non-appellate pPowers and duties.

- (a) The civil service commission, in consultation with the city manager, is charged with the on-going development of the city's classification and pay plans. This includes periodic studies relating to equitable classification categories and pay ranges, shall have the power to establish rules and regulations for its own operation not inconsistent with the provisions of this Code.
- (b) The civil service commission, working with the city manager and relevant human resources staff, will periodically examine, by use of staff, consultants, and such other resources available, market conditions and comparative wage data for relevant public and private sector employers, and based upon the results of this examination, will make a written recommendation to the city managerboard of commissioners concerning wage adjustments.



(c) The civil service commission, ~~working with the city manager and relevant human resources staff,~~ is charged with developing recommended classifications and pay plans (subject to budgets approved by the board of commissioners) ~~as the city's business needs and operating experience dictate.~~

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Commented [JC20]: The Charter does not reflect this language.

**SECTION 2.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**SECTION 3.** For purposes of codification of any existing section of the Madeira Beach City Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**SECTION 4.** The Codifier shall codify the substantive amendments to the Madeira Beach City Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

**SECTION 5.** Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon its adoption.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, THIS \_\_\_\_\_ day of \_\_\_\_\_, 2023.**

\_\_\_\_\_  
James "Jim" Rostek, Mayor

ATTEST:

\_\_\_\_\_  
Clara VanBlargan, City Clerk

PASSED ON FIRST READING:

PASSED ON SECOND READING:

