

## **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; 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

**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.**

- (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.
- (b) The civil service commission shall preside over appeals of disciplinary terminations of regular, non-probationary 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. 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.

### **Sec. 2-127. - Appointment and membership.**

- (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, 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 retained, suspended or 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 chair 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 the vacancy to the board of commissioners, which shall promptly fill such vacancy.
- (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 of each year, elect a chair and a vice-chair 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, determines that there are no agenda items requiring a scheduled meeting, the chair is 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. Any other unscheduled meetings may be requested by the city manager or his or her designee to discuss personnel matters which cannot wait until the next regularly-scheduled meeting.
- (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.
- (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.
- (j) The city manager 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.
- (k) Human resources staff or such other staff as may be designated by the city manager shall serve as staff person(s) for the civil service commission and shall attend all meetings of the civil service commission. 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 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.

- (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 and commission chair shall confer on the agenda and determine if the city attorney's attendance would be necessary or desired, and if so, shall request the city attorney's presence.
- (m) Notwithstanding the foregoing, if, in the sole judgment of the city manager, the nature and complexity of the appeal 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.
- (n) As set forth in the Charter, the civil service commission is an advisory board that makes non-binding advisory recommendations to the city manager. 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.
- (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.**

- (a) The city clerk, serving as ex officio secretary to the civil service commission, shall ensure all notices of the civil service commission are posted in a manner compliant with the state's sunshine law.
- (b) Meetings and hearings. At all regular meetings 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. 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 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 recommendations to the city 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.
- (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 official 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.*
- (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.

**Sec. 2-129. - Non-appellate powers 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.
- (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 manager 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.

**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.**

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**James “Jim” Rostek, Mayor**

ATTEST:

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**Clara VanBlargan, City Clerk**

PASSED ON FIRST READING:

PASSED ON SECOND READING: