



MINUTES
CIVIL SERVICE COMMISSION
MEETING
AUGUST 17, 2023
4:00 p.m.

The City of Madeira Beach Civil Service Commission meeting was scheduled for 4:00 p.m. on August 17, 2023, in the Patricia Shontz Commission Chambers at City Hall, located at 300 Municipal Drive, Madeira Beach, Florida.

MEMBERS PRESENT: Gene Embler, Chair
Cristina Ponte, Vice Chair
Jerry Cantrell
Paul Tilka
Clara VanBlargan, Ex-Officio Secretary

MEMBERS ABSENT: Judithanne McLauchlan

CITY STAFF PRESENT: Robin Gomez, City Manager
Attorney Rob Eschenfelder, Trask Daigneault, L.L.P.
Megan Powers, Assistant to City Manager & HR Staff

1. CALL TO ORDER

Chair Gene Embler called the meeting to order at 4:08 p.m.

2. ROLL CALL

City Clerk Clara VanBlargan called the roll. Commissioner McLauchlan was absent.

3. PUBLIC COMMENT

There were no public comments.

4. OLD BUSINESS

A. Proposed Ordinance 2023-06, Civil Service Commission Rules

[Chair Embler and Commissioner Cantrell prepared a PowerPoint presentation for the meeting. The PowerPoints were distributed to the members before the meeting.]

Chair Embler presented her PowerPoint presentation first.

Ordinance 2023-06 "The Rules"

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 passed by the BOC.

Chair Emblar said the meeting's purpose was to continue the discussion on Ordinance 2023-06, Civil Service Commission Rules. Hopefully, everyone had an opportunity to go through both versions of the ordinance, the Attorney's version, and Commissioner Cantrell's proposed changes. The differences mainly center on three areas. The City Charter provides for the Board of Commissioners to approve their rules by ordinance on how they want to conduct themselves as it relates to the duties and powers of the Civil Service Commission.

Eschenfelder and Cantrell – Version Comparison: 3 major areas for discussion.

(1) Grievance vs Appeal

Attorney Eschenfelder clarified the purpose of the verbiage change and stated that the Ordinance is in alignment with the proposed Employee Handbook. He also clarified that no judge would require them to use the word 'grievance' simply because that was the word used in the City Charter. CSC members unanimously agreed with not using the word 'grievance' but rather using the termination 'appeal.'

Chair Emblar said at their last meeting they had addressed a difference of opinion concerning grievance vs. appeal, the first major difference between the two ordinances. The Attorney had clarified the verbiage change and confirmed that no judge would require them to use the word grievance. They unanimously agreed not to use the word grievance but to use the word appeal as stated in the Attorney's version.

Commissioner Cantrell said he appreciated the explanation by the Attorney. He was good with using either one.

(2) Who Can Appeal to the CSC? (Disciplinary Terminations)

- **Attorney: Regular, not 'at-will'**
- **Mr. Cantrell: Classified, delete 'at will' language**
- **Classified, per the current Handbook includes "All employees of the City not employed as a Charter Officer, Department Head, or confidential officer."**
- **Part II Code of Ordinances, Division 4 also states "rules with regard...to classified employees"**
- **Regular employees include individual contributors, supervisors, and Managers, not Department Heads.**
- **Question: Should the CSC hear the appeals of Department Heads, or should Department Heads appeal to BOC, like Charter Officers?**
 - **Historically to BOC**
 - **The Attorney opined that appeals should go to BOC, not CSC.**

Chair Emblar said the second major difference between the two is who can appeal to the Civil Service Commission regarding disciplinary terminations. The word in the Attorney's version applies to regular, not at-will employees. Jerry's version references classified and would like to

strike at-will language. Classified, per the current handbook, are all employees of the City not employed as a Charter Officer, Department Head, or confidential officer. The Code, Division 4, is in regard to classified employees. The regular employees include individual contributors, supervisors, and managers, not department heads. That has been the historical Intent of who can appeal to the Civil Service Commission. At their last meeting, the Attorney explained why he recommended that department heads not be included. She asked the Attorney to speak to that and remind them of the definition of at-will.

Commissioner Cantrell said before the Attorney does that, he would like to present the historical things said by Mr. Hendricks, Ms. Price, and Mr. Andrews. It would be better if they looked at everything when presenting and then make comments. He made notes to request clarification of at-will and would like to address Charter Officers and department heads.

Chair Embler said they must agree on whether the Civil Service Commission should hear appeals of department heads or should department heads appeal to the Board of Commissioners the same as the Charter Officers. Historically, they would appeal to the Board of Commissioners. The Attorney told them that the department heads should appeal to the Board of Commissioners, not the Civil Service Commission. They have the power to change that. The question is, does it make sense?

Commissioner Tilka asked if that had changed from the previous procedures. Chair Embler said no, it has been that way. The department directors and the Charter Officers will go directly to the Board of Commissioners. The Charter Officers include the City Clerk, City Manager, Finance Director, and the City Attorney if they do not have a contract. The City Clerk said the City Charter does not require all Charter Officers to have a contract. The City Clerk and City Treasurer were meant to be long-tenured employee Charter Officers.

Commissioner Cantrell said City Charter, Article V, lists the Charter Officers as the City Clerk, City Attorney, City Manager, and City Treasurer. Those are the positions appointed by the Board of Commissioners.

Chair Embler said before they decide, they look at it historically, listen to the Attorney's recommendation, look at other things, and look at the pros and cons and decide accordingly.

Commissioner Ponte asked that the Chair and Commissioner Cantrell present together so they could make comments on both as they go along. Commissioner Cantrell said he would prefer that the Chair present first, and following his, they discuss and decide.

(3) City Manager / City Clerk: Roles and Responsibilities

- **Attorney verbiage provides authorization for City Manager to**
 - **Schedule / Cancel Meetings with CSC Chair approval, Clerk providing notification**
 - **Schedule Personnel meetings that cannot wait until the next formal meeting**
 - **Agree on Agenda items with CSC Chair**
 - **Request legal advice (intended to preclude conflict of interest)**

- **Co-develop classification and pay plans with CSC**
- **Mr. Cantrell's version provides authorization for the Clerk to**
 - **Schedule / Cancel Meetings with CSC Chair approval, Clerk providing notification**
 - **Schedule Personnel meetings that cannot wait until the next formal meeting**
 - **Agree on Agenda items with CSC Chair**

Chair Emblar said the third area of difference she saw between the two documents was the attorney version referenced in several places the role of the City Manager, and Commissioner Cantrell cited a desire to change many of them to the City Clerk. Some duties stated in the City Clerk's job description and included in the packet are setting up and handling elections, records management, public notices, and notary services. She saw nowhere in the City Charter that they work directly with the Clerk. Instead, the Clerk is there as a support person. Section 5.7 (C) in the City Charter says they give advisory opinions to the City Manager. Division 4 of the Code of Ordinances says the Civil Service Commission makes non-binding advisory recommendations to the City Manager. She has the historical perspective they should be working with the City Manager. However, it is up to the Civil Service Commission if they want to change the responsibilities to the Clerk.

The City Clerk said the City Charter, Section 5.2, says the City Clerk shall be the secretary ex-official of the Civil Service Commission. She does not know why that language is not referenced in Section 5.7 also.

Commissioner Cantrell asked the definition of the ex-officio secretary. He understands that the City Clerk is part of the Civil Service Commission and a non-voting member. The City Clerk said research showed that there are ex-officio members who take part in debates and votes. There are different things that an ex-officio member does. One city had an ex-officio finance member on a board that did not vote only because their City Charter said non-voting. She participates in the Civil Service Commission meetings and discussions. The City Charter does not state non-voting.

Chair Emblar said the City Clerk plays an important role and participates, which they welcome. In the business world language, the Clerk is an enabling and support organization, not a line organization. The Clerk is there to support the line people. The Commission reports to the City Manager, not through the Clerk.

Attorney Eschenfelder said every city clerk and county clerk essentially serves the same role. They are a supporting entity but are not meant to be a participating member of the various boards but are stakeholders they must listen to. Municipal and county clerks have a unique existence in the country. If the City Clerk were a member of the Board, there would be a potential dual office holding situation but not to an advisory board. The City Clerk said it is not considered dual office holding when both duties are stated in the City Charter.

Vice Chair Ponte said since they are talking about who is part of the Civil Service Commission, she would like to know why former HR Director Sean Lilly sat with them and participated in the meeting and the City Manager did not. She would like the City Manager to be involved in the same

capacity as the City Attorney and City Clerk, participating in the discussions and giving them advice. She would like them to discuss it at the next meeting.

Commissioner Cantrell said he had documentation where the Board of Commissioners in the past and the current have specifically stated they want a HR Director. That would be separate from the City Manager, but there are not enough hours for a full-time HR Director. He is certain that their decisions as a Civil Service Commission impacted their ability to do their job and how well the City will function. The Civil Service Commission is not doing its job if they do not have input. Commissioner Ponte said she would like them to discuss the expected participation level.

Chair Emblar said they have said that the City Manager will be there when possible. If the City Manager is not available, should they cancel the meeting, and if he is there, where does he sit?

Commissioner Cantrell presented his PowerPoint presentation. He said he only pulled out things specific to what the Civil Service Commission said, detailing what they would like them to do regarding the rules.

2018-08-20, Joint CSC and Charter Review Committee Meeting

- **Both committees agreed that the Civil Service Board needed more power to make decisions, especially regarding Grievances and Appeals.**
- **Arbitration steps must be in place, so all employees have due process if an employee is terminated. It specifically stated all employees.**

Commissioner Cantrell said at the August 8, 2018 Joint Meeting that Mr. John Hendricks was part of the meeting as a member of the Civil Service Commission, and Mr. Doug Andrews was part of it as a member of the Board of Commissioners.

Vice Chair Ponte asked if the information was obtained from meeting minutes and meeting videos. Commissioner Cantrell said it came directly from the minutes.

2019-07-12, Joint BOC, Budget Review, and CSC Meeting

- **The Personnel Policy has not been updated since 2014.**
- **Commissioner Andrews noticed that Article X, Disciplinary Action, had been removed from the Policy. The City Manager removed that section from the Policy without notifying the CSC.**
- **The Personnel Policy was returned to the CSC.**

Commissioner Cantrell said at the July 12, 2019 Joint Meeting with the Board of Commissioners, Budget Review Committee, and the Civil Service Commission, it was brought up that the personnel policy had not been updated since 2014. Commissioner Andrews had noticed that Article X, Disciplinary Action, had been removed from the policy. The City Manager had removed it without notifying the Civil Service Commission. The personnel policy was then returned to the Civil Service Commission for corrections. The City Manager should be involved in what is on

their meeting agenda and when they are having the meeting. Any type of grievance or information must be reported to the City Manager to share with personnel, and they must also report it to the Board of Commissioners.

2020-08-04, Joint BOC and CSC Meeting

- **The entire discipline section of the Personnel Policy had been removed. The BOC sent the document back to the CSC to continue working on it.**
- **The Labor Attorney offered to create a better version for the CSC to consider. The CSC members were to send their changes to the City Clerk. Commissioner Price would work as a liaison with the Labor Attorney to create the workable document.**
- **The document is to include a section on whistleblowing.**

Commissioner Cantrell said at the August 4, 2020 Joint BOC and CSC Meeting, the Board of Commissioners noticed that Article X, Disciplinary Action, still had not been put back in and sent the document back again to the CSC. The Labor Attorney offered to create a better version and created a whistleblower ordinance for the Board of Commissioners to approve.

2022-01-31, CSC Meeting

- **It had been 10 months since the last Civil Service Commission meeting: resignation, commissioner termed out, there were not 3 members to hold a quorum. The City Manager also delayed meetings as he wished the new City Manager to be present.**

Commissioner Cantrell said because of the delay, the City Manager should not be making those decisions.

2022-07-20, BOC Meeting: Civil Service Commission By-Laws

- **Vice Mayor Andrews acknowledged, "Problems have occurred with the grievance procedures and mistakes were made that had not been corrected. The Civil Service Commission conducts grievance hearings, and makes a recommendation to the City Manager, a Charter Officer. In one case, the grievance was found in favor of the employee and against the City Manager, and he ignored recommendation by Civil Service Commission and the Board of Commissioners did not act upon it. The grievance hearings are time-consuming, and the Civil Service Commission felt they had spent their time for nothing. They need more teeth to do their job so that does not happen again. A City Manager should not decide their own fate. If a Charter Officer files a complaint against an employee and the Civil Service Commission finds in favor of the employee, the complaint and recommendation should be given to the Board of Commissioners and not to the City Manager. The procedures need to be made by the voters or the Board of Commissioners could do it. That would change the dynamic and direction of it.**

- **Mayor Hendricks agreed with Vice Mayor Andrews and supported a change giving the Civil Service Commission more teeth. He was involved in the Civil Service hearing when that happened, and he was very disappointed in how it was handled and how the employee was handled. The Civil Service Commission is an impartial group, and if a complaint is found against the City in a grievance hearing, they need the ability to fight back when told their decision was meaningless.**
- **Mayor Hendricks read City Charter, Section 5-7, Personnel Systems, Civil Service Commission, Subparagraph A (p. 3 of 56, agenda packet): "Merit Principal. All appointments and promotions of City employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence."**
- **The Mayor said the department heads should be the ones determining whether an examination is needed, and he does not know if they give examinations to City employees. The City Manager said currently only fire employees are given examinations, written and physical.**
- **Mayor Hendricks read City Code, Section 2-126, Intent, (c), (p. 5 of 56, agenda packet): "The Civil Service Commission members also recommend cost of living increases and employee pay adjustments to the Board of Commissioners for consideration."**
- **The Mayor said that the department directors should determine the cost of living and pay adjustments for their employees, but since it is only a recommendation, he is okay with the language as is.**
- **Mayor Hendricks said if a Charter Officer brings a complaint against an employee and the Civil Service Commission finds in favor of the employee, then that should come before the Board of Commissioners and not to the Charter Officer that filed the charges. Attorney Mora thanked the Mayor for the clarification and said he would follow through with his colleague to ensure the best procedural mechanism to make the change.**

Commissioner Cantrell said he listed all four Charter Officers as at-will, the way they have it. Anyone else is a classified or a regular employee. To that extent, if the City Manager had a problem with one of his department heads, he would not want to interfere with him taking corrective actions. If the City Manager puts an employee's expectation in writing and the employee does not do that, the City Manager has the right to release that person. However, if the City Manager does that unfairly, that person has the right to come before the Civil Service Commission. They all say the same thing, so how do they resolve it? He looked at what was historically said and tried to figure out how they could make it happen based upon the things already brought up, which is why he is saying all employees.

Vice Chair Ponte said it seems like Commissioner Cantrell and the Attorney's language is different and a difference in opinion. So, they need to resolve it.

Chair Emblar said she would like to hear the recommendation of the Attorney if department heads should go to the Board of Commissioners or should it be changed to go to the Civil Service Commission.

Attorney Eschenfelder said philosophically his advice would be that a line be drawn between management and civil service-protected employees. His draft policy defines it as at-will. The first provision he has is that for purposes of the policy, the term at-will or serving at-will shall mean that employees holding positions designated by the Board of Commissioners as such serve at the will and pleasure of the City Manager. That includes but is not limited to all deputy or assistant City Managers, directors, deputy or assistant directors, division Managers, division chiefs, section managers, or trusted aides or assistants regardless of specific position title, which positions exist or may in the future be created. All employees directly reporting to the City Manager shall be deemed as directors for purposes of the policy, notwithstanding their actual title. A trusted aide is any employee working as an administrative assistant to the City Manager or one or more members of the Board of Commissioners. Absent City Charter or contract terms to the contrary, the City Manager and City Clerk serve at the will and pleasure of the Board of Commissioners subject to the terms of any employment contract to the contrary. That is his line drawn. However, the Board of Commissioners could give civil service protection to department directors. If it does, it could set up tension between the Manager and his or her senior management team. The City Manager would need the ability to require his or her directors to perform in the manner they want without them going before an advisory board. The employee, when hired, understands what is expected of them and their role and responsibility. The Board of Commissioners could choose to give directors civil service protection. If they should do that, he will revise the policy to state that and that the four Charter Officers appeal to the Board of Commissioners.

Vice Chair Ponte asked Commissioner Cantrell if it changed his opinion after hearing that from the Attorney. Commissioner Cantrell said no, he could add more to it.

Commissioner Tilka asked the Attorney if the City Manager could terminate an employee without cause. The Attorney said under his draft policy rules before the Civil Service Commission, the City Manager could terminate any of his direct reports, confidential employees, and executive assistants. The City Manager does not terminate people below the rank of his direct reports. He is recommending a tiered system where each director oversees his or her department, and each director makes the termination or suspension decisions subject to review by the Manager, and if it is a termination, it is subject to review by the Civil Service Commission. Each department head can have his or her own disciplinary philosophy. Some directors could be stricter than others. That would be fine by the courts as long as the department head is consistent and non-discriminatory in how they treat the people in their department. The rules must be applied equally in that department. Across departments, there could be differences of opinion, which is fine. The Civil Service Commission will review that.

Commissioner Tilka asked for a yes or no answer: Can a City Manager terminate an at-will employee without cause? The Attorney said yes. They have no appeal process.

Commissioner Tilka said he sat on the Civil Service Commission some years ago, and the Manager terminated two employees. Following the hearings of both employees, the Manager proceeded with termination, although they found in favor of the employees. The City Manager did not listen to their reasons. So, he is in favor of having more teeth for the employees.

Attorney Eschenfelder said they continue to be an advisory commission without a Charter amendment and cannot become the type of Civil Service Commission with the power to overrule the Manager.

Commissioner Cantrell said they would not overrule the Manager. They would come up with a fair and distinct decision and take that before the Board of Commissioners, which is their job. They are supposed to supply the information to the City Manager and requested to supply it to the Board of Commissioners. If they have to make a ruling based on their decisions, they are ultimately the ones to choose, but they must do the research and background to get it done. He was on the Board of Directors while working at Medical Education Technologies in Sarasota, Florida. If the boss wanted to let him go, he could have, but just like any other employee, he had the right to be treated fairly. If he is not doing his job, let him know. Put the expectations in writing and hold him to it. If it is at a director's level, they do not need to be given more than 24 hours. There should be significant expectations from that position. If they cannot uphold it and cause disruption to the rest of the workforce, remove the person from that position. But that person deserves the opportunity to go through the process everyone else goes through. When he was at Siemens Medical Solutions as a senior manager of field engineering, he had to make all sorts of decisions, and many of his employees worked in at-will states. However, although it was an at-will state, he still had to go through the documentation process if that employee needed to be terminated. If a new city manager comes in and he already does not like somebody, the person would be gone, and that is not fair practice. If the rule is in the employee manual that they are at-will and they are let go because someone did not like them, he is competent that they might come back and sue. It would make sense they at least have the authority to look at it first to determine what is or is not fair and provide their recommendation to the City Manager and the Board of Commissioners. They must decide to leave the City Charter as is or write in their rules that they provide their recommendation to the City Manager as required by the City Charter and go a step further and provide it to the Board of Commissioners. He does not think it is wise to put anyone in the position to file a grievance with the Board of Commissioners when the Board of Commissioners does not hire that person. It is the job of the Civil Service Commission to review that grievance, not the Board of Commissioners. If a Charter Officer wants to file a grievance, the Civil Service Commission should not have anything to say about it because the Charter Officers are hired and fired by the Board of Commissioners. The Board of Commissioners is the one to fire a Charter Officer if they are not doing their job. The Civil Service Commission should have something to say about everybody the City Manager hires and fires because the City Charter says they review grievances. They provide a recommendation to the Board of Commissioners. If they find against the City Manager, the Board of Commissioners should know about it. Vice Chair Emblar said that seems reasonable and valid.

Commissioner Tilka asked how the Civil Service Commission would get more authority, as Mr. Hendricks and Mr. Andrews suggested. Commissioner Cantrell said they would need to agree on a recommendation to take to the Board of Commissioners and request a vote by the citizens. If the

Board of Commissioners asks for more teeth, the only way to make it permanent is for the citizens to vote on it. The Civil Service Commission has the authority to request an amendment to the City Charter to change its rules.

Attorney Eschenfelder said Commissioner Cantrel and Vice Chair Ponte are going in the right direction in terms of amending the Charter. If the Civil Service Commission believes they should have actual authority to overrule or modify the Manager's discipline decisions, that needs to be a Charter amendment. Currently, the City Charter gives the authority to the Manager, who is hired by the Board of Commissioners, to hire and fire someone below them. If a majority of the Board of Commissioners feels that the City Manager fired someone unfairly, they could choose to terminate their contract. It would require a Charter amendment to change the procedure. Long ago, when he was the City Attorney for St. Petersburg, their Civil Service Commission had the authority to overrule a termination, and if they ruled in favor of someone, they got their job back. That is not how the Madeira Beach Charter reads.

Vice Chair Ponte said she would think the value of having the Civil Service Commission is to have a hearing to present the other side of the case. They must submit to the Board of Commissioners even though they are advisory. In essence, they are representing the employees against the City Manager. Commissioner Cantrell said they are representing the City, not the employees. They decide what is fair. Vice Chair Ponte said as the Charter is written, their unbiased opinion on a department head appeal or any of it is valuable, even in an advisory position. They could move forward with getting an amendment to the Charter, but they still have value as it is with having the appeal process and the review. Commissioner Cantrell said they need to decide whether they request an amendment or say that the department heads go through the appeals process with the Civil Service Commission. They give a report to the City Manager and give it to the Board of Commissioners.

Commissioner Tilka said even if the Board of Commissioners decided the employee should be reinstated the Manager can still go ahead and terminate. Vice Chair Ponte said they seem to be on the same page. They want to address that. Chair Embler said she does not know if they are on the same page but does want to address it. To simplify it, they only talked about what happens to department heads or directors. Vice Chair Ponte said Commissioner Tilka is asking to amend the Charter for them to have the final say and can overturn a regular employee's termination. Commissioner Cantrell said Tampa's Civil Service Commission can do that. Chair Embler said that is another issue outside the ordinance. Commissioner Cantrell said they need to decide what they want to do because it impacts the ordinance. That is what they are trying to get at; what do they want to do? He does not know the process to request a Charter amendment.

Attorney Eschenfelder said there are two distinct issues. The Commission can deal with the first issue through a combination of the ordinance and the personnel policy. If they want to recommend that every employee, no matter how high ranking except for the Charter Officers, can appeal to the Civil Service Commission for an advisory opinion if they get terminated. Then, the advisory opinion gets given to the Manager and the Board of Commissioners. That could be written in the personnel policy. The only issue with that is they would be raising an expectation among those employees that if they agree with their position, the Manager would be forced to change his mind,

which is not the case. That gets to the second distinct legal issue: Do they want authority to overrule the Managers' discipline decision? That would require a Charter amendment.

Commissioner Cantrell said if they brought a grievance or appeal to them, they should be able to report that to the Board of Commissioners because the Board of Commissioners employs the Manager. If the Manager is firing somebody for an unjust reason, they need to know it anyway. It does not matter if they overturn it; the Board of Commissioners still needs to know there is a problem, a bigger issue.

Vice Chair Ponte said she agrees with Commissioner Cantrell on it. Hearing both sides, she agrees with the Attorney in the sense that, yes, managerially, it is appropriate for the Manager to be able to make decisions and to hire and fire. Ideally, those are sound, without bias or any other reason that could come back to them for litigation. However, it could be that the City Manager is wrong. In those instances, it seems reasonable for a department director to go through the process. She does not see why that would be a problem with the regular expectations. The same relationship would still exist. It would only be a problem if there were something out of line. An appeal process would only be used in a very extreme process. It should be negligible almost.

Commissioner Tilka said he could go along with reporting to the City Manager and the Board of Commissioners, which is how it should go. If there is a complaint against the Manager, it should go to the Board of Commissioners.

Chair Emblar said there is no appeal process for a department head terminated, but could they hire an attorney to defend them to seek their job back? The Attorney said they could hire an attorney to file a lawsuit that they were terminated for an unlawful reason. They are still protected by all the civil rights laws, such as Title VII, race discrimination, disability discrimination, and gender. The Americans with Disabilities Act covers them; they could say they were terminated for First Amendment retaliation, and there are a lot of state and federal civil rights laws that at-will employees can invoke. The key difference is that they do not have a property interest in their job. There must be just cause for terminating the employee. That is the line drawn between the civil service-protected and at-will groups. The Civil Service Commission can say that even the at-will group can still come and make a case that they shouldn't have been terminated, and if they agree, they can develop a report agreeing they should not have been terminated, and that gets sent to the Manager and the Board of Commissioners. If the Civil Service Commission decides to do that, the director must understand that unless the Charter is changed, it doesn't change the fact they are still terminated.

Commissioner Tilka said if they cannot get a referendum to go forward, he would be inclined to go with Commissioner Cantrell's recommendation.

Vice Chair Ponte asked the City Clerk if it were to be extended and written in the policy, would it cause any difference in managerial style? As a manager in her profession, it would not. The City Clerk said she did not believe it would cause a problem if done fairly. Any side of the party could be abusive to it. In the Civil Service Commission policy, the City Manager and the employee are expected to do what they are supposed to do. If an appeal is filed, the Civil Service Commission would be doing due diligence by listening to both sides and making their recommendation to the

City Manager and Board of Commissioners based on that. Employees can also go to the Civil Service Commission if they feel they might be getting terminated, and it has not happened yet. The Civil Service Commission is like a mediator, listening to both sides settling that way and giving the recommendation to the City Manager.

Chair Emblar asked if the language in the ordinance should include all employees or should remain that all at-will are not included. She asked for a motion. Commissioner Cantrell said he considers at-will as the four Charter Officers hired by the Board of Commissioners. Commissioner Tilka said at-will would mean all employees.

Vice Chair Ponte asked the Attorney who in the City is at-will by his definition. The Attorney said at-will means employees holding positions designated by the Board of Commissioners as such serve at the will and pleasure of the City Manager and includes but is not limited to all deputy or assistant City Managers, directors, deputy or assistant directors, division Managers, division chiefs, section managers, or trusted aides or assistants regardless of specific position title, which positions exist or may in the future be created. All employees directly reporting to the City Manager shall be deemed as directors for purposes of the policy, notwithstanding their actual title. A trusted aide is any employee working as an administrative assistant to the City Manager or one or more members of the Board of Commissioners.

Commissioner Tilka asked if all regular employees were at-will. The Attorney said they are technically because the Civil Service Commission has no power to reinstate. Commissioner Cantrell said they want to make sure that all employees who feel they were unfairly terminated can appeal to the Civil Service Commission. They listen to both sides of the information and determine whether the employee was terminated fairly or not. They provide the findings to the City Manager and Board of Commissioners. The Board of Commissioners decides if the employee is or is not reinstated.

Vice Chair Ponte asked the City Manager if the department directors should be allowed to enter an appeal process. The City Manager said no. The City Manager should still have the authority to hire and fire. To change that it would require a different form of government. Department directors should not be able to appeal against the termination. Department directors should have an employment agreement with their employees, so they know their expectations. The Board of Commissioners hires their CEO based on their qualifications. The Vice Chair asked what happens if the Board of Commissioners does that and the City Manager does not do what he is supposed to do. The City Manager said they need to get a new Board of Commissioners because they are responsible for hiring the right person. It is properly managing the employees and providing clear expectations.

Commissioner Cantrell said the City Manager is asking to change the entire process. They would have to write additional procedures to accommodate a contract. Other employees have it, which is done through the Board of Commissioners. The City Clerk said employees are hired to do a job. They sign a document accepting the position. That is a service contract stating they will do what is expected. Commissioner Cantrell said if the person does not do the job hired to do, they get terminated. Department directors must document what did not happen. The City Manager needs a significant degree of latitude regarding a director. If a director does not do what they are supposed

to do and causes disruption, the City Manager has a right to terminate that director. Still, that does not take away their right to an appeal if something else happened. As stated on August 8, 2018, in the Joint Civil Service Commission Meeting with the Charter Review Committee, arbitration steps must be in place, so all employees have due process if an employee is terminated. It specifically stated all employees.

Chair Embler told Commissioner Cantrell that he cited people from 2018 who are not part of the current Board of Commissioners. Their philosophy does not count. Vice Chair Ponte said it was not about philosophy. The idea is to prevent something that happened in the past multiple times. There was an ability to do something to prevent that. Now, they are trying to have the ability to prevent that from happening again.

Chair Embler said the two employees went through the regular process. The problem they are trying to solve has never happened before. What happens to a department head if a City Manager decides to fire them? They've heard from the Attorney, who said it should stay status quo, and the City Manager, who said he would be a good leader. At that high level of the organization, they must trust that. Anything below that is spelled out. They are civil service employees. They can appeal to the Civil Service Commission, so they are involved.

Commissioner Cantrell said he read the last six years' documents that were sidestepped. The Board of Commissioners had asked for additional steps to ensure that what happened previously does not happen again. Do they make sure it does not happen to a few or all employees? It has been routinely addressed as 'all employees.'

Attorney Eschenfelder said they really would not be changing what happened back then. It would still happen unless the voters give the Civil Service Commission the authority to overrule a Manager's employment decision. Those two people who had disputes did get to come before the Civil Service Commission. The problem was, as he understands it, that the City Manager utterly ignored the process and chose not to listen to what the Civil Service Commission had to say and forged ahead and did what he did. The voters would need to give the Civil Service Commission or the Board of Commissioners the authority to overrule.

Commissioner Cantrell said they are trying to address how to take care of it right now. It has to be the Civil Service Commission or the Board of Commissioners to have the ability to overturn it when something has been wrong. The Chair said there was a third option that they not be involved. Commissioner Cantrell said per Charter Section 5.7, they are supposed to be involved. It says they are supposed to hear grievances, which are now appeals. Only four employees are employed by the Board of Commissioners directly. Everyone else is under the guidance of the Manager. Based on what the Attorney is telling them, do they want the authority to overturn a decision by the Manager, or do they want to ask the Board of Commissioners to have that authority? It is one or the other.

The City Manager said his concern would be that they are trying to remove the authority from the Manager. The Vice Chair said they should only be involved when somebody has done something incorrectly because it has happened historically, which they are trying to prevent. The City Manager said it did not happen to a department head. Commissioner Cantrell said it could.

Commissioner Cantrell said, as he stated before, he has been in companies where he was a director, and only one person was above him. In those cases, if they wanted to eliminate any director, they still had to go through the same process and document what was happening. They could not just fire them. Commissioner Ponte said they like to think things through. It is not that they would not support a correct decision. They are trying to prevent anything that would come back as an issue and a liability. That is what they are after and to prevent liability.

Commissioner Cantrell said the Attorney had said if, through the appeal process, they agreed with the employee they had unfair treatment, they send it to the Board of Commissioners, there is still no process to rehire an employee. The Vice Chair said that is reality, and she would like to put it to a workshop. There is value in their history, and they do need more teeth. They should have a workshop to discuss that. Commissioner Cantrell and Commissioner Tilka said they agreed.

Chair Emblar said they are an advisory group, and the Board of Commissioners needs to hire competent people. The Civil Service Commission does not need more teeth but instead needs to trust the people. They mentioned before they did not need much teeth. What has changed now to have more teeth? Commissioner Cantrell said it was probably because they now know the historical information they asked him to research. He presented that. He read six years of documents.

Commissioner Tilka said they need more teeth. He would like to find a way to do it without a Charter amendment, but there is not. The City Clerk said they and the Board of Commissioners always brought it up. Nothing has ever been put on the agenda to make that happen.

Vice Chair Ponte asked the City Clerk if they have always been an advisory Commission. The City Clerk said yes, but their advisory opinion is based on court cases or whatever may have happened to reach the recommendation to the City Manager. The opinions are like those of the Attorney General. The City Manager said it had read the same for a long time. The Charter can only be changed by referendum. Before a referendum occurs, an ordinance puts the referendum to the voters. If the voters approve the referendum, the ordinance would be codified in the Charter. In a workshop, the Board of Commissioners would listen. If it were to be a Charter amendment, the City Attorney would write an ordinance for the Board of Commissioners to approve to put the amendment on the ballot for voter approval.

Commissioner Ponte motioned to have a workshop meeting with the Board of Commissioners to do that. The Attorney asked that the motion be for a joint meeting.

Commissioner Ponte motioned to host a joint meeting with the Board of Commissioners to understand the option to make a referendum to the City Charter. Commissioner Tilka seconded the motion.

ROLL CALL:

Vice Chair Ponte	"YES"
Commissioner Tilka	"YES"

Commissioner Cantrell "YES"
Chair Embler "YES"

The Motion carried 4-0.

The City Clerk said she would put it on the agenda for the Board of Commissioners to set a date.

Ordinance 2023-06, Civil Service Rules

Chair Embler said of the three issues, they resolved one, changing grievance to appeal. She would like to resolve the issue of the role of City Manager and City Clerk. She asked who oversaw scheduling and canceling meetings. She has always seen it as a joint decision. The City Clerk said the City Manager's office and the City Clerk's office work together in scheduling meetings. The Civil Service Commission is supposed to set its meeting calendar for the year and the items they wish to discuss so everyone is aware. If there is nothing to discuss, the meeting gets canceled. Commissioner Cantrell said the City Manager should not be the one canceling their meetings. The Chair or the Vice Chair needs to be in that loop.

Commissioner Cantrell said on the first page of Ordinance 2023-06, shown on Page 11 of the agenda packet, that the language in red was only for his notes and did not need to be there.

Attorney Eschenfelder said that 2-127 (g), Page 13 of the agenda packet, says that 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 to discuss in the scheduled meeting, the Chair is authorized to cancel the scheduled meeting and 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. The City Manager or their designee may request unscheduled meetings to discuss personnel matters that cannot wait until the next regularly scheduled meeting. Commissioner Cantrell said the language in the ordinance also says that it will be at the behest of staff in collaboration with the Chair of the Civil Service Board. That language is stricken out and should not be.

Chair Embler asked Commissioner Cantrell if, in paragraph (g), he wanted to replace where it says City Manager with ex officio secretary. Commissioner Cantrell said he did not want to exclude the City Manager, although the former City Manager prevented things from happening inside the Commission and should not have. The City Manager should always be able to give them input. Chair Embler said the discussion should be with the City Manager, not the City Clerk. The Clerk is an enabling body. Commissioner Cantrell said he was okay with that as long as the Chair decided to cancel the meeting and not the City Manager. He did not want the Chair to lose the authority to cancel a meeting. The City Clerk said there were only two instances where they had to cancel a meeting: one was when there was a storm and a hurricane, and the other was because there would not be a quorum.

Chair Embler asked Commissioner Cantrell if he wanted to change City Manager to City Clerk in 2-127 (g) where it says any other unscheduled meetings may be requested by the City Manager or

his or her designee through the Civil Service Commission chair. Commissioner Cantrell said he was okay with that as long as it reads that way. The City Clerk said they also have to check with her because the City Clerk is required to be at the meetings. The consensus of the Civil Service Commission was to keep the Attorney's version of paragraph 2-127 (g).

Chair Emblar said in Commissioner Cantrell's version that paragraph ~~(h)~~(g) is stricken. She asked if they wanted to keep the language in that section that says the City Manager shall coordinate with the Civil Service Commission chairperson and the human resources coordinator to choose and set meeting dates and times before a meeting is noticed. Vice Chair Ponte said that would be a conflict. Why would the City Manager be scheduling their meetings if it is their regular meetings? The Civil Service Commission should choose their meeting dates and times. They are allowed to meet without the City Manager, who is not responsible for scheduling their meetings. The Attorney said the "City Manager shall coordinate" is already the current language. He is the one that has to bring the resources to bear. Commissioner Cantrell said that the five commissioners are doing the coordination for normal meetings and would like it to read that way. The Chair said they could say that the Civil Service Commission chairperson coordinates with the City Manager.

Commissioner Ponte suggested they bring the meeting to a wrap and continue the discussion at their next meeting. The Chair said they would put paragraph ~~(h)~~(g) on hold to think about.

Chair Emblar said Commissioner Cantrell wants to change City Manager to ex officio in paragraph ~~(h)~~(j), where it says 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. That should be the City Manager because they are dealing with personnel issues. The personnel people report to the City Manager and not the City Clerk. The City Clerk is an enabling organization.

Commissioner Cantrell said when he added his edits, the whole idea was for the City Manager not to make their decisions for them, and he knew that the City Clerk was the one who coordinated the meetings. He wanted to ensure they were not taking the authority away from themselves. They can retain it but not exclude the City Manager or human resources. Vice Chair Ponte said she agreed with Commissioner Cantrell on some of it because whenever they have some conversation where they are not in agreement, it usually falls back on what the rules are in the City Charter. She would like it made to support them and what they need to accomplish. She does not want to see what happened in the last year and a half happen again. The meetings were canceled, which prevented the Civil Service Commission from meeting. She would like that considered because a lot of time was wasted on their behalf.

Chair Emblar said in paragraph ~~(k)~~(l) that Commissioner Cantrell wants to change the City Manager to ex officio secretary, where it says that prior to each Civil Service Commission meeting, the City Manager and the commission Chair shall confer on the agenda and determine if the City Attorney's attendance would be necessary or desired. The City Manager is in a better position to determine that. Commissioner Cantrell said it should be the Chair in consultation with someone else to determine that because, in the past, having an attorney was the Manager's decision. Miranda was fired, and there was no alternative to his decision. In paragraph ~~(k)~~(l), it says that the city attorney shall be the primary legal advisor to the Civil Service Commission on all matters of municipal law, and if the Civil Service Commission should require specialized labor or

employment counsel of a nature the city attorney cannot provide, the City may within established budgets provide additional specialized counsel. The City Manager should not be involved in what Attorney is in the meeting. It should be up to the Civil Service Commission when having problems with counsel to go directly to the Board of Commissioners and request an attorney to help. It would be up to the Board to get them that legal counsel.

Chair Embler said they had identified four areas, and there could be more where they disagree with the roles and responsibilities, taking things away from the City Manager and giving them to the Clerk. Commissioner Cantrell said after they discussed it, he agreed that it should not be changed in some areas. Chair Embler said they could continue discussing the four areas of differences at another meeting.

Commissioner Cantrell said it is important not to overlook that they need to be in control of what is happening. They do not need to relinquish that to any other person, or otherwise, they lose the ability to make the decisions that need to be made. He does not want to downplay anyone because they have good people employed, but they do not want past instances to reoccur should people leave their positions. It is their job to make sure that does not happen again. Vice Chair Ponte said she agreed.

5. NEW BUSINESS

6. NEXT MEETING – September 13, 2023; 3:30 p.m. to 5:30 p.m.

The Civil Service Commission scheduled a Joint Workshop Meeting with the Board of Commissioners and the Civil Service Commission at 4:00 p.m. on Monday, September 18, 2023, to discuss their options to put a referendum on the ballot to amend the City Charter.

Commissioner Tilka asked the City Clerk to come up with rules of appeal and look at other communities to see how they go about it. The City Clerk said she already had some information from other cities when asked to work on it before the Civil Service Commission stopped meeting for a while. She would add the item to their list for discussion and provide the information well in advance to allow them time to review it before they meet to develop their appeal process rules. Attorney Eschenfelder said he could also provide some information. Commissioner Tilka and Commissioner Cantrell said both would be helpful.

Chair Embler said they will finish up on the Attorney's version of the handbook at their next meeting on September 13, 2023, at 3:30 p.m. and then circle back around at the beginning and go through it. The City Clerk will check with the Board of Commissioners to see if they can get together in a Joint meeting with the Board of Commissioners on September 18, 2023, at 4:00 p.m. to specifically discuss a possible Charter amendment ordinance and who should be included under their purview.


7. ADJOURNMENT

Chair Gene Embler adjourned the meeting at 6:09 p.m.



Gene Embler, Chair

ATTEST:



Clara VanBlargan, City Clerk/Secretary Ex-Officio