

MINUTES
AGENDA FOR A REGULAR MEETING OF THE CIVIL SERVICE COMMISSION
TO BE HELD AT 6:00 P.M., THURSDAY EVENING, JANUARY 11, 2007
CITY COUNCIL CHAMBERS, #2 CIVIC CENTER PLAZA – 2ND FLOOR

All matters listed under the Consent Agenda below will be considered by the Commission to be routine and will be enacted by one motion in the form listed below. There will be no separate discussion of these items unless members of the Commission or persons in the audience request specific items be removed from the Consent agenda to the Regular Agenda for discussion prior to the time the Commission votes on the motion to adopt the Consent Agenda.

MEMBERS PRESENT: Boureslan, Ali – Chair
 Brannon, Edith
 Gezelius, Ken
 Graham, Elijah
 Mosher, Fran
 Ruck, Lance
 Reynolds, Thurman
 Scott, Valarie
 Schwartz, Elma

MEMBERS ABSENT: None

CONSENT AGENDA

The meeting convened at 6 p.m. with all Commissioners and Chair Boureslan presiding. Chair Boureslan began the meeting by asking if there were any changes to the agenda. Linda Thomas requested that item 10A on the regular agenda be tabled until 1/25/07. Chair Boureslan requested that Item 11 be moved to the top of the regular agenda due to the employees that came in for that issue.

MOTION TO MOVE ITEM #11 TO THE FIRST ITEM OF THE REGULAR AGENDA MADE BY COMMISSIONER GEZELIUS AND SECOND BY COMMISSIONER REYNOLDS AND UNANIMOUSLY PASSED.

MOTION TO APPROVE THE CONSENT AGENDA MADE BY COMMISSIONER GEZELIUS, SECOND BY COMMISSIONER REYNOLDS AND UNANIMOUSLY PASSED.

1. Discussion and Action on Approval of Minutes:

December 14, 2006

2. Discussion and Action on Approval of Contracts

Employment agreement with Jacqueline Y. Smalls to perform the duties of Clerical Assistant from January 12, 2007 through January 11, 2008, for the Economic Development Department.

3. Notice of Promulgation of Eligible Lists:

A. Benefit Specialist = Promulgated 12/28/06 (P-6) (O-6)

B. Community & Human Development Director = Promulgated 12/01/06 (O-2)

- C. General Services Lead Worker = Promulgated 12/15/06 (O-5) (P-8)
 - D. Public Services Librarian = Promulgated 12/21/06 (O-5)
 - E. Recreation Specialist = Promulgated 12/21/06 (O-13) (P-6)
 - F. Senior Accountant = Promulgated 12/08/06 (P-3) (O-4)
 - G. Senior Planner = Promulgated 12/07/06 (P-3) (O-2)
 - H. Stores Clerk = Promulgated 12/15/06 (P-1) (CR-1) (O-16)
 - I. Water Service Worker = Promulgated 12/20/06 (P-3)
4. Discussion and Action on request to have named placed on Transfer List:
- A. Lopez, Irma – Administrative Assistant – Municipal Clerk
 - B. Wilson, Sophia – Senior Office Assistant – Museums & Cultural Affairs
 - C. Valenzuela, Jose M. – Truck Driver – Environmental Services
5. Discussion and Action on request to have name placed on Reinstatement List:
- A. Montes, Gilberto – Truck Driver – Environmental Services
 - B. Ayala, David M. – Recreation Leader – Parks & Recreation
 - C. Chavez, Samuel – Coach Operator – Sun Metro
6. Discussion and Action on request for temporary promotion:
De Los Santos, Victor – Police Department
From: Police Records Unit Supervisor
To: Records Supervisor
7. Discussion and Action on Approval of Hearing Officer's Invoice:
- Borunda, Chris – Invoices for Nov. 06 - \$843.33
 - Palafox, Patricia – Invoice for Dec. 06 - \$560.00
8. Discussion and Action on request to assign pending appeal cases:
- A. Hernandez, Raul J. – Termination – Sun Metro

REGULAR AGENDA

9. Discussion and Action on Appeal of Disqualification to take Examination and/or Removal of Name from Eligible List in accordance with C.S.C. Rule 8.1.d.1.:
- Lassiter, Robert L. – Senior Safety Specialist

Mr. Lassiter spoke and requested that the Commission waive his disqualification because I do not meeting the minimum qualification because I do not have a bachelor's degree. I do have an Associate degree in Safety Engineering Technology. For 20 years I have been a certified safety professional. This designation is similar to a CPA. I would like to be moved forward in the process so that I can be considered for this Senior Safety position and not disqualified because of the lack of a 4-year degree. Chair Boureslan inquired if Mr. Lassiter was currently enrolled to finish his degree. He stated no. Are you aware that you can go back to college and the City pays tuition? He stated yes.

MOTION MADE BY COMMISSIONER BRANNON TO DENY; SECOND BY COMMISSIONER GEZELIUS AND PASSED WITH ONE OPPOSITION BY COMMISSIONER GRAHAM AND ONE ABSTENTION BY COMMISSIONER RUCK.

10. Discussion and Action on Hearing Officer's Report and Recommendation:

- A. ~~Gardon, Rafael – Suspension – Parks & Recreation (06-PR-14CB)~~
(Postponed until meeting of 1/25/07)
- B. Villanueva, Ricardo – Suspension – Sun Metro (06-SM-08CB)

MOTION TO APPROVE HEARING OFFICER'S RECOMMENDATION TO SUSTAIN SUSPENSION MADE BY COMMISSIONER BRANNON; SECOND BY COMMISSIONER GEZELIUS, AND UNANIMOUSLY PASSED.

- C. Molina, Raul – Suspension – EPWU (06-EPW-24PP)

MOTION TO APPROVE HEARING OFFICER'S RECOMMENDATION TO SUSTAIN SUSPENSION MADE BY COMMISSIONER RUCK; SECOND BY COMMISSIONER GRAHAM, AND PASSED WITH ONE OPPOSITION BY COMMISSIONER GEZELIUS.

11. Discussion and Action on Proposed Updated Charter Amendments.

Chair Boureslan reminded that we are only concerned with section 6 pertaining to the Civil Service portion of the charter and the Commissioners have arrived at a consensus.... However we will open it to discussion with employees and audience, but limit their comments to three minutes.

Elaine Hengen of City Attorney's office requested to present some revisions prior to any employee discussion. Since our last meeting, we have developed three additional revisions that we would like to bring to you. You should all have copies of those.

(Discussion)

Chair Boureslan inquired whether any further discussion was needed from any of the Commissioners prior to hearing the employees. **Commissioner Graham** commented that he needed more time to examine the three new proposed changes as well as the entire document. Commissioner Graham felt we should revisit the entire document at a later date.

(Discussion)

Commissioner Brannon felt that most of what was presented tonight was just “clean-up” stuff and there is nothing really controversial.... So if we can, I think we should go ahead and vote.

Joyce Wilson reminded that the committee that was set up is really focused on bringing a recommendation forward for an item on the May ballot. Their target is to have a recommendation by the first week of February. After we spoke at our last meeting, I have represented to the Charter committee that I felt we had a consensus document that we would present and support jointly as the Commission and City Management. In doing so, I will be asking the group to accept it as written with no tampering so not to erode the consensus.

Chair Boureslan reminded that we do have a document that we reviewed line by line and voted on. We are discussing only the changes which are proposed tonight. He suggested that we hear from the employees first prior to any vote on additional changes. **Commissioner Ruck** also added that he did not find any of the additional changes that were added tonight to be objectionable, but I do disagree with one thing..... there are still several items that we still need to discuss and these should be clarified before we do vote. We also want to hear from the employees prior to any vote.

MOTION MADE BY COMMISSIONER BRANNON THAT CHANGES PRESENTED TONIGHT BE APPROVED AND ACCEPTED AS PART OF THE DOCUMENT THAT WILL BE TAKEN FORWARD TO THE LRC. SECOND BY COMMISSIONER SCOTT AND PASSED WITH ONE OPPOSITION BY COMMISSIONER GRAHAM.

David Ochoa, employee of the City Parks department requested to speak. It takes a lot of time to digest this amount of information especially with all the legal terminology. There is very little information out there giving us the incentive to come forward and make it clear that it is important to step up because this will affect not only current employees, but employees for years to come. I believe the City employees deserve more time and more information to address our concerns. My purpose tonight is to ask you not to be hasty.

Leila Fierrero, employee of the Museums and Cultural Affairs department requested to speak. She urged Commissioners to take another look at all the changes. I do not believe the employees were considered with any of the changes. The document does not work for the employees. This document is what a dictator would support. We will not have any rights at all. We appreciate the Commissioners time but the changes will not work.

Chair Boureslan reminded Ms. Fierrero that we went through the document word for word and had input from every commissioner. We voted on the document. I would request that you bring up specifics when you present you comments. Generalities does not help in the process.

MOTION MADE BY COMMISSIONER GRAHAM TO HEAR EMPLOYEE DAVID OCHOA AGAIN AND SECOND BY COMMISSIONER REYNOLDS. MOTION FAILED.

Ayes: Graham, Reynolds

Nays: Brannon, Gezelius, Schwartz, Scott, Mosher, Ruck

(Discussion)

Commissioner Brannon and Mosher felt that employees could speak a second time, but only after everyone has had an initial opportunity to speak.

Terry Ramirez, employee and vice president of the employees association requested to speak. Currently we have a membership of approximately 800 members, many who are very concerned about this issue. Although there was not time to discuss this with our board, we would like to request more time to seek legal council to review the document, and then come back to you with specifics. After

being questioned by **Commissioner Graham**, Ms. Ramirez said she would need approximately two more weeks.

Chair Boureslan reminded that tonight is not the end to this discussion. Nothing we do will be engraved in stone. This is the Commission recommendation to the Ad Hoc committee. They will have two more meetings for the public. The Ad Hoc committee will discuss this regardless if we table any decision or not.

(Discussion)

Commissioner Graham objected to the current timeline, and felt there should be a "cooling off" period.

Commissioner Mosher commented that she does appreciate the shortness of time. I don't think you have the time to wait until Monday. What I would encourage you to do is poll your board tonight and make a decision if you are going to obtain an attorney. This Commission does not have the flexibility to postpone because the Ad Hoc committee will meet next week whether they hear from us or not. It is not really in our power to have a two week postponement. We will miss our window of opportunity. I encourage you to move ahead, and not wait.

Commissioner Ruck commented that he has had this before two different attorneys. My concerns have been addressed and if they would not have been addressed I would not have moved forward. Ms. Wilson is right.... We spent a lot of time and worked out a whole lot. There are still two items that I need to address tonight. This is not an attempt from keeping the employees from having their say. I made the corrections to protect the city employees from the original document that was a pitiful document. I am now satisfied, with two exceptions that I am going to deal with tonight, that these concerns have been corrected and that the Commission is not going to become "advisory" at the whim of management. We need to have a majority recommendation for the Ad Hoc committee when they discuss the Civil Service section. If we go forward with a recommendation that is already also approved by the City Manager, that I think it does everything it needs to do to protect the employees, then I am not willing to wait for the employees to decide. If you watch the videotape of the last meeting, I was real blunt about it. The ad hoc committee could reject our proposals completely, or they could accept them and make a recommendation to the Council and the Council could reject them completely and go back to everything the City Manager had proposed previously.... And if that happened the citizens of El Paso would know they are being duped. They are not being duped right now because the City Manager and the Commission have an agreement with a couple of little items still left up in the air. Once I am satisfied with those, then I have to wait to see what the ad hoc committee does. The employees can bring their legal opinion to the Ad hoc committee. Stop worrying about you not getting enough time, I have already spent hours with two lawyers about this. The commission is not going to become advisory.... It is as simple as that.

(Discussion)

Chair Boureslan added that at the end of the day, whatever document that is going to be presented, the whole city of El Paso is going to vote on it. There are checks and balances from now until it is put on the ballot. And to echo Commissioner Ruck, this Commission will not become an "advisory" commission.

Norma Ledesma, employee of the City Fire department requested to speak. She voiced comment that she would like for the Charter to remain as is for future employees and not what is being proposed.
6.7.1 Examination and standards. Why is some of the language being stricken? And in section 6.13-6 Action by Commission, section B. Again, stricken language is of concern.

Commissioner Ruck noted that it was his understanding that it was being stricken from the Charter,

but that it would remain in the Rules. Everything that you see a line through doesn't mean it will not be in the Civil Service Rules. **Commissioner Brannon** added that much of the language was taken from the Charter, but not removed from the Rules.

Commissioner Graham added that if anything is going to be taken from the Charter and put in the Rules that it should be done so now to make the Rules clear now, so that everybody can see. We don't want to haggle with the Rules later on. If it is taken out of the Charter, we should also list where it is in the Rules. This has not been done.

Rosy Buenning, employee and previous Civil Service Commission Recorder request to speak. When you say you are streamlining the language in Article 6, Civil Service, but I am asking you why you can not just leave some of the language. I was pleased to hear Chair Boureslan say that the Commission was here to ensure fair and equitable treatment, so why can't that language stay in the Charter. It is simple language, and would make the employees feel a lot better. A lot of the document reads "as may be prescribed by Commission Rules"... We would like to see "as are prescribed" or "as is prescribed" not "may be". We want to make sure it is in the Rules if it is being taken away from the Article. We are afraid things will come out of the Article and never get placed in the Rules. On page 3 6.1-6 Rules. 2/3 majority of vote. Why can't this be left as is.

Chair Boureslan explained that for any Rule to be overruled by the City Council, they need six votes.... Not the majority.... Not a percentage... but six votes out of eight. Even if there is a quorum of five, they would not be able to override any decision by this commission. There must be six votes. They can not amend anything. They can only accept or reject items. If it is rejected, then it comes back to the Commission. I really feel that this is strong enough.

(Discussion)

Rosy Buenning continued that on page four section 6.2-2, unclassified services. What will happen to classified employees working for the representatives. If you are in Civil Service, you will stay in civil service. If a representative brings in an unclassified employee on a contract, they would stay with him but would not eliminate any current city employees.

MOTION MADE BY COMMISSIONER GEZELIUS TO ADD AN ADDITIONAL ONE MINUTE OF TIME FOR ROSY BUENNING TO SPEAK, SECOND BY COMMISSIONER REYNOLDS AND UNANIMOUSLY PASSED.

On page 7, section 6.4-3. Pay Reduction. Can you replace "classified" employees with "entire" employees so that the reduction would be uniform? Chair Boureslan stated that they did not change anything. John Batoon added that the Commission's jurisdiction extends only to the Classified employees.

Bill Ellis requested to speak. It concerns me that the Commission has not had the benefit of legal independent advice assessing the import of some of these changes. Please look at 6.1-8 and 6.1-9. This gives the commission limited authority to resort to courts. There is nothing that states the commission can file suit to support the position of the employee... only to enforce provisions of the Charter. You presently have the authority to sue the city, yet it is proposed that you give that up. Similarly in 6.1-9, you need to have the right to resort to independent legal council that doesn't have any ties with the City Attorney's office On page 10, 6.6-4 removes your authority to supervise independent contractors and opens the flood gates to independent contractors. The currently language has already open the gates about two thirds of the way. On page 18, this has already been touched upon but I hope you are aware of how courts interpret changes in language... Of course, if you can't go to court it won't matter. The language in the current charter is broad. If you make these deletions, that will become language by limitation. Don't give up any language before you have it in a Rule.

(Discussion)

City Attorney Charles McNabb expressed in reference to sections 6.1-8 and 6.1-9, that it is our position the City Attorney's office and the City defend any lawsuit against the City. There are no lawsuits directly against the Commission. The Commission does not have a jural existence. There is only one legal entity... that is the city of El Paso. Any lawsuit would be against the City of El Paso, not the Commission.

(Discussion)

Commission Ruck questions how we would enforce the Commission's decision should the City want to fire a Hearing Officer. How can we stop the City from doing this? Mr. McNabb responded that he believed that would be an invalid termination from the perspective of the employee, and the employee could sue the city for wrongful termination as with any violation of any Rule of an employee's rights. If the Commission has the authority to hire and fire, then the Commission is that entity that makes that decision. No one else in the City has the power to make that decision.

A MOTION MADE TO MAKE THE CHANGE SUGGESTED BY CITY ATTORNEY MCNAB TO STRIKE THE PHRASE "APPEAL TO DISTRICT COURT" AND USE "THE DECISION BY THE COMMISSION IS FINAL" MADE BY COMMISSIONER RUCK AND SECOND BY COMMISSIONER MOSHER AND UNANIMOUSLY PASSED.

Chair Boureslan stated that anyone who spoke before could now speak again for a period of one minute.

David Ochoa requested to speak again. The Charter was established to ensure fair and equitable treatment of all classified employees. This vital language should not be stricken. In section 6.1-5D..... although it appears in 6.1-1, repetition is necessary so that nobody misunderstands their role or their rights, and that protection is ensured.

(Discussion)

MOTION TO SUSPEND RULES TO GIVE MR. OCHOA ONE MORE MINUTE OF TIME MADE BY COMMISISONER GRAHAM,SECOND BY COMMISSIONER BRANNON AND UNANIMOUSLY PASSED.

When we amend a document that is as important as the City Charter, it should be to accommodate the people it is meant to protect. We have an entire legal staff to decipher the language. Why take it out? To remove language without due process that should be allowed city employees to make our own personal recommendations....

Rosy Buenning requested to speak again. 6.6-1 says the same thing as 6.6-2.... And it does not. It is not the same wording. The next point is page 17, section 6.13-1 Discharge during probation. Why not put the statement in writing? My last point is that Commissioner Ruck believed that employees should speak up vigorously.... But many employees fear retaliation. So many times not everyone speaks up. Please think about this, Commissioners for the sake of all employees.

Lillia Fierrero requested to speak again. She inquired regarding the times and dates of the Ad hoc committee meetings

Chair Boureslan requested that Linda get a message to all city employees regarding an update of all meeting time and dates for the ad hoc committee and the items that will be discussed so the employees will be informed.

Commissioner Graham commented for the record that he had not heard for any department heads, contract personnel, anyone from the Fire, Police or Sun Metro. **Chair Boureslan** commented that they certainly had the opportunity to speak.

Ms. Wilson called for what changes Commissioner Ruck still needed to have clarified. **Commissioner Ruck** responded that he just had one issue now. For the record, in 6.13-1, on page 17 "a statement shall be filed with the Human Resource Director within three days of discharge. I realize that termination during probation does not require any reason, but aren't we now already giving them a six-month employee evaluation that is rate either a 0 or a 1 and on it states that you recommend that you do not keep this employee.... So I believe this document states the determining factor of why we fire these people.

MOTION MADE BY COMMISSIONER RUCK TO RESTORE LANGUAGE STATING TO FILE A STATEMENT FOR REASON OF DISMISSAL WITHIN THREE DAYS OF DISCHARGE AND SECOND BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

MOTION MADE BY COMMISSIONER RUCK TO RESTORE LANGUAGE IN SECTION 6.1-2d "ENSURE FAIR AND EQUITABLE TREATMENT"; SECOND BY COMMISSIONER GRAHAM AND PASSED WITH ONE OPPOSITION BY COMMISSIONER MOSHER.

Commissioner Ruck requested to ask a final question referencing 6.1-6. I am concerned that no language exists in d. that indicates 2/3. **Commissioner Ruck** asked Ms. Wilson and Mr. McNabb if they believed the language in section d. sufficiently indicates that the same procedures for b. would be 2/3? If there are proposed new rules and we reject them.... Then the council would still need 2/3 in order to override us?

(Discussion)

Chair Boureslan stated that he would like to entertain a motion to support the document as it has been voted on in the last meeting and what we have voted on in this meeting to be presented to the Ad Hoc Committee as the opinion of and the consensus of this Commission.

MOTION MADE BY COMMISSIONER GEZELIUS TO ACCEPT AND SUPPORT THE DOCUMENT AS IT HAS BEEN PRESENTED AND VOTED ON AND FURTHER TO BE PRESENTED TO THE AD HOC COMMITTEE AS THE CONSENSUS OF THIS COMMISSION; SECOND BY COMMISSIONER MOSHER AND PASSED WITH ONE OPPOSITION BY COMMISSIONER GRAHAM.

Joyce Wilson took the opportunity to thank the Commission for working with us through this last week and for spending the amount of time you did in advance of it. There have been a lot of changes taking place in this organization. Certainly within the last 2 ½ years. We are changing a form of government. I truly believe that this document does not cause any loss of rights or protection to employees.

The Civil Service Commission may retire into Executive Session pursuant to Civil Service Commission Rule 1, Section 11(a) and the Texas Government Code, Section 551, Subchapter D to discuss any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the Commission may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act.). The Commission will return to open session to take any final action.

- Section 551.071 CONSULTATION WITH ATTORNEY
- Section 551.074 PERSONNEL MATTERS

MOTION MADE TO ADJOURN MADE BY COMMISSIONER GEZELIUS ; SECOND BY COMMISSIONER BRANNON, AND UNANIMOUSLY PASSED.

Meeting adjourned at 8:24 p.m.



Ali Boureslan, C.S.C. Chair



Linda Ball Thomas, CSC Secretary

1/25/07

Date Approved