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**MINUTES FOR A REGULAR MEETING OF THE CIVIL SERVICE COMMISSION  
HELD AT 6:00 P.M., THURSDAY EVENING, OCTOBER 27, 2005  
CITY COUNCIL CHAMBERS, #2 CIVIC CENTER PLAZA – 2ND FLOOR**

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**MEMBERS PRESENT:** Boureslan, Ali  
Ellis, William - Chair  
Gezelius, Ken  
Graham, Elijah  
Martinez, Ramy  
Peña, Andrew  
Ruck, Lance  
Schwartz, Elma  
Scott, Valerie

**ALSO PRESENT:**

Alston, Victor  
Arballo, Bill – AFSCME Local 59  
Batoon, John – Asst. City Attorney  
Buenning, Rosy – CSC Recorder  
Bustamante, Ricardo  
Cuellar, Lupe – Asst. City Attorney  
Macias, Jose  
Maese, Jose  
Mendoza, Francisca – Information Technology  
Momsen, Richarda – Municipal Clerk  
Opdyke, Robert  
Serrano, Antonio  
Thomas, Linda Ball –CSC Secretary/HR Director  
Worrell, Lilia – Municipal Court  
Wiles, Richard – Chief of Police  
Hamlyn, Debbie –Deputy City Manager

The meeting convened at 6:04 p.m. with a quorum of 9 Commissioners present and Chair Ellis presiding.

**CONSENT AGENDA**

Ms. Thomas requested the following amendments: Item 1F – the agenda item language needs “/OMB” added. Also the hourly rate on the contract should read \$13.60 per hour and not to exceed \$28,288. Item 2 needs to be deleted because there is a MOU for the new rule.

Commissioner Ruck requested that Item 1B be moved to the Regular Agenda.

Commissioner Boureslan requested that Items 1A and 1D be moved to the Regular Agenda.

**MOTION TO APPROVE THE CONSENT AGENDA WITH THE MODIFICATIONS MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.**

1. A. Personal Services Contract with William Lilly, Jr. to perform the duties of Neighborhood Services Manager from December 5, 2005 through December 4, 2006, for Community and Human Development.

*This item was addressed at the beginning of the Regular Agenda.*

Commissioner Boureslan said that after reading the memorandum to the Commission from Ms. Wilson he wondered if this was going to become a permanent position in 2007-2008.

Debbie Hamlyn, Deputy City Manager, stated that they wouldn't know until they got into the budget process.

Commissioner Boureslan also requested that the language “not to exceed \$80,000 per year” be added to the language of the contract in the compensation section.

Commissioner Graham asked if there was anybody from El Paso considered for this position.

Ms. Hamlyn said they didn't believe there was anyone in El Paso with the specific requirements they were looking for so they looked in other cities to see if they could find a comparable individual who would fit their needs (i.e., budget-wise, experience, etc.).

Commissioner Martinez said he hoped they looked in El Paso for someone with the specific credentials because there might have been someone interested. He hoped that in the future they would look in El Paso.

Ms. Hamlyn said one of the specific things they were looking for was someone who had experience doing this and since this has never been done in El Paso before they believed it would be hard to find someone locally.

Commissioner Ruck said he wanted to make sure that in the future they would advertise for these positions so anyone who wanted to could apply for them.

Discussion.

Chair Ellis stated that the change requested was to add the language "not to exceed \$80,000."

MOTION TO APPROVE ITEM 1A WITH MODIFICATION MADE BY COMMISSIONER BOURESLAN, SECONDED BY COMMISSIONER RUCK AND PASSED BY A VOTE OF 7 TO 1.

Ayes: Commissioners Peña, Martinez, Gezelius, Boureslan, Schwartz, Scott, Ruck

Nays: Commissioner Graham

B. Personal Services Contract with Rosy Buenning to perform the duties of Civil Service Commission Recorder from November 15, 2005 through November 14, 2006, for Human Resources.

*This item was addressed at the beginning of the Regular Agenda.*

Commissioner Ruck stated that the termination clause was different than the termination clause on the last contract and asked why. He said that the words "either party may terminate" were not clear. He knew one party was Ms. Buenning but wondered who the other party was? Was it the Department Head, the City Manager? He suggested deleting all the wording in the Termination paragraph and add "The contract may be terminated pursuant to City Charter Section 6.2-3." He also stated that the old contract said Ms. Buenning could appeal a termination and that language wasn't in the current contract either.

Assistant City Attorney Lupe Cuellar said the only problem she saw with the Charter language is that it wouldn't allow Ms. Buenning to terminate the contract if she chose to for some reason and this current language would require her to give 10 days notice. She suggested that the language under Termination be modified to read "The Civil Service Commission or the Contractor may terminate this contract without cause after 10 days written notice to either party with the intention to terminate this contract, or at any time by mutual agreement of the parties," then strike the rest of the language and add the language suggested by Commissioner Ruck.

Commissioner Ruck said that was fine with him.

MOTION TO APPROVE ITEM 1B WITH THE MODIFICATIONS MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER BOURESLAN AND UNANIMOUSLY PASSED.

C. Graduate Intern Contract with Gabriela Valle from October 31, 2005 through October 30, 2006, for Municipal Court.

D. Cooperative Education Contract with Oscar Sevilla from October 28, 2005 through October 27, 2006, for Museums & Cultural Affairs.

*This item was addressed at the beginning of the Regular Agenda.*

Commissioner Boureslan said he wanted to address this contract for the same reason, he requested that the language "Total contract shall not exceed \$9,193.60." be added to the contract. He also questioned the 20 versus 40 hours per week language in the contract.

John Batoon, Asst. City Attorney, agreed to make the change to the contract.

Discussion.

MOTION TO APPROVE ITEM 1D WITH THE MODIFICATION MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GRAHAM AND UNANIMOUSLY PASSED.

E. Personal Services Contract with Samuel Rosales to perform the duties of Deputy Court Clerk I from October 28, 2005 through August 31, 2006, the Municipal Court.

F. Personal Services Contract with Suzanne Tomlinson to perform the duties of Customer Service Clerical Assistant from October 28, 2005 through October 27, 2006, for the City Manager's Office.

2. Discussion and Action on Approval of Applications for Outside Employment:

- A. Chase – Marc – Police
- B. Johnson – Jerome – Police
- C. Maese – Jose – Fire
- D. Schmidt – Wyatt – Police
- E. Martinez – Miguel – Police

*This item was deleted concurrent with approval of the Consent Agenda.*

3. Notice of Promulgation of Eligible Lists:

- A. EPWU Plant Technician I = Promulgated 09/30/05 (P-1)(O-25)
- B. Public Services Librarian II = Promulgated 10/05/05 (P-2)(O-1)
- C. Airport Operations Officer = Promulgated 10/07/05 (P-)(CR-3)(O-2)
- D. Court Liaison Supervisor = Promulgated 10/12/05 (P-3)(O-3)
- E. Roofer = Promulgated 10/12/05 (P-0)(O-3)
- F. Police Detective = Promulgated 10/17/05 (P-44)
- G. Certified Firefighter Trainee = Promulgated 10/18/05 ((O-39)

4. Discussion and Action on request to have name placed on Transfer List:

- A. Sanchez, Jose – Electronics Technician – Street Department
- B. Pardo, Samuel – Laborer - El Paso Water Utilities
- C. Steele, Harry – Business and Customer Service Manager – EPWU

5. Discussion and Action on request to have name placed on Reinstatement List:

- A. Bustamante, Ricardo – Recreation Specialist – Parks & Recreation
- B. Macias, Jose – Electronics Technician – Street Department

5.1. Discussion and Action on Request for Temporary Promotion:

Hernandez, Graciela – Human Resources  
From: Personnel Aide  
To: Personnel Technician I

5.2. Discussion and Action on Request for Extension of Eligible Lists for an additional six months:

- A. Contract Compliance Specialist – Extended through 05/04/06
- B. Criminal Intelligence Liaison – Extended through 05/21/06
- C. Engineering Section Chief – Extended through 05/14/06
- D. Engineering Tech. I – Extended through 05/21/06
- E. EPWU labor Lead Worker II-Water – Extended through 05/14/06
- F. Municipal Svcs Asst. Director for Facilities Mgmt. – Extended through 05/14/06
- G. Neighborhood Relations Coordinator – Extended through 05/04/06
- H. Residential Inspector Supervisor – Extended through 05/21/06

### REGULAR AGENDA

*Items 1A, 1B and 1D were addressed here.*

6. A. Discussion and Action on Reconsideration of Motion to Table Items 6B and 6C to the November 10, 2005 CSC meeting.

MOTION TO RECONSIDER THE MOTION TO TABLE MADE BY COMMISSIONER GEZELIUS, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

MOTION TO RESCIND THE MOTION TO TABLE MADE BY COMMISSIONER GEZELIUS, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

B. Discussion and Action on amending Rule 15, Suspension, Reduction, Discharge, to allow written reprimands to be appealed to the Commission. (Tabled to 11/10/05)

C. Discussion and Action on revising the current policy of the Commission regarding the appeal of written reprimands. (Tabled to 11/10/05)

Items 6B and 6C were addressed concurrently.

Bill Arballo, AFSCME, stated that currently employees cannot file a grievance or appeal written reprimands. He said these reprimands greatly impact the workforce in that they affect the ability of the employee to receive merit increases, they are affecting the performance evaluations, and the potential promotional opportunities for the employee in the upcoming future. He told the Commission that if employees were allowed to appeal the reprimands to the Commission they would have a sense of due process in that if there was a misstatement, a misrepresentation of facts or an allegation that is not sustainable then the employee would have a recourse. He detailed several reasons why it would be important for employees to have a right to appeal these reprimands.

Commissioner Ruck asked if written reprimands would deny an employee a merit increase and if they could appeal that to the Commission. He asked if the written reprimand affected the employee's performance evaluation if the employee could appeal the rating.

Assistant City Attorney Lupe Cuellar said written reprimands could come into play in progressive discipline and in performance evaluations, but a written reprimand itself cannot deny a merit. A written reprimand also serves as a notice to the employee to improve their performance or to cease some type of misconduct. She stated that merit increases are only given to employees with exceeds or exceptional on their PE. However, not all employees with good evaluations get a merit increase because departments are allotted only a certain percentage that they are allowed to give.

Discussion.

Police Chief Richard Wiles, stated that this change would impact his department greatly. He reminded the Commission that this request has come to them several times but the rule has always been kept in place. He said reference his department he has a disciplinary matrix with standards of conduct and what can be expected. He said written reprimands are many of the first discipline in a lot of issues and police officers know that the reprimand is coming in most cases (i.e., police officer missing municipal court, police officers wrecking police cars, etc.). Chief Wiles said he was concerned for a couple of reasons.

First, the officers would have no reason not to appeal because the reprimand would either be upheld or thrown out – so they would likely appeal all reprimands because it wouldn't take the officers' time but it would take much of management's time. Second, it is used as a part of progressive discipline but the arbitrator always is made aware that the reprimand was not appealable, therefore, the arbitrator knows this information and will probably take it into account. He said he was very concerned about this and about putting a timeframe into it either because in his department they have to go back into the history sometimes for years. He requested they leave the rule as it is.

Commissioner Ruck commented that if written reprimands were going to be used in progressive discipline this meant that ultimately the discipline itself would be appealable.

Discussion.

MOTION TO DENY ITEMS 6B AND 6C MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER PEÑA AND UNANIMOUSLY PASSED.

7. Discussion and Action on proposed amendments to Rule 13, Leave of Absence, Resignation, Sick Leave and Vacations.

Chair Ellis reviewed the amendments for the Commission.

Only one additional change was made as follows: Section 8 to delete the words "as provided in these Rules" before the words "including termination."

Assistant City Attorney Lupe Cuellar advised that this would be introduced to City Council until November 15<sup>th</sup>.

MOTION TO APPROVE THE AMENDMENTS TO RULE 13, MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER BOURESLAN AND UNANIMOUSLY PASSED.

8. Discussion and Action on Appeal of Performance Evaluation of:

Jimenez, Ivonne – Library Extension Services Administrator – Library

Ms. Thomas advised the Commission that normally the appellants in these cases are not asked to be present because their appeal is usually assigned to a committee of the Commission.

Chair Ellis said he wasn't inclined to appoint this to a committee right away because he believed it contained some matters that the Commission as a whole needed to consider. He requested that the item be tabled and that Ms. Jimenez be requested to appear at the next meeting.

MOTION TO TABLE ITEM 8 MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER RUCK AND UNANIMOUSLY PASSED.

9. Discussion and Action on Appeal of Denial of Reinstatement:

Serrano, Antonio – Police Officer – Police Department (Tabled)

Police Chief Richard Wiles pointed out to the Commission that Mr. Serrano had signed a Waiver of Charter Rights when he resigned waiving his right to reinstatement. He requested this item be deleted.

Chair Ellis asked Mr. Serrano if he had signed the waiver.

Mr. Serrano said he did sign the document. He said that at that time there was an investigation being conducted which he believed was biased, this was one of the reasons he signed the form.

Assistant City Attorney Lupe Cuellar commented that if Mr. Serrano hadn't resigned he would have been terminated.

MOTION TO DENY ITEM 9 MADE BY COMMISSIONER ELLIS, SECONDED BY COMMISSIONER PEÑA AND PASSED BY A VOTE OF 7 TO 1.

Ayes: Commissioners Peña, Martinez, Gezelius, Boureslan, Schwartz, Scott, Ruck  
Nays: Commissioner Graham

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

A. Discussion and Action on Reconsideration of Motion to Table below Item 10B to the November 10, 2005 CSC meeting.

MOTION TO RECONSIDER THE MOTION TO TABLE MADE BY COMMISSIONER BOURESLAN, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

MOTION TO RESCIND THE MOTION TO TABLE MADE BY COMMISSIONER GEZELIUS, SECONDED BY COMMISSIONER BOURESLAN AND UNANIMOUSLY PASSED.

B. Opdyke, Robert – Termination – Public Transit (05-SM-03by) (Tabled to 11/10/05)

MOTION TO APPROVE THE HEARING OFFICER'S RECOMMENDATION MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM (no vote taken)(motion was later withdrawn)

Chair Ellis stated that there was considerable discussion on this item at the last meeting and some of the holdings in the recommendation needed clarification.

After substantial discussion on the findings and conclusions of the Hearing Officer, the following sentences were deleted from the recommendation:

MOTION TO DELETE THE FOLLOWING SENTENCE FROM THE RECOMMENDATION MADE BY COMMISSIONER SCHWARTZ, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 6 TO 1 WITH 1 ABSTENTION:

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Schwartz, Scott  
Nays: Commissioner Boureslan  
Abstain: Commissioner Ruck

Page 8, Section D, second paragraph, first sentence which reads, "I find that there was no evidence of any Charged rule, regulation, ordinance, or the like prohibiting the transaction as it occurred."

MOTION TO DELETE THE FOLLOWING SENTENCE FROM THE RECOMMENDATION MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

Page 8, Section D, second paragraph, last sentence which reads, "The fact that the sale took place in the City parking lot, where the general public has access, does not entitle the City to police or patrol such private matters."

MOTION TO DELETE THE FOLLOWING SENTENCE FROM THE RECOMMENDATION MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 6 TO 2:

Ayes: Commissioners Peña, Graham, Martinez, Gezelius, Schwartz, Scott  
Nays: Commissioners Boureslan, Ruck

Page 8, Section D, fifth paragraph, fourth sentence which reads, "While I may agree that the public access parking lot does not guarantee anyone there any "right to privacy", I do not agree that the specific conduct cited in this termination is any in which the City has any interest in regulating."

MOTION TO DELETE THE FOLLOWING SENTENCE FROM THE RECOMMENDATION MADE BY

COMMISSIONER SCHWARTZ, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 7 TO 1:

Ayes: Commissioners Graham, Martinez, Gezelius, Boureslan, Schwartz, Scott, Ruck  
Nays: Commissioner Peña

Page 8, Section D, sixth paragraph, first sentence which reads, "I find that the Appellant has no less rights than a member of the public in using the City's parking lot, which is itself open to members of the public."

MOTION TO DELETE THE FOLLOWING SENTENCE FROM THE RECOMMENDATION MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER GEZELIUS AND PASSED BY A VOTE OF 5 TO 3:

Ayes: Commissioners Peña, Martinez, Gezelius, Schwartz, Scott  
Nays: Commissioners Graham, Boureslan, Ruck

Page 9, Section D, last sentence which reads, "I find that there was not a single Charge alleged that was sustained by a preponderance of the evidence, and that the City's case against Appellant was not met as to any single Charge."

MOTION TO UPHOLD THE TERMINATION MADE BY COMMISSIONER BOURESLAN BUT FAILED FOR LACK OF A SECOND.

MOTION TO APPROVE THE HEARING OFFICER'S RECOMMENDATION WITH THE AMENDMENTS NOTED ABOVE, AND THAT THE TERMINATION BE REDUCED TO A 6-MONTH SUSPENSION MADE BY COMMISSIONER PEÑA, SECONDED BY COMMISSIONER BOURESLAN BUT FAILED BY A VOTE OF 3 TO 5.

Ayes: Commissioners Peña, Gezelius, Boureslan  
Nays: Commissioners Graham, Martinez, Schwartz, Scott, Ruck

MOTION TO AMEND THE HEARING OFFICER'S RECOMMENDATION WITH ALL THE AMENDMENTS NOTED ABOVE, DELETE *SECTION V. RECOMMENDATION* IN ITS ENTIRETY AND THAT THE TERMINATION BE SET ASIDE AND REDUCED TO A 30 WORKING-DAY SUSPENSION MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER GRAHAM AND PASSED BY A VOTE OF 6 TO 2.

Ayes: Commissioners Graham, Martinez, Gezelius, Schwartz, Scott, Ruck  
Nays: Commissioner Peña, Boureslan

MOTION TO ADJOURN TO EXECUTIVE SESSION MADE BY COMMISSIONER MARTINEZ, SECONDED BY COMMISSIONER GEZELIUS AND UNANIMOUSLY PASSED.

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The Commission retired into Executive Session at 8:20 p.m. to discuss Item 11, and reconvened for Open Session at 8:46 p.m.  
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MOTION TO ADJOURN EXECUTIVE SESSION AND RETURN TO REGULAR SESSION MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER ELLIS AND UNANIMOUSLY PASSED.

Discussion and Action on Appeal of Disqualification to take Examination and/or Removal of Name from Eligible List in accordance with C.S.C. Rules and Regulations:

11. Alston, Victor – Zookeeper (8.1.b.)

The matter was discussed in Executive Session. The following action was taken in Open Session.

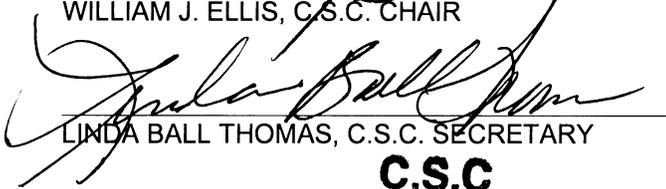
MOTION TO APPROVE ITEM 11 MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER BOURESLAN AND PASSED BY A VOTE OF 6 TO 2.

Ayes: Commissioners Peña, Graham, Martinez, Boureslan, Schwartz, Ruck  
Nays: Commissioner Gezelius, Scott

THERE BEING NO FURTHER BUSINESS BEFORE THE COMMISSION, A MOTION TO ADJOURN WAS MADE BY COMMISSIONER RUCK, SECONDED BY COMMISSIONER MARTINEZ AND UNANIMOUSLY PASSED.

THE MEETING ADJOURNED AT 8:47 P.M.

  
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WILLIAM J. ELLIS, C.S.C. CHAIR

  
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LINDA BALL THOMAS, C.S.C. SECRETARY

**C.S.C**

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DATE APPROVED NOV 10 2005