

# CIVIL SERVICE BOARD MEETING MINUTES



DATE: March 8, 2010  
8:00 AM – 10:05 AM

BOARD: Doug Coulter, Chairperson  
Hugh Logan, Vice Chairperson  
James “Mickey” Dunlap, Board Member  
Debra Allen, Board Member  
Maiqual “Mike” Talbot, Board Member

STAFF: Terri L Cassidy, Human Resources Director/Secretary to the Board  
David Hunt, City Attorney  
Jyll C Ramirez, Administrative Assistant to the HR Director

## 1. FLAG SALUTE

The Pledge of Allegiance was led by Board Member Allen.

## 2. ROLL CALL

All Board Members were present.

## 3. CONTINUED DISCUSSION FROM THE MARCH 1, 2010 CSB MEETING ON CIVIL SERVICE BOARD AND SYSTEM – CHARTER UPDATE

Vice Chairperson Logan asked Mr. Hunt if he is recommending to the City Council that he wants the City of Newport Beach to be governed by general law instead of the City Charter.

Mr. Hunt replied that he is a strong advocate of the Charter. Mr. Hunt reiterated that his job is to research and obtain information for the City Council so that they may make the best decisions for the City of Newport Beach and to make sure that they function within the laws.

Ms. Cassidy explained that the Charter Update Commission (CUC) is charged with deciding which City governing documents should be updated and need to come into compliance with current State and Federal laws. The primary question is how do we continue to work under the Charter in a Civil Service System so that it is fair, non-discriminatory, respectful of sound practices, cooperative and reasonable in light of all of the changes that have occurred since 1958. Although the question has been posed on whether or not the Civil Service System should be disbanded, it has never been recommended by staff. Human Resources has researched 54 different cities and discovered that five of them have chosen to dissolve their Civil Service System. However, a majority of them have different variations of the System, which include a

span from covering Police and Fire employees only to covering all City employees. Some other options include a stronger System with additional responsibilities or eliminating monthly meetings.

Ms. Cassidy told the Board that eliminating the Civil Service Board will not be her or Mr. Hunt's recommendation to the CUC and requested that the Board not focus on Mr. Praet's recommendation for this meeting and to concentrate on modifying the Charter and Ordinance 866, which was first created in 1942 depicting the Civil Service Board as a trial board before being modified in 1958. Ms. Cassidy requested the Board's recommendation.

Chairperson Coulter asked Mr. Hunt if he agreed with Ms. Cassidy's statement.

Mr. Hunt replied that he did and has never said anything different.

Board Member Coulter stated for the record:

*The Civil Service Board functions as a fair and impartial governing board designed to assist both the City employees as well as the citizens of Newport Beach. It offers a professional group of experienced business people who are carefully selected to help guide successful resolutions of personnel and policy issues, all without charge to the City itself. The Board fulfills a vital role, especially considering the current lack of employee performance reviews.*

Board Member Coulter directed the focus to Section 710, which explains how the Board is selected.

Board Member Logan shared some of his opinions:

- He prefers a five-member Board.
- He is in favor of two Board Members being included in the interviews for the Fire and Police Chiefs.
- He raised the question of who else could be chosen that may have better knowledge of the function.
- He would prefer to not have the City Manager pick the interviewers so that there would be no perception of conspiracy or having too much power.
- He would like to see all Safety Employees in the City covered by the Board.
- He does not advocate a role in the hiring of the Department Directors.
- He does not want to eliminate the Civil Service Board, because he believes the Board protects the City from litigation.
- He concluded by stating that the Civil Service Board is fair and has integrity.

Board Member Talbot asked what is the significant requirement that should be recognized to fall within the System, as the "Classified Service" appoints two of the members.

Ms. Cassidy explained that, as it currently exists, it is not clear who can come before the Board. She continued to inform the Board that there are both sworn and non-sworn employees in the same bargaining unit (e.g. Police Association), and because of the wording, they may all come before the Board and be included in the System. She told the Board that if they believe it is clear enough, it does not need to be addressed.

Board Member Dunlap understands that there are others areas of the Charter that also need to be changed, but have nothing to do with the CSB. He is in favor of having another upper-level management position in a department that is not in an employee association. In addition, he believes Ordinance 866 should be the prevailing document and pointed out that the City's Employee Policy Manual can be changed by the City Council at any time, whereas Ordinance 866 may only be changed by majority vote of the people. Therefore, if the City Council could change the integrity of Ordinance 866 by a vote of four members, they could change the protection for the Safety Employees which could be used as a bargaining tool during meet and confer.

Board Member Allen asked the Association Representatives for input. She suggested that the Motion include a change in the language from "classifications" to naming the five bargaining units protected by the Board (NBPA, PMA, LMA, FMA and NBFA).

Ms. Cassidy cautioned the Board that the names of the Associations could change under Meyers-Milias-Brown, and the purpose in defining the Classifications is only to determine who is making the nomination of the two Board Members.

Chairperson Coulter opened the discussion to the public.

No comments were made.

Board Member Talbot asked what the procedure was to incorporate the Board's suggested changes.

Mr. Hunt explained that he would draft the changes recommended by the CSB and present it to the City Council, who would have to put it on the ballot to vote in June 2010.

Board Member Dunlap requested to address Ordinance 866, and explained that he is in favor of updating it to comply with current laws, but still provide protection through the initiative process.

Board Member Allen suggested that they go over Ms. Cassidy's staff report before addressing Ordinance 866.

Ms. Cassidy agreed with Board Member Allen's suggestion, because any changes to the sections in the Charter could affect Ordinance 866.

A Motion was made by Board Member Dunlap to make no changes to Section 710 (Civil Service Board) of the Charter, with the understanding that changing the language from "Classified Service" to "Associations" will be addressed in a different document. Chairperson Coulter seconded the Motion. It was approved 5 Ayes, 0 No.

A Motion was made by Board Member Talbot to make no changes to Section 711, A through E, (Civil Service Board. Powers and Duties.) of the Charter. Board Member Dunlap seconded the Motion. It was approved 5 Ayes, 0 No.

Ms. Cassidy advised the Board that they may change their own rules, so that any changes or concerns may be addressed later.

A Motion was made by Board Member Dunlap to make no changes to Section 801 (System to Be Maintained.) of the Charter and keep the Civil Service System as outlined. Vice Chairperson Logan seconded the Motion. It was approved 5 Ayes, 0 No.

Chairperson Coulter requested that the Board move forward to Section 802 (Positions Included in the System).

Ms. Cassidy described a scenario for the Board in which a Department Director or Chief is out for a period of time. Typically, the Director would designate an employee to act on their behalf and make decisions based on what is in the best interest for the department and City. When that designee is also holding a key position in a bargaining unit, a division of loyalty may occur.

Vice Chairperson Logan asked if this person would be an outside professional or a person that has been selected by the Chief or Director with domain knowledge.

Ms. Cassidy explained that the details have not been worked out, but that the individual's position and knowledge would ideally be similar to the Chief. They would have to step in and be able to direct the department in the Chief's absence.

A Motion was made by Board Member Dunlap to accept the recommended changes to Section 802.2 to read: *City Manager, Assistant City Manager, Executive Assistant to the City Manager, City Attorney, Assistant City Attorney, City Clerk, all Department Heads, and Assistant and Deputy Directors*. Section 802.3 to read: *All Members of appointive boards, commissions and committees*. Section 802.7 to read: *Such other positions, outside the system, as the City Council shall designate, by resolution*. The Motion was seconded by Chairperson Coulter.

Chairperson Coulter opened the discussion to the public.

Lifeguard Management Association (LMA) President Brent Jacobsen addressed the Board to emphasize the importance of specifying who is included in the System by job titles and/or what the duties are of the positions. He explained that during his career the name of his Association (currently LMA) has changed three times and includes part-time employees and public safety employees. His second comment addressed the Deputy or Assistant Chief position discussion, and he stated that he feels strongly that this position be occupied by a current staff member that holds institutional knowledge, instead of going outside the City.

Board Member Allen responded to Captain Jacobsen by letting him know that she is apprehensive to put specific titles in the Charter, since job titles may change. She is more comfortable with "safety employees."

Fire Management Association (FMA) Vice President Ralph Restadius also expressed his concern of how the Assistant or Deputy position will be picked (i.e. internal or external) and whether it will be an at-will position similar to the Chiefs.

Ms. Cassidy explained that the person would be selected through a process and would be at-will.

Firefighters Association (NBFA) President Chad Ponegalek believes that the position would be desirable, but is concerned about the position being at-will. He explained that he thinks some qualified candidates will be less inclined to apply for the position because they will lose their protection. He is also not in favor of this person being an outside candidate.

Vice Chairperson Logan would like the particulars of the Assistant/Deputy position before he will vote for or against it.

Board Member Dunlap reminded Vice Chairperson Logan that the Board is only making a recommendation to the City Council whether or not to consider revising it for the Charter, and he expressed his favor and believes it presents a positive promotional opportunity.

Board Member Allen agrees with Board Member Talbot's philosophy in that the Departments can already create a Assistant/Deputy Chief position that is still protected by CSB. She doesn't see the need to take them out of the System/Associations.

Ms. Cassidy explained that mixed loyalties may exist when a senior management staff member steps into the role of Director, while serving on an Association Board.

Chairperson Coulter brought it back to vote. The Motion did not carry 2 Ayes, 3 No (Logan, Allen and Talbot).

Board Member Allen made a recommendation to change the language for Section 802 from "*all full-time, regular and permanent positions or employment in the Police and Fire Department...*" to "*all safety positions.*"

The Board requested that staff re-draft, and bring back to the Board, Section 802 to include all safety employees including all Police and Fire Department employees. This language would include Lifeguard safety employees should they ever separate from the Fire Department, which has been done in the past.

A Motion was made by Vice Chairperson Logan to make no changes to Section 803 (Withdrawal From System) of the Charter. Board Member Allen seconded the Motion. It was approved 5 Ayes. 0 No.

Chairperson Coulter opened discussion of Ordinance 866. He informed Ms. Cassidy that the Board is not in agreement with staff's recommendation to repeal the Ordinance.

Board Member Dunlap re-stated his remarks from the March 1, 2010 meeting (included in the March 1 Minutes).

Board Member Talbot favors necessary corrections only to the Ordinance.

A Motion was made to retain Ordinance 866 with the exceptions of any updates due to State, Federal and local laws and reserve conflicts as long as they don't dilute the CSB protection through the initiative process by Board Member Dunlap. Board Member Talbot seconded the Motion.

LMA President Brent Jacobsen commented that he believes it is of utmost importance that the CSB be impartial and maintain disciplinary protection. The second important point is that the perception of the ethical wall is problematic.

NBFA Vice President Brian McDonough agrees that updates need to be made while still providing the protection of the CSB. He has found that some the the Charter restrictions have bound HR and unnecessarily slowed down the recruitment processes. He believes it can and should be streamlined.

PMA President Tom Gazsi expressed his support of separating and defining the codes, because of the added burden to already complex situations, like the PMA Investigation. He also advised the Board that it was never his interpretation that Mr. Hunt was recommending or wanting to move towards a general law. Mr. Gazsi expressed his appreciation for the protection of the Civil Service Board.

Chairperson Coulter brought it back to the Board to vote. It was approved 5 Ayes, 0 No.

#### **4. BOARD MEMBER COMMENTS**

Chairperson Coulter asked Mr. Hunt how he could uphold an ethical wall when the Board and he have different opinions with regard to the Charter Update.

Mr. Hunt explained that an ethical wall has nothing to do with this position. He reiterated that he has never recommended that the CSB be disbanded and that his motive has always been to seek the Board's recommendation for the Charter Update Commission.

Board Member Dunlap explained to Mr. Hunt that the Board is uncomfortable with him being their representative because they feel that they have a different view than Mr. Hunt.

Mr. Hunt explained that he represents the City as a whole, not just the Civil Service Board. He continued to explain that his job is not to advise the Board as to what recommendations they should make, but to provide legal assistance to the Board so that *they* may make a decision or recommendation.

Board Member Allen informed Mr. Hunt that she does not believe an ethical wall can exist within his office when all of the other staff members work for Mr. Hunt and that he can not remain impartial when it comes to his employees.

Mr. Hunt explained that he and all of the Attorneys in his office work for the City. Mr. Hunt continued to explain his function/role as the City Attorney and does not take a position or decide who is right or wrong in a disciplinary issue. His job is to set the boundaries and advise what is legal.

**5. ITEMS FOR FUTURE AGENDAS**

None

**6. PUBLIC COMMENTS**

None

**7. ADJOURNMENT**

The Civil Service Board meeting adjourned at 10:05 AM

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Terri L Cassidy, HR Director  
Secretary to the Board