



CITY OF TOPEKA

CITY COUNCIL COMMITTEE MEETING MINUTES

POLICY AND FINANCE COMMITTEE

CITY COUNCIL
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Committee: Policy and Finance

Date: May 15, 2019

Time: 9:30 A.M.

Location: 1st Floor Conference Room - Holliday Bldg 620 SE Madison

Attendance: Councilmembers Jeff Coen (Chair), Tony Emerson & Brendan Jensen, Jacque Russell (HR Director), Shawn Maisberger (HR), Lisa Robertson (City Attorney), Catherine Walter (Legal)

1) Call to order

Councilmember Coen called the meeting to order. Committee members introduced themselves.

2) Approve May 10, 2019 Minutes

Councilmember Jensen made a motion to approve the May 10th, 2019 meeting minutes. Councilmember Emerson seconded the motion. Minutes were approved 3:0.

3) Continued Discussion of Personnel Code: Articles VIII through X

Lisa Robertson provided Articles VIII through X of the Personnel Code to the Committee members and noted that Article VIII pertains to Non-Disciplinary Reductions in Force, Article IX pertains to Corrective and Disciplinary Actions, and Article X pertains to Grievances. Ms. Robertson sought the committee's guidance for including this information, which is more administrative in nature, in the Personnel Manual. Ms. Robertson referred to the Charter Provisions that were put into place following the change in the form of government. These provisions outline the powers and responsibilities of the Governing Body; relaying that the last sentence contained in Section A2-25 Powers of the Governing Body - states "It shall have no administrative powers." and that the language contained in Section A2-28(c) refers to Councilmembers communicating with appointive officers and employees who are subject to the direction and supervision of the City Manager through the City Manager. The language contained in Articles VIII through X of the Personnel Code was adopted in 1991 and provides for administrative responsibilities. Ms. Robertson suggested removing Articles VIII through X from the Personnel Code deciding which pieces would be most appropriate for an administrative document and which pieces would be most appropriate for inclusion in the TMC.

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Minutes Taken: May 15, 2019

Minutes Approved: June 3, 2019

Councilmember Jensen inquired about the lack of a clearly-documented line of authority with regard to the process of Governing Body members communicating to other staff through the City Council's Assistant and the Mayor's Assistant. Councilmember Jensen also inquired about the process for speaking to City staff in a private meeting if there was ever a concern about the City Manager, without the City Manager being present. Further inquiry was made regarding the role of the City Attorney during such an event and whether the City Attorney would represent the Governing Body or the City Manager. Ms. Robertson noted the duties of the City Attorney and how the inquiry raised by Councilmember Jensen has been raised in the past and continues to be a question. Another concern expressed related to priority and hierarchy as to the Executive Assistant of the City Council and the Executive Assistant of the Mayor - noting the dual roles those positions have to the Governing Body as well as to the City Manager. Ms. Robertson and Jacque Russell, Human Resources Director, confirmed that the duties and responsibilities for the aforementioned positions are found within the job descriptions. Ms. Robertson inquired as to whether or not the position description for the Council Assistant are provided to each Councilmember. Ms. Russell noted that changes had been made recently and that each Councilmember would receive this new description.

Topic moved back to the Personnel Code Articles.

- Personnel Code Article VIII: Non-Disciplinary Reductions in Force. Ms. Robertson briefly walked through some of the topics covered in Section 1 of the article, and noted that most are administrative in nature.

Section 2 speaks to permanent reduction of force and discusses severance pay. Ms. Robertson suggested the language related to severance be codified in the TMC due to the budgetary impact that would occur in such a situation. The Governing Body should provide oversight in making these decisions.

Section 3 covers Administrative Leave, and how it would be addressed during a disciplinary matter. Staff suggested moving this section to Article IX of the Personnel Code, which addresses Corrective and Disciplinary Actions.

- Personnel Code Article IX: Corrective and Disciplinary Actions. Ms. Robertson briefly mentioned the topics covered in Article IX and noted that they are of an administrative nature.

Councilmember Emerson inquired about the language found in the second sentence of Article IX, Section 3 which states "An administrative leave is not considered a corrective or disciplinary action and is therefore not subject to the grievance process" and whether it would be

appropriate to move this section to Article IX. Ms. Russell noted that Administrative Leave is typically used during an investigation process when a policy-level infraction is being determined; or during a termination process when the employee has an opportunity to a due process hearing prior to being terminated. In Ms. Russell's opinion, administrative leave is a pre-cursor to a disciplinary action and would be appropriate to move to Article IX. Ms. Russell noted that the administrative leave process is sparingly used, and that the employee is receiving pay during this leave period. If an employee is temporarily removed from his/her position without pay, this action would fall under suspension. Councilmember Emerson inquired if a new article could be put in place to separate the two instances, one under Article VIII, and one under Article IX.

Councilmember Jensen inquired if Administrative Leave is used in Use of Force cases within the Police Department. Ms. Russell noted that it is not always used following a Use of Force action, but it is put into effect after an Officer Involved Shooting. Ms. Robertson noted another option would be to move Administrative Leave into the section covering the various types of Leaves of Absences.

Councilmember Jensen inquired if items in Article IX only applied to "at-will" employees. Ms. Russell explained that the items would pertain to employees who are benefit-eligible and are not covered by a bargaining unit. "At-will" employees are the Department Directors. Other employees covered under the Personnel Code could be subject to disciplinary actions found in the policy. Councilmember Jensen inquired about the terminology used to describe employees who are not Department Directors and also not part of a bargaining unit. Ms. Russell responded that those employees are considered to have Civil Service Protection. The Topeka Municipal Code specifically states that Department Directors serve at the will of the City Manager, hence the reference to that status.

Councilmember Coen noted references made to Parks and Recreation. Staff confirmed and responded that outdated references would need to be removed or corrected, including addition of references the Utilities Department needed to be added.

Councilmember Jensen inquired about levels of egregiousness for violations. Ms. Russell noted that Article IX, Section 2(B)(3) provides a list of examples of offenses that are not normally serious enough for suspension or termination. Additionally, Section 2(B)(4) provides a list of examples of offenses that would result in immediate suspension or

termination. These lists are not all inclusive, but provide a guideline for instances of a similar nature.

Councilmember Jensen inquired about what process could be put in place to reflect the types of disciplinary steps taken by private entities- versus what is currently found within government. Ms. Russell noted that within recent years, much work has been done to change the perception related to government disciplinary process - to that of being professional, similar in nature to the private sector.

Councilmember Emerson inquired about offenses that could be interpreted on either list and the process used to decipher which would be the appropriate action to take. Ms. Russell responded by noting that it is fairly common that situations may have numerous policy infractions that accompany some of the offenses listed and that the Human Resources staff assists Department Directors in navigating the best course of action.

Councilmember Coen inquired about events where employees commit a crime or infraction on personal time and inquired how it relates to their job position. Ms. Russell noted that there currently is nothing in the Personnel Code that discusses a conviction. Ms. Russell noted that one major difference between how the private sector deals with disciplinary actions versus how the public sector handles them relates back to the Constitutional rights of the employees, or Civil Service Protection. Further, the process of dealing with charges versus convictions is sometimes more difficult. Ms. Walter noted that the Personnel Manual contains language covering off-duty conduct. Ms. Russell commented that consideration of potential City liability is also factored into the equation when disciplinary matters are reviewed.

Ms. Russell provided further detail as to how performance-related corrective action is handled.

Ms. Robertson noted that Article IX, Section 3 covers Corrective Actions; however, there is an entire ARR that is dedicated to performance evaluations and probations. Ms. Robertson suggested removing this section from the Personnel Code entirely.

- Personnel Code Article X: Grievances. Following the discipline, an employee has the right to file a grievance if they choose to do so. The sequence of steps that must be followed is laid out in this article.

Ms. Robertson noted that the last three articles in the Personnel Code could be copied directly from the code and placed into the administrative document.

Councilmember Coen inquired about the next step of action. Ms. Robertson suggested that staff present portions of Title 2 of the TMC, with suggestions for restructuring, for the committee to review on June 3rd, 2019.

Ms. Robertson noted additional follow-up from questions brought up at prior meetings would be provided to the committee, as well.

4) Other Items Before the Committee

No other items.

5) Adjourn

Councilmember Coen adjourned the meeting.

Video of this meeting can be found at: <https://youtu.be/9xmmyA0ep0Q>