



**MINUTES OF THE CITY COUNCIL WORK SESSION,  
held January 23, 2002, for the purpose of meeting with the Employee  
Relations Board to discuss the board's proposed revision of the procedures for  
employee appeals and grievances.**

Mayor Davis started the meeting at 8:05 p.m. It was held in the Multipurpose Room of the Community Center.

PRESENT WERE: Council members Edward V. J. Putens, Rodney M. Roberts, Alan Turnbull, Thomas X. White, and Mayor Judith F. Davis.

STAFF PRESENT WERE: Michael P. McLaughlin, City Manager; Robert A. Manzi, City Solicitor; and Kathleen Gallagher, City Clerk.

ALSO PRESENT WERE: Employee Relations Board members Jim O'Reilly (chair), Gil Weidenfeld, Hugh Jascourt, Danita Elkerson, and Joe Griffith; F.O.P. President Craig Rich; and Jean Snyder.

Prior to starting the work session with the board, Council heard a request from Jean Snyder that the City review its procedures for interacting with Greenbelt Homes, Inc., on code enforcement issues. The City Manager took materials from her to copy and distribute to Council later.

At the Mayor's request, Mr. O'Reilly gave a brief history of the process of this revision, which started with a request from the former City Manager to the board in 1995. He said he believed the amendment proposed to Council represents a consensus among the board, the City Manager, and the City Solicitor. He referred Council to the board's cover memo of October 10, 2001, which discusses the highlights of the revision. Among the issues were a lack of clarity regarding the differences between appeals and grievances and a lack of closure to the grievance procedure.

Mr. Manzi stated that there had been a great deal of give-and-take between the staff and the board. He said he knew Council was aware that there were problems with the current Code, and he concurred with Mr. O'Reilly that the proposed amendment is a consensus document that should address many of the problems. In particular, it will make the grievance process more accessible and useful to employees, as well as making the statement in the Code easier to read and understand.

Mr. Weidenfeld said he thought the proposal would be "a vast improvement" over the current statement of the Code. He also cited its emphasis on following the proper steps in handling an appeal or grievance, so that every effort can be made to resolve the problem without coming to the ERB.

Mr. Jascourt pointed out that there is currently no time limit on filing a grievance, and this has been remedied in the proposed amendment. He cited this as an illustration of

the fact that while some aspects of the policy have been broadened, others have become narrower.

Mr. Putens asked what happens if an employee is still unsatisfied at the end of the process. Mr. O'Reilly replied that in the case of an appeal, the board's ruling is final, as it has always been. The appellant has no further recourse within City government and would have to take the matter to court. He said that in the case of a grievance, one of the problems has been that there has been no clear-cut "end of the process." The board sends its recommendation to the City Council, copied to the City Manager and the grievant, but it has no force, and no further action is required of anyone. In the proposed revision, the City Council would respond with acceptance or rejection of the board's recommendation and would thus be the final arbiter.

Mr. White commented that this change in procedure would be more substantial than other aspects of the revision. Mr. Manzi agreed but said the current problem is that the report goes to Council and then nothing happens. Mr. White responded that he had assumed it was implicit that if Council took no action, the board's recommendation stood. He said he was concerned that the policy as revised would require Council to act without having been previously involved in the process; he said he thought Council would have to hold its own hearing to make a meaningful judgment.

Mr. Jascourt said in practice it was not the case that an absence of action from Council was interpreted as an endorsement of the board's recommendation. Among other problems, there is no deadline. How, he asked, could the board know when to conclude that Council had not acted? Mr. White responded that he thought a deadline could be set for Council either to act or, by default, to let the board's recommendation stand.

Mr. Putens said he thought either the board or the Council should be the final arbiter in both cases. Mr. Manzi said that while in the case of appeals it had always been clear that the intent of the legislation was for the board to have the final say with no Council involvement, the intent had always been murky with regard to grievances.

Mayor Davis asked if the board would be comfortable with the authority for both appeals and grievances. Mr. O'Reilly and Mr. Weidenfeld were of the opinion that the board could handle both without problem if Council so wished. Mr. Turnbull said he thought the board should have the authority, since having Council involved with this process would only serve to erode the relationship between the Council and the City Manager.

Mr. McLaughlin said he wanted to be sure that Council appreciated that making the board's opinion binding on the City—i.e., binding on the City Manager—would be a major change.

Mr. Roberts said he did not think employees should be denied a right to go to the Council. Mr. Turnbull responded that this was not in the same category as the right of citizens to come to Council; employees are not necessarily residents, and different principles apply. Mr. Weidenfeld concurred, adding that one of the very reasons for having a Council-Manager form of government is to provide a separation between the Council and the employees.

Mr. Jascourt suggested that a compromise might be to allow employees to carry a grievance to Council only for certain types of claim—specifically, for an abuse of process. Mr. Turnbull and Mayor Davis both thought this suggestion was worthy of further consideration. Mr. Manzi recommended against this approach, saying that appeals of process can never in practice be limited to process issues; they always slip into issues of fact. He added that it should be kept in mind that it is the City Manager whom the City Charter names the Chief Personnel Officer for the City. Later in the meeting, Mr. Jascourt responded that Mr. Manzi's opinion notwithstanding, there is a substantial body of law on the subject of dealing with concerns of process vs. fact.

Mr. Roberts took issue with Mr. Putens' proposition that either the board should be the final arbiter for both appeals and grievances or that Council should be. He said appeals are about "hiring and firing" matters, which clearly are not Council's prerogative. Grievances, on the other hand, he thought could be very broad in nature and could even be brought against the City Manager personally.

Mr. Turnbull asked if there should more cause for concern about putting too much power in the hands of a citizen group, especially given potential liability. Other Council members said it was up to Council to assure that the board performed responsibly, replacing members if need be.

Mr. McLaughlin said it appeared to him that the board was simply looking for closure to the process, not necessarily a shift in authorities. He said he thought the intent of the current Code was for the Manager to make the decision, with the Council being informed and able to step in if it chose to take action.

Mr. White said he thought the Manager should make the decision and that the matter should not come to Council.

Mr. Weidenfeld said he thought it would be workable for the board's recommendation to be made to the City Manager (rather than to Council, as is currently the case), copied to the grievant and Council, with the City Manager making the decision, but with the proviso that within a specified time limit, Council could choose to act. The result would be that Council would not usually have any involvement.

Mr. Griffith commented that there is no value to the employee in having a recommendation go back to the City Manager, who is the very person being grieved against. Mr. Turnbull said this was perhaps not as circular as it seemed, since the Manager would be informed by the board's recommendation and would also be aware that Council had seen the board's recommendation. Mr. Roberts, however, said he agreed with Mr. Griffith that having the City Manager make the final decision on a grievance against himself "makes no sense."

In response to the concerns about the City Manager having the final say, Ms. Elkerson suggested a variation on Mr. Weidenfeld's idea above. In her variation, it would be the board's recommendation, rather than the City Manager's decision, that would become final if Council did not act within a specific time limit.

Mr. Putens said a problem with giving Council a time period over which to decide whether it wished to intervene, under both the Weidenfeld and Elkerson scenarios, was

that it would be virtually impossible to tell employees that they could not lobby Council over that time period. He asked, "How can you tell people they cannot contact Council?"

Mr. Turnbull said he agreed it did not make sense for the City Manager to make the decision, but he thought Council's role should be that of "an observer of outcomes for quality control" of the actions of both the Manager and the board.

Mr. White agreed with Mr. Putens that any scenario with a time limit for Council's optional intervention would be a problem. He said, "As long as it is possible for Council to overturn a recommendation, Council members can be prevailed upon to inject themselves into the process." He added that the goal should be to avoid setting Council up to be importuned, not to guaranty it.

The discussion continued regarding where the final authority should lie for grievance decisions, and Council members entertained various positions. Mayor Davis attempted to find common ground but no consensus was reached among Council on any change to the revision that would be preferable to what the board had proposed. The issue was not a fine-tuning of language but rather of agreement on what the decision-making process should be. It was agreed to leave Section 13-180(f) as it stood. Several other specific changes to be made in the document were noted, and Mayor Davis asked that some additional work be done on making language consistent in the amendments that would be required for the Charter.

#### Other Business

In response to requests for information from Mr. Putens, Mr. Manzi said it is not possible for the City to restrict the sale of items used as drug paraphernalia beyond state law; the City may not issue restraining orders against minors in Roosevelt Center; and he will provide a further report to Council regarding a query about revenues from red light cameras. Mayor Davis asked staff to get clarification on an item on M-NCPPC's agenda related to vacating a plat of subdivision on the BARC property.

The meeting ended at 11 p.m.

Respectfully submitted,  
Kathleen Gallagher  
City Clerk