




MEMORANDUM

TO: Audit and Finance Committee Members

FROM: Joya Hayes, Interim Director of Human Resources and Civil Service Director 

DATE: February 23, 2016

SUBJECT: Item #49 on February 25th Council Agenda: Proposed Resolution regarding expansion of Municipal Civil Service Commission duties

The purpose of this memorandum is to request Item #49 on the February 25, 2016 City Council Agenda be postponed. This item includes a proposed resolution that would significantly expand the current duties of the Municipal Civil Service Commission.

The draft resolution requests:

"That the City Council requests the Human Resources Director initiate amendments to the Municipal Civil Service Rules to include a process for appeals pertaining to allegations of discrimination, harassment, and retaliation for which an employee has exhausted the departmental grievance process as outlined in the Municipal Civil Service Rules by June 1, 2016, and to assist the MCSC in the necessary process for development of a subsequent recommendation to the City Council."

Staff has not had a full opportunity to evaluate this proposal, and we are concerned with the potential impact. An initial evaluation by staff includes outstanding questions and concerns from reading the resolution when it was posted on February 18, 2016. Since last Friday, staff has worked to provide the attached PowerPoint to the Committee, and an outline of the concerns can be found below. I respectfully request that consideration of this topic be postponed.

- 1) The proposed language includes adding a process for appeals pertaining to allegations of discrimination, harassment, and retaliation. Article IX of City Charter specially identifies five types of appeals that can be appealed to and decided by the Municipal Civil Service Commission (MCS). The Law Department will need to evaluate what the defined process is in the City Charter to consider such expansion.
- 2) The proposed language includes reference to an employee exhausting the departmental grievance process pertaining to allegations of discrimination, harassment, and retaliation, as outlined in the MCS rules prior to filing an appeal with the MCS Commission. The current departmental grievance process calls for an initial response by management within 10 business days of receipt of the grievance, and a final answer from the Department Director within 25 business days of receipt of the grievance. Allegations of

discrimination, harassment, and retaliation are complex matters which are currently investigated by Human Resources staff. It is not unusual for a thorough investigation of these allegations to take 90-120 days, and often times longer. The timeframes provided for in the grievance language does not provide adequate time for an effective investigation and determination of these claims, and also does not provide for extensions.

- 3) Providing a process that allows for escalation and determination of allegations of discrimination, harassment, and retaliation to an appointed Commission, who could make a determination at odds with the investigatory findings of the City, will, at a minimum, create undesirable confusion and complexity to future litigation regarding those claims and will serve to increase the liability to the City in those matters.
- 4) The proposed change is inconsistent with practice in the five Texas cities we benchmarked, and with sworn Civil Service.
- 5) Benchmark data with the Federal Equal Employment Opportunity Commission (EEOC) compared to the HRD cases investigated do not support a need for additional review. While the EEOC only found "reasonable cause" in 3.8% of the cases it investigated nationwide from 2010-2014, comparable cases investigated by HRD found discrimination or harassment policy violations in 9.9% of allegations, and found at least one policy violation in 36% of the investigations evaluated.

I believe additional review and consideration of this item is warranted. My request for postponement is so staff can have further time for review, and also so we can provide comment and discussion with the Audit and Finance Committee regarding the proposed resolution.

Attachment

Cc: Marc A. Ott, City Manager
Mark Washington, Interim, Assistant City Manager
Anne Morgan, City Attorney

CITY OF AUSTIN

Audit and Finance Committee Meeting February 24, 2016



Human Resources Department

The City of Austin is an Equal Opportunity Employer

We will not discriminate against any applicant or employee based on:

- Race
- Creed
- Color
- Disability
- Veteran status
- Age
- Religion
- National origin
- Gender
- Sexual orientation
- Gender identity
- AIDS or HIV status or perception
- Retaliation

City of Austin Personnel Policy

Policy includes prohibitions against:

- Harassment - abusive, obscene, threatening or intimidating conduct or communication that is intended to harass, alarm, torment, embarrass or injure another
- Sexual Harassment - quid pro quo or creating a hostile working environment
- Employee Conduct - responsible for professional, respectful and ethical conduct towards coworkers and members of the public

Complaint Reporting Avenues for City Employees

- Immediately report concerns to supervisor
- Escalation within management chain to include Assistant Director, Director
- Department Human Resources, or the Director of Human Resources
- Ethics and Compliance – Law Department
- City Auditor Hotline (includes anonymous reporting)

No Retaliation

- No employee shall suffer reprisal as a result of reporting allegations in good faith
- Retaliation is an action or inaction that:
 - a. Adversely affects the terms and conditions of employment; and
 - b. Is taken in response to the affected employee's good faith complaint, participating in an investigation, proceeding or hearing.....

Internal Grievances & Appeals

- Departmental grievance process
- Appeal to MCS Commission

Departmental Grievance

- Provides a process for employee complaints to be addressed in a timely manner
- Complaint is presented through the department, up to the Department Director
- Decision of the Department Director is final except for MCS appealable actions

Appeals to MCS Commission

Appealable actions:

- Denial of Promotion
- Disciplinary Probation
- Demotion
- Disciplinary Suspension
- Discharge*

*May be filed without going through department grievance process

- Available to regular status employees
- MCS Commission decision is final

Allegation Data for HRD Investigations

January 2010 – May 2015

	Discrimination		Harassment		Retaliation		Hostile Environment		Investigations
	Substantiated	Not Substantiated	Substantiated	Not Substantiated	Substantiated	Not Substantiated	Substantiated	Not Substantiated	
Anonymous v. Female	-	6	-	2	-	7	-	-	7
Anonymous v. Male	2	1	1	-	-	1	1	-	4
Female v. Female	-	5	1	8	-	18	-	-	15
Female v. Male	-	12	3	13	-	9	2	2	23
Male v. Female	-	3	-	5	-	7	-	-	8
Male v. Male	2	14	2	7	-	8	-	-	15
Total	4	41	7	35	0	50	3	2	72

- One investigation can frequently include multiple allegations
- 14 of 142 (9.9%) of the allegations regarding discrimination, harassment and retaliation, summarized above, resulted in a finding of a policy violation
- Of the 72 total investigations, 26 investigations (36.1%) had a finding of at least one policy violation

Feedback and Recommendations

- Current policies prohibit harassment, discrimination and retaliation, HRD staff is drafting updated language as part of the overall updates to the Personnel Policies
- Proposed updates to the Personnel Policies will include streamlining and clarifying language regarding the reporting and investigation of discrimination and harassment complaints

Feedback and Recommendations

- Expanding the role of the MCS Commission as proposed is not recommended:
 - HRD Investigation data does not support a need for the expanded role: HRD cited policy violations in 9.9% of allegations – EEOC statistics from 2010-2014 cite a 3.8% rate of finding of “reasonable cause”
 - Less than 10% of external discrimination charges filed actually result in a lawsuit against the City : Law department statistics do not support a need for the expanded role

Feedback and Recommendations

- Expanding the role of the MCS Commission as proposed is not recommended:
 - The proposed change would be inconsistent with practice in all 5 benchmarked cities in Texas and with sworn Civil Service (Dallas, Houston, Corpus Christi, San Antonio, El Paso)
 - Investigations are currently conducted by professional HR staff who typically invest 20 - 200+ hours for each investigation – significant detail, complexity and uniqueness – little “forensic evidence”
 - Time and scheduling constraints currently exist for the MCS Commission and would be exacerbated

Feedback and Recommendations

- Expanding the role of the MCS Commission as proposed is not recommended:
 - A “second review process” for “non-substantiated” determinations would result in concerns from City employees regarding perceptions of “double jeopardy” and a lack of fundamental fairness
 - By the very nature of these employment matters, each investigation conducted can result in the complainant or the respondent being “dissatisfied” with the outcome. Currently, escalation paths exist internal and external to the City for either party

Feedback and Recommendations

- Expanding the role of the MCS Commission as proposed is not recommended:
 - City employees dissatisfied with the outcome of a discrimination complaint, or who do not wish to file an internal complaint, have adequate external complaint channels
 - Charging parties are not required to hire an attorney, and frequently do not, when they file a charge with the EEOC or the Texas Workforce Commission