

Audit and Finance Committee Special Called Meeting Transcript – 1/13/2020

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>> Alter: Good afternoon, my name is Alison alter, chair of the audit and finance committee. It is 1:05 P.M. On January the 13th. I am going to call to order this special called meeting. Thank you. I have here with me mayor Adler and councilmembers tovo and Flannigan. Councilmember pool was not able to make this special called. I appreciate my colleagues coming for a special called meeting. Originally we called this to discuss taking possible action regarding an absent municipal civil service commissioner. That commissioner recently resigned so we will not have to take action on that item today. I want to confirm with staff that applications will be automatically opened for the vacant position, is that correct? Why don't you come on down and you can maybe explain the process of what will happen at this point.

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Please state your name for the record. >> Matt [indiscernible] With the human resources department. We will automatically do an open call for applications based on the last time that we came to audit and finance. I think we got approval to automatically go and do an open call once that happens, once there's a vacancy. >> Alter: Great. So my understanding is that we may have two openings that we are trying to fill. We have one commissioner who is not sure whether they're going to continue. It might depend on the solutions that we come up with for the second part. Should she decide not to proceed, then we would definitely need to fill that position. If she decides that she wants to proceed we'll have to decide whether we want to renew or take a different direction in terms of that seat. So we will likely have to have another special called meeting some time in February to interview folks, but in the meantime I would invite the public who would

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be interested in serving on the municipal civil service to apply and I believe you can get that information by going to the boards and commissions page, is that correct? >> Yes. >> Alter: Great. Maybe if you can provide at least each of our offices or the councilmembers the information for the application. If we know somebody then we can make sure that we have a qualified pool for that. The second thing that we wanted to discuss today, which is resilienced to the first, -- which is related to the first, is the current workload of the municipal civil service commission. I passed out a memo to my colleagues that was shared with me in December, and wanted to go through some of the statistics and give you a sense of the problem that we're trying to figure out how to address. And today I really wanted to kind of throw the problem out there so that we can be thinking about it and brainstorming what some solutions may look like. As you recall, municipal

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civil service is designed to be the place that is kind of the last resort through the appeals process for our employees when they have concerns about how a particular employment action has taken place. And so what we're seeing now is a really heavy cloudy and that is leading to delays in how long it's taking for a given case to be processed which has implications for our workforce for that. So for several years the mcs office said an average of 12 eligible appeals. In 2018 it received 35 appeals, with a significant uptick in cases. Hearings from fiscal year 19 carryovers are scheduled through 2020. It's likely it's later now. That means folks are waiting months to be heard. The average number of days between an appeal being filed and the hearing date went from 78 in fiscal year

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18 to 149 in fiscal year 9. I had a question of staff. So far in 2020 are we seeing an additional cloudy? >> We have had two cases filed. We do hear rumbles of other possible cases out there, but as of right now we only have two additional cases. >> So Monica trvelo, assistant human resources director. We have appeals scheduled through may. We have two open dates between now and then. >> Alter: And how many of the fiscal year '19 hearings were held over from fiscal year '18. >> Six of those. >> Alter: And in fiscal year '14, I wanted to note that the mcsc met 20 times

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and in fiscal year '19 it was 14. Is there a difference in that it was a different setup year? >> If you look historically at our data, we had a very pretty heavy year, fiscal year '14, which increased a little bit in fiscal year '15. '16 and '17 kind of continued the trend. '17 was actually a kind of low year. We actually held only four hearings in 2017. Nine hearings in fiscal year '18. There's a fluctuation in the workload, people withdraw, parties settle, so not everything that is filed will be heard as an appeal. >> Alter: Sure. So -- councilmember tovo. >> Tovo: Can we backtrack through a couple of the numbers that you have raised? >> Alter: Sure. >> Tovo: I'm sorry, I didn't completely understand the carryover from year to year. So when you said six carried over, is that six from 2019?

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>> Yes, six were filed in fiscal year 2019 that were carried over in 2020. >> Six hearings. >> Six hearings. >> Tovo: Is it fair to assume in the other years they were able to handle the caseload the whole year without carrying over? >> No. They set the hearing dates the first quarter or the -- what do we do, December? >> November-december. >> The commission generally schedules about 21 meetings in next fiscal year, so as they come in towards the end of the fall they will get scheduled into the next year. >> Tovo: That makes sense to me, but they weren't scheduled into the next year because they came in earlier and there was just a backlog. They just came in late and they had to be scheduled for the next? >> Primarily. >> Alter: There's still a backlog if you have to wait 149 days. To be heard. >> Tovo: I did see that on the other page. I have some questions around

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that and' then also some some of the other data. >> Alter: So what's happening is with the large number of hearings taking place, if you're coming in at the end of the queue you have to wait longer to next be heard because they have more cases than they're able to -- there was a piece of this that we had a commissioner was absent, which meant that there were a couple of times when they didn't make quorum, which is one piece of the solution, which is why we're trying to move quickly on filling that seat. But that's not clear that it's going to fill -- fix the problem at least in the short run. And these are all volunteers so there's only so much we can ask of them for free to do? Were there other questions. >> Flannigan: Just quickly, in the memo it says that as dates have become available, no one was interested in moving their hearing date up. >> So one of the things we do is when we have an open hearing, for instance we have an opening in February,

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next month. When that became open we generally will reach out to the parties, let them know that day is open if they would like to request a reschedule, those go forward to the chair. A lot of times we talk to

people and it's too soon or it's too far or there's a vacation or there's a reason why they don't request to reschedule. Each party only has five days to unilaterally reschedule a hearing. So if we reschedule your hearing for June we contact you and say that there's another hearing date open. You have five days to be able to fill it in that date. So we aren't seeing a lot of people taking advantage of trying to reschedule to earlier dates when they do become open. For instance, the February one, it's too soon. They're not going to be able to meet their submission deadlines and everything else within that process, but we do have one in May and if a party -- we only have one scheduled after that, so if that party is interested they'll be able to move up. And if anybody files an appeal between now and May they will get that May slot first. >> Flannigan: Would you say that the unusually high number of appeals,

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[inaudible - no mic] There have only been two appeals filed in the three months of 2020? >> They were actually filed December and January. So in fiscal year '20. >> Flannigan: So I'm wondering if maybe the 35 is just an aberration. And if it course corrects and then it works itself out. I'm not sure to your point about them being volunteers, what our options are. >> Alter: So the option that I wanted to kind of throw out there to consider is kind of like a concept of overtime so that like they're volunteering and they're set to go for, say, two committee meetings a month, but if the backlog gets so you have to wait over a certain period of time and we can schedule the hearing that there would be

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an opportunity for some kind of compensation for them for the day. These are generally people who would be paid a very high amount per hour and they're missing work to be participating. So we could do it along those lines. We have to see what happens with the applicant pool but we may also find that we're asking a little bit too much from these people from this process with no pay as part of this civil service commission in the first place to get the qualified candidates that we want to be on the committee. That will be determined by what we see with our applicant pool, but what I was thinking of was some kind of thing that would be triggered under certain circumstances so either we had an opportunity to clear some of this backlog, which at this point I'm not sure we'll need to do, but that we'll be able to put in place moving forward so that we wouldn't get in this

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situation again should the number of appeals be higher. The information I have is from December so the additional ones came after this was provided because we were still trying to figure out what we were going to do with this and the first order of business was to deal with the absent commissioner. >> Tovo: Thank you, chair. I had some questions about the data collection -- not the data collection, but the data

results on that last chart, the benchmarking data. Could you help us understand, are the cases in these other cities primarily -- are they generally a day long process as well? I understand they're about a day long process here in Austin. >> So I don't know that we pulled data on how long the hearings last. >> Correct, we did not. >> We just asked what their

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hearing structure looked like and what was eligible to be appealed. >> Tovo: And I assume you focus just on Texas, not elsewhere. >> Correct. >> Tovo: And so it looks like the cities in Texas where there is compensation are Dallas,. >> Ellis: And Houston -- Dallas, El Paso and Houston. In Houston it's the grievance examiner who is paid and then the commissioners are not compensated. >> In Dallas they pay an administrative law judge. There are some differences -- >> Tovo: I understand that individual -- yeah. I should know -- have summarized it that way. They may not have a commission, they may have a hearings officer or a hearings examiner. >> Absolutely. >> Tovo: So there's some compensation being paid. >> And what we put up on the screen are the four cities that have a civil service commission structured like ours. How often they hold their hearings and what that compensation looks like. As you notice, . There's different compensation structures for administrative law judge and

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hearing officers and their work tends to be a little bit different. In Dallas I think they review the employee chooses whether to go to the board or an olj. -- Alj. In El Paso they have a hearings who hears the appeal and the commission just reviews the decision of the hearing officer. >> Tovo: So it would be useful to have a sense in looking at this whether the meetings -- whether the meetings were as lengthy as Austins, but generally I really like the approach that you've laid out, chair, because it doesn't -- it seems I remember having the conversation here in the past in the relatively recent past about whether we should compensate the mcs commissioners and I like the approach of not necessarily compensating them for the existing two meetings a month, but potentially coming up with some incentive for that additional meeting. I would say if we move in that direction I would

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probably not use corpus and San Antonio as a model. Those are such minimal amounts that I don't think it compensates for that extra workday out of the office. I would look to something that actually is more of an incentive for missing an additional workday a month. >> Alter: Mayor? >> Mayor Adler: I'm good with the idea that you propose as well. I'm not sure we actually have a challenge given the numbers that we have. It could be that there was an aberration and things settle out, but in the way that you described it, you said we would pay -- set the criteria associated with that and then it would either be

accessed or it wouldn't be accessed. And when people are developing the criteria, criteria that is understood that they were volunteering for -- to hold hearings twice a month. We don't want to have five overtime days in month two so they can't get all the work done in month two when I think there should be an

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expectation, but I think the criteria could also say that a backlog of more than 90 days or 60 days or whatever was appropriate should fuel a special called time and for those special called times we would pay for that. So I think it's -- to build those kind of controls into the criteria makes sense to me too. And then we don't even have to address the issue whether it's an aberration or not because it would only come into play when there was -- it wasn't meeting the level of service or responsiveness we wanted to. And in that respect it's something that I would support as well. >> Alter: Let me also clarify that you wouldn't get paid unless you had done your two weeks, so it's not something that could be gained by not attending. >> Flannigan: When I look at the data, I see suspiciously low numbers in the two years with an interim city manager. I'm wondering if that had

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any effect in the way staff was responding, the way managers were responding, people were holding back, people were treating people differently. Get a new city manager in and suddenly there's a rush of appeals. It seems conspicuous that the two fiscal years with really low numbers are the two when we were in manager transition or Elaine was so good she kept everybody in line. >> Mayor Adler: I was going to say Elaine was so good! [Laughter]. >> Flannigan: I am going to say this is an aberration that corresponds. >> Alter: There is also an explanation that folks are feeling more comfortable with the process moving forward and there's more awareness now of the process. That is also possible, not as a reflection on anyone's prior tenure, but just as a process -- as the municipal civil service matures. Okay, then if -- does staff have any other ideas? I understand a piece of this will be fixed by getting the

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commissioner in place, but the magnitude of the delays and stuff. And we've been having some conversations with the chair and vice-chair for before this December. It took awhile for us to get the memo back, which was unfortunate because we could have addressed it sooner in terms of the commissioner. Are there other ideas that staff has? >> So one of the -- the commissioners -- every meeting we have a standing item where we discuss the workload. And as you kind of noted earlier is they generally discuss adding an additional hearing or an additional meeting date when the wait is more than six months -- the wait is more than six months out. That's part of our ongoing practice is we keep the commission up

to date on how many appeals are filed and what they're scheduled for and they have those discussion. The discussion around compensation is not new to the council. It's come up before. The commission has discussed it and the council has had the item before on their

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agenda as recently as -- the last time the council discussion was held in February of 2016 on compensation. Thank you. And I see that acsme has come. I don't know if you want to speak or not. I know you missed the first part, Carol. >> [Inaudible]. >> So we have dealt with the commissioner because the commissioner who was absent has resigned. So we moved on to the question of the cloudy and whether we have a problem that we need to be solving. We have talked about my idea about kind of an overtime that you would get paid in that circumstance, but if you had something that you would like to express to us in the importance of addressing the cloudy or how we do it, we would invite you to come up, Ms. Guthrie.

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>> Okay. It is important for these cases to get heard as quickly as they possibly can. So I think if the commissioners are able to take on another case, and I understand that the majority of the commissioners all have full time work elsewhere. So I think that if they are going to give up another workday to help keep the backlog to a reasonable or manageable time frame that it would be good. And if that takes perhaps awarding them compensation for the additional meetings, not just the regularly scheduled meetings that they

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have, that is something that we would support. You can imagine if you were an employee who lost your job waiting six months before you can be vindicated without any compensation. It would be difficult. We hope that there is a way to get the backlog out and if it is the requirement of additional meeting, we do believe that they should be compensated. Thank you so much. >> Alter: One other question before you go. We have been trying to understand the level of appeals and what's causing that increase and what we may be anticipating moving forward in terms of the workload. Is this going to naturally fix itself or how should we be thinking about that? >> That is a complicated

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issue because, you know, there are a number of employees on who have rights to go to the commission who don't go and that helps a little bit, but we just don't know what might occur at the city where someone feels that they want to have their situation heard. I think, and this is just me, I think any time you get out past three months that's too long. That's really too long. And I know what's required to prepare every case to get there. And the commissioners have tried other things. They tried having a hearing on a Monday and a Friday and different days to try to knock things out. And so I just -- this last year it really seemed to get

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very backed up. I can't recall that this is the norm. It may be the norm going forward but we just don't know. It depends on what happens out in the workplace. >> Alter: It may be they're not putting the grievances forward because they're looking at the amount of time it's taking. >> Yes. And most people live paycheck to paycheck, so the minute you get without that paycheck, you have to have another job. And so they have to get employed elsewhere even though they want to come in front of the commission to see if everything was handled properly. So I think as a goal we should try to set the three months and that if the commissioners can, and I don't want to put a stress on their jobs because I know

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they have full-time jobs and they lose money every time they come to hear a case I would imagine unless they're on vacation or however it works for them. But I think a three-month waiting period, which is still a substantial waiting time, I think we should try to keep that in mind as a target. And once it starts to get up there is when we need to add the additional meetings. >> Alter: Colleagues. We have two options. We can put together and I -- I would say make a proposal on what that formula looks like and have essentially this committee be proposing it. We can bring it back up again in the committee. How would you like to us do that? We would be happy to take the lead on it. Mayor? >> Mayor Adler: For me I would be happy with you just preparing an ifc and taking it forward. And it seems to me that something that says that we expect the panel to meet in

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their volunteer service twice a month, but to the degree that wait times get over three months, we want them to call special meetings to try to keep it to that and we'll pay you for those things. And then some appropriate compensation. I can't imagine it will be very much on this. It's averaged about 100 days. It may very well be that it stays within the period of time, in which case it never goes into play. So it would only go into play in the event that there's an issue, and the way that you were setting up with those criteria makes sense to me. We don't have to decide whether it's an aberration or not. >> Alter: Thank

you. Councilmember Flannigan. >> Flannigan: Quick question for staff. Do you have a ratio of the appeals, whether they're discharged or not discharged? >> Why he, we do. We have a slide prepared for the breakdown. The commission can hear appeals on the motion for discharge, and then a

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combination. [Inaudible - no mic]. So in fiscal year '19 we had 14 discharge appeals, 12 denial promotion appeals, four probation and four that were a combination. And we prioritize scheduling of discharge appeals and probation appeals or discharge promotion appeals. So if we get multiple appeals within a certain time frame we try to hold the discharge and denial of promotions, schedule those first. >> Alter: Can you get us each a copy of the slide? Thank you. Were there other slides where information -- >> We had an historical information slide that kind of went through the 2014 and you will get a copy of that, that went through 2014 through 2019, what historically it looked like. The one that we've already shown about the types of appeals, how many were filed for each fiscal year, and then the different types of appeals for each fiscal year. >> Alter: Okay, thank you.

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So we'll go ahead and prepare an ifc. And if we can -- I don't know whether we can get it together for the addendum so it can be moving quickly so that if it needs to be used to address the backlog now that we have a better chance of doing that. If we can, we will, otherwise it will be the council meeting after that. Councilmember tovo, did you -- >> Tovo: Just a quick question. Can you give us some of the range of reasons that a case would be determined ineligible? >> If an employee files an appeal that doesn't -- I'm off. If an employee files an appeal that doesn't meet one of these categories, sometimes employees will fill out the paperwork and it doesn't meet the definition of demotion, discharge or denial, discharge, probation. A lot of times employees aren't familiar with the process and they'll file something outside of the scope of what the commission can hear. >> Tovo: I didn't know if you had some examples of what some kinds of things are.

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>> So we've seen a range from denials of promotion. Let's say somebody was -- there was a reorganization done and somebody thought they were going to be posting for a position, but that position was not posted for. Something of that nature. And somebody says I really wanted that position. Or if it's in compliance with the direct appointments in rule 4 that says they can be appointed for return to work procedures, if there's anything like that, fmla, if somebody is put into those positions that somebody was seeking or thought they were going to seek and file a denial promotion in that instance, that would be deemed ineligible. >> Tovo: Thanks. >> And there's timelines. A lot of times people will

file something outside of the timeline where they could file an appeal. So that's probably another common ineligible we see.

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>> Alter: Great. Thank you all for being here. If no one has any other questions, we will be adjourned. It is 1:35. Thank you all for making the time to be here.