



MEMORANDUM

TO: Mayor and Councilmembers

THRU: Nuria Rivera-Vandermyde, Deputy City Manager *YPR*

FROM: Joya Hayes, Human Resources & Civil Service Director *JAH*

DATE: August 28, 2020

SUBJECT: Update on Resolution 20200123-111 - Municipal Civil Service Compensation

The purpose of this memorandum is to provide an update on [Resolution 20200123-111](#), which directed the City Manager to establish a policy to pay reasonable compensation to the Municipal Civil Service (MCS) Commissioners that provides an appropriate incentive for their attendance at any special called meeting.

Background

The Human Resources Department (HRD) reached out to almost 90 cities across the country to request information related to commission compensation. Of the 15 who responded, a variety of compensation structures was reported. Not all cities provide compensation to commissioners, but all who do provide compensation at every meeting. Specifically, Milwaukee and Seattle compensate their commissioners with a biweekly stipend of \$161.00 and \$200.00, respectively, and overall compensation ranges from \$5.00-\$200.00 from those cities reporting. The Texas cities that provide commissioner compensation provide \$5.00 to \$20.00 a hearing. Resolution 20200123-111 specified that if a third meeting in a month is called to hear an appeal, Commissioners should be compensated for their attendance as an incentive to reduce the waiting period for appellants to less than 90 days from the time of filing an appeal.

The MCS Commission schedules approximately 21 meeting dates a year, or almost two (2) meetings a month. The MCS Commission can call a special called meeting at any time to address the time frame delay in hearing appeals. The MCS Office discusses the hearing schedule at every meeting, and has historically recommended adding meeting dates when hearings are booked six (6) months out. In 2019, MCS averaged one meeting per month, except for February and September, where two meetings were held.

Benchmarking Structure and Compensation

Benchmarked findings for other cities with a civil service system for non-sworn employees included different processes. A summary is provided below, and additional benchmarking is attached to this report.

Hearing Officers and Grievance Examiners

- Ten (10) of our benchmarked cities utilize a hearing officer, grievance examiner, or grievance committee to assist in the appeal or hearing process. Some cities utilize a hearing officer or grievance examiner in tandem with a board or commission. These positions supplement the process and often work with the board or commission to hear appeals or grievances.
- Hearing officers or grievance examiners hear the appeal and provide a written report on the findings. When used in tandem with a commission, the final report and findings are then submitted to the commission for approval, modification, or reversal. Some cities allow for an appeal of a hearing officer's decision if either party does not agree.
- Compensation for hearing officers or grievance examiners ranges from \$78.00-\$125.00 when paid per hour, and \$350.00-\$400.00 when paid per hearing. Hearing officers and grievance examiners generally have the additional responsibility of writing a report on the findings and issuing a recommendation after hearing an appeal.
- Three (3) Texas cities use a hearing officer or grievance examiner in tandem with a board or commission. The hearing officer or grievance examiner provides a written report with either a recommendation or final decision to the commission, depending on the structure set by the city.
 - o El Paso compensates hearing officers \$135.00 an hour.
 - o Houston compensates hearing officers \$350.00 a hearing.
 - o In Dallas, an employee can choose to have their appeal heard by an Administrative Law Judge whose total compensation is \$400.00, with \$200.00 each being paid by the employee and the city.

Commissioners

- At the City of Austin, the MCS Commission makes a final decision on the employee's appealable action at the time of the hearing. The MCS Commission is the sole, final level of review outside of the department.
- For cities that utilize a hearing officer or grievance examiner in tandem with a commission, the commission reviews the final report and finding and then approves, modifies, or reverses the recommendation or decision.
- Of the eight (8) Texas cities documented (including Austin), six (6) do not provide commissioner compensation.
 - o Corpus Christi compensates their commissioners \$5.00 per meeting (1 per month)
 - o San Antonio compensates \$20.00 per hearing.
- Cities outside of Texas who compensate commissioners pay from \$25.00 to \$200.00 per hearing, some provide additional compensation for the chair.
 - o Milwaukee and Seattle compensate their commissioners with a biweekly stipend of \$161.00 and \$200.00, respectively.

City of Austin Previous Hearing Officer Process

Before MCS became effective in 2014, any regular employee could utilize the grievance process concerning any appealable action (defined as disciplinary probation, denial of promotion, suspension, demotion, or termination). This process required an employee to first file a grievance within the department and follow an internal process. If the employee was not satisfied with the grievance process, they would continue to HRD and select a hearing officer from a list provided by the Director of Human Resources. For termination grievances, employees could request to either

send the hearing officer's report to a grievance committee for recommendation to the City Manager or request the hearing officer produce the written report and recommendation to the City Manager. For any other action, a hearing officer would hear the grievance. After reviewing all the evidence and testimony, the hearing officer would produce a written report containing a summary of the evidence, findings of fact and recommendation to either uphold, reverse, or modify the department's action to the City Manager.

The City contracted with four hearing officers. The fees associated with the hearing officers were as follows:

- Received a flat-fee of \$1,600.00 per grievance hearing.
- If the parties cancelled the hearing less than 24 hours before the hearing, officers were provided 33.3% of the fee.
- If either party did not arrive at the grievance hearing, officers were provided 66.6% of the fee.
- The fee would be reduced by 30% if the hearing officer's report was not timely.

Thirty-eight (38) grievances were filed in fiscal year 2011, 26 in 2012, and 22 in 2013. Between fiscal years 2011-2013, an employee would wait an average of 109 days to have an appeal heard by a hearing officer, and 132 days to have an appeal heard by a grievance committee.

Municipal Civil Service (MCS)

In November 2012, Austin voters passed Proposition 10 to amend Article IX of the City Charter to establish a Civil Service System. Council appointed five (5) MCS Commissioners to establish bylaws and discuss MCS Rules. On June 6, 2014, the City Council adopted MCS Rules. The Rules transitioned appeal hearings from a grievance system with a paid hearing officer, to the volunteer five (5) member MCS Commission.

The MCS Rules established a uniform appeal process for all appealable actions (defined as discharge, suspension, disciplinary probation, demotion, and denial of promotion), and converted non-sworn City employees from "at-will" to "just cause" status. The MCS Commission was established as the final, binding decision-making authority on all appealable actions, removing the City Manager from the appeal process.

Except for discharge, employees exhaust a two-step internal grievance process with their department before filing an appealable action to the MCS Office. Discharged employees can file an appeal directly to the MCS Office. When an appeal is filed, an employee may voluntarily elect to use the Alternative Dispute Resolution (ADR) process. If an employee and department reach an agreeable resolution before the date of an MCS hearing, the appeal will not proceed to the MCS Commission.

During a hearing, each party (the department and the employee, including their representatives), have 120 minutes to present their witnesses and evidence and to question the other party's witnesses. This time does not include opening or closing statements, MCS Commissioner questions, or additional examination following MCS Commission questioning. After the presentation of evidence and testimony, the MCS Commission deliberates (typically in closed session) and announces its decision (typically in open session). The MCS Commission does not draft a written report with findings, but signs a final, binding decision on the day of the hearing

documenting their vote to deny or grant the appeal.

Current MCS Data

The MCS Commission may meet as necessary to carry out its duties under City Charter Article IX (Personnel). The MCS Commission schedules an average of 21 regular meetings per year. The MCS Office discusses the hearing schedule at every meeting and has historically recommended additional meeting dates when hearings are booked six (6) months out. MCS Commission meetings with hearings average 7.25 hours, while meetings without hearings average 2.25 hours.

MCS HISTORICAL DATA BY FISCAL YEAR (as of February 28, 2020)							
Fiscal Year (Oct.-Sept.) Data	FY14	FY15	FY16	FY 17	FY 18	FY19	FY 20
Average days to hear an appeal	135	129	100	92	78	148	
Appeals Filed	11	18	13	21	15	35	2
Appeals Withdrawn or Ineligible	7	10	4	18	8	17	0
Total Appeals Heard	4	8	9	3	7	12	4
Regular Meeting – Scheduled	11	22	20	22	21	21	21
Regular Meeting – Cancelled	2	9	6	18	12	5	5
Total Regular Meetings Held	9	13	14	4	9	14	3
Special Called Meetings –	14	3	1	0	0	1	2
Special Called Meeting – Cancelled	2	3	1	0	0	0	1
Total Special Called Meeting	12	0	0	0	0	1	1

MCS Compensation History

The MCS Commission has made two prior recommendations to the City Council regarding compensation. The first was made on August 25, 2014, and there was no Council action. The second was on July 13, 2015, along with a recommendation for independent legal counsel. On February 25, 2016, the City Council discussed this item and did not take action. However, since 2015, HRD has worked with the Law Department to contract with independent legal counsel for the MCS Commission.

During the January 14, 2019, MCS meeting, Commission Chair Pamela Lancaster, requested the MCS Commission discuss compensation and requested this item return on a future meeting date for possible action. The MCS Commission discussed potential compensation on February 11, March 25, and April 22, 2019, but did not take action on a recommendation to the City Council.

On January 27, 2020, following Resolution 20200123-111, HRD staff requested feedback from the MCS Commission regarding compensation. The MCS Commission did not identify a specific

monetary amount that would incentivize additional hearings; however, the MCS Commission agreed that a flat-rate per hearing would be the best solution. The MCS Commission, most of whom are attorneys, discussed their current salaries and billable hours. One Commissioner stated they did not wish to attend a third hearing a month, but would if scheduled. The Chair, who was not present at the meeting, was a hearing officer for the City before MCS and was compensated \$1,600.00 per hearing. The MCS Commission decided that special called meetings would not be held until Council decides on MCS Commissioner compensation.

Remaining Issues to Resolve

If Council approves compensation to the MCS Commissioners, funding will need to be allocated to HRD. The Human Resources Department (HRD) does not have funding budgeted to cover compensation for the 5-member MCS Commission. If compensation is approved, HRD will work closely with the Law Department and Purchasing Office to determine how best to arrange for MCS Commissioner compensation, including the potential they may have to register as vendors with the City. Also, as discussed in prior conversations relating to MCS Commissioner compensation and equity among volunteers, the City has over 60 boards and commissions, including 20 sovereign boards, none of whom are eligible for compensation.

Attachment

Cc: Spencer Cronk, City Manager

National Municipal Civil Service Benchmark Data 2020 (Non-Sworn Employees)

City / Municipality	Name of Board / Number of Commissioners	Hearing Frequency	Commission Compensation	Officer/Examiner If so, what is the Compensation?	Structure
Cuyahoga County, Cleveland, Ohio	3-Member Personnel Review Commission	1 Meeting / Month, 2-3 special meetings per year	\$200 / Meeting for Commissioners; \$225/Meeting for Chair	Utilize Hearing Officer (No Comp Data)	<p>Hearing Officer - hears appeals and writes a report and recommendation</p> <p>Personnel Review Commission - The Commissioners issue final rulings on appeals hearings, after considering the Report and Recommendation provided by the hearing officer, a seasoned arbitrator who works for us part-time. Either party to the appeal can then appeal the Commissioners decision to the court of common pleas.</p>
City of Milwaukee, Milwaukee, WI	5-Member Board of City Services Commissioner	2 Meetings / Month, may call special meetings as necessary	\$161 Stipend on a biweekly basis	None	There are five members appointed by the Mayor, the Director of Employee Relations serves as the Secretary to the Commission, and there is an Assistant City Attorney assigned to staff all meetings and hearings. The Commission holds elections every year for a Chair and a Vice Chair. There is no hearing officer, the Board hears all appeals.
Pinellas County, FL	7-Member Personnel Board for the Unified Personnel System	1 Meeting / Month	\$100 / Meeting Stipend for Commissioners; \$150 / Meeting Stipend for Chair	Informal Grievance Committee (Consists of Employees)	<p>Informal Grievance Committee - hears grievances if an employee is dissatisfied with the Dept. Head Response or receives no response. Informal Grievance Committee consists of five employees: 2 Classified Service Employees, 1 Appointing Authority representative, 1 Exempt Service Employee, and 1 HR Representative who serves as chair. Following presentation of evidence, the Committee will deliberate and reach a decision, which is announced at the conclusion of the hearing.</p> <p>Unified Personnel Board - If either party is dissatisfied with the decision, the party may appeal the Informal Grievance Committee's decision to the Unified Personnel Board (unless not allowed per the rules).</p>
San Diego County, San Diego, CA	5-Member Civil Service Commission	1 Meeting / Month	\$50 per day / \$100 per day if service exceeds 4 hours	The Commission appoints one of its members as the Hearing Officer for each appeal	<p>Commissioner as Hearing Officer - Each commissioner serves as hearing officer on a rotating basis. The Commissioner appointed as Hearing Officer hears the appeal, submits the findings and proposed decision to the commission.</p> <p>Civil Service Commission - The Commission reviews the hearing officer's findings and proposed decision before taking final action</p>
City of Raleigh, NC	7-Member Civil Service Commission	1 Meeting / Month	Volunteers - Unpaid	None	<p>Meetings may include multiples hearings, and sometimes multiple employees if on the same topic.</p> <p>Commission only schedules additional meetings when a hearing needs to be continued to a second or third day.</p>
Montgomery City-County, Montgomery, AL	3- Member Montgomery City-County Personnel Board	2 Meetings / Month, but may be more or less as necessary	\$25 / Meeting	None	The Montgomery City-County Personnel Board was created to administer classified services for local government and is governed by a three member board. One board member is appointed by the mayor of the city of Montgomery, one by the Montgomery county commission and one by the majority of circuit judges and the probate judge of Montgomery county.
Multnomah County, Portland, OR	3-Member Merit System Civil Service Council	No Information Provided	Volunteers - Unpaid	MSCS Council may designate a person to preside at any hearing.	<p>Arbitration - Appeals with union representation go to arbitration.</p> <p>Merit System Civil Service Council - The MSCS Council workload is small. The Merit Council is a three-person council created by Multnomah County Charter (7.20 Civil Service Commission) to enforce the county's personnel rules, County Code, and the County Charter.</p> <p>The Merit Council is comprised of citizens who are neutral fact-finders appointed by the Board of Commissioners and do not receive compensation for their service. The rules for the Merit Council are found in Multnomah County Personnel Rule (MCPR) § 2-20.</p>

National Municipal Civil Service Benchmark Data 2020 (Non-Sworn Employees)

City / Municipality	Name of Board / Number of Commissioners	Hearing Frequency	Commission Compensation	Officer/Examiner If so, what is the Compensation?	Structure
City of Phoenix, AZ	5-Member Civil Service Board	1 Meeting / Month (20+ hearings per year)	Volunteers - Unpaid	\$125/ Hr for Hearing Officers \$260/Hr for the Board's Attorney	<p>Hearing Officers - The Board (as authorized by City Charter) utilizes hearing officers to conduct the hearings. The hearing officers, along with representation from both sides, then make a brief presentation to the Board at a monthly meeting.</p> <p>Civil Service Board - The Board makes final binding decisions on the report and recommendation presented by the hearing officer.</p> <p>The Board also retains an attorney through the City's procurement process. The Board has 5 members who serve 3-year staggered terms. No more than 3 members can belong to the same political party.</p>
City of Baltimore, MD	3-Member Civil Service Commission	Varies depending on the number of cases to be heard.	Volunteers - Unpaid	Utilize Hearing Officer (No Comp Data)	<p>Employee may contest an action by:</p> <ul style="list-style-type: none"> (i) requesting a hearing before the Commission; or (ii) initiating a grievance pursuant to the applicable grievance and arbitration procedure, if any, contained in an applicable collective bargaining agreement. <p>The Commission may, and on written request of the employee, the Commission shall investigate the disciplinary action. The Commission reports its findings to the Mayor; and the appointing authority takes the action directed by the Commission.</p>
City of Seattle, WA	3-Member Civil Service Commission	1 Meeting / Month, but may call special meetings any time.	\$200 stipend every pay period, regardless of whether or not a hearing was heard.	Hearing Officers \$78 per hour (includes hearing and writing decision)	<p>Hearing Officer - The Commission delegates hearing the appeal a Hearing Officer who hears the appeal and writes a report and recommends a decision. The Commission usually has a pool of 5 hearing officer, but currently they only have 1 that's active. Officers get paid \$78/hr (covers any work they do, Hearing last 2 days. Decision takes about 2 hours), and any other review of case).</p> <p>Civil Service Commission - The hearing officer's decision is then brought to the Commission at a meeting and approved or modified.</p>

Texas Municipal Civil Service Benchmark Data 2020 (Non-sworn employees)

City	Name of Board / Number of Commissioners	Hearing Frequency	Commission Compensation	Officer/Examiner Compensation	Structure
Austin	5-Member Municipal Civil Service Commission	2 Meetings / Month	None	N/A	Commission hears appeals and makes decisions.
Corpus Christi	3-Member Civil Service Board	1 Meeting / Month	\$5 per commissioner per meeting; not to exceed \$100/FY.	N/A	Commission hears appeals and makes decisions.
Dallas	7-Member Civil Service Board	1 Meeting / Month	None	Administrative Law Judge - \$400 - Employee pays half - City pays half	Employee chooses Trial Board or Administrative Law Judge, both hear same type of appeals
El Paso	9-Member Civil Service Commission	1 Meeting / Month	None	Hearing Officers paid \$135/hour	Hearing Officer - The Commission assigns appeals to Hearing Officer who then hears the appeal, reviews evidence and prepares a recommendation for the Commission. Civil Service Commission reviews Hearing Officer recommendation and makes a decision.
Houston	3-Member Civil Service Commission with 3 alternates	2 Meetings / Month	None	Grievance Examiner paid \$350/case.	Grievance Committee - Hears lower level grievances; Committee's decision is NOT appealable to the MCS Commission Grievance Examiner : \$350/case, if employee unsatisfied may be appealed to the MCS Commission MCS Commission : 3 members, not compensated Hears cases where the Hearing Examiner's decision is being appealed Hears appeals on more severe disciplinary actions like discharges, involuntary demotions, and reductions-in-force.
San Antonio	3-Member Municipal Civil Service Commission, with 3 alternates	2 Meetings / Month	\$20 per commissioner per hearing	N/A	Commission hears appeals and makes decisions.