

Livermore Area Recreation and Park District Staff Report

TO: Chair Furst and Personnel Committee

FROM: Mathew Fuzie, General Manager
Megan Shannon, Human Resources Officer

DATE: October 12, 2021

SUBJECT: **Proposed District Notice 0009 – Role of the Personnel Commission**

Prior Review: **Presented to Personnel Commission on 10/05/21 (input reflected)**

The attached, proposed District Notice (DN) is intended to amend the role of the Personnel Commission moving forward.

Background:

The Personnel Commission was created by the Livermore Area Recreation and Park District at a time when the District was very different in makeup and function, and since its inception in 1964, the District has grown and added additional personnel functions. Over the years, laws and statutes have evolved, and it has now become necessary to redefine the role of the Commission. The Commission consists of five (5) volunteer members from the Livermore Area who have typically held backgrounds in Human Resources or Employment Law, and who serve four-year staggered terms. The Commission has served at the will of, and is appointed by, the Board of Directors. Historically, the District had relied on the Commission to assist with various Human Resources functions including, but not limited to, all processes surrounding recruitment, maintenance of eligibility lists, job description creation and review, salary recommendations, and to act as an appeals board for certain disciplinary actions.

Role Moving Forward:

Staff recommends the continuation of the Personnel Commission with five (5) appointed members to maintain a viable quorum. The Commission should be comprised of members who hold backgrounds in the fields of Human Resources or Employment Law, while an understanding of the functions of Local Government operations, or more specifically, the Parks and Recreation field, is desirable. The primary roles of the Personnel Commission will be to serve as both an advisory group to the General Manager and designees, and to act as an appeals board for employee disciplinary matters.

Attachments:

- A. Proposed District Notice 0009 – Role of the Personnel Commission
- B. For Reference: Notes on History of the Personnel Commission
- C. Rules and Regulations: Section on Right of Appeal

ATTACHMENT A

TO: All Staff

FROM: Mathew Fuzie, General Manager

DATE: November 1, 2021

SUBJECT: District Notice 0009 – Role of the Personnel Commission

Purpose: The purpose of this District Notice is to redefine the role of the Personnel Commission, which was first created by the Livermore Area Recreation and Park District (LARPD) in 1964 when the District did not have a Human Resources Department. At the time, the District relied on the Commission to assist with various Human Resources functions including, but not limited to, all processes surrounding recruitment, maintenance of eligibility lists, job description creation and review, salary recommendations, and to act as an appeals board for employee disciplinary matters.

Currently, the District has a full-service Human Resources Department, that is capable of conducting all functions independently of the Commission, with guidance from contracted legal counsel. Due to the aforementioned shift in responsibilities, the current need of the District is to use the Commission as a resource which functions as both an advisory group for everyday personnel issues, and as an appeals board following disciplinary actions. The roles of the Commission defined in this District Notice shall supersede all previous policies and ordinances surrounding the Commission.

Eligibility and Reporting Structure: The Personnel Commission will be appointed by the Board of Directors to serve in an advisory capacity for Human Resources matters to the General Manager and designees. Members will be appointed to four-year staggered terms beginning in January.

The Commission shall be comprised of volunteer members who live within the LARPD boundaries and who hold professional backgrounds in the fields of Human Resources or Employment Law. Additionally, it is desirable for the members to have an understanding of the functions of Local Government operations, or more specifically, the Parks and Recreation field.

Any currently active LARPD employees will not be eligible to serve on the Commission.

Role: The Commission shall serve two primary functions:

1. To act in an advisory capacity for Human Resources matters to the General Manager and designees. Members may provide feedback on items such as drafting new job

classifications, policy and procedure updates, providing input on difficult personnel issues which may arise, etc. Commissioners shall not vote on or approve items, but rather should provide professional, constructive feedback and advice. Additionally, the Commission should indicate when advice of contracted legal counsel should be sought.

2. To act as an appeals board for disciplinary actions which arise for current, full-time District employees. Full-time employees are eligible to appeal any of the following actions: suspension without pay, reduction in rank, reduction in compensation, or termination. The Commission shall hold hearings within two weeks of the receipt of an appeal and make a recommendation to the Board whether the action(s) be affirmed, modified, or revoked; commission findings will be brought to the Board who can affirm, modify, or revoke the action taken regardless of the Commission's recommendation. Board action shall be final.

Meeting Frequency:

The Commission will meet on a quarterly basis, or as needed, on a schedule agreed upon by both District Staff and the Commission.

Appointment: When there is a vacant seat on the Commission, the District shall advertise the vacancy to the public. Any interested applicant residing within the LARPD boundaries shall submit a letter of interest and resume. If letters of interest from the public are received, the Personnel Committee shall interview eligible candidates and make recommendations to the Board, who will make a final selection for appointment. Majority vote of the Board shall determine appointees, while a four-fifths vote will be required to remove a Commission member mid-term.

At the first meeting of each calendar year, Commissioners shall elect their Chairperson and Vice Chairperson to serve in these capacities for 12 months.

ATTACHMENT B

Notes on the Personnel Commission

J Schneider, M Shannon 042121

Brief History:

3. **Creation of the Commission via “Ordinance 1”, which was adopted May 14, 1964 and effective July 1, 1964**, which created the District’s “Personnel System”:
 - a. Five members, appointed by the board with 4 year terms ending January 15th, with 3 members constituting a quorum.
 - b. Must be qualified electors of the District
 - c. Majority vote of the Board shall determine appointees, while a four-fifths vote will be required to remove a Commission member mid-term
 - d. Vacancies shall be appointed by the Board
 - e. Chairman selected by the Board Chair (revised in Ordinance 2)
 - f. Duties:
 - i. To hear appeals of disciplinary actions submitted by anyone “in the competitive service” (which effectively translates to full time employees)
 1. To hold hearings within two weeks of the receipt of an appeal and recommend (to the Board) that the action(s) be affirmed, modified, or revoked; commission findings will be brought to the Board who can affirm, modify, or revoke the action taken regardless of the Commission’s recommendation. Board action is final.
 - ii. To publish or post notices of tests for positions in the competitive service, receive applications, and conduct/grade tests
 - iii. Hold hearings and make recommendations on “any matter of Personnel Administration” as requested by the General Manager or Board
4. **Adoption of “Ordinance 2”, September 11, 1974, amending the “Personnel System”:**
 - a. Established the GM as the District’s ex-officio Personnel Officer, the appointing authority for all positions.
 - b. Personnel Commission (language added via this Amendment):
 - i. Within 30 days prior to the expiration of a member’s term, a successor shall be appointed by the Board.
 - ii. Commissioners shall elect their Chairperson to serve in this capacity for 12 months
 - c. Duties:
 - i. To monitor the District’s Affirmative Action program and report progress to the Board of the District’s Equal Opportunity and Affirmative Action program.

- ii. Continue to hear appeals submitted by competitive service employees, recruit them, and make recommendations on any matter of Personnel Administration.

5. Adoption of “Ordinance 4”, March 14, 1990 – amending the “Personnel System”:

- a. Personnel Commission (language added via this Amendment):
 - i. Added language re: hearing of appeals that allows for the Commission to establish procedures, subject to Board approval, for appointing a hearing officer to perform this function. In addition, allows the Commission to appoint an ombudsperson to conduct investigations and prepare reports when an employee elects “an investigatory appeal” instead of a hearing.
 - ii. Added language calling for the Commission to “oversee the Competitive service program”, replacing earlier language (publish or post notices of tests for positions in the competitive service, receive applications, and conduct/grade tests)
 - iii. Added language re: the Commission holding hearings and making recommendations to the Board regarding the proposed annual salary resolution for employees in the competitive service.

Experience of the Administrative Services Manager and Human Resources Officer:

- 1. The Commission has provided helpful feedback and advice related to the following:
 - a. Policy and procedure updates
 - b. Approach to challenging personnel matters (which often also involved consultation with Neumiller), such as:
 - i. Establishment of new employee status (“Regular” full-time)
 - ii. Reorganization and establishment of District policy re: furlough and layoff
 - c. Interpretation of legislation that could impact District personnel practices
- 2. The Commission has also been expected to be involved in, and has contributed to, the following:
 - a. Eligibility list reviews for exempt positions (a fallback to the Ordinances’ mention of administering and monitoring the District’s “affirmative action” program; this had been, until recently, the process for ALL benefited positions); this has been a bottleneck for staff and is a process that HR can manage.
 - b. Job Classification reviews. While the Commission has been helpful in this regard, including devoting huge amounts of time in 2017 when the District updated ALL of its job classifications, HR staff can manage this process given the expertise of the existing Human Resources group.
 - c. Annual salary and benefit plan reviews, which are also reviewed with the Board via its Finance and Personnel Committees.
- 3. Finally, the HR team has the expertise to function independent of the Commission, either with staff or in conjunction with third party partners, in the following key areas:

- a. Administration of Employee Leaves
- b. Employment Law Compliance
- c. Compensation and benefits (health, retirement planning, etc...)
- d. Workers' Compensation
- e. Disciplinary actions, including investigations related to them
- f. Performance management and employee development
- g. Recruitment and retention of employees

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ATTACHMENT C

LARPD RULES AND REGULATIONS: SECTION ON APPEALS

XI. DISCIPLINARY OR CORRECTIVE ACTION

C. Pre-Termination /Disciplinary Rights

This section and sections D and E below apply solely to non-probationary competitive service employees. All other District employees may be terminated without notice, with or without cause, and have no appeal rights.

A non-probationary employee in the competitive service shall receive a written notice of intended disciplinary action at least five (5) calendar days before the effective date of the action when the discipline proposed is discharge, suspension, reduction in rank, or reduction in compensation. The written notice shall state the proposed disciplinary action, the reason for such action and copy of the charges and materials upon which the action is based. The notice of intended disciplinary action shall also notify the employee of the right to respond, either verbally or in writing, to the person proposing the action, before its effective date. An employee may be temporarily suspended, without loss of pay, without being provided this written notice of intended action, if the written notice of intended action is provided within three (3) working days of the suspension with pay.

D. Written Statement of Action

In every case of termination, suspension without pay, or disciplinary reduction in rank or compensation, a written statement of the action shall be issued, stating specifically the reasons for the action and, if applicable, the period of its duration. The written statement shall be filed with the Personnel Commission and a copy shall be furnished by registered mail to the employee being disciplined.

E. Post-Termination /Disciplinary Right of Appeal

1. A non-probationary employee holding a position in the competitive service who disputes that cause existed to impose the discipline of suspension without pay, reduction in rank, reduction in compensation, or termination, or who claims that discipline of these types was imposed in violation of the state or federal statute prohibiting discrimination in employment, shall be entitled to file an appeal under the procedures set forth in this section. This section shall also apply to a probationary competitive service employee who claims that employment was terminated during or at the end of the probationary period due to discrimination in violation of any federal or state law prohibiting discrimination of employment. A probationary employee shall otherwise have no right to appeal under this section.
2. A person discharged, suspended, or reduced in rank or compensation may appeal such action by filing a written appeal with the Personnel Commission. The written appeal must be presented to the Personnel Commission within five working days after the effective date of the discipline. The appeal shall be by one of two procedures, selected at the option of the person disciplined: (1) investigation by an ombudsman appointed by the Commission, who, after interviewing witnesses and

reviewing documents shall issue a recommendation on the appeal to the Commission, or (2) a hearing before the Commission or a hearing officer appointed by the Commission.

3. Appeal Through Investigation by Ombudsman

- a. If an employee selects appeal through investigation by an ombudsman, the Commission shall, within two weeks of its receiving the written appeal, appoint an ombudsman to conduct the investigation. The ombudsman shall interview the person disciplined, the person or persons making the disciplinary decision, and witnesses who in the discretion of the ombudsman can provide facts relevant to the appeal. The ombudsman shall make his or her recommendation concerning the appeal to the Personnel Commission within one month of his or her appointment. Within 15 days of receipt of the recommendation from the ombudsman, the Personnel Commission shall review the report and recommend that the disciplinary action be affirmed, modified or revoked.
- b. An employee who selects appeal under this option shall not be entitled to be present at the interview of other witnesses nor have the right to cross-examine any witness, with or without counsel. However, the employee shall be entitled to receive a copy of the ombudsman's recommendation and shall be entitled to submit a statement concerning the findings in the ombudsman's report to the Personnel Commission for its consideration.
- c. The findings and recommendations of the Commission shall be certified as soon as practicable to the General Manager and the Board of Directors. The Board of Directors shall review the findings and recommendations of the Personnel Commission and shall affirm, revoke or modify the disciplinary action taken, as in its judgment seems warranted. The Board's decision shall be final.

4. Appeal through Hearing Before the Personnel Commission or a Hearing Officer

- a. A non-probationary employee holding a position in the competitive service who is discharged, suspended, reduced in rank or reduced in compensation shall, in the alternative, have the right to appeal by requesting a hearing before the Commission. The Commission shall either set the matter for its hearing within one month of its receipt of the written appeal, or shall appoint a hearing officer to hear the appeal within one month of his or her receipt of appointment.
- b. Hearing officers shall be appointed from a list of arbitrators or hearing officers maintained by the San Francisco Office of the American Arbitration Association. The Commission shall have the right to create a list of potential arbitrators or hearing officers from the list maintained by the American Arbitration Association. The selection of the hearing officer and the hearing shall be conducted according to the Employment Arbitration Rules of the American Arbitration Association. The formal rules of evidence need not apply. Either party may request that a transcript of the proceedings be taken by a court reporter. The party requesting the

recording shall be required to pay the fees charged by the court reporter. Parties shall be entitled to be represented by counsel, to examine and cross-examine witnesses, and introduce evidence. The parties shall also be entitled to subpoena witnesses through subpoenas issued by the hearing officer, in accordance with the rules of the American Arbitration Association. Costs of the hearing officer and the American Arbitration Association shall be split equally between the employee and the District if the appeal is not successful. District shall pay all hearing officer costs and American Arbitration Association costs if the appeal is successful.

- c. If the hearing is by the hearing officer, the recommendations of the hearing officer shall be made in writing to the Personnel Commission, which shall, within 30 days of the receipt of the hearing officer's decision, affirm, modify or revoke the disciplinary order.
- d. The findings and recommendations of the Personnel Commission shall be certified as soon as practicable to the General Manager and Board of Directors. The Board of Directors shall review the findings and recommendations of the Personnel Commission and shall then affirm, revoke, or modify the disciplinary action taken, as its judgment seems warranted. The Board's decision shall be final.

5. Employees holding positions exempt from the competitive service have no right to appeal any disciplinary action.

6. Judicial review of any disciplinary action against an employee by the District may be made pursuant to Section 1094.6 of the Code of Civil Procedure, only if any such petition shall be filed not later than the 90th day following the date on which the disciplinary decision becomes final