



City of North Port

Office of the City Attorney

Response to Request for Legal Services

To: Kathryn Wong, City Clerk

Copy: Peter D. Lear, City Manager
Heather Taylor, Deputy City Clerk
Michael Golen, Assistant City Attorney

From: Amber L. Slayton, City Attorney

Date: June 4, 2019

RE: Request for Legal Services – Questions related to City Charter

Pursuant to the above-referenced Request for Legal Services, you have made two categories of inquiry, related to the City Charter:

1. Whether City Charter Section 10.05(b) divests the employees of the City Clerk's Office from any rights or resources, particularly access to the Human Resources Department, afforded other City employees; and
2. Whether the City Charter permits: (i) individual City Commissioners to direct employees in the City Clerk's Office; and (ii) employees of the City Clerk's Office to address work or personnel-related concerns with City Commissioners.

This memo addresses the legal aspects of your questions. Please let me know if you have any questions.

SUMMARY

1. Rights/responsibilities of employees: Employees in the City Clerk's Office are employees of the City. They have access to all the services of the Human Resources Department and are obligated to follow all City policies, including the Personnel Policy.
2. City Commission interaction with employees:
 - (i) The charter prohibits the Commission or individual Commissioner from making requests or issuing orders to an employee of the City Clerk's Office.

- (i) The charter does not address whether employees may speak about workplace/personnel concerns to individual Commissioners. However, employees are required to follow the Personnel Policy, which enumerates the reporting structure for certain issues.

RIGHTS/RESOURCES AFFORDED EMPLOYEES

Summary of Relevant Charter Provisions

Section 10.05 of the City Charter provides that the City Clerk has the duty to hire and terminate the employees within the City Clerk's Office, within the confines of the law and City policies:

The City Clerk shall...

- (b) Employ or remove any employee of the City Clerk's department, subject to the provisions of this Charter, all ordinances and resolutions of the City, all personnel policies and applicable collective bargaining agreements of the City, and all personnel rules of the State and Federal government. ...¹

This duty first appeared upon the adoption of the current charter by referendum on November 17, 2018. Identical language was added to the City Attorney's duties as it relates to employees in the City Attorney's Office.²

Previously, the charter provided that the City Manager had the duty to "[e]mploy or remove all employees of the City (except appointees of the City Commission and the Legal Department)..."³ The 2018 referendum also modified the City Manager's duties relating to this topic; the charter now provides that the City Manager has the duty to "employ or remove any employee of the City," but then specifies:

Charter officers appointed by the City Commission, employees of the City Attorney's department, and employees of the City Clerk's department shall not be subject to employment or removal by the City Manager.⁴

On its face, the charter as revised in November 2018 provided the City Clerk with a duty that the City Attorney already held – to hire and remove employees in their respective departments, provided that all laws and City policies are followed. With the exception of the charter officers and employees within these two departments, all other employees are hired and terminated only with the City Manager's approval.

¹ City Charter § 10.05(b).

² City Charter § 12.05(b).

³ March 9, 2017 City Charter § 12.06.

⁴ City Charter § 9.05(b).

Human Resources and Personnel Policy

The charter only addresses the authority of the City Clerk. Nothing in the charter changes any employee's rights or responsibilities with respect to the services offered by the Human Resources Department or the provisions of the Personnel Policy. Regardless of who makes the hiring decision (City Clerk, City Attorney, City Manager, or even City Commission), all employees have access to the Human Resources Department and must follow all City's policies, including the Personnel Policy.⁵

CITY COMMISSIONER INTERACTION WITH CITY EMPLOYEES

Summary of Relevant Charter Provisions

Section 5.02 addresses the limitation of the City Commission's powers related to the City Clerk's Office:

- (c) Neither the City Commission, nor any Commissioner, shall dictate the appointment of any person to office or employment by the City Clerk or in any manner interfere with the City Clerk's exercise of judgment in personnel selections of the City Clerk's subordinates. Neither the City Commission, nor any Commissioner, shall give orders to or make requests of any of the City Clerk's subordinates, including contracted consultants, either publicly or privately unless authorized to do so by the City Clerk. Individual Commissioners may make requests of the City Clerk but may not give orders to the City Clerk.⁶

This section includes almost identical provisions related to the City Manager⁷ and the City Attorney.⁸

Direction to City Clerk's Employees

As quoted above, Section 5.02 prohibits the Commission as a body and the Commissioners as individuals from giving orders to or making requests of any subordinate of the City Clerk.⁹

Discussion with City Clerk's Employees

The City Charter does not address whether employees may speak about workplace or personnel concerns to the Commission as a body or any Commissioner individually.

However, City employees are required to follow the Personnel Policy, which enumerates the reporting structure for certain issues.¹⁰ These reporting structures must be followed in order for employees and the City to receive all the protections built into the policy. For example, the policy requires that if an

⁵ Unless otherwise provided in their respective contracts.

⁶ City Charter § 5.02(c).

⁷ City Charter § 5.02(a).

⁸ City Charter § 5.02(b).

⁹ The Deputy City Clerk is a charter officer and is not a subordinate of the City Clerk. See City Charter art. XI.

¹⁰ The two examples set forth herein do not comprise of an exhaustive list of reporting requirements in the Personnel Policy. See the policy for more information.

employee feels harassed or discriminated against in the workplace, the employee should notify Human Resources immediately,¹¹ or if not comfortable doing so, should bring the complaint to the attention of the City Manager.¹² The City Commission is currently considering the adoption of an official policy that would govern how Human Resources would process the report and investigation of a complaint about a charter officer.

By way of another example, the Personnel Policy also states that employees should report to their supervisor any potentially threatening or violent situation that could endanger the health and/or safety of an employee.¹³

¹¹ Personnel Policy § 2.11.D.

¹² *Id.*

¹³ Personnel Policy § 2.11.C.