

**MINUTES
CITY OF NEW BRAUNFELS CIVIL SERVICE COMMISSION MEETING
July 9, 2014**

The Civil Service Commission of the City of New Braunfels, Texas, met on July 9, 2014 at the New Braunfels Municipal Building in Council Chambers.

Commissioners present were: Chairperson Jan Kotylo, Vice-Chairperson Pat Clifton and Commissioner Fritz Welsch, Jr.

City Staff present were: Gary Wuest, Human Resources/Civil Service Director; Tom Bushur, Human Resources/Civil Service Manager; Lori Stidham, Senior Human Resources Assistant/Civil Service Assistant; Becca Pence, Human Resources Specialist; Tom Wibert, Police Chief; Joe Vargas, Assistant Police Chief; Val Acevedo, City Attorney; Kristi Aday, Assistant City Manager; Michael Wehman, Battalion Chief; Rick Edwards, Battalion Chief; Joe Tovar, Police Corporal; Police Officer Randy Bryan; Xavier Larralde Fire Lieutenant; Garrick Herbert, Fire Lieutenant; Miguel Troncoso, Fire Lieutenant; Oscar Reyna, Firefighter; Mitchell Halbardier, Fire Engineer; Bettye Lynn, Civil Service Attorney; Randy Daubrnvh, TMPA Attorney; and Chad Hyde, TMPA Attorney.

The meeting was called to order by Chairperson Kotylo at 3:02 p.m.

ITEM 1. APPROVAL OF MINUTES FROM THE MEETING ON MAY 8, 2014.

Commissioner Welsch made a motion to approve; Vice-Chairperson Clifton seconded the motion, which was unanimously approved.

ITEM 2. DISCUSSION AND POSSIBLE ACTION ON NOTICE OF APPEAL BY ONE FIRE LIEUTENANT OF QUESTION NUMBER 139 FROM THE FIRE CAPTAIN PROMOTIONAL EXAMINATION CONDUCTED ON MAY 28, 2014 FOR THE NEW BRAUNFELS FIRE DEPARTMENT.

Question # 139: Civil Service Assistant Lori Stidham introduced Fire Lieutenant Miguel Troncoso who is appealing question number 139, and presented and discussed the item. She explained to the Commission that the testing company admitted that the answer key was incorrect and Mr. Troncoso had the correct answer and that 7 out of 8 test takers chose the correct answer. The correct answer for question number 139 should be D and not C.

Vice-Chairperson Clifton made a motion to overrule the answer key; Commissioner Welsch seconded the motion, which was unanimously approved.

Civil Service Director Gary Wuest explained to the Commissioners all tests will be re-graded and the final eligibility list for the Fire Captain Examination will be added to the next agenda for their approval.

ITEM 3. DISCUSSION AND POSSIBLE ACTION ON NOTICE OF APPEAL BY ONE POLICE CORPORAL OF QUESTION NUMBERS 24 AND 35 FROM THE POLICE SERGEANT PROMOTIONAL EXAMINATION CONDUCTED ON MAY 20, 2014 FOR THE NEW BRAUNFELS POLICE DEPARTMENT, AND APPEAL OF THE PREPARATION OF THE PROMOTIONAL ELIGIBILITY LIST.

Civil Service Assistant Lori Stidham introduced Police Corporal Joe Tovar who is appealing question numbers 24 and 35 and she and Police Chief Wibert presented and discussed the item. Police Chief Tom Wibert explained to the Commission that there is not a clear question and two or more answers may be correct. He recommended that the question be thrown out.

Vice-Chairperson Clifton stated that answers A and D or clearly incorrect, and that C is clearly the correct answer, but could not find anything to support that B was an incorrect answer.

Question # 24: Police Corporal Joe Tovar presented his appeal by stating that a warrant is good for every part of the state if is something other than a magistrate. If it is above a Class C than it is good in the state, he thought the question pertained to a blanket warrant from Municipal Court and up.

Vice-Chairperson asked the difference between a complaint and a warrant. Police Corporal explained that if he received a report of an offense and he believed there is enough to obtain a warrant then he would draw up a

complaint charging a specific individual of the offense and the date of the offense. The complaint then would go to the judge or magistrate to be signed and that is when it becomes a warrant.

Vice-Chairperson Clifton asked Police Corporal which answer he chose and he answered he chose B as the correct answer.

Chairperson Kotylo asked which article and paragraph the question and answer is referenced from in the study material.

Civil Service Director Gary Wuest answered it is in sections 15.02, .04, .06, and .08 according to the test company.

Chairperson Kotylo asked for a motion; Vice-Chairperson Clifton made a motion to eliminate question number 24; Chairperson Kotylo seconded the motion, which was unanimously approved.

Question # 35: Police Corporal Joe Tovar presented his appeal by stating that the question seemed to refer to every tax assessor collector across the state and all the answers given would apply. He explained that a complaint is not the same level as a warrant and any individual could have a complaint, but not all complaints would reach the level of a warrant. He also explained that a tax assessor collector has to have a contract with a local entity to have access to these records and not all tax assessor collector have access to these records.

Chairperson Kotylo stated there are only four answers to the question and asked which answer is most correct.

Police Corporal Joe Tovar stated that the most correct answer would be C, and his issue with this answer is that would mean it would apply to every tax assessor collector, but that is not the case in this question.

Vice-Chairperson Clifton stated that he did not find anything in the reference material to support any of the other answers to be correct.

Chairperson Kotylo stated by using process of elimination that C would be the correct answer and she agreed with Vice-Chairperson Clifton.

Vice-Chairperson Clifton made a motion sustain question number 35; Commissioner Welsch seconded the motion, which was unanimously approved.

EXECUTIVE SESSION

ITEM 4. RECEIVE LEGAL ADVICE REGARDING THE POSSIBLE AMENDMENT OF THE CITY OF NEW BRAUNFELS FIREFIGHTER AND POLICE OFFICERS CIVIL SERVICE COMMISSION RULES AND REGULATIONS.

Chairperson Kotylo announced that the Commission would be retiring into Executive Session to discuss item 4.

The Civil Service Commission, Chairperson Jan Kotylo, Vice-Chairperson Pat Clifton, and Commissioner Fritz Welsch, retired into Executive Session with City Attorney Val Acevedo, Civil Service Attorney Bettye Lynn, Civil Service Director Gary Wuest, Human Resources/Civil Service Manager Tom Bushur, Assistant City Manager Kristi Aday, and Senior Human Resources/Civil Service Assistant Lori Stidham at 3:20 PM.

The Civil Service Commission reconvened in open session at 3:50 PM. Chairperson Kotylo announced no action was taken on Items 3 and 4.

City Attorney Val Acevedo announced that the Civil Service Commission reserves the right to return to Executive Session for further discussion.

Chairperson Kotylo asked Police Corporal to present his appeal regarding the preparation of the eligibility list from the Promotional Sergeant Examination from the second part of item 3.

Appeal to preparation of the Promotional Sergeant Examination eligibility list: TMPA Attorney, Chad Hyde asked the Commission for approval to present the second part of the appeal on item 3. TMPA Attorney Chad Hyde explained that Police Corporal Joe Tovar is appealing that seniority points were not added to his grade from

the Police Sergeant Exam. He stated that Police Corporal Joe Tovar received a 64 on the exam and the Commission did not apply his seniority points. He stated that Police Corporal Joe Tovar should have received 10 seniority points and that he has 13 years of service and under the Civil Service laws he is entitled to receive 1 point for each year of service. He goes on to explain under the local rules it requires a Police Officer to score a 70 percent to receive the seniority points. He explained the grievance is under the Civil Service laws section 143.033, there is a distinction between a Firefighter and Police Officer and only a Firefighter is required to score a 70 percent in order for the seniority points to apply. TMPA Attorney Chad Hyde goes on to explain that this issue had been litigated in 2011 in the City of Pharr in a similar case, where a police officer who scored a 64 on the examination and seniority points were not added to his score. He goes on to explain the police officer appealed it to the Commission and the Commission denied his appeal, and filed a declaratory judgment. Where the judge ruled in the police officer's favor and ordered the Commission to add the seniority points. He stated the judge said that the local rules can't circumvent the statute. The TMPA Attorney Chad Hyde stated that they believe this is similar case and wanted to present that to the Commission before making their decision. He stated they believe it will save time and money to correct the problem to avoid going to litigation.

TMPA Attorney Chad Hyde also presented the legislative history regarding the current statute; in 79th legislature in 2005 to add the language regarding Firefighters and at one point it might have applied to both Police Officers and Firefighters, but there was a clear change in 2005. He provided copies to the Commission regarding the 2005 change to the statute and the 2011 case from the City of Pharr.

TMPA Attorney Chad Hyde spoke on behalf of Police Corporal Joe Tovar asking the rule be amended to read as the statute and the list be re-certified with his seniority points.

Chairperson Kotylo asked if anyone had any questions or anything to add, which no one did.

Chairperson Kotylo announced that the Commission would be retiring into Executive Session to discuss item 4.

The Civil Service Commission, Chairperson Jan Kotylo, Vice-Chairperson Pat Clifton, and Commissioner Fritz Welsch, retired into Executive Session a second time with City Attorney Val Acevedo, Civil Service Attorney Bettye Lynn, Civil Service Director Gary Wuest, Human Resources/Civil Service Manager Tom Bushur, Assistant City Manager Kristi Aday, and Senior Human Resources/Civil Service Assistant Lori Stidham at 3:55 PM.

The Civil Service Commission reconvened in open session at 4:03 PM.

RETURN TO OPEN SESSION

ITEM 5. DISCUSSION AND POSSIBLE ACTION REGARDING APPEAL OF THE PREPARATION OF THE ELIGIBILITY LIST ON AGENDA ITEM 3.

Chairperson Kotylo asked for a motion. Vice-Chairperson Clifton made a motion to deny the appeal; Commissioner Welsch seconded the motion, which was unanimously approved.

ITEM 6. DISCUSSION AND POSSIBLE ACTION FOR APPROVAL AND CERTIFICATION OF THE ELIGIBILITY LIST FOR POLICE OFFICER FROM THE ENTRY LEVEL EXAMINATION CONDUCTED ON JUNE 20, 2014.

Civil Service Director Gary Wuest and Senior Human Resources/Civil Service Assistant presented and discussed the item.

Chairperson Kotylo made a motion to approve; Vice-Chairperson Clifton seconded the motion, which was unanimously approved.

Motion to adjourn was made.

ADJOURNMENT: Meeting adjourned at 4:07 p.m.

Date Approved: July 29, 2014

[Signature]
Commission Member

[Signature]
Commission Member

Attest:

[Signature]
GARY WUEST, Recording Secretary