



**Staff Liaison**

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## AGENDA

### SPECIAL MEETING OF THE CIVIL SERVICE COMMISSION

Thursday, March 30, 2023 at 4:00 p.m.

El Cerrito City Hall  
City Council Chambers  
10890 San Pablo Avenue  
El Cerrito, CA 94530

This Meeting Place is Wheelchair Accessible

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#### 4:00 p.m. CONVENE SPECIAL MEETING

- 1. ROLL CALL** – Commissioners Rebecca Curry, Eugene Park, Dorian Peters, Bruce Yow
- 2. ORAL COMMUNICATIONS FROM THE PUBLIC**  
*Remarks are typically limited to three minutes per person, and may be on anything within the subject matter jurisdiction of the body. Remarks on non-agenda items will be heard first. Remarks on agenda items will be heard at the time the item is discussed.*
- 3. APPOINTMENT OF CHAIR AND VICE CHAIR**  
Receive nominations and consider approval of a one-year term of a Chair and Vice Chair of the Civil Service Commission.
- 4. EL CERRITO CIVIL SERVICE COMMISSION TRAINING**  
Receive an informational presentation from Edward L. Kreisberg of the Kreisberg Law Firm on the roles and responsibilities of the Civil Service Commission.
- 5. ADJOURNMENT**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Staff Liaison, (510) 215-4302. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).

Any writings or documents provided to a majority of the members regarding any item on this agenda will be made available for public inspection at 10890 San Pablo Avenue, El Cerrito CA 94350 during normal business hours.



## **SUPPLEMENTAL AGENDA MATERIALS**

April 3, 2023

### **SPECIAL CIVIL SERVICE COMMISSION MEETING**

#### **Agenda Item 4 – EL CERRITO CIVIL SERVICE COMMISSION TRAINING**

1. Presentation

# El Cerrito Civil Service Commission Training

By: Edward L. Kreisberg  
Kreisberg Law Firm

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March 30, 2023



# Agenda

- Overview of the City of El Cerrito
- Roles of the El Cerrito Civil Service Commission
- Legal Concepts and Framework
- Nuts and Bolts of Appeal Hearings
- Specific Hearing Issues
- Questions?

# Overview of the City of El Cerrito

- Charter City
  - Elected City Council and Mayor
  - City Manager
  - Assistant City Manager and City Departments
- Commissions, Boards and Committees
  - Civil Service Commission is one of 13 commissions, boards and committees at the City of El Cerrito
- Represented and Unrepresented employees
  - El Cerrito Police Employees' Association (Police Corporal, Police Officer, Sergeant and certain non-sworn Police Department classifications)
  - United Professional Firefighters, Local 1230 (Firefighter, Fire Engineer, Fire Captain)
  - Service Employees International Union (SEIU), Local 1021 (approximately 40 non-management classifications)
  - Unrepresented employees (management and other specified and non-SEIU represented classifications)

# Roles of the El Cerrito Civil Service Commission

- El Cerrito Municipal Code – Chapter 2 (Administration)
  - “There shall be a civil service commission. It shall consist of five members. The commission shall have the powers and duties specified in Title 3 of this code, and such other powers and duties as the council may prescribe, or as may be prescribed by the law. The commission shall decide the order of business for its meetings. It shall meet regularly if its rules require it, or on call of the chairperson or three members. A quorum consists of three members.” (Section 2.04.250)
- El Cerrito Municipal Code – Chapter 3 (Personnel):
  - *To hear certain disciplinary appeals*
  - To examine witnesses under oath and compel attendance in investigations or hearings conducted by the Civil Service Commission
  - To provide advise and counsel to the City Manager, if called upon
  - To hold hearings and make recommendations on any matter of personnel administration, if requested by the City Council or City Manager (Section 3.10.030)
- El Cerrito Personnel Rules and Regulations
  - Chapter 12 (Complaint and Grievance Procedure – Step 5) – grievance appeal hearings
  - Chapter 13 (Disciplinary Guidelines and Appeal Procedure – Section 13.8) – disciplinary appeal hearings

# Roles of the El Cerrito Civil Service Commission

- The key role of the El Cerrito Civil Service Commission is to hear appeals from a decision of the City Manager as follows:
  - Appeal of City Manager decision upholding a Department Head's discipline of a non-probationary / regular employee
  - Appeal of City Manager decision denying a Union / Association grievance and upholding a Department Head's denial of the grievance
    - A grievance is "an alleged violation, misinterpretation or misapplication of specific written provision of Title 3 (Personnel) of the El Cerrito Municipal Code, these [Personnel] rules and regulations, or any written agreement or understanding between the City and an employee organization."
- The Civil Service Commission makes written findings and a recommended decision which it provides to the City Council
  - The City Council makes the final decision, which may be to accept, reject or modify the recommended decision of the Civil Service Commission.

# Legal Concepts / Framework

## Constitutional “Due Process”

- Government shall not “deprive any person of life, liberty, or property, without due process of law”
- Skelly and other cases have concluded that a government employee’s continued expectation of employment is a property interest and that the government as employer must provide due process when significantly interfering with this property interest
  - Terminations, demotions, unpaid suspensions of 5 days or more significantly interfere
  - No due process or good cause for probationary employees or employees for whom made clear are “at will”
- Pre-Disciplinary Due Process (“Skelly” meeting)
  - Notice of intended discipline, including grounds and documents relied upon
  - Opportunity for employee to respond in writing or in person, prior to implementing discipline
- Post-Disciplinary Due Process – appeal hearing before a civil service commission or arbitrator or administrative law judge
- Good Cause – for both discipline and for level of discipline



# Legal Concepts / Framework California Statutes

- Public Safety Officers Procedural Bill of Rights Act / Firefighters Procedural Bill of Rights ACT (POBOR and FBOR)
  - Procedures / rules for investigations
  - Privacy
  - Personnel Files
  - Disciplinary Proceedings
  - Administrative Appeals of Punitive Action
- Sworn Police
  - Statutes governing privacy of and access to Police Officer personnel information
- Other laws applicable to the employment of El Cerrito employees

# Legal Concepts / Framework

## Meyers-Milias-Brown Act (MMBA)

- MMBA is a California law that entitles employees of local public agencies like cities to join employee organizations and have them negotiate with their employer on subjects within the scope of bargaining
- Both Unions / Associations and public agency required to meet and confer in good faith
- Many important conditions of employment are set forth in labor contracts (Memoranda of Understanding) but also found in Personnel Rules, Department rules and binding past practices
  - Unions / Associations / employees have a right to grieve alleged violation of applicable conditions of employment
- Employees have a right to Union / Association representation in discipline and grievance processes
- Unions / Associations also have the right to bring an unfair labor practice charge to the Public Employees Relation Board (PERB) in lieu of or in addition to bringing a grievance

# Legal Concepts / Framework

## Brown Act

- California's open meeting laws generally require that councils, boards and commissions be open to the public
- Decision-making bodies must conduct their business in an open and public meeting to assure the public is informed about local decisions
- A "meeting" is any situation involving a majority of the Commission in which business is transacted or discussed
- Specific notice requirements for meetings
- Closed sessions are permitted for specific circumstances, including Commission deliberations and conferring with counsel on process issues

# Legal Concepts / Framework

## El Cerrito Municipal Code

- Civil Service Commission meetings are subject to the Brown Act's requirements (Section 2.04.220.B.10.)
- Enabling legislation for (creation of) Civil Service Commission (Section 2.04.250)
- All employees subject to Civil Service except those specifically excluded (Section 3.10.020)
- Functions of the Civil Service Commission listed (discussed previously) (Section 3.10.030)
- “Good cause” required for dismissal of Civil Service employee (Section 3.10.110)
- Employee discipline appeals (Section 3.10.130)
  - “Any regular employee in the civil service shall have the right to appeal any disciplinary action, alleged violation of this title or the personnel rules, or dismissal, demotion or reduction in pay, to the civil service commission. . . . Within ten calendar days after concluding the hearing, the civil service commission shall certify its findings and recommendations to the Council, the city manager, and to the employee affected. The council, acting as a review board, shall review the findings and recommendations of the civil service commission and the city manager, and shall then affirm, revoke, or modify the action taken, as in its judgment seems warranted, and the action taken by the council shall be final. . . .”

# Legal Concepts / Framework

## Personnel Rules - Chapter 13 (Discipline)

- 13.2 – Disciplinary Actions Defined – Counseling, Oral Reprimand, *Written Reprimand*, *Suspension*, *Reduction in Pay*, *Demotion*, *Discharge*
- 13.3 – Causes or Grounds for Disciplinary Action are listed
- 13.7 – Right of regular permanent employee covered by civil service to appeal discipline decision of City Manger to Civil Service Commission
- 13.8 – Civil Service Commission Hearings
  - Commission to make written findings and decision
  - Informal in nature so long as due process is observed. Judicial rules of evidence need not be applied.
    - Though some level of informality permitted, the appealing party's rights include right to be represented, right to call and examine witnesses, right to introduce evidence, right to cross examine and impeach witnesses, and right to rebut evidence against him or her
  - Commission may be advised by city attorney or other counsel provided by the City
  - Chair of Commission has full authority to maintain orderly procedure
  - Hearings public unless appellant entitled under law to a private hearing, and makes a written request for a private hearing
  - Commission will make written findings which shall be provided to the parties and submitted to the city council as a recommendation

# Nuts and Bolts of Hearings

- Burden of Proof
- Roles – Commissioners, Chair, counsel to the Commission, parties, representatives for the parties, witnesses, court reporters
- Order of Presentations
  - Opening Statements
  - Moving Party's Case in Chief
    - Direct and cross exam of each City witness (discipline case) or direct and cross exam of each Union/Association witness (grievance)
  - Responding Party's Case in Chief
    - Direct and cross exam of each Union/Association witnesses (discipline case) or direct and cross exam of each City witness (discipline)
  - Moving Party's Rebuttal Witnesses and related cross examination
  - Responding Party's Rebuttal Witnesses and related cross examination
- Closing Arguments and/or Closing Briefs

# Specific Hearing Issues

- Evidentiary
  - Strict rules of evidence do not apply and any relevant evidence *may* be admitted
  - Evidentiary objections include attorney-client privilege, privacy, compound, vague and ambiguous, relevance, hearsay
    - “Hearsay” is a statement made by someone other than the person testifying, offered to prove the truth of the matter asserted.
    - Personnel Rule 13.8 states, “Hearsay evidence may be used for the purpose of explaining direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions.”
- Pre-hearing motions and potential pre-hearing Civil Service Commission decisions or orders
- Open Session vs. Closed Session
- Deliberations and written findings and recommendations

# Questions?