

April 5, 2021, CSB Agenda Item Comments

These comments on Newport Beach Civil Service Board (CSB) agenda items are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item V.1.B APPROVAL OF MINUTES FOR THE NOVEMBER 2, 2020, REGULAR MEETING

The following minor corrections to the passage shown in ***italics*** are suggested in **strikeout-underline** format:

Page 3, first bullet under “Fire Battalion Chief Philip Puhek reported,” sentence 3:
“Newport Beach Fire Department sent three fire engines staffed with four personnel each, along with two Battalion ~~Chief’s~~ Chiefs assigned to the incident-, a Line Safety ~~Officers~~ Officer, and a Fire Line Paramedic to help safety of the fire crews.”

Additional comments:

1. Near the bottom of page 4, there is a “Part 1 Crime through October 28, 2020” summary.

Under that is a “Property Crime is down 7 crimes” sub-bullet, followed by listings for four specific subcategories of property crime, the first two of which (“Auto Burglary” and “Residential Burglary”) were down by 68 and 22 crimes for a total of 90 down.

- a. Were numbers provided for the following two subcategories (“Garage Burglary” and “Commercial Burglary”) indicating whether they were up or down?
 - b. Did some other, unlisted category go up to explain the net of only 7 down?
2. In response to a public comment about a possible personnel dispute involving the Finance Director, on page 1 of the draft minutes, in the last paragraph under Item IV, Board Member Wood is paraphrased as saying “*the topic of Finance Director is not in the purview of the Civil Service Board. The Civil Service Board holds hearings when employees in the public safety classifications are appealing disciplinary actions.*”

I do not recall attending this meeting, so I don’t know if this accurately reflects what was said, but to me it does match the description of the Board’s functions and duties found in our [City Charter](#).

While it is true [Article VIII](#) of the Charter requires the City Council to maintain a civil service system, and while that system as currently implemented is confined to the City’s safety employees, and while the name “Civil Service Board” is assigned to the present board in Article VII, **I don’t believe the Board’s responsibilities were ever intended to be limited to matters involving employees in the civil service system.**

Specifically regarding appeals, as [originally enacted](#), Charter Section 711 gave the board the power and **duty** to “(c) **Hear appeals of any person in the City employment relative to any suspension, demotion or dismissal and make findings and recommendations thereon.**”

This language was modified by [Measure V](#) in 2010. However, [Section 711\(c\) as currently written](#) still requires the board to “**Receive and hear appeals submitted by any person employed by the City** relative to any appointment, promotion, suspension, demotion, dismissal or other disciplinary action and to make determinations thereon.” The only difference between civil service employees and others is the new statement that “*The Board’s determinations shall be final for persons included in the Civil Service System.*”

It might further be noted that the board has other Charter Section 711 duties that extend to City employees outside the civil service system. These include:

“(b) *Act in an advisory capacity to the City Council on problems concerning **personnel administration.***”

and

“(d) *Make any investigation concerning the administration of personnel in the municipal service and report its findings to the City Council and City Manager when requested to do so by the City Council, the City Manager or by **any organized City Employees’ association.***”

So, the “Civil Service” Board seems to be more than a Civil Service [system only] Board.

As to appeals to the board, it is not clear all employees are informed of this Charter-provided right of appeal.

I examined the current Council-approved 2019-2021 [Memorandum of Understanding](#) with the [Newport Beach City Employees Association](#) and found no mention of the CSB in it.

With respect to “grievance procedures” the NBCEA MOU mentions a right to appeal to the department director and City Manager, but says on page 26 (29 of the 37 page PDF) that “*The decision of the City Manager shall be final and conclusive.*” As to “Failure of Probation” it says on page 27 as to “New Probation” that “*An employee on new probation may be released at the sole discretion of the City at any time without right of appeal or hearing, except as provided in (c), below,*” and as to “Promotional Probation” that “*An employee on promotional probation may be failed at any time **without right of appeal or hearing, except as provided in (c), below,** and except that failing an employee on promotional probation must not be arbitrary, capricious or unreasonable.*”

But there is no “(c), below” that I could find. Based on comparison with written page 29 of the 2019-2021 [Newport Beach Employees League MOU](#), the missing subsection in the NBCEA MOU was likely intended to read something like “*An employee who alleges that his or her probationary release was based on discrimination by the City, may submit a grievance within ten (10) days after receipt of the Notice of Failure of Probation.*” It would appear the decision of the City Manager on that grievance would be final.

I may not correctly understand what “promotional probation” means, but the absence of any mechanism for existing employees to appeal promotional decisions to the Civil Service Board seems in direct contravention to City Charter Section 711(c) as currently written.