RESOLUTION NO. 52-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, SUPPORTING THE TEXAS MUNICIPAL LEAGUE'S PROPOSED AMENDMENTS TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 143 (MUNICIPAL CIVIL SERVICE ACT) TO RESTORE PROPER AND EFFECTIVE MANAGEMENT TO POLICE AND FIRE DEPARTMENTS; ENCOURAGING THE VARIOUS LEGISLATORS REPRESENTING THE MESQUITE AREA TO ADOPT AND SUPPORT SUCH LEGISLATION; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

WHEREAS, Texas Local Government Code Chapter 143, hereinafter referred to as the Municipal Civil Service Act, was originally enacted forty-three years ago to prevent mismanagement of police and fire departments, and was a needed and well-intentioned statute; and

WHEREAS, the numerous amendments to this law made by the Texas Legislature since 1947 have eroded the ability of local governments to effectively and responsibly manage their police and fire departments under the Municipal Civil Service Act; and

WHEREAS, since 1947, politics have been reinstated into police and fire operations through the large campaign contributions of police and fire union organizations made to encourage various amendments limiting the management ability of local government; and

WHEREAS, the Municipal Civil Service Act should be amended to provide for hiring and promotion using means other than strictly written exams, therefore allowing municipalities to incorporate affirmative action plans in their police and fire departments; and

WHEREAS, the Municipal Civil Service Act should be amended to provide that a municipality may remove itself from the requirements of the Act using the same method that is used to adopt the Act, therefore allowing cities to remove themselves from a provision which has changed dramatically since it was originally created by the Texas Legislature; and

WHEREAS, the experience of numerous cities across the State with the use of hearing examiners under the Municipal Civil Service Act has proven the hearing examiner system a failure, in that police chiefs and fire chiefs have lost management authority over their own employees, with a resulting loss in the efficiency and effectiveness of public safety departments in those cities subject to the Municipal Civil Service Act; and

WHEREAS, the proposed amendments will assist the City of Mesquite in maintaining efficient, effective, well-managed police and fire departments, resulting in better public safety for Mesquite citizens, which is the goal of both the City and the officers in the police and fire department; and

WHEREAS, a task force composed of elected and administrative officials from cities across the State have determined that ten amendments to the Municipal Civil Service Act should be adopted to address these needed changes, a copy of such amendments being attached hereto;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City of Mesquite hereby requests and encourages the Texas Municipal League, on behalf of Mesquite and other cities subject to the Municipal Civil Service Act, to coordinate the preparation and submission to the Texas Legislature of the amendments to Texas Local Government Code, Chapter 143 as described in the attached Exhibit "A".

SECTION 2. That the City of Mesquite hereby urges the Legislators representing the Mesquite area in the Texas Legislature to support and pass the proposed amendments so that their constituents living in Mesquite will be served by the most effective and efficient public safety departments possible.

00044

Page 2

SECTION 3. That this resolution shall take effect immediately upon passage as the charter in such cases provides.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 5th day of November, 1990.

George A. Venner, Sr.
Mayor

ATTEST:

Lynn Prugel
City Secretary

APPROVED:

B.J. Smith
City Attorney

1.

AN AMENDMENT SPECIFYING CERTAIN QUALIFICATIONS FOR HEARING EXAMINERS UNDER CHAPTER 143

Current Law

Chapter 143.057 allows a police officer or fire fighter to appeal a disciplinary action to a third party hearing examiner. The only qualification necessary under state law is that the hearing examiner be a member of either the American Arbitration Association or the Federal Mediation and Conciliation Service.

Proposed Change

This amendment would require that a third party hearing examiner receive special training regarding Chapter 143 or that the hearing examiner be a retired or former judge who is a member of the State Bar.

Reasons for Proposed Change

Several cities have experienced problems with third party hearing examiners not understanding the nature of police or fire work. Police officers and fire fighters, because of the very nature of their work, interact with citizens everyday. Therefore, when a police chief decides to indefinitely suspend a police officer because the officer has shown a history of unnecessary violence in arrest situations, violation of criminal laws, or for other reasons, the examiner often fails to understand the liability the city faces by keeping that officer on the force.

In an attempt to reach a compromise between the city and an officer who has been disciplined, hearing examiners have reduced the punishment even though there is no dispute as to what the officer did. Since there is no appeal from a decision except in very limited situations, the city is often forced to return an obviously bad officer or fire fighter to the force.

2.
AN AMENDMENT REQUIRING HEARING EXAMINERS TO BASE THEIR DECISIONS ON SPECIFIC CRITERIA

Current Law

Section 143.057(f) states that the hearing examiner has the same duties and powers as the Civil Service Commission as they relate to conducting disciplinary appeals, including the right to issue subpoenas.

Section 143.057(j) provides for an appeal to district court of a hearing examiner's decision only on the grounds that the examiner's decision was without jurisdiction or exceeded its jurisdiction or if the order was procured by fraud, collusion, or other unlawful means.

Proposed Change

This amendment would clearly define the phrase: "the same duties and powers of the commission." The proposed amendment would state that a commission or a third party hearing examiner may uphold a suspension or dismissal of a fire fighter or police officer for a violation of a civil service rule by determining that the specific charges against the fire fighter or police officer are true. This amendment would clarify that the same "findings" standard currently required of the commission is also required of the hearing examiner. In the event the hearing examiner does not make a finding concerning the truth of the charges, that decision may be appealed.

Reasons for Proposed Change

The commission is required to find the truth of the specific charges against the fire fighter or police officer, and the hearing examiner has the same duties and powers as the commission. However, if a hearing examiner does not make a finding as to the truth of the charges, there is no recourse. This change would specifically state this duty of the hearing examiner and provide for an appeal if the hearing examiner fails to comply.

3.
AN AMENDMENT REQUIRING THAT HEARING EXAMINERS BASE THEIR DECISIONS ON A PREPONDERANCE OF THE EVIDENCE, NOT ON CLEAR AND CONVINCING EVIDENCE

Current Law

Section 143.057(j) provides for an appeal to district court of a hearing examiner's decision only if the decision was without jurisdiction, exceeded jurisdiction or if the order was procured by fraud, collusion, or other unlawful means. Current law does not provide a standard of proof that must be met by the city in an appeal of a disciplinary decision to a hearing examiner.

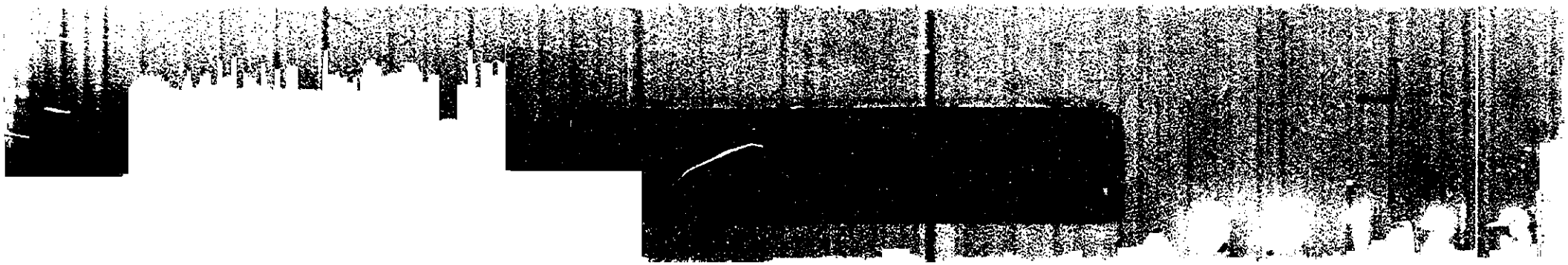
Proposed Change

This amendment would specifically state that the decision of a hearing examiner must be based upon a preponderance of the evidence and that failure to do so would be grounds for appeal of that decision to district court.

Reasons for Proposed Change

Although the standard of proof in civil cases in Texas is a preponderance of the evidence, some hearing examiners have required the city to produce "clear and convincing" evidence to justify the disciplinary decision. This amendment would clarify the burden which is required and would allow an appeal in the event that this standard is not utilized by the hearing examiner.

[redacted]



RETAKE
OF
PREVIOUS
DOCUMENT

4.
AN AMENDMENT PROVIDING THAT AN APPEAL TO A HEARING EXAMINER IS LIMITED TO CASES OF DEMOTION, INDEFINITE SUSPENSION, OR DISCIPLINARY ACTIONS OF TEN DAYS OR MORE

Current Law

Section 143.057(a) requires that the city's letter of disciplinary action issued to a fire fighter or police officer state that in an appeal of an indefinite suspension, a suspension, promotional passover or a recommended demotion, the appealing fire fighter or police officer may elect to appeal to an independent third party hearing examiner instead of the civil service commission. Therefore, the fire fighter or police officer is given the choice of going before the commission or before the hearing examiner since both have the same jurisdiction in appeals.

Proposed Change

This amendment would allow the fire fighter or police officer the choice of appealing to a hearing examiner only in the case of an indefinite suspension, a recommended demotion, or a suspension of ten days or more.

Reasons for Proposed Change

The cities under civil service have had five years of experience with appeals to hearing examiners. A two-day hearing often costs $1,500 or more, not including the hearing examiner's travel expenses. This seems particularly expensive when the appeal involves a one-day suspension. An appeal of a one-day suspension to the civil service commission costs virtually nothing. This amendment would allow an appeal to a hearing examiner in the most serious of disciplinary actions -- an indefinite suspension, a recommended demotion, or a suspension of ten days or more. This amendment does not dilute an officer's right to a due process proceeding, since the promotional passover or suspension of less than 10 days is always appealable to the civil service commission.

5.

AN AMENDMENT PROVIDING THAT A HEARING EXAMINER SHALL UPHOLD THE DISCIPLINARY DECISION OF THE CHIEF IF THE HEARING EXAMINER MAKES A FINDING OF THE TRUTH OF THE SPECIFIC CHARGES AGAINST THE FIRE FIGHTER OR POLICE OFFICER

Current Law

The hearing examiner has the ability to alter the disciplinary action imposed by the chief even if the hearing examiner has made a determination that the city's charges against an officer are true.

Proposed Change

This amendment would clarify any confusion regarding the determination that must be made by a hearing examiner. The hearing examiner must make a finding of the truth of the specific charges. This amendment would also provide that once the hearing examiner has made a finding of the truth of the specific charges against the fire fighter or police officer, the disciplinary action recommended by the chief shall be imposed.

Reasons for Proposed Change

In the past, hearing examiners have been confused as to the finding that must be made at an appeal hearing and the level of proof that is required of the city in defending its disciplinary recommendation. The amendment would clarify the findings that must be made by the examiner.

Additionally, hearing examiners, in an attempt to reach a compromise between the chief and the disciplined uniformed officer, will: (1) find that the charges are true, but (2) determine that the disciplinary recommendation is too harsh and reduce it.

6.

AN AMENDMENT REQUIRING THAT A HEARING EXAMINER FOLLOW THE PROCEDURAL RULES USED BY THE CIVIL SERVICE COMMISSION AND ALLOWING THE CITY TO APPEAL A HEARING EXAMINER'S DECISION FOR FAILURE TO FOLLOW THE RULES

Current Law

Section 143.008 requires that the commission adopt rules necessary for the proper conduct of commission business. There is no appeal of a hearing examiner's decision to district court by the city except in very limited situations.

Proposed Change

This amendment would require that a third party hearing examiner follow the procedural rules set by the city's civil service commission. It would also allow for an appeal of the hearing examiner's decision if the examiner failed to follow the commission's procedural rules.

Reasons for Proposed Change

Civil service commissions often adopt detailed rules regarding procedures that must be followed during an appeal hearing. In the absence of a specific rule, commissions often require in their rules that the rules of civil procedure shall be followed.

Hearing examiners have often held hearings in which neither the commission rules nor the rules of civil procedure were followed. Under current law, the city cannot appeal the hearing examiner's decision for failure to follow the commission's rules of procedure.

This amendment would clarify the procedural rules that the hearing examiner must follow and would allow the city to appeal a hearing examiner's decision to district court for failure to follow those rules.

7.
AN AMENDMENT PROVIDING THAT A DEMOTION IS EFFECTIVE IMMEDIATELY, SUBJECT TO AN APPEAL

Current Law

Under Sec. 143.054, the chief of the fire or police department may recommend in writing to the civil service commission that an officer be involuntarily demoted. The chief must include reasons for the recommended demotion and request that the commission order the demotion. If the commission believes that good cause exists for ordering the demotion, the commission shall give the fire fighter or police officer notice to appear before the commission for a public hearing. The commission must give the police officer or fire fighter ten days notice before the hearing.

Proposed Change

This amendment would provide that when the chief recommends a demotion for a police officer or fire fighter, the demotion would take effect immediately, subject to the appeal.

Reasons for Proposed Change

Currently, if the chief recommends a demotion, the decision must await a review and possible appeal to the commission or a third party hearing examiner. The only time requirement in the statute is one which requires that the commission give notice to the affected police officer or fire fighter. If the officer has been suspended, the commission must hold a hearing and render a decision in writing within 30 days after the date it received notice of appeal. Often, attorneys representing the employee in a demotion appeal will delay any hearing on the matter, effectively blocking the attempted demotion of the officer.

There seems to be no logic for the difference between a suspension (which has immediate effect) and a demotion (which has effect only after an appeal).

8.

AN AMENDMENT ALLOWING AFFIRMATIVE ACTION PLANS TO BE IMPLEMENTED IN POLICE AND FIRE DEPARTMENTS

Current Law

Under Section 143.026, when a vacancy occurs in a beginning position in a fire or police department, the civil service director certifies to the city's chief executive officer the names of the three persons having the highest grades on the eligibility list. The chief executive officer then appoints the person with the highest grade unless there is a valid reason that the person having the second or third highest grade should be appointed.

Proposed Change

Under this amendment, an additional name from the eligibility list may be added to the list submitted to the chief executive officer to fill a vacancy in a beginning position. This additional name is allowed if the city council has adopted an affirmative action plan that has been approved by the civil service commission.

The additional candidate from the eligibility list must meet all the other qualifications and criteria necessary to fill a beginning position. Currently, the chief executive officer can appoint the person with the highest grade unless there is a good and sufficient reason that one of the other persons named should be appointed. Under the proposed amendment, the implementation of an affirmative action plan would be a "good and sufficient" reason to appoint someone other than the first person on the list.

Reasons for Proposed Change

City councils are currently being sued for implementation of affirmative action plans in their police and fire departments. Local city councils should be able to consider implementation of affirmative action plans in hiring of police and fire personnel to avoid court-ordered sanctions or comply with appropriate consent decrees. This provision would also allow local authorities to consider what is best for their community in balancing the make-up of police/fire departments in lieu of having the courts make those determinations. The unions contend this is a violation of the Civil Service Act because there is no provision that allows for these appointments. City councils should be allowed to hire minorities and women when they have adopted an affirmative action plan.

9.
AN AMENDMENT CONFORMING REPEAL PROCEDURES WITH ADOPTION PROCEDURES

Current Law

Law To Adopt Civil Service

A city may adopt civil service under Section 143.004(b) if the city council receives a petition requesting an election signed by 10 percent of the number of voters who voted in the most recent municipal election. The resulting election is decided by a majority of those voting.

Law To Repeal Civil Service

If the voters wish to repeal civil service, the petition must be signed by 10 percent of all the qualified voters in the city. In order for the repeal effort to succeed, a majority of all qualified voters in the city must vote for the repeal.

Proposed Change

This amendment would allow voters to petition for repeal of civil service with the same number of signatures with which the voters can petition to adopt civil service. The amendment would also provide that the election for repeal shall be decided by a majority of those voting.

Reasons for Proposed Change

Since the Civil Service Act was enacted by the Legislature in 1947, nearly 70 cities have adopted the civil service statute by election. Since that time, the civil service statute has been amended numerous times to include many more provisions than had been originally approved by the voters.

What was initially adopted by cities as the Civil Service Act is not what cities are living with today. Therefore, voters should be able to petition and vote to repeal the city's adoption of civil service if the system no longer meets the needs or the expectations of the citizens in the community.

10.
AN AMENDMENT PROVIDING FOR ALTERNATIVE TESTING PROCEDURES FOR FIRE DEPARTMENTS

Current Law

Under Section 143.035, upon the recommendation of the chief of the police department, and after a majority vote of the sworn police officers in the department, the commission may adopt an alternate promotional system to select persons to occupy non-entry level positions other than positions that are filled by appointment by the department head.

Proposed Change

Allow the same alternative testing procedures for fire departments.

Reason for Proposed Change

Currently, only police departments may choose alternative testing procedures. If the same safeguards (a recommendation by the chief and a majority vote of the fire department) are adopted for fire departments, the commission should be allowed to adopt an alternative promotional system to promote persons to non-entry level positions. There is no good reason that a police department is allowed to exercise this option and a fire department is not.