

CITY OF CASTLE HILLS
SPECIAL CITY COUNCIL MEETING
MINUTES OF NOVEMBER 20, 2008

The City Council of the City of Castle Hills convened at 6:00 p.m. on the 20th day of November, 2008, at the City of Castle Hills City Hall, 209 Lemonwood Drive, Castle Hills, Texas.

Mayor Harper called the meeting to order at 6:00 p.m.

I. OPENING

QUORUM - Present and composing a quorum of the City Council were Mayor Marcy Harper, Douglas Gregory, Tom Davis, Bruce Smiley, Tim Howell, and Marcella Huff.

Staff present was City Manager Mike Rietz, Assistant City Manager Rita Hoyl, City Secretary Linda Gill, City Attorney Mike Brenan, Police Chief Donny Davis, Fire Chief Jerry Riedel, and Public Works Director Rick Harada.

II. ANNOUNCEMENTS – None

III. REPORTS – None

IV. NEW BUSINESS

A. CONSIDER AND ACT UPON AN ORDINANCE AMENDING CHAPTER 2, Administration, by revising the appeal process for disciplinary actions in Section 2.301.1 and 2.301.2.

Mayor Harper explained that revision of the appeal process came up on the previous Monday. She said that it had nothing to do with the recent King case; but because of it, the council was aware of the process. She said that City Manager Rietz e-mailed her a copy of the minutes of the April, 2007 meeting and a copy of the ordinance passed at that meeting regarding the appeal process. Prior to that, the mayor said that she had talked to council member Huff; and council member Huff thought that she remembered the ordinance stating that all employee appeals could go as far as the mayor for resolution. Mayor Harper said that the minutes of the April, 2007 meeting confirmed that the ordinance voted on by the council was clearly intended to allow all employees, not just those who answer to the city manager, to make a final appeal to the mayor.

Council member Huff clarified that what was intended was that employees would first appeal to the department head, then the city manager, and finally the mayor. She felt cases that would be carried that far would have unusual circumstance and would be rare, but employees should have the right to appeal to the mayor or whomever the mayor

designates. She suggested that the ordinance be reworded to allow the mayor to designate a disinterested third party to hear the case.

The consensus of the council was that the city manager should not be taken out of the loop. Councilman Howell suggested that the mayor and council should be because of political implications. Council member Smiley recommended that an arbitrator be appointed by the mayor, who would make a recommendation and turn it over to the council to vote on.

Council member Huff responded that the appeal will not go to council. When the appeal gets to the mayor, the mayor will let the city manager and the department head know and then will turn the case over to an arbitrator or designee. Councilman Davis commented that the city manager is like the CEO of a corporation. In a corporation an appeal will go to the CEO, but will never go to the Board of Directors. He added that he thought department heads should be able to go to the mayor if they disagree with the city manager's decision. Mayor Harper indicated that a case should be heard by an outside source rather than the city manager, and that takes the burden away from the city altogether. Council member Huff said that taking the city manager out of the loop would weaken his position, and that most of the time he and the department head will be on the same page regarding the employee. Councilman Davis agreed that the case should be taken to an outside source only after it has been through the city manager. Councilman Howell reiterated that the mayor and the council should be taken out of the process because of political aspects. He recalled the reason for the ordinance passed in 2007 was to take the mayor and council out of the appeal process.

Council member Huff said the gist of the matter is that the motion that she made in 2007 and the ordinance that resulted from that motion were two different things. Councilman Smiley said that he thought the appeal should go to the mayor, who would then bring in an arbitrator to hear the case. The arbitrator would bring a recommendation back to the council, and the council would act on it. Council member Huff said that she did not think it should come back to the council, only to the department head and the city manager. Councilman Howell remarked that the city manager would feel intimidated if the mayor decided differently than he did, and he thought the council should vote on bringing in an outside arbitrator.

Mayor Harper asked Mr. Rietz to comment. Mr. Rietz answered that the employee drives the process, and an appeal may go further than the council expects because the employee has the right to use the process all the way through the arbitrator. Council member Huff said that her experience has been different.

Mr. Brennan said that he and Mr. Rietz do not have a personal bias in the matter. The intent was to stop low-level employees from appealing

beyond the level of the city manager. He said it has worked, but a second level appeal can be added, if the council chooses. He mentioned the policemen's union CLEAT, an organization that will appeal any case for any police officer at no cost to the officer; and the council needs to assume that they will take advantage of every appellate step available on an appeal relating to a termination. Mr. Brennan noted that high-level employees are covered in the current ordinance and can go to the mayor. He said that he envisioned that the mayor would appoint a professional to hear the case and make an impartial decision based on the facts. He added that he was against an arbitrator because an employee will never agree to give up his right to a trial. A mediator would only make a recommendation.

The mayor said that she thought minor cases should stop at the city manager level. Mr. Brennan said that the ordinance could not be subjective. The council has to make a rule and enforce it. Councilman Gregory stated that some businesses make employees waive their rights. He suggested putting that into a contract for future employees. Mr. Brennan said that they cannot do that by law when it involves policemen, firemen, or public employees. He said that the appeal process starts with the department head's decision. The employee can accept it or appeal to the city manager under the current ordinance. A process can be carved out to let the appeal go above the city manager to the mayor or council. Councilman Gregory said that the city manager should be able to make the final decision. He added that he liked the fact that the department heads could go above the city manager. Mr. Brennan said that is the way it is at present.

Councilman Smiley indicated that he believed every employee should have the right to appeal to the mayor; and the mayor can appoint a third party, such as a non-binding arbitrator, who will make a recommendation to the mayor, whose decision will be final. Mr. Brennan remarked that the decision is politicized if it is final with the mayor. Councilman Smiley said that he did not have a problem with that.

Mr. Brennan said that the normal practice, if a termination appears to lead to a lawsuit, is to have the mayor appoint a professional person, vested with the authority to make an impartial decision based on the facts of the case. An arbitrator's recommendation would be binding to both parties. Councilman Smiley said that he did not want the arbitrator to be binding. Mayor Harper responded that, since the arbitrator is the third level of appeal, his decision would need to be accepted. Mr. Brennan said that the employee has exhausted his administrative remedies at that point and can choose to file a lawsuit or not file a lawsuit.

Council member Huff asked Mr. Rietz what his experience had been with other cities and what works best. Mr. Rietz answered that it would be similar to what the city currently has in place. He said that he didn't have a problem with appeals going beyond the city manager to the

These minutes were approved on the 9th day of December, 2008.

APPROVED:

Marcy Harper, Mayor

ATTEST:

Linda Gill, City Secretary