

**CITY OF MIRAMAR
PROPOSED CITY COMMISSION AGENDA ITEM**

First Reading Date: May 3, 2023

Second Reading Date: June 7, 2023

Presenter's Name and Title: Randy Cross, Human Resources Director

Prepared By: Randy Cross, Human Resources Director

Temp. Ord. Number: O1805

Item Description: **FIRST READING** of Temp. Ord. #O1805, AMENDING CITY CODE SECTION 16-4, POSITIONS COVERED AND EXCLUDED TO UPDATE THE POSITIONS COVERED UNDER THE CITY'S CLASSIFIED CIVIL SERVICE AND SECTION 16-324, EMPLOYMENT OF RELATIVES, TO INCLUDE THE FLEXIBILITY FOR THE HUMAN RESOURCES DIRECTOR TO CONFIRM THAT ANY PERCEIVED OR ACTUAL CONFLICT OF INTEREST THAT MAY EXIST BETWEEN RELATED EMPLOYEES HAS BEEN REMOVED THROUGH INTERNAL CONTROLS, POLICIES AND PROCEDURES AND THEN REQUIRING THE HIGHER RANKED EMPLOYEE TO RECUSE HIM OR HERSELF FROM ANY HUMAN RESOURCES RELATED RECOMMENDATIONS OR ACTIONS INVOLVING THE RELATED EMPLOYEE THUS ELIMINATING THE CONFLICT OF INTEREST; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. (Human Resources Director Randy Cross)

Consent ☐ Resolution ☐ Ordinance ☒ Quasi-Judicial ☐ Public Hearing ☐

Instructions for the Office of the City Clerk: None

Public Notice – As required by the Sec. ____ of the City Code and/or Sec. ____, Florida Statutes, public notice for this item was provided as follows: on ____ in a ____ ad in the ____; by the posting the property on ____ and/or by sending mailed notice to property owners within ____ feet of the property on ____ (fill in all that apply)

Special Voting Requirement – As required by Sec. ____, of the City Code and/or Sec. ____, Florida Statutes, approval of this item requires a ____ (unanimous, 4/5ths etc.) vote by the City Commission.

Fiscal Impact: Yes ☐ No ☒

REMARKS: None


Content:

- Agenda Item Memo from the City Manager to City Commission
- Ordinance TO1805



**CITY OF MIRAMAR
INTEROFFICE MEMORANDUM**

TO: Mayor, Vice Mayor, & City Commissioners

FROM: Dr. Roy L. Virgin, City Manager 

BY: Randy Cross, Human Resources Director

DATE: April 27, 2023

RE: FIRST READING of Temp. Ord. No. 1805, Amending City Code Section 16-4, Positions Covered and Excluded, and City Code Section 16-324, Employment of Relatives, to Provide Flexibility for Employees to Recuse themselves from Perceived or Actual Conflicts of Interest

RECOMMENDATION: The City Manager recommends approval of Temporary Ordinance No. 1805, amending Sections 16-4, Positions Covered and Excluded, and 16-324, Employment of Relatives, of the City Code.

ISSUE: Review and update of the City's Code Chapter 16 requires Commission approval. This is the first of several ordinances that will be presented to the City Commission over the next 12 months that will recommend updates to Chapter 16.

BACKGROUND: Chapter 16 of the City Code provides the regulations for the City's civil service system and the Human Resources Department. The last major update to this chapter of the City Code was in 2003. Over the last 20 years, there have been developments in law, social norms, the human resources profession, the unique growth of the City's workforce, and other factors that warrant a review and update to this section of the City Code.

The Human Resources Department staff has been working over the past year to review each section of Chapter 16 and determine areas to update. The following list is the result of this review:

- Positions covered/excluded from civil service
- Employment of Relatives
- Application of preference points during civil service exams
- Review of testing processes for new hires and promotional opportunities
- Employee training and development

- Incorporating current and proven human resources best practices
- General updating and cleanup of text

Where appropriate, the proposed language will be discussed with the civil service board for their input and approval. Each of the unions will also be presented with proposed changes for their review and input.

Recommendations to the following two areas are being presented in this ordinance for the City Commissions consideration:

- Positions covered/excluded from civil service
- Employment of Relatives

DISCUSSION: This section of the memorandum will discuss the unique history and development of the recommendations to the proposed changes to the City code.

Section 16-4 Positions Covered and Excluded:

The civil service system is a unique and important set of rules that govern the human resources practices of government agencies. It is one of the major distinctions between the public sector and other sectors. Civil service is a system designed to solely employ candidates based upon their knowledge, skills, and abilities, and not based upon patronage or political appointment. Being hired into one of these positions requires a formal and transparent testing process for the candidates to demonstrate their capabilities to perform the job. In exchange for sitting through this process, those hired enjoy unique job protections in which their position is actually a property right. This property right can only be removed through due process. An employee cannot be terminated without documented and progressive discipline.

This is most evident in the federal government where the executive branch of government is able to appoint many upper level, senior executive positions. These positions may require certification by congress before becoming permanent in the position, but the appointees into these positions usually only serve as long as the current administration is in power. Despite the potential for changes at the top if the organization as politics and power change hands, the government still needs to continue providing services. This charge is carried out by the career employees that are protected in their positions based on their performance, and not on the politics. These positions are protected by civil service.

At the local level civil service can extend up to the department head level. Within the City of Miramar the level of civil service protection has always been position specific. Yet, as the workforce has expanded and the organization has become more sophisticated, there has been a conscious attempt to create clear levels of responsibility between line positions, supervisors, managers, assistant directors, etc. This uniformity helps to create a clear line of succession throughout the organization and a recognized pattern of progression for employees wishing to be promoted.

The question becomes at what level to draw the line of appointed versus civil service protected positions. After researching how other municipal organizations have structured their system and considering the structure and service delivery of our City, the recommendation is to establish the boundary for civil service at the level of first line supervisors. So, line level positions and their supervisors will be protected by civil service. Positions that are considered management, those that supervise supervisors, will be appointed. There will be some distinctions across the organization where collective bargaining has already established these lines of demarcation.

Section 16-324 Hiring of Relatives:

The City Code currently prohibits the hiring of relatives when a perceived or actual conflict of interest exists. The code defines the conflict as one employee having the authority to take, or recommend, job-related decisions over another employee who is a relative. The code only allows for one remedy to a conflict which is for the less senior employee to leave their position through transfer, demotion, or separation.

Over the past 20 years, the City has hired within the same department employees who are related to active City employees. While a conflict of interest may not have existed upon the original hire, promotions, transfers, shift bids and other opportunities which occur over the employment term have created circumstances where one employee may now have a conflict with relatives within their respective departments. Department standard operating procedures and policies have been implemented to minimize those conflicts. However, these policies may conflict with Section 16-324 of the City Code.

Section 16-324 of the City Code was last updated in 2003. At the time the City had an employee population of approximately 500 employees. The ability for one employee to be related to another employee, and having authority to take, or recommend, job-related decisions over said employee was a real possibility. The nepotism policy that was put into place, City Code Section 16-324, was necessarily stricter than those found in larger government agencies, including what's found in Florida State Statutes.

The City has more than doubled its employee population since 2003, creating more levels of bureaucracy between those with the ability to make human resources recommendations and decisions and those impacted by those recommendations and decisions. In this time, most departments have adopted professional industry standards and have become accredited or are in the process of becoming accredited. This creates a degree of checks and balances within each department, and between the City Manager's Office and the Human Resources Department, to ensure that decisions follow policies and procedures, reflects best practices, and are based upon performance.

ANALYSIS: The following section includes the recommended changes to the City Code to address the concerns and improvements to the code that have been discussed above.

Recommended Changes to Section 16-4:

~~(10) Positions specified in former Section 16.2.1.0.C will retain civil service rights until the current incumbent vacates the position, at which time the position will thereafter be excluded from civil service.~~

~~The positions are as follows:~~

~~5. Accounting supervisor; b. Building official/chief structural inspector; c. Chief plant operator; d. City manager secretary; e. Computer programmer/operator; f. Early childhood coordinator; g. Executive secretary; h. Fire captain; i. Fire division chief; j. Human resources aide; k. Human resources technician; l. Human resources specialist; m. Membrane plant manager; n. Newly appointed confidential/managerial positions created or recognized by PERC; o. Planner II; p. Recreation activity/special events coordinator; q. Risk manager; r. Special projects coordinator; s. Utility coordinator; t. Victim advocate.~~

(10) All line and staff positions that work directly in the delivery of City service, within their respected industries and departments, and those that directly supervise such employees, will be covered by civil service.

Recommended Changes to Section 16-324:

(4) The Human Resources Director shall have the flexibility to examine the circumstances surrounding any perceived or actual conflict, as defined in this Section. If, the Human Resources Director determines, in writing that sufficient checks and balances exist to eliminate any conflict of interest if the senior employee recuses him or herself, then the senior employee shall recuse him or herself from taking or recommending any human resources related actions with respect to the relative, thus removing the conflict.

(5) If the Human Resources Director determines that the conflict of interest cannot be remedied by recusal based on the facts and circumstances, the city shall attempt, if possible, to transfer either party to a different work assignment not involving a conflict of interest. If the transfer of either party is not possible, or the party to be transferred does not wish to accept another work assignment, one (1) of the parties may elect to resign, or the city shall terminate the employment of the relative with the least total service with the city.

Temp. Ord. No. 1805
2/2/23
4/25/23

**CITY OF MIRAMAR
MIRAMAR, FLORIDA**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AMENDING CITY CODE SECTION 16-4, POSITIONS COVERED AND EXCLUDED, TO UPDATE THE POSITIONS COVERED UNDER THE CITY'S CLASSIFIED CIVIL SERVICE AND SECTION 16-324, EMPLOYMENT OF RELATIVES, TO INCLUDE THE FLEXIBILITY FOR THE HUMAN RESOURCES DIRECTOR TO CONFIRM THAT ANY PERCEIVED OR ACTUAL CONFLICT OF INTEREST THAT MAY EXIST BETWEEN RELATED EMPLOYEES HAS BEEN REMOVED THROUGH INTERNAL CONTROLS, POLICIES AND PROCEDURES AND THEN REQUIRING THE HIGHER RANKED EMPLOYEE TO RECUSE HIM OR HERSELF FROM ANY HUMAN RESOURCES RELATED RECOMMENDATIONS OR ACTIONS INVOLVING THE RELATED EMPLOYEE THUS ELIMINATING THE CONFLICT OF INTEREST; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is a best practice for government agencies to periodically review and update its regulations to maintain industry and sector best practices; and

WHEREAS, Chapter 16 of the City Code addresses the human resources and civil service regulations of the government and have not been reviewed and updated since 2003; and

WHEREAS, this ordinance is the first of several that will be presented to the City Commission for consideration to update Chapter 16; and

WHEREAS, ordinance amends Section 16-4, positions covered and excluded, and Section 16-324, employment of relatives; and

Ord. No. _____

Temp. Ord. No. 1805
2/2/23
4/25/23

WHEREAS, it is a best practice for government agencies to apply a nepotism policy for its employees to eliminate any perceived or actual conflicts of interest; and

WHEREAS, City Code Section 16-324, Employment of Relatives, defines a relative as a person related by blood, marriage, legal guardianship, or adoption to the first degree of relationship to another employee; and

WHEREAS, City Code Section 16-324, Employment of Relatives, states that a conflict of interest relationship will be deemed to exist when one (1) employee/relative is in a position to exercise authority over job related decisions or effectively recommend such decisions, affecting the other employee/relative; and

WHEREAS, the continued growth of the City and the elevation of professionalism within the various industries employed by the City creates a higher degree of commitment to excellence, which prohibits job-related decision based upon anything other than employee performance; and

WHEREAS, Section 16-4 determines which positions within the workforce are covered by the City's civil service system; and

WHEREAS, it is in the best interest of the City workforce to streamline this section to better match the workforce as it exists today and balancing that with industry best practices.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:

Temp. Ord. No. 1805
2/2/23
4/25/23

Section 1: Section 16-324 of the City Code is hereby amended and reads as follows:

(4) The Human Resources Director shall have the flexibility to examine the circumstances surrounding any perceived or actual conflict, as defined in this Section. If, the Human Resources Director determines, in writing that sufficient checks and balances exist to eliminate any conflict of interest if the senior employee recuses him or herself, then the senior employee shall recuse him or herself from taking or recommending any human resources related actions with respect to the relative, thus removing the conflict.

(5) If the Human Resources Director determines that the conflict of interest cannot be remedied by recusal based on the facts and circumstances, the city shall attempt, if possible, to transfer either party to a different work assignment not involving a conflict of interest. If the transfer of either party is not possible, or the party to be transferred does not wish to accept another work assignment, one (1) of the parties may elect to resign, or the city shall terminate the employment of the relative with the least total service with the city.

Section 2: Section 16-4 of the City Code is hereby amended and reads as follows:

~~(10) Positions specified in former Section 16.2.1.0.C will retain civil service rights until the current incumbent vacates the position, at which time the position will thereafter be excluded from civil service.~~

~~The positions are as follows:~~

~~a. Accounting supervisor; b. Building official/chief structural inspector; c. Chief plant operator; d. City manager secretary; e. Computer programmer/operator; f. Early childhood coordinator; g. Executive secretary; h. Fire captain; i. Fire division chief; j. Human resources aide; k. Human resources technician; l. Human resources specialist; m. Membrane plant manager; n. Newly appointed confidential/managerial positions created or recognized by PERC; o. Planner II; p. Recreation activity/special events coordinator; q. Risk manager; r. Special projects coordinator; s. Utility coordinator; t. Victim advocate.~~

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(10) All line and staff positions that work directly in the delivery of City service, within their respected industries and departments, and those that directly supervise such employees, will be covered by civil service.

Section 3: It is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Miramar, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions.

Section 4: If any clause, section, or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

Section 5: All ordinances or parts of ordinances, resolutions, or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 6: This Ordinance shall become effective immediately upon adoption, unless otherwise provided.

Temp. Ord. No. 1805
2/2/23
4/25/23

PASSED FIRST READING: _____

PASSED AND ADOPTED ON SECOND READING: _____

Mayor, Wayne M. Messam

Vice Mayor, Alexandra P. Davis

ATTEST:

City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved
this ORDINANCE as to form:

City Attorney,
Austin Pamies Norris Weeks Powell, PLLC

<u>Requested by Administration</u>	<u>Voted</u>
Commissioner Winston F. Barnes	_____
Commissioner Maxwell B. Chambers	_____
Commissioner Yvette Colbourne	_____
Vice Mayor Alexandra P. Davis	_____
Mayor Wayne M. Messam	_____

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