

KIRKLAND CIVIL SERVICE COMMISSION

Meeting Minutes

March 9, 2021

Present (Via Zoom)

Mark Nelson - Chairperson

Dianne Ramerman - Commissioner

Terry Coonan - Commissioner

Police Chief Cheri Harris

Fire Deputy Chief Dave Van Valkenburg

IAFF President- Capt. Justin Becker

Mikala Mikolaski - HR Analyst

The meeting was recorded.

The meeting was opened by Chairperson Mark Nelson at 4:02 p.m.

The first item on the agenda was the review and approval of the minutes from the January 12th meeting. Chairperson Nelson requested a change the line "Commissioner Ramerman ... opt of the voting" by adding the word "out" to read "... opt out of the voting" and some minor typos. The meeting minutes for the January 12th meeting were revised and approved.

The second item on the agenda was the Fire Department's request to change the language in the Civil Service Rules around hiring from the entry level Firefighter eligibility list using the "Rule of Three".

Deputy Chief Van Valkenburg shared that the current language of "Rule of Three" limited the number of candidates from the eligibility list that Fire could interview. He gave the example, if Fire has three vacancies available, the department could interview the first three names on the list. They would select one of the three to hire. Then for the next vacancy, Fire must consider the two previous interviewees and then add the next one on the list to consider. This limits the ability of Fire to move down through the list and interview more candidates for opportunity for multiple positions. This new language would provide the Fire Department greater flexibility to hire with all qualifications being equal and to have a greater say in which candidates move to job offers. He stated that this language change would only be for new hires for the Fire Department and not promotions or any other process.

Deputy Chief Van Valkenburg introduced Captain Justin Becker, the new IAFF union president, to the Commission.

Commissioner Ramerman asked what type of problem that Fire was trying to solve and what type of inclusive issues would you be addressing and the logistics of how updating the list would work. Deputy Van Valkenburg responded that with the inclusivity initiatives and

resolutions that the City has been launching, he stated that the Fire Department has been behind in hiring and recruiting for diversity. In the consideration of the candidates and qualifications being equal and interview and presentation being equal, being able to have a greater say in which candidate we can hire. That is the ultimate goal.

Commissioner Ramerman clarified that currently the language states the department can look at the top three scorers. The new language asks for three candidates for each vacancy. She asked if it is not the top three scorers what criteria are you looking at then; are you looking for persons of color or more females. Deputy Van Valkenburg responded that the department goal is recruiting for diversity and hiring for quality. Any person hired would be from the eligibility list and would have met the criteria for qualifications. With the new language, the department would still start interviews with candidates one, two and three, but if the department had two spots, they could interview candidates one through six and pick two people from that pool of six.

Commissioner Coonan asked if the Fire department has broken down what the candidate diversity pool looks like. Deputy Van Valkenburg stated that there were about 12% female applicants and about 6% people of color. Commissioner Coonan asked if the department was taking any steps to increase the diverse candidate pool. Deputy Van Valkenburg responded that Human Resources had hired a recruiter to assist Fire and Police with diversity recruiting, they have started community outreach and created recruiting videos highlighting the Fire Department and trying to remove roadblocks where we can. Commission Coonan stated that the math was simple. If you increase your diverse candidate pool, that will allow you to hire more diverse individuals. Deputy Van Valkenburg stated yes to a certain extent. He gave the example of the most recent hiring process where there were two female candidates at #7 and #9 spots. If we had three vacancies, we would never have reached them to interview. We would only have been able to interview the top six candidates. If we alter or change the "rule of three" language, we would have been able to interview those two candidates.

Chairperson Nelson stated that this topic is not something that he is comfortable making any sort of decision on today. He has a lot of questions that need answers and more discussion. Chairperson Nelson proposed the following question for general consideration. If the current language of "rule of three" is working for the Police Department, why is it not working for the Fire Department? The request is to modify the Civil Service Rules and the Civil Service Commission can do that, but the Civil Service Rules are based on the Revised Code of Washington (RCW) 41.08 with respect to Firefighters and has a similar code for Police. Also, the Kirkland Municipal Code (KMC) 3.54. The Civil Service Rules are based on these two documents and what the state requires us to do and what the City Municipal Code requires. He stated that the Revised Code of Washington talks about the rule of one and over time the rule of three has become a practice and he was only able to find one challenge on the rule of three and one in a case from 1978 with the City of Walla Walla. He stated that he felt it was not up to the Civil Service Commission to change the rule of three or the rule of one if it was not working. He stated that he understood that the Fire Department was asking for the rule of as many as the list was. He stated that there was a discussion of 25 applicants of the list, or the rule of three. He read KMC 3.54.080 "The commission shall certify the ... top 25% of the ... list or the top three ... whichever number is larger". He stated that the Commission's job is to certify the most qualified candidates on the list and if the process to determine the best candidate on the list is flawed, then the process needs to be changed. He referenced KMC 3.54.030 "requires all

appointments ... shall be made solely on merit, efficiency and fitness by an open, competitive exam ...". Chairperson Nelson stated that he was not comfortable with the request from Fire to change the rule of three and didn't get a number from Fire as to how big the list was going to be. He stated that if the process was not identifying the best candidates for the job, then the process needs to be looked at and I don't understand how the existing process both negatively impacts the inclusivity process for the Fire Department, but not the Police Department. He stated he believes that the Commission would be on a slippery slope, if the Police is under one set of rules and Fire is under another.

Commissioner Ramerman thanked Chairperson Nelson for the language about merit and stated that there may be some screening modification in the exam to solve the problems of what Fire is trying to do for inclusivity. If it not the top three scorers, that make a good candidate, then what is it that will help people to be looked at for hiring. She stated that she was not clear on the criteria being considered when looking at six or seven candidates beyond mere numbers and it is important that the Civil Service Commission understand the criteria that is being used to certify the list. Deputy Chief VanValkenburg stated that the list is certified before the Chief's interviews. The process is that Fire conducts interviews and brings a list of candidates to the Commission to certify. After that list is certified, then we do Chief's interviews from that list of some 20 candidates. If we have five spots, I only get to interview seven candidates from that list. Chairperson Nelson interjected that from the RCW and KMC that were shared earlier, that the Chief's interviews are not discussed in either place. He stated that it seems to be a process that is being used and doesn't appear to me to be discussed in the Civil Service Rules. He stated that the state and local rules talk about finding the best qualified candidate based on certain criteria and then paraphrased for illustration "that you can disqualify a candidate if the Chief doesn't care for them". He stated that he does not believe that is authorized but stated that he may have missed that. Deputy VanValkenburg stated that Chief's interviews were the standard and it is the process for entry level, promotions, etc. We have a fair exam process and come to you with a list and you certify the list and then we have a Chief's interview based on criteria such as level of engagement, past interactions in the department, past contribution to the department and work performance. The entry level process is the same. We interview the top candidates and pick ones that best align with the departments core values. That is the purpose of the rule of three is to have three interviews for the one opening.

Chairperson Nelson stated that his concern is that if what is established for law enforcement and fire as to what is evaluated in candidate criteria causes a list of the top candidates that are not top candidates, then the criteria needs to be reviewed. He also stated that the RCW allows for the six to twelve-month evaluation period after hire to allow the hiring authority to make a change if the person hired is not the right fit. Deputy Chief Van Valkenburg stated that Commissioner Coonan was correct in his statement that the recruiting piece needs to be corrected, but in hiring from the list, Kirkland is competing with other agencies for the same top female and minority candidates. When we have them on our list, we don't even get to interview them with these current rules.

Commissioner Coonan stated that diversity in recruiting is the main topic in hiring over the last year and it goes back to using the latest tools and technology to compete for the same top diverse candidates. He stated that in the hiring of a diversity recruiter we are taking the first step in increasing that diverse candidate pool.

Deputy Chief VanValkenburg clarified that the ask was to interview three candidates per vacancy from the certified list. We are competing with agencies that do not use the rule of three. Renton, for example, interviewed one through 25 and hired who they wanted from that list. He stated that he appreciated how the rule of three works for promotional process, but the hiring process is hurting us.

Chairperson Nelson stated that maybe it is time to look at a regional fire authority to allow the change. He did not ask for any comment from either Fire or the union on it, he just wanted to make the statement.

Commission Coonan stated that he was not comfortable making a decision on this today either. He stated he would like to see some case or proof of concept on what you are asking. Chairperson Nelson stated that the Commission wants to have an inclusive organization but does not want to have Kirkland have a process for creating a list and then hire whoever they want.

Secretary Friang asked to be able to clarify the differences between Police and Fire eligibility lists and the rule of three. Fire's eligibility list is good for a year and when it is created it does not change. Police entry level is on a continuous hire and they are continuously testing so their list changes each time they test. Chairperson Nelson asked if the Police are continuously testing, is there more turnover in Police than in Fire. Secretary Friang stated, not necessarily. Deputy Chief Van Valkenburg stated that he did not think the turnover was the issue. He stated that Police has a central location for their academy, and they are always running academies, but Fire has only two academies. One in January and one in the Fall and their process is mandated by those two academies.

Chief Harris stated that she had been talking to HR about the rule of three and possible changes. The Chief's interviews for positions for Police on the rule of three are the same as Fire. Police can interview more often, but they still have competition with other agencies as well. She stated that their current list is quite diverse, but that is often not the case and if they can only hire from the top three, they do not get the chance to interview any candidates past #4. The Chief stated that she knew of other agencies that use the rule of five and she was here to see what the Commission's thoughts were on changing the rules.

Chairperson Nelson asked if the turnover was driving the training in Police more often than Fire or what was creating the gap? Chief Harris stated that she did not think so, but there has been a turnover and even turnover from Police to Fire.

Chairperson Nelson asked that Police and Fire look to see if the 25% criteria help with the list or are there changes to be made in the examination process, so it yields what you need for top candidates and diversity.

Commissioner Ramerman had a concern about the draft of the language of Article II and that it left out the top three scorers being the starting point. She suggested that maybe there was a way to combine the two – old language and new – to create what Fire was looking for. Looking at the top three scorers per vacancy and the current language does not line up. She stated that in reviewing Article II language change and after hearing Fire's explanation, that she felt Fire was intending to have the top three scorers per vacancy. Deputy Van Valkenburg agreed and

said he would review the language and work to make that change. Her other concern was with the changes to the language Article X is one that covers both Police and Fire, the change needs to be drawn out for Fire from the middle of the paragraph since it covers both departments. This will make it clearer that the change is just for this group. Deputy Van Valkenburg stated that he can add a second section in Article X to make it clearer.

Chairperson Nelson stated that the RCW 41.08 talks in the singular "an applicant for a position". The only court case that he could find was with Walla Walla Fire and the issue of "an applicant for a position" and they used rule of three. The Supreme Court stated that the "rule of three" met the spirit of "an applicant for a position". Deputy Chief Van Valkenburg stated that he would work with Secretary Friang to review the language and based on this guidance will bring another draft for review.

Chairperson Nelson provided more insight into the KMC 3.54.080

Whenever a position in the classified service becomes vacant, the appointing authority, if it desires to fill the vacancy, shall make requisition upon the commission for the names and addresses of the persons eligible for appointment thereto. The commission shall certify the names of those persons in the top twenty-five percent of the eligible list, or the top three persons, whichever number is larger, for the class to which the vacant position has been allocated, who are willing to accept employment.

He suggested that maybe there are options there to consider. Secretary Friang stated that she and Deputy Van Valkenburg would review the RCW, KMC and the language clarification suggestions given and return another draft proposal to the Commission for review.

There were no new business items to discuss.

Chairperson Nelson adjourned the meeting at 5:04pm

for Mark B. Nelson 07/13/2021
Shawn Friang
Secretary/Examiner
Kirkland Civil Service Commission