

**CITY OF SHEPHERDSVILLE
SPECIAL MEETING
Wednesday, May 20, 2013**

In attendance were Council members Jose' Cubero, Dana Bischoff James, Faith Portman and Gloria Taft.

Mayor Ellis called the meeting to order at 6:36 and stated the purpose of this meeting is informational to discuss new Civil Service Ordinance.

Also in attendance were City Attorney Joe Wantland, Tom Rosselli, Chairman of Civil Service Commission and Walt Sholar, Counsel for Civil Service Commission.

Mayor Ellis turned the floor over to Tom Rosselli and Walt Sholar to explain the new Ordinance and then the Council can ask any questions they may have.

Walt Sholar: As far as what we did; when we started dealing with the Schroeder case in looking at the first two Ordinances, it's just very apparent that reading through them the first ones – they're getting there but there was one that was done that was an Amendment to the first one that was just frankly a mess. There's a statutorily correct way a Statute is amended for instance, the way that's done where you would go through and strikes through what is being changed and then underlines and adds what additions there are going to be and strikes through what's going to be taken away. It didn't appear that was done with that second Ordinance and I believe the one I'm talking about it the '07 Ordinance. So there are things in the first one and the second one doesn't take it away; it just adds some more stuff to it and it made it cumbersome to try to deal with. Then as Joe said the '09 compounded it even more. So after we got finished with dealing with the Schroeder case, Joe and I had talked and we were both in agreement that the Civil Service Ordinances as they stand today in Shepherdsville need to be changed. There are some things that are a little bit in conflict and a number of things that are duplicative and so forth so what we tried to do with the one that Tom and I worked on we tried to go in and draft a workable plan to carry out civil service in the City of Shepherdsville. I don't really know other than answering any detailed questions that you have; don't know what else to say. Jose' Cubero: It's been evolving a little bit. It seems like when we first started all this most of us when we got elected we went to one of the KLC meetings in E-Town. We listened to the Attorney for KLC who talked about just the vulnerability of having the civil service. Obviously he may have been specifically talking about Shepherdsville because again of the amendments to what was going on and the Civil Service Commission we had. Quite frankly he was tearing it apart right in front of us. We're just sitting there soaking up everything we can about being elected officials. So this is where it all starts. For us I get this first impression that it's like, we've got to do something about that. That's putting in on our radar "we want to fix that". My instinct was and it's not required that we have it. Only First Class has to have it, Second through Five doesn't have to have it but we have it. We just want to do what's right for the City. That's where it all goes. With the establishment of the Civil Service, good, better or indifferent, mostly bad, I'm going to say that; because of the way that they tried to build on and build on and all they've done is just made it worse. And I appreciate what you guys did. I read this, pretty standard, sounds good, it's covering all bases, I get it. So in our process we were trying to get our policies and procedures done. So we've got this one thing we want to get done and they we have this over here. So we were trying to look at it if this wasn't a requirement could we do something within our policies and procedures that you still have the first level of recourse for grievances within the City. The whole idea came out with maybe we have Councilpersons who would actually go through the process of being on the Committee to help somebody; Walt has a grievance, we meet with him first, and then go through the levels of recourses. That's kind of where this was going at first because the ultimate thing was we wanted to get our policies and procedures manual in place because we're really leaving the City wide open as far as the workplace. Now listening a little bit more, I've read this Walt, and the one thing that really stands out to me and I'm want to make sure I truly understand it. What we have in place is in place for the people who have already been hired. Anybody else that we change they would go on to whatever we did. Right? Walt Sholar: If you change. Jose' Cubero: If we change. So now with what you did here all we would do is we would keep the program in place we would just put this in place instead of the three fiascos we did. This would now be our Civil Service. Walt

Sholar: If that's adopted. Jose' Cubero: What about those other three? Walt Sholar: Those would be repealed. That Ordinance is repealing those other Ordinances or anything that is contrary to what's in that one. So if you adopt that and then you go on for a month, a week, a year, and you decide we just don't want to be fooling with this civil service business, and you repeal civil service; everybody that is a classified employee at that time, it's my opinion pursuant to the Lauderhill case is entitled to continue on with civil service protection. Now here's a question that comes to my mind. I don't believe that there is anything more onerous in the one that we've drafted and have submitted to you than what is in the '06, and '07 and '09 Ordinances. Someone could claim, that's the one I was hired under, that's the one I want. If that happens the Court is going to have to make a determination, are they giving them a less of a fair shake with this one because they are entitled to the generally speaking what they signed on for. And what anybody signed on for is subsequent to that Ordinance being adopted was civil service. Until you do change it, anybody who signed on during that interim period I believe is entitled to go forward. They have a property interest in their job and they are entitled to expect that's going to be carried out. City Attorney Wantland: This is to Councilman Cubero, what did you find negative about civil service at a KLC meeting? Gloria Taft: Everything. Dana Bischoff James: They were very very down on civil service within the City of Shepherdsville. Walt Sholar: Here's why. I wasn't there but I can tell you why. Same reason I would be down on it. Same reason Judge Burress was down on it. And that is the same reason that I generally across my career been down on policy and procedure manuals. They are wonderful. Everybody that does them though needs to think about that old saying about KISS—keep it simple sonny. Whatever. Because when we get these big thick policies and procedures as I mentioned to you last time. City Attorney Wantland: The one thing civil service really addresses very quickly is the ability of the Mayor to hire his cousin; the ability to hire his son; the ability to fire people at will. And when people say this stuff, if you've got a good guy as your Mayor, civil service might be cumbersome, might be impediment and the real thing is you're not going to use it. The problem is when you have an at will State and you have a Mayor who wants to jockey the employment situation to hire his political buddies and promise jobs and these kinds of things. This thing can get and has in our Community; and I don't know when you went to KLC but Shepherdsville had a reputation that Sherman hired a lot of people who worked for him in the election. Whether that be true or false that was one of the impressions that was out there that it was who you knew is how you got your job and your qualifications were not considered. Jose' Cubero: You can use the term "good ole boys" club. You can say that. The biggest point they made to us is that we were ripe for litigation. The way we handled things in this City we were ripe for litigation. There were two things along with the preface of bringing our City into the 21st Century, the other thing was I wanted to protect it from getting into lawsuits. City Attorney Wantland: You had three lawyers involved to really bring this back and the change was Judge Burress said I want rules. We got rules. Mr. Sholar was advising the Civil Service and another lawyer was representing the City of Shepherdsville. What I refer to there was a due process hearing. The facts were laid in while this one ripe for litigation, and when we did it the way we had been trained to do things, it went away in Circuit Court. Walt Sholar: To follow that, that case didn't go away because they just got tired. That case went away because the civil service hearing that was conducted. It was conducted properly and what those guys out of Frankfort whoever they were, talking about civil service, and ripe for litigation, they were absolutely right. We wound up in it. But what they were getting at is, and here is what is done all over this State, I've seen it, we passed an Ordinance, we do it in the legislature too, we want to fix this, pass an Ordinance, pass a Statute. But if we don't think it through and then implement what that Statute or Ordinance says to implement, which is what we had not done until that time in Shepherdsville, we passed it and said the Civil Service Commission shall institute rules of procedure. Didn't do it. I'm not here to advocate for or against civil service, I will tell you though, it works if you work it. But it has to be worked if you're going to have it or it will hang you. Jose' Cubero: Here's the other thing I want to make sure of. I want to emphasize. I don't want us to go back. This City is now moving in the right direction. It's doing all the right things; supporting the people that we need to support to take care of the community, and we're getting things in place. I do not want us to step back. Again I've made comments and I've made them publicly that we spent a lot of years serving just a few not the whole. And you can tell. You can look at things that have been in this City that maybe some of the leadership and vision, and I'm not pointing fingers, there's plenty to point, but at the same time, I try to give credit where credit is due; I think it the City is going to continue to do the things it's doing now, it's got to avoid litigation and if we do stay with civil service then that's got to be the thing that protects from two things; it has to protect us from litigation and second, it has to protect, people are going to

elect who they elect, that's the thing, if they are not going to elect the people that are going to be taking care of this City then I'm going to warrant whatever entity we take here to make sure that we protect it from not taking that wrong turn again. Tom Rosselli: Well you have a problem. And I'm going to tell you you're problem. I've been here since '76 and Mr. Wantland has been here longer than I have, and there has been a lot of finagling going on and it's been that way ever since I've been here. You have three civilians that don't have any political bounds, we don't socialize, but four people could ruin this City. Which has happened in the past. Believe me if you get a Mayor up there, and I have this in the Ordinance, the Mayor may not like this, he can't fire us, you all have to fire us. City Attorney Wantland: I want you to understand the first thing that civil service does is curb the Mayor. The next thing it does it allows the employees to have the ability to communicate more freely with the Council because they are not fearing recrimination from the Executive. It's there and finally which I will try to encourage you all to go down this road, you as a Council if you're sitting as a reviewing group as the Mayor's decisions, in employment situations, it can become extremely time consuming and it can lead you wide open to what you're trying to guard against, is some form of litigation and in litigation somebody make an assertion. It doesn't have to have any basis per se. Jose' Cubero: That's what Walt and I were talking about. You've got to execute what you put in place. It doesn't matter what nice program you have if you don't do it. City Attorney Wantland: What you've done is put a Commission there that is not political. It takes it almost like two steps away. Dana Bischoff James: So we can't be held liable for it as far as people can't look back if it's sitting in our hands and say well you didn't like that person. City Attorney Wantland: Sometimes it's the other way. You do like that person and that person has done something very egregious. There is no right or wrong answers. It's how you want to do things. Jose' Cubero: I think the thing that stands out to me about this is, this is the bike that we rode in. And we've got to fix that bike. I think there are merits to having civil service. I was trying to avoid that because I was looking at and then also too depending on, I don't know how we would progress in our Class but I didn't think that it has to be done but then, you're telling me it's permissive. City Attorney Wantland: I think it's permissive as to any new hires. I think the old hires are under civil service. Gloria Taft: When I called KLC that's what they told me. Jose' Cubero: So we're going to have two different plans. A lot of this has come out over the last couple weeks because my first instinct was we want to get the policy and procedures done, and try to put a thing in for a good work environment. But because of what we've done through the years with this program if people are on it already they are going to stay on it. That is going to make it complicated. Dana Bischoff James: To me that's the fear part to me, because as much as we've put back in emergency reserve fund, if we're all gone come the next election, then we just set the next people up for failure because the employees will know that their under civil service so as soon as they start trying to start to dismiss people that's when litigation will come and the City will take 15 steps back. City Attorney Wantland: I don't think they'll take steps back if litigation comes if they are fired for reasons other than cause. Dana Bischoff James: But knowing who is under civil service and who is not, it's sad to say but it's who comes in to this. I mean whoever sits in these seats. Gloria Taft: Trying to exist under two separate rules of law would be very trying. Dana Bischoff James: Our employees need one thing. This would be a second protection for the City. City Attorney Wantland: The way civil service protects the City and really assists the Council is when you provide a meaningful due process hearing to determine the reasons behind the employee's severance or demotion because it really cleans a lot up when people are under oath, and you have a meaningful hearing and once you have a meaningful hearing there is a lot of prohibitions for trying to get around that. Jose' Cubero: The other thing I want to do is I want to protect these people that work here in the City between the policies and civil service. Walt Sholar: Generally speaking City Council, Fiscal Court's, they can be involved in the day to day and in times past they were. They were chief cook and bottle washer, take the trash out, do everything. In some places still is, partly due to size, don't have a big enough budget. But one thing civil service helps a City do is are you going to be in operations or you going to be in planning? It's difficult to be in both. It's not impossible, but it's difficult. And if you can get away from having to hear about so and so is not doing this right or he drove the car faster than he should have, etc. then you have to have a hearing yourself to determine whether somebody is going to get canned or not or they are going to be punished or not, and it takes away from your ability to step back and look at the bigger picture and start implementing your policy, your vision of how you want to City to grow as opposed to getting caught up in the day to day of being a front line supervisor and having 6-7 front line supervisors instead of a supervisor, appeals board, and so forth, it makes it more difficult to grow. Jose' Cubero: I think we all agree we want to get this resolved and get it done. City Attorney Wantland: The question is that many

times there are allegations/assertions that may or may not be true and suddenly you are becoming the fact finder and I will continually advise this Council you do not wish to be in that position where you're having to judge whether or not a Mayor committed perjury and you have to work with him. Walt Sholar: I've spent close two 2 years now primarily doing just civil service and merit board work and it's not a cut off of litigation. What I've found is generally dealing with public employment law; it's a cottage industry all in itself and when it starts somebody gets disciplined or fired or this or that; they file the civil service appeal, they then file an unemployment appeal, they then file depending upon what their situation is, they may well file an appeal with the equal opportunity folks. Lawyers are looking at ways to generate work. But generally speaking the whole civil service board hearing, the merit board hearings, if they are done the way they are supposed to be, I'm going to try to do my darnedest to see anything I'm associated with is done properly. I don't care about the result. I just care about the proper procedure. If we get that done then ultimately we typically are successful at the tail end of all of that litigation. Gloria Taft: In your version, Section 6, Classified Service, you have some employees excluded and some employees included. Who selected these to be excluded and why? Tom Rosselli: I chose these and I had a question on a couple of them. I didn't understand what her function was and to tell you the truth I don't know what your job descriptions are. If you are a professional and have a degree in accounting, then the Mayor, if you're doing a great job, the new Mayor can keep you. If you're doing a great job as the Chief of Police, he can keep you. But the way it really goes your Department Heads, your cabinet, or your key people that you depend on and as it goes down the list, traditionally it's been with the Police and Fire Departments, on the merit system you have a personnel board, they have supervisors, it can work all kinds of ways. I put down if he was a Department Head he can either be discharged back to his old rank until this debauchery of the civil service straightened out which this tries to do. I didn't have the luxury of having the job descriptions of Treasurer, to me the Treasurer and Controller, you guys are going to have to make that decision. Dana Bischoff James: If I may interject here. That is one of the things KLC frowned upon Shepherdsville for because our Department Heads could not be selected by the Mayor. This one though does protect Chief Puckett and Chief Layne because they are technically still under the old one. Now the future of whoever comes under the new one will fall under that. This is one of the big things at the KLC at that meeting were we get a new Mayor and they can't even select their own people. That was one of the big issues. Gloria Taft: Right but that was one of the problems with Shepherdsville is when they got a new Mayor he brings in all his cronies. What I'm wondering why did you choose to go down through Major to exclude? Tom Rosselli: Because the way it usually works all over the Country captains are the highest rank that are usually feasible to keep. Anything over Captain is a political rank. Chief Puckett: For civil service you test up to the rank of Captain. You have to take a civil service test. The rank of Major, LTC and Chief are appointed ranks. That's the reason they are typically excluded from civil service protection because they are appointed. Tom Rosselli: With the Sewer Department you have to have certain prerequisites that were a nightmare. I learned a lot of what regs are and anyone that gets fined \$25,000 a day you're opening up for a lawsuit and you better make sure you have somebody in place that knows what he's doing and has credentials to carry that function out and the Mayor has his choice because he knows he's checked his background. But if he hands it to somebody who doesn't know what they are doing then he's stuck with them. City Attorney Wantland: If the Council decides they are going to pass and exclude the City Clerk and Controller from civil service for future employees, I would like for them to consider something that any City Clerk and any Controller may only be removed or hired with approval of the Council. Mayor Ellis: It says in the KRS that the Mayor appoints any of his Department Heads but they have to be approved by the Council. City Attorney Wantland: Again I hope that any future Mayor 10 years down the road or better really we never cross that bridge again. Gloria Taft: On page 7 it says that no employee covered by this Ordinance shall foster, promote, or be concerned with any actions involving political or religious controversies or prejudices while in uniform. I'm just looking for some clarification on this. Three of our officers attended the National Day of Prayer in uniform. Would that be contradictory to civil service if somebody wanted to be ugly? Tom Rosselli: If you want to rephrase that. I don't have a problem with it. We need to rephrase some other stuff in here. Gloria Taft: If John Doe ugly out there, oh well Sgt. So and so attended in uniform in his police car the National Day of Prayer and that means he's against Muslim people. Hypothetically then he's in violation of civil service. Walt Sholar: I would disagree with that. Tom Rosselli: It goes right back to the policy making by the Chief of Police if he allows them to do it or not. Dana Bischoff James: That's also a community event. Gloria Taft: It doesn't matter. When people start getting ugly and they start looking for money... City Attorney Wantland: The first

step he's going to get an inquiry from his supervisor. The public doesn't get any grounds to sue people because of this. Gloria Taft: You're misunderstanding me. I'm saying this says that they will not be concerned with any religious controversy while in uniform. Walt Sholar: Controversy. That's controversy as defined by reasonable man standards. And attending a generally accepted service is not going to qualify for that. If it were that they we had a police officer that happened to join the outfit that goes and protests military funerals and throws blood, we have a police officer or fireman join that organization and go and get involved in a protest in uniform that would qualify. If we had an officer that protested against those people in uniform, I think that would qualify. But it's the controversy and the mere attendance at a religious event in uniform I do not believe would qualify for that. The mere attendance in uniform at a political rally I do not believe would qualify. We have police officers who come to a Tea Party Event at City Park, if all they did was attend I don't believe that would qualify. We want police to be there frankly because we want it patrolled at any event. If they took the stage and spoke in uniform against the government, one party against another, that would be engaging in controversy and that's what that is going after. Dana Bischoff James: What if one of our officers led a prayer in uniform? I would like to see that there is not any room for error. Walt Sholar: Part of what you have to look at is you're dealing with people and depending on what people do. To answer your question here's what I would look at. If I were not a Christian, which I am, let's say we had a police officer that came on board that was Islamic and he's at some service that I'm at and he stands up and prays and says we pray this under the name of Allah. I'd be irritated by that. That would bother me that that uniform police officer of that government had stood up and was espousing Allah as opposed to God Almighty. That's what I think. Jose' Cubero: I think the controversy being engaged in, if you're just there I don't know. You're right Gloria anybody can do anything. Gloria Taft: I wanted to bring it up because frankly that part bothered me. Mayor Ellis: I think it would go back to how far the Mayor or Department Head wanted to push it. If we had several complaints on it, myself and the Chief would look at it and say there's no issue there, he wasn't leading a rally or protest. Something like that is just going to have to be on a step by step basis I don't think that is one of those things you can put an umbrella on an say this is the coverage on that. Tom Rosselli: That's where your judgment comes in from your supervisors. Walt Sholar: That's something that you all will have to wrestle around with and determine where you're at. You could have in there that people in the classified service cannot engage in any politics or in anything; legally that is an acceptable thing to have in there. Those are twists and turns unfortunately that things will come up as it comes up. City Attorney Wantland: As the Council ponders, the number of employees is going to continue to grow. Tom Rosselli: This is just a guide for you all; to get us out of that mess we were in. And as we phase those out it's going to take a while. Jose' Cubero: That's going to be one of the things that help me understand the magnitude of this. If we approve this we rid ourselves of the civil service but it doesn't have the old and the amendments because that's going to be important because if we approve this we put an end to our policies and procedures. If we put this in there then we rid ourselves of the fiasco of the civil service that we've had. Walt Sholar: You have a good chance of being rid of that anyway. Again the City Council adopted civil service and said here we've got it now you three go deal with it. It wasn't thought through and frankly lots and lots of legislative bodies adopt civil service and when they adopt it all they want is to provide that appeal process. They have the part in there about promotional exams and hiring and all that, but that doesn't get much attention. Jose' Cubero: I understand the history in that. I understand what was done before. Walt Sholar: So you know that's moving forward and having a set of rules, and having it set up that we are going to conduct hearings in a fair fashion. It's not just Shepherdsville. The Jones case out of another City in the County where a police officer was engaging in some personal activity and it was even before the civil service commission was established. But they had a civil service commission that held a hearing and fired him. He filed a lawsuit. The Court came back and said no you can't do that and he got his job back. That was a long time ago. City Attorney Wantland: I've been on both sides of the issue. I would strongly encourage the Council to have a due process hearing with an independent tribunal. It really makes a level playing field to another person reviewing what the City has done. Gloria Taft: Does it say in the civil service that the civil service members have to be a 5 year resident of the City? Tom Rosselli: It's spelled out in Chapter 90 and it's also spelled out in Chapter 95; if you want us to allude to that that's fine. When the City of Shepherdsville started this and I want to explain we're going to 3 year terms now instead of 1, 2, and 3 because we have that option of doing that according to law. Walt Sholar: I believe it's in KRS 90.310 what you're referring to. Tom Rosselli: That's talking about the terms. Dana Bischoff James: I would say for future generations having that spelled out would help protect us. Tom Rosselli: You have to be over 21, you have

to be a certain party, you have to be a five year resident. Gloria Taft: Unless it's spelled out in Chapter 90 or 95 that they have to be a resident it's not stated. Walt Sholar: I find it in Chapter 95.763, it says the Mayor by and with the approval of the legislative body shall appoint three citizens who have been taxpayers and voters of the City for 5 years previous to their appointment and who shall not be less than 30 years of age and who shall constitute the Civil Service Commission of said City. Said appointees shall originally be appointed for 1 year, etc. etc. Gloria Taft: That infers that they are a current resident. It just says they had to be a resident for five years and a taxpayer to the City. Walt Sholar: For the last five years. Gloria Taft: Right. So it's only inferring that they have to be a current resident. It never specifically states that. So if we want them to be a current resident it needs to be spelled out in this. Walt Sholar: You can change it any way you want to change it. Gloria Taft: I'm asking please, on page 7, section 8, commission members. Something to the effect that they must be a current resident and must remain a resident for the duration of their appointment. It doesn't say they can't move out it just says they have to have lived here for 5 years and if they're appointed and they decide to move that doesn't say that's a negative. It's inferred but it's not spelled out. Tom Rosselli: We can spell it out but to me if you're not a citizen of Shepherdsville for 5 years prior to you being on the board and while you are on the board, I would say you are cutting straws. Walt Sholar: I'll put a line in there saying only current residents will be eligible to serve. Tom Rosselli: On page 23 we're going to change Mayor to City Clerk shall be allowed a period of ten days from the date of notice ... Walt Sholar: What I'm getting at the Mayor can't but the City Clerk can't either. Under what I pointed out at the last meeting is that pursuant to KRS 95.761 is what sets out that a City of the 4th and 5th Class is authorized to adopt the provisions of KRS 90.300-90.420 governing civil service. The same as the City of the 3rd Class. Then when you go back to 90.360 sets out that no employee in the Class 5 service of a City of the 2nd or 3rd Class which we have adopted 90.360 if we go with this shall be dismissed, suspended or reduced in grade or pay or any reason except inefficiency, misconduct, insubordination, violation of law involving morale perpetude or in a City of the 3rd Class violation of any rule adopted by the City legislative body or civil service commission. Here is where we get to why this has to be changed. Section 2-any person may prefer charges in writing against any employee by filing them with the Mayor or other appointing authority who shall communicate the charges without delay to the civil service commission of the City. The charges may be signed by the person making them and must be set out clearly and must set out clearly each charge. The appointing authority shall whenever probably cause appears prefer charges against any employee whom he or she believes guilty of conduct justifying his or her removal i.e., whoever hired them, the appointing authority would probably be the Mayor, shall prefer charges when they see that they've done something inappropriate. Upon filing of charges the clerk of the civil service commission shall notify the commission's members and serve a copy of the charges upon the accused employee with a statement of the date, place and hour in which the hearing of charges will begin. The hearing not to be held within 3 days of the date of the service of charges upon the accused employee. The day on which the charges are served on the accused employee shall count as one of the days. Upon the hearing the charges shall be considered traversed and put in issue i.e. traverse meaning that they are challenged and the trial shall be limited to the issues presented by the written charges. The civil service commission shall have the power to summon and compel attendance of witnesses at all hearings by subpoena, etc. Basically what KRS 90.360 does is it puts the responsibility and the authority to discipline employees on the civil service commission. The civil service commission is who demotes them. The civil service commission is who fires them. The civil service commission is who reduces them in grade or pay, suspends them, or dismisses them, etc. Dana Bischoff James: Shouldn't that be the Department Head? Walt Sholar: KRS Section 6 the civil service commission shall punish any employee found guilty by reprimand or a suspension for any length of time not to exceed six months or by reducing the grade if the employee's classification warrants or by combining any two or more of these punishments or by dismissal. So it is my belief that based upon my reading of that Statute that the Kentucky State Legislature has said that if we adopt civil service it's not the Mayor that gets to reduce people in grade, it's not the Mayor who gets to suspend them; it has to be done by the civil service commission. Jose' Cubero: That's not what I wanted with it. Gloria Taft: That's what we've got currently. Dana Bischoff James: Is there a way to put it where it starts with the Department Heads because I feel like that takes away from their authority. City Attorney Wantland: The Mayor or Department Heads are going to bring the charges. Tom Rosselli: They bring the charges and make the recommendations. The way I read it we can't go over their recommendations. Walt Sholar: I think you're mistaken in that. My belief as to what that Statute says and that's what the Ordinance that you have right now is doing. The Ordinance that is in

place right now conflicts with KRS 90.360. Dana Bischoff James: But we can have stricter laws correct? Walt Sholar: I do not believe that the City can ignore that Statute lawfully. City Attorney Wantland: Department Heads or the Mayor are going to be the ones preferring charges and recommendations. The Mayor is going to make the recommendation to the commission and the commission is basically going to accept or reject that recommendation. Dana Bischoff James: But it has to go through just from reading that. The Department Heads have to be the ones to make that recommendation and then it goes. Walt Sholar: That is contrary to State law. That's what I'm saying has to be changed. That's after I read KRS 90.360 if you recall last meeting I said I think that we need to change 36 as I wrote it because in my review of KRS 90.360 it's contrary to that Statute. Jose' Cubero: So we're going to have civil service firing people? Walt Sholar: Civil service is who would fire people. Gloria Taft: Based on the recommendation of the Mayor and Department Head yes. Dana Bischoff James: It all starts within their departments. City Attorney Wantland: There is going to be writings prepared by the Mayor and/or the Department Head. Jose' Cubero: What I really wanted was the civil service to investigate if there's a charge brought up and somebody appeals it. City Attorney Wantland: The Executive branch of City government will be the one to investigate and carries the burden of proof that something was done. Walt Sholar: An example. I work for the City and under this let's say I'm a police officer and I decide to go on a run with just my blue lights going. On that run I crash into somebody at the intersection of Conestoga Parkway and Highway 44. I've not gone Code 3. I just had my blue lights on. Clear violation of policy, clear violation of State law etc. etc. The Chief under that would need to prefer charges against me if he wanted me disciplined for that under KRS 90.360 as I read it he would have to prefer charges against me, the civil service commission would then receive those charges and the civil service commission would serve me with the charging document. The civil service commission would then conduct a hearing to determine if what the Chief has said I did, actually happened and the civil service commission would inflict whatever penalty and punishment they determined was appropriate. City Attorney Wantland: I'm trying to tell you it does work. It works better than the Mayor walking in and saying you just didn't work hard enough for me in this last election, I don't need you anymore. Jose' Cubero: I get that and they whole idea but because that decision was made the civil service judges that decision and decides if all is in there if there's no proof the proof is still back on the Mayor to get rid of that person for right reasons. Walt Sholar: That isn't the way it works. That's the way it works in Jefferson County, the City of Louisville. The City of Louisville is a 1st Class City and the rules for 1st Class City as you may recall at the last meeting I said I made that mistake. I was drafting this for two reasons; one, that's the system I'm used to working with; number two, that is what is in that old Ordinance but that old Ordinance is contrary to KRS 90.360 and with the civil service that we have today if it comes along and I'm working for the City and the Chief or the Mayor comes up and says I'm giving you 3 days off or I'm giving you a month off or I'm suspending you, I'm firing you, and there's no hearing. I'm not talking about an appeal hearing, I'm talking about a KRS 90.360 hearing, I'm going to be saying hey hold on, Judge Burress this Statute says the City is going to do it this way; how they've got an Ordinance that says they are not, but which trumps which. The Ordinance or the Statute? I think I'm going to be successful. Gloria Taft: State always trumps the City. City Clerk Richmond: Before it went from the Department Head to the Mayor; from the Mayor to the Commission. Now it's taking the Mayor totally out of it, right? Walt Sholar: KRS 90.360 takes the Mayor completely out of it other than the Mayor has authority to prefer charges just like the Chief does or so forth. Dana Bischoff James: I know you've worked with the City of Louisville does it hold people accountable or; can I get the two Chiefs take on this? Chief Puckett: I come from the system that Walt's talking about where it's all done within the Police Department. Gloria Taft: That's exactly not what civil service does? Chief Puckett: In a City of the 1st Class it did. Anything less than ten days wasn't even appealable. Walt Sholar: That's exactly how it works in Louisville. Chief Puckett: Let me ask you this, when you're talking about discipline, are we talking about discipline just for suspension dates or are we talking about any kind of discipline? Gloria Taft: Any type. Walt Sholar: What I'm reading says a reprimand, so just giving them a reprimand, that's the civil service commission. This Statute takes that away from the Mayor. Gloria Taft: That's why Shepherdsville is the red headed step child of the State because our City Ordinance violates Kentucky State Law. This Ordinance violates State Law which is why they tried to change it twice and made it worse. But our current employees are still going to be held underneath this regardless of what we do. Walt Sholar: That's not correct. Gloria Taft: According to the Kentucky League of Cities. Walt Sholar: I don't care, the Kentucky League of Cities is wrong if they are saying that. Faith Portman: They won't be grandfathered in. Gloria Taft: Even Tom said the old employees would be grandfathered in. Walt Sholar: I don't know, I will

tell you what I believe based on my experience and my legal education and my legal experience, they will not be because you cannot hold a City employee to task under an illegal Ordinance. City Attorney Wantland: I think the Statute we're going to be working under primarily at this juncture as a 4th Class City will be 95.765. Walt Sholar: But 95.765 merely says that you can adopt the same civil service that you have under 90.360. The Ordinances that you have if I recall them correctly cite KRS Chapter 90 and so forth and that's why you are under that but somebody didn't read KRS 90.360 when they wrote it. City Attorney Wantland: Any person can bring charges and that includes the Council, Mayor, or anybody else; communicate the charges to the civil service commission. Gloria Taft: I as a Council person do not want to remove the power from my Department Heads to discipline their own employees with a proper procedure manual that has been followed to the letter. I want them to make the decisions. Jose' Cubero: After you read that Walt that really puts a lot of authority in their hands. Ideally what I'd like to have is a Board that reviews the action of the folks up here because we want it to be if it's all followed you can't let somebody go. Walt Sholar: Here's the problem I think you are going to run into. If you do nothing or if you take and establish by some separate Ordinance that you're going to just provide an appeal process, you can do that, the City of Lebanon Junction decides it wants to do it, I think they can because they never touched civil service. The City of Shepherdsville adopted civil service. If I am correct and KRS 90.360 if you're stuck with that because the legislature said you are if you adopt civil service. Jose' Cubero: Are you basically telling us we've got civil service, we're going to keep civil service? Walt Sholar: Generally speaking when you adopt civil service you can't take it away from the folks that are already under it. The Lauderhill case says that when you adopt civil service and I hire in under that civil service you can't just decide next year that you don't like it and get rid of it; then tell me you're back to this new rule of how we deal with employees that says they get to operate under that old system. The problem with the old civil service system is that if 90.360 says that you must discipline them in this fashion if you have civil service then you can't have an Ordinance that says no we isn't doing it that way. Gloria Taft: How did Louisville do it? Walt Sholar: Louisville operates under the Statute that deals with 1st Class cities. Louisville also operates under KRS 67C which sets up a police merit board and the police merit board is very specific and sets out that the Chief of the Police Department inflicts discipline and an officer has x period of time to file an appeal and they can appeal the Chief's actions. Gloria Taft: Is that only specifically for the police? Walt Sholar: For the police merit board, yes ma'am. The other city agencies in Louisville operate under the Louisville civil service commission which is under 1st Class cities and so forth. Dana Bischoff James: I really want to hear from our two Chiefs as well. I want your input because I think that's going to be where it matters because this is dealing with you all and your people and you all are very much more familiar with this than what we are. Chief Troutman: Actually from what Walt is saying I don't think it matters what we say right now because it's going to be totally up to the City and from what I'm gathering from him once the civil service has been adopted it's here. There's no way to get right? Walt Sholar: The only way I know to get rid of it is you can take in an arm's length transaction you can take and have the employees that are under it agree to come out from under it but you can't shove it down their throat. Chief Puckett: The thing I see is it's going to put a lot of work on the civil service commission. Tom Rosselli: You're right it is, do you think I want that, no. I'm just trying to straighten out a nightmare that was given to me. I promise you can do whatever you want with this thing! Chief Troutman: It would almost put the civil service to have to meet at least once a month. City Attorney Wantland: It encourages Department Heads to put things in writing. In the past it's been having evaluations and having documentation in files has been very lacking so it puts Department Heads on their toes. Jose' Cubero: That was the whole idea when we talked about it that we've got a program in place that if you do it right, somebody that has a track record of being documented for disciplinary action is not going to win his case. Chief Puckett: I've done that all along. I've always documented and we had one case where I gave a person 30 days suspension and it held up other than that I think the civil service commission decided to give him 7 days back for whatever reason. But we had everything documented. City Attorney Wantland: And we had a civil service hearing over a wastewater treatment operator who was drinking on the job and there wasn't a thing in his file that said he was drinking in the City plant on the clock. Gloria Taft: That's when the Mayor needs to write the Department Head up and there needs to be accountability. Dana Bischoff James: So you all are used to this. This makes sense to you then? Chief Puckett: I don't have a problem with it. I don't mind documenting. The thing is going to be that the civil service commission is going to have to meet a lot more than they do now. City Attorney Wantland: Everybody is going to have to do writings and the writings transmitted to the commission for review. Chief Troutman: The way I looked at it

was the civil service would have to say once a month on this night we're going to meet regardless; if you all have anything that has come up bring it to this meeting. There may be emergency situations where you have to have something done immediately like to suspend someone to have the hearing then. Tom Rosselli: That's where you have a hard time. I had a headache getting hold of these three guys at one time and that's why I finally cleared it through the people on now that we will meet once a month unless there is no business. The clerk will advise us if there's any business for the month. So we don't have a meeting. But if we have business you all have to tell her what the business is and she has to tell us on the Tuesday because it's spelled out in here we will have meeting on the third Tuesday of the month. That's when we're going to have a hearing on any ... But on a trial scenario all bets are off. I thought it was ten days but Walt says it's 3 days. Walt Sholar: 90.360 says three days. 95.761 will authorize 4th and 5th Class cities to adopt civil service for their police and fire departments not any other department in the City. Shepherdsville did not do that. Shepherdsville adopted civil service city-wide and that had to have been done by adopting the 90.300-90 whatever that is authorized by Statute but that brings along with it I believe 90.360 and it gives a little leeway in subsection 5 of that in cases where the head of the department or the appointing authority has probably cause to believe an employee has been guilty of conduct justifying removal or punishment he shall immediately suspend that employee from both duty, pay and duty, pending trial of the employee shall not be placed on duty or allowed pay thereafter until the charges are heard by the civil service commission. Dana Bischoff James: So that puts in back on the Department Head? Walt Sholar: If I'm a City police officer and I rob a bank, they can fire me that day. They can suspend me that day but I'm entitled to my hearing in addition to my trial for the bank robbery I'm also entitled to a hearing on whether that violates the civil policy. Dana Bischoff James: That's makes me feel a lot better because I was concerned. Gloria Taft: That's only in drastic measures. Walt Sholar: That's only in drastic measures. That's not for if I talk foully to the Chief. He has to just prefer charges to the civil service commission. Dana Bischoff James: That still has to take place within 3 days where something has to be done, documentation; now it can be sooner correct? It doesn't have to wait for 3 days? Walt Sholar: It has to wait a little bit; it can't be hardly sooner because they have to give notice to the employee. It tightens it all up. There's some language in there that indicates that it has to be done very quickly. The employee can demand that it be very quick maybe within three days. 90.360 in my opinion is quite erroneous with regard to the commission; it ties them up tight, time wise. Chief Puckett: You've got the Police Officer's Bill of Rights you have in there too, that's 48 hours you lose. Tom Rosselli: We have to have at least 24 hours to give notice that we're going to have a meeting on such and such a day and what for. City Attorney Wantland: Generally speaking the employee has the right for an open or closed meeting. The notice to the press is pretty easy. If the Department Head wants to let someone go because of behavior that has to be done in pretty much a face to face manner and the person has to be advised to what the conduct is. I will tell you the Department Head needs to be with the Mayor or Clerk and advise them of the behavior and either be suspended or terminated. That would be in some form of the person having a right to respond. It doesn't have to be under oath, you don't have the right to cross examine but you have to have almost a pre hearing hearing. Chief Puckett: You could still suspend somebody with pay and suspend their powers right? City Attorney Wantland: You don't suspend them with pay you suspend them without pay. You just have to advise them of what you're doing face to face and then document it in writing. Then they can go to the commission. Then turn your paperwork in to the commission and they can review it. The employee has to have a right to notice of the termination. Gloria Taft: But they can suspend employee but then they have to start the commission at work because the commission is the one who has the final say in whether the suspension is carried out or any further action because they felt that the employee robbing the bank is necessary that they shouldn't come back to work but the commission is the one that carrier the power whether that employee gets to come back to work or not. City Attorney Wantland: The commission may have the absolute finality. Gloria Taft: It's not the employee who goes to the commission though; the department head has to start the commission. City Attorney Wantland: In the meantime what I call is perfunctory is there is not going to be much response. Walt Sholar: Here is where that reference is going to meet the road. It's not going to be the bank robbery, it's going to be when Joe or Sally employee is late. They are told to quit being late. They come in late again. Does the department head have authority to demote them, to punish them, to give them a reprimand? Gloria Taft: No. Not under civil service. Walt Sholar: Under KRS 90.360 they don't. They have to prefer that charge to the civil service commission. Jose' Cubero: We are holding these department heads accountable for these people. What I would like not to be the enforcer but a watch dog or oversight because what happens is if I'm responsible

for my staff, my due diligence is that I go through the process of documenting everything. If I fire you after 7 documentations and we've gone through all the lists and I've suspended you then what should happen is I made that decision then the committee should be able to say Jose' you did a good job you're gone. Gloria Taft: No that's not right, the statute says different. Jose' Cubero: I give all the information to the commission and he gets to make the decision. I get to make it, I'm responsible for those individuals. Gloria Taft: Not according to KRS 90.360. Jose' Cubero: Not according to that Statute. To effectively run it you have to have the individual that's accountable for these people; they understand their roles. If they don't do it right they are the ones. What could happen let's say I don't handle you right then the commission says hey not only do we believe that person is not justified to be terminated but we're also going to recommend the Mayor look at what the department head did and then the Mayor can say you didn't go a good job you're suspended. Then the commission is going to look at that one and say will that's right. Dana Bischoff James: This is my thing though, that can happen not only with whoever is in that commission seat but it also can happen with whoever is the Chief or in that position because if you get somebody such as the situation where they are not documenting it doesn't matter how many times an employee messes up if they not documenting it nothing is ever going to happen. There's a three person who is holding them accountable and that's where we get to choose because like you said if he's doing a crappy job and he's not doing what they need done for the City we have the right to dismiss them. Mayor Ellis: The only thing that concerns me is that you'll have employees looking at it going you know what Chief, you can't fire me, Mayor you can't fire me, I'll whatever I want to do. Walt Sholar: It puts a delay process in it like many other things. That's what it does and if a department head is not serious enough about bringing that then they are not serious about bringing it. City Attorney Wantland: The police already have this protection. Jose' Cubero: We adopted a city wide Ordinance for all our employees. Dana Bischoff James: I want to hear from Layne because I agree the police have a police officer's bill of rights. I want to hear from Layne how do you feel about the civil service? Chief Troutman: There are pros and cons to the entire civil service the way it's written here. For instance somebody being tardy or little things that can go on that you would write somebody up for. I can document that and write it up and have that in a file and after I get three or four incidents say I've got all these incidents now I'm going to present this to the civil service and see how they want to handle this. Then I can present all those incidents at one time and say here you go, this is what's been going on with this employee how do you want to handle this? Gloria Taft: You have to present it with my recommendation for punishment is ... and spell it out. They can say yay or nay but you still have to say within, because we're still going to have our procedures manual. Chief Troutman: Then I say how would you all like me to pursue this? Jose' Cubero: It says it in there. It says exactly how to do it in the policies and procedures manual. It tells exactly the steps to follow. So we're going to put this in place but though we're not going to do this, our manual says this is what we're going to do, but we're not going to do that because we have to go to the commission and if we do that, Statute says we let them make the decision. Gloria Taft: Now you know why there's a mess. Chief Puckett: What are you going to do about progressive discipline from a verbal to a written. Gloria Taft: It can't. The progressive thing goes out the window and civil service takes over. Walt Sholar. It won't go out the window it would still wind up being, if I'm late one day and the civil service commission says okay you're out of there, I would be filing a progressive discipline case because me appeal from that would be to the Circuit Court and when I got to Circuit Court I would say man they never gave me a chance to get straightened up, what happened to progressive discipline? Gloria Taft: You can't have both. You can't say we're going to have all these steps and then oh the Chief can't do anything about it, we're going to have to send you over here to the commission. Chief Puckett: A verbal, would that be subject to civil service? Walt Sholar: In order to reprimand an employee according to that Statute you have to take it to the civil service commission. Chief Puckett: Okay let's go one step further then, let's say an officer violates the police of speeding in his police car when he's off duty. I decide to take his car away from his for 30 days. Can I do that? Walt Sholar: You have to have the civil service commission do it. Mayor Ellis: I don't agree with that. Gloria Taft: That's what you're supposed to be living under right now. You guys have the two biggest departments; can we get your department employees to sign off of civil service? Dana Bischoff James: Layne I understand civil service protects the fire department and they are not going to sign off on civil service. Do you think that they would sign off on KRS 90.360 where it puts authority back in your hands versus civil service? Would they sign off on that because then if every employee signed off on that where it goes back to the department head. Gloria Taft: I don't think you can do that because it's a State Statute. Dana Bischoff James: I would think they would trust Layne more than three people they may or

may not know. Gloria Taft: You're asking them to give up State law. You can't do that. City Attorney Wantland: I think you all collectively thinking you are going to have more problems than what you are really going to have. I really do believe it's going to put more on the department heads and the Mayor to make sure that there is documentation in the file. I don't see the civil service not following the recommendation if the documentation is there. Jose' Cubero: That's not what it states though. It didn't say follow recommendation basically they make the decision. Walt Sholar: They should not make it in a vacuum. Dana Bischoff James: If they do we can dismiss them. Walt Sholar: The department head will have the ability to make the recommendation. Faith Portman: The department head is going to make a recommendation to the civil service. Walt Sholar: The civil service commission is not required to adopt his recommendation. Gloria Taft: Civil service has the power to discipline, period. Walt Sholar: And if they were to tell them he has to follow his recommendation then you may as well not have civil service. The whole idea is for an independent body that is not tied in politically or labor relation wise to be make decisions. Jose' Cubero: The Statute doesn't make any sense to me because we're trying to hold people accountable for their folks. I can see if they go out of their way to do things not in the policies and procedures or the State or Federal guidelines as far as work employment. I don't understand that. I wanted oversight. City Attorney Wantland: Part of this vacuum this Statute, this whole arena is developed on the idea we live in Kentucky where political suffrage of employment has been unbelievably politicized for year and year and years. Now they are trying to say you're not going to have police with business cards working for the Mayor to get him re-elected. Jose' Cubero: That's an overreach on that Statute. Walt Sholar: The whole legislative intent is to take the employment of public employees out of the elected and appointed people's hands and put it in a body right down the line. They decide who gets hired objectively through testing and they decide who gets punished based upon evidence that's presented to them and that's what the legislature has set up. Dana Bischoff James: This is another area where I can see it being an actual benefit. After these guys retire or move to Florida or do whatever you want, the Mayor to come whether it is you or a future Mayor gets to appoint who he wants in there. So then if the Mayor says hey I don't like that officer for that firefighter get them out, that's where the corruption comes in is because then it still comes down the funnel and it puts it where it makes it fair. Gloria Taft: You still have to have documentation. City Attorney Wantland: Let's look at it the other way, I like that guy working for me and he's out there washing my car on Sunday, he's delivering my business cards on Tuesday, he's campaigning every other day. That's what they are trying to get out of. It's really taking the Mayor out of that equation and this Mayor is okay with that I think. Mayor Ellis: No. If I've got a Sergeant that likes to over sleep and I want to demote him I should have the authority to demote him without this man telling me I can or can't. City Attorney Wantland: Unfortunately he's got a bill of rights already that precludes you from doing that with him saying I want a hearing. Gloria Taft: Let's move to a wastewater treatment man who's sleeping on the job. You still have to have documentation. Mayor Ellis: We document and document and document then I have to rely on this guy to tell me if I can demote him or not. I think a guy that's oversleeping and being tardy doesn't need to be a Sergeant on this Fire Department. Gloria Taft: And if he's friends with the employee then the employee gets to stay here so you still have the possibility of corruption. Chief Troutman: From just hearing what was presented to the Council tonight, Chapter 90.360 and if basically we've already adopted civil service it's something we're pretty much stuck with unless the employees decide to come out from underneath of it, which is not going to happen, it sound like that we need to adhere to it and try to accept it and move forward with it. Walt Sholar: Or not and here's why I say that. In the mid-1990s Governor Zell Miller from Georgia advocated and the State of Georgia legislature determined they were going to do away with civil service in Georgia. They had it for x number of years and they found it cumbersome. They didn't like it. They wanted the department heads to be able to give out discipline and so forth. So they changed and they did way, repealed Georgia's civil service law and replaced it with a different law that authorized department heads and so forth in that State government to implement punishment, discipline, and so forth. But it did not affect all the employees that were employed on the day before they passed that. They continued under civil service and as they have retired and left their employment for whatever reason, more and more people are now not under civil service. Layne is absolutely right in that you've got civil service today and I by no means know how they would react to it but there is a strong argument that the methodology that the civil service ordinance that is in place today is in conflict with KRS 90.360. Jose' Cubero: There's no question what we've been doing here is really wrong. We've got that part. Dana Bischoff James: I want to ask Layne another question. Just the employees knowing that civil service was voted out what would that do to their morale and towards the

Council as well. Chief Troutman: You have some that really wouldn't care one way or the other because they really don't understand what civil service does for them speaking for the fire side of it because the police are totally different, they have the police officer's bill of rights. Other than the civil service a firefighter is an at will employee and that the only protection a firefighter has is the civil service. Gloria Taft: But if we replaced it with the strong manual, with the real strong employee based procedures. Chief Troutman: Just from the ones who went to the meeting on the employee handbook there are a few that understand about civil service and they understand about the employee handbook, they are completely against the employee handbook and want civil service to stay. Gloria Taft: What's the percentage of your employees? Chief Troutman: I would have to poll them. Gloria Taft: Would you do that for me and let me know please? Dana Bischoff James: Even though it wouldn't attack them I still feel like they would feel like we just built them up, we gave them these great things, we're doing great things but now we're snagging out from them, especially the fire because that is their only protection. The civil service is the only thing that protects the fire department. And I feel like we should even educate them so that whenever these meetings start taking place they need to be here so that they understand it. Chief Troutman: I'll throw this out. I told the Mayor and I've told some of you before. That's where I feel that the City should have one person hired in; we need someone that does HR services, that knows the civil service, they know all the HR stuff, they can teach classes on sexual harassment, they can go over your health benefits, everything to do with their employment here. They understand all that and that's all their job is; if an employee or department head has a question about it they can call that one person up and that one person can tell them everything about City policies. We go by City policy, department policy and civil service right now. It's hard to keep up with all that plus all their benefits. It's a lot. Tom Rosselli: We had many many meetings on the procedure of hiring, testing, what to do in each department. Some departments want to be lax on the testing because you know you don't need a rocket scientist to cut grass. There are certain prerequisites, read, write. That's where I'm coming from and in there it does have system where if their comfortable with it and we okay it, their fine. If you want to have certain procedures in testing you present the test; the sewer department made up their own test because it pertained to them; I don't know anything about the sewer department. Faith Portman: That's how it should be. City Attorney Wantland: That's what they've been doing, hiring people who have achieved well on the test. Walt Sholar: A person such as what Layne was talking about they are going to be wearing two or three different hats as well. In Louisville for instance we have a Chief Examiner for the civil service commission and merit board, he has a degree and there are several other people that work throughout that department over in HR that have degrees in industrial occupational psychology. That has to do with developing tests for employment and so forth. But the City of Louisville has 5000 employees. Jose' Cubero: That's not apples to apples. I'm not saying that in the growth of our City that's not a bad suggestion but I'm just going to say this. After reading that Statute we need to get something resolved. We just can't keep doing this and keep going on and on. We need to resolve the manual. We need to resolve the civil service and I'm just going to say this. I was very open minded to the civil service. I think that Statute gives it a lot more authority than I want but I will say this, my goal is still to protect the City. So as long as that's still my principle thought here is I would still like to challenge every department head that you come with a recommendation, you don't just take all the evidence on an employee and you give it to them and let them decide. I challenge every department head that you go and you tell them what you want done and that's what I'm going to watch. I'm going to watch what you do and I'm going to watch what he does and if you do everything you're supposed to do then he should concur with that. If you don't then he's going to undo what you did. That's the problem I have with that Statute. I think it's too much of an enforcer and not much more of an oversight because you're right, politics especially in Kentucky has shown that's why we are where we are because of the politics and some of the things we've done and our results speak for themselves. I can speak on different categories. My frustration is that we've got to resolve it and I do not want if we already have a civil service that I didn't put in place but I'm responsible to the taxpayers now, then we've got to make something work with the civil service and put it in there but I still like to challenge my department heads to put the information out there. When you want to let somebody go and you want to suspend somebody as long as you have it together I would expect this civil service and that's what I'll be watching for that they concur with that. That's all I want. Mayor Ellis: What about the Mayor-Council plan because the KRS Mayor-Council plan it strictly says in there that hiring and firing authority is the Mayor and that is it. No civil service commission. It strictly is on the Mayor for hiring and firing. City Attorney Wantland: You're the one who hires from the suggestions made. Mayor Ellis: But I can't fire somebody, demote them or anything

else unless he tells them to. City Attorney Wantland: You can still sign the termination statement. Mayor Ellis: If somebody is speeding 90 mph down the road he says fire him because he doesn't like him; I'm saying the guy just sped one time, I don't want to fire him. But I have to go with what they said. Dana Bischoff James: I like the idea of it being a group decision because then it takes out the tyrannical aspect. Walt Sholar: Mayor you spoke about Mayor-Council, when the City Council adopts civil service it takes that out of play. You would refer charges. File it with the civil service commission, the employee would be informed that charges had been preferred and they would be entitled to a hearing. Gloria Taft: Right now he have progressive in the policy and procedures manual. If we want to go with civil service or we feel like we have to go with civil service we have to tell Mitch to put civil service in here. Jose' Cubero: And we have to take the proposal that he has and put it in there. Chief Puckett: The only thing this is going to do, like the Mayor said, we got a complaint that an officer was speeding on the expressway, and he's off duty. We find out who did it so we come in and say I want to take his car away from him for a certain period of time. I've got to write all this up then I've got to go to the civil service and give it to them and they say yeah go on and take his car away from his. Gloria Taft: They have to have a hearing. You have to notify the employee then they have to have a hearing. City Attorney Wantland: The employee has to ask for the hearing. Chief Troutman: If they employee accepts the punishment there's no hearing he just accepts it and goes on. Gloria Taft: You can't give out punishment. The commission has too. Chief Puckett: The punishment is given out they've got 10 days to appeal it according to what we've got in play now. Dana Bischoff James: If they are guilty they are not going to continue without pay. They are not going to and keep appealing it without pay. Gloria Taft: They might because if they win they get all their pay back if they take it to a high enough court. Dana Bischoff James: Each case will find its way to the correct court. Walt Sholar: Let me suggest that you guys and you might make note here, paragraph 2 of 90.360 says: upon the filing of charges the Clerk of the civil service commission shall notify its members and serve a copy of the charges upon the accuse employee with a statement of the date, place and hour in which the hearing of charges will begin. This hearing not to be held within 3 days of the date of the service of the charges upon the accused employee. So the clerk of the civil service commission would notify the civil service commission members and would serve upon the employee going 90 mph a copy of the charges. They would set a date which can't be within 3 days of the date that the charges are brought and they would hold a hearing. Jose' Cubero: So between the dates you actually get served plus the 3 days. Walt Sholar: The day on which the charges are served on the accused shall count as one of the days of notice. So serving today, you could hold the hearing on Thursday. The person accused may in writing waive the service of charges and demand a trial within 3 days after they have been filed with the clerk of the civil service commission. Upon the hearing, the charges shall be considered traverse. That means that at the hearing they are considered denied (that the employee is denied) and put in issue and the trial shall be limited to the issued presented by the written charges. So at that hearing about 90 mph if somebody wanted to also claim that I didn't turn my blue lights on or my siren, or they wanted to complain that I'm late also, they can't do that, they can only talk about the 90 mph business. But the civil service commission has to hold a hearing as requested. If you had somebody that was just brazenly violated the law and putting life safety issues in play that would qualify as authority to dismiss them immediately and therefor the department head would have the authority to take that action pursuant to that Statute. City Attorney Wantland: Suspend them without pay pending a hearing. Gloria Taft: There again you're looking at a lot of grey area because it puts on one human individual is this or isn't this going to quality as egregious. Some people may think that being tardy for the fifth time is egregious. Walt Sholar: That grey area you're living with in whatever we do because the Mayor is the one what gets to make the decision as putting on one individual the determination to be made as to whether it's egregious. It's still subject to be reviewed. Jose' Cubero: I'm understand then by reading that Statute is that in exceptional cases they can do something right away and we're not going to have 50 of those case. All I'm asking is what I presented earlier, am I asking anything unfair? Chief Puckett: I have a lot of written reprimands. Jose' Cubero: Our concern was this process. As long as you said in the exception ... Walt Sholar: Section 5: In cases where the head of the department or appointing authority has probable cause to believe an employee has been guilty of conduct justifying his removal or punishment, he shall immediately suspend that employee from duty or from pay or from both pay and duty pending trial and the employee shall not be placed on duty or allowed pay thereafter until the charges are heard by the civil service commission. Dana Bischoff James: That's not just extreme circumstances then. You all can dismiss without pay anything that needs to be addressed. That makes me feel a lot better. Jose' Cubero: As long as I know they have the

right to do that at that point. Walt Sholar: This is also where aggressive discipline comes in. Jose' Cubero: After you read Section 5 that reassured me that if an immediate decision has to be made it can be made and then it will be left to the hearing and I trust these guys to make that decision when it is needed to be made. Walt Sholar: It doesn't require exigent circumstances; if I'm late, just late, or I don't show up for work for a week, the department head if they have reasonable grounds to believe that I've committed conduct or engaged in conduct that would subject me to being fired, they can suspend me without pay. Jose' Cubero: I very comfortable with that. As long as they have the right to do that. Chief Puckett: What if it doesn't rise to that level of suspension? Gloria Taft: Then you have to submit all your written reprimands. Chief Puckett: I have a guy speeding out there am I going to have to wait until we go through the hearing with the commission to give me the blessing to take that car from that officer or can I take that car away from that officer pending an investigation? Gloria Taft: That is stuff that is going to have to be directly outlined in your procedure manual because you can't treat every officer differently. Dana Bischoff James: Paragraph 5 says discipline. Jose' Cubero: Again that's jeopardizing the public. Gloria Taft: But he's got to treat every officer the same if it's not outlined in your procedure manual he has the right to treat everybody differently. Which is wrong. What are we going to do? Jose' Cubero: Chief I know in your department you have a lot of hoops to jump through, but I think because the due diligence you put towards documentation I think that you could bring a case. If you make a quick judgment on something like that then you make the judgment. Chief Puckett: But evidently I can't make that judgment unless it's going to be possibly suspension then. Right? Everyone answered yes. Walt Sholar: It says in paragraph 5 conduct justifying his removal or punishment. But it doesn't say that you can exact whatever punishment you determine. It says that he shall immediately suspend that employee from duty or from both pay and duty pending trial and the employee shall not be placed on duty. You can take them off duty, you can suspend them but you couldn't just take the car away. Chief Puckett is right that's in my mind the most ornery portion of it is it has the potential of turning the civil service commission into a very busy busy part time or full time job. Gloria Taft: We either stick with it or we stop it and go with the progressive and we're dealing with two sets of rules that will probably never end. City Attorney Wantland: Based on 30 some odd years of experience I will tell you that employment issues are dealt better with almost any other conceivable way other than the Council. Jose' Cubero: We need to decide; I don't want to do civil service and then a new plan that just isn't going to work either. Gloria Taft: I agree. Jose' Cubero: So do we agree if we look at the civil service and Tom I know you're going to tweak it, I don't want to have 3 more meetings. Walt Sholar: This policy manual that you have, in looking at it over the last week it did not look to me as though it's a we either have this or we have civil service. Jose' Cubero: It was in it. Gloria Taft: The last one we got has civil service completely removed. Walt Sholar: There is nothing about civil service in there buy you can have that and add civil service in there. Jose' Cubero: That's what we're saying. We're going to have you and Tom just tweak whatever you need on the proposal you gave us and then make sure we get that back as quick as we can. Gloria Taft: We continue with civil service with the newly written Ordinance and have the newly written Ordinance of Civil Service added into the policy and procedure manual. Mayor Ellis: You can't add it to the policy and procedure Ordinance until you have two readings and vote on. Jose' Cubero: So on June 10th we're going to have the 1st reading of the new and improved version of the civil service ordinance. Gloria Taft: Right now we have something out there that repeals civil service so we're going to have to kill that first. Mayor Ellis: That has to be done at a regular meeting. City Clerk Richmond: You can repeal the older civil service ordinances and have the first reading of the new version on June 10th.

Gloria Taft made motion to adjourn. Jose' Cubero 2nd.

Meeting adjourned at 8:47 p.m.

R. Scott Ellis III, Mayor

Attest:

Tammy Richmond, City Clerk