

# *CITY OF FORT LAUDERDALE*

## OFFICE OF THE CITY AUDITOR

### *Interim Chief of Police Eligibility*

*Report #20/21-01*

February 1, 2021



## Memorandum

Memo No: 20/21-02

Date: February 1, 2021

To: Honorable Mayor and Commissioners

From: John Herbst, CPA, CGFO, CGMA  
City Auditor

Re: Interim Chief of Police Eligibility

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The City Auditor's Office (CAO) received several expressions of concern related to the appointment of the current Interim Chief of Police, specifically related to nepotism.

The Interim Chief was appointed in July 2020 to maintain continuity of operations while a search was to be conducted to find a permanent replacement to head our Police Department (PD). The Interim Chief has several family members presently serving within her chain of command in PD, including spouse, sister-in-law, and spouse's first cousin.

This scenario is addressed within the City's Code of Ordinances, Sec. 2-43. - Restrictions on employment of relatives.

### **CONCLUSION**

Based on the City Attorney's determination (as described in more detail below) that the appointment of the Interim Chief is not in conflict with the City's Code of Ordinances (City Code) or Florida Statutes it is our conclusion that the issue should be considered closed at this time.

In addition, as described in the Management Response (attached), the City Manager has proposed to retain an outside firm with a view towards hiring an external Interim Chief of Police with the stated intent of not being a candidate for the permanent position. This will likely lead to a larger and more diverse pool of candidates, both internally and externally for the position. We strongly support this approach.

### **RECOMMENDATION**

It is standard HR practice within most mature organizations to have robust policies in place that address nepotism to avoid both the appearance and actuality of favoritism and conflicts of interest towards family members. Those issues can cause both liability and morale issues within organizations when they go unaddressed.

*In recognition of the ambiguity within the City Code regarding the difference between individuals that are promoted from within versus those who are hired externally we recommend that the City Commission direct the City Manager to develop a more comprehensive nepotism policy.*

## **BACKGROUND**

There are two governing legal standards in place that address the issues of employment of relatives. The first is the City's Code of Ordinances and the second is Florida Statutes.

### **CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA**

#### **Sec. 2-43. - Restrictions on employment of relatives.**

(a) In this section, unless the context clearly requires otherwise, the following words and phrases shall have the meanings herein ascribed to them:

(1) *Appointing authority* means any officer or employee of the city in whom is vested the authority by law, rule or regulation or to whom the authority has been delegated to appoint, employ, promote or advance individuals or to recommend individuals for appointment, employment, promotion or advancement in connection with employment by the city.

(2) *City official or employee* means any officer or employee of the city and specifically including every person engaged in any employment relationship with the city under any appointment or contract of hire, whether express or implied, oral or written, for remuneration and including all full-time, part-time, seasonal, permanent and temporary employees. Notwithstanding the provisions of subsections (e) and (g) of this section, the city manager may authorize temporary employment of individuals for any continuous period of four (4) months and assign those individuals to a department in which a relative of such individual is serving, which relative is related to such individual within the degrees of relationship as set forth in paragraph (a)(3) of this subsection.

(3) *Relative* means any individual related to a city official or employee of the city by a degree of consanguinity or affinity as set forth below:

<u>Consanguinity</u>		<u>Affinity</u>	
Father	Uncle	Husband	Sister-in-law
Mother	Aunt	Wife	Stepfather
Son	Nephew	Father-in-law	Stepmother
Daughter	Niece	Mother-in-law	Stepson
Sister	First cousin	Son-in-law	Stepdaughter
Brother	Half brother	Daughter-in-law	Stepsister
	Half sister	Brother-in-law	Stepbrother

(b) An appointing authority may not appoint, employ, promote or advance or advocate for appointment, employment, promotion or advancement in or to a position in a department or agency of the city in which such appointing authority is serving or over which such appointing authority exercises jurisdiction or control any individual who is a relative of the appointing authority. An individual may not be appointed, employed, promoted or advanced in or to a position in a department or agency of the city if such appointment, employment, promotion or advancement has been advocated by an appointing authority serving in or exercising jurisdiction or control over the department or agency and who is a relative of the individual.

(c) Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

(d) Except as provided in this section, an individual appointed, employed, promoted or advanced in violation of this section is not entitled to pay and money may not be paid to an individual so appointed, employed, promoted or advanced.

(e) No person who is related to an incumbent city employee or official within the degrees of relationship set forth in paragraph (a)(3) of this section shall be hired for employment in the same department in which such incumbent employee is employed or holds an appointive position.

(f) When persons employed in the same department become related to each other within any degree or degrees as set forth in paragraph (a)(3) of this section through acts of affinity or other processes of law, the city manager may, where practical and reasonable, transfer one (1) of such employees to another department.

(g) No employee who is related to another city employee within any degree of relationship as set forth in paragraph (a)(3) of this section shall be transferred into the department in which the related employee is assigned or in which he holds an appointive position.

(Code 1953, § 2-32; Ord. No. C-76-71, § 1, 7-6-76)

**State Law reference—** Restriction on employment of relatives, F.S. § 116.111.

As noted in the City Code above, Florida Statutes address this issue as well:

## The 2020 Florida Statutes

<a href="#">Title X</a>	<a href="#">Chapter 112</a>	<a href="#">View Entire Chapter</a>
PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS	
CHAPTER 112		
PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS		

**112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—**

**112.3135 Restriction on employment of relatives.—**

(1) In this section, unless the context otherwise requires:

(a) “Agency” means:

1. A state agency, except an institution under the jurisdiction of the Board of Governors of the State University System;
2. An office, agency, or other establishment in the legislative branch;
3. An office, agency, or other establishment in the judicial branch;
4. A county;
5. A city; and
6. Any other political subdivision of the state, except a district school board or community college district.

(b) “Collegial body” means a governmental entity marked by power or authority vested equally in each of a number of colleagues.

(c) “Public official” means an officer, including a member of the Legislature, the Governor, and a member of the Cabinet, or an employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency, including the authority as a member of a collegial body to vote on the appointment, employment, promotion, or advancement of individuals.

(d) “Relative,” for purposes of this section only, with respect to a public official, means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(2)(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide.

(b) Mere approval of budgets shall not be sufficient to constitute “jurisdiction or control” for the purposes of this section.

(3) An agency may prescribe regulations authorizing the temporary employment, in the event of an emergency as defined in s. 252.34, of individuals whose employment would be otherwise prohibited by this section.

(4) Legislators’ relatives may be employed as pages or messengers during legislative sessions.

**Note.**—Former s. 116.111.

## **METHODOLOGY**

As the interpretation of both the City Code and Florida Statutes are ultimately a legal question, we consulted with the City Attorney's Office. The City Attorney, in several emails, clarified his position as follows:

**"First**, subsection (b) of Section 2-43 is inapplicable because that section deals only with an appointing authority hiring or advocating the hiring of their own relative. **Second**, with regards to subsection (e), note that the Chief and her husband were both employed and working in the same department prior to her appointment as interim chief. In fact, I believe they got married after both had already been working in the same department, but that's just a bonus fact, and not a dispositive one. Consequently, and technically, the Chief was not "hired for employment" (and for that matter was not transferred either) in the same department in which such incumbent employee is employed." **Third**, with regards to subsection (f), when persons employed become related after they have been hired, the city manager "may," but is not required to, transfer one of the employees to another department. Strictly construed, it is not an outright bar. **Fourth**, with regards to subsection (g), neither the Chief or her husband were "transferred" into the department.

Lastly, Section 112.3135, Fla.Stat, upon which our ordinance is modeled, is far less restrictive than our ordinance, and generally only pertains to public officials hiring, appointing, promoting, and advocating for their own relatives."

and;

"The prohibitions on promoting or advancing their own relative, or advocating for their relative, would still apply. So, the Chief could directly supervise her relative, and those protections are already in place. The only exception, both in our ordinance and per state statute, is that general budget or pay increases wherein the relative would also benefit could not be included."

And lastly;

"It is not a model of clarity, but does go much further than the state statute. You are correct that it does not adequately address scenarios of relatives working in the same department, if that was the intent."

## **MANAGEMENT RESPONSE:**

*Thank you for the opportunity to provide a management response to accompany your letter. As you have pointed out, prior to appointing our current interim police chief, our policy on nepotism was considered and a conclusion was drawn that it did not apply.*

*Having concluded one nationwide search for a police chief without arriving at a suitable number of finalists, I am in the process of doing two things with a new search firm. First, I will identify an interim police chief that does not have interest in the permanent appointment. My intention is to select someone from outside our organization, but I do not want to give up my discretion to appoint from within if it is required. With the appointment of a different interim police chief,*

*your concerns should naturally resolve. Second, I will continue our search to make a permanent appointment.*

*Finally, I agree with you that our policy on nepotism should be reviewed so there is no confusion in the future. As we review our policy on nepotism independent of the police chief search, I look forward to your input.*

**Chris Lagerbloom | City Manager**

We would like to express our appreciation to the City Attorney and City Manager for their assistance during our review.

cc: Chris Lagerbloom, City Manager  
Alain Boileau, City Attorney  
Jeff Modarelli, City Clerk  
Tarlesha Smith, Assistant City Manager  
Greg Chavarria, Assistant City Manager