

Council Meeting of
March 20, 2007

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Examination for Deputy Public Works Director

RECOMMENDATION

The City Manager recommends that the City Council:

- ▶ Defer the City Manager's and employees' appeal of the Civil Service Commission decision as to eligibility for the ordered promotional examination for Deputy Public Works Director to which the appellants have agreed;
- ▶ Concur in the concept of using the same eligibility used for department head promotional exams for Deputy or Assistant Department Heads and refer the attended proposed ordinance to the Civil Service Commission for its consideration and recommendation;
- ▶ Assign the long-term issues related to Civil Service and non-Civil Service employees to the Council's Employee Relations Committee.

Funding

Not applicable.

BACKGROUND

The Human Resources Director and the Public Works Director recently recommended to the Civil Service Commission the approval of ordering an Open Exam for the position of Deputy Public Works Director. The Civil Service Commission wrestled with its desire for a promotional exam and with legal counsel input that the City would be putting itself at risk if qualified internal employees were excluded from the exam process. The Commission took a unanimous position to order the exam on a promotional basis.

The City Manager has appealed the decision of the Commission solely on the matter of defining who would be eligible to take this exam. This exam is related to a deputy department head, a position which is expected to "act as" the department head in his or her absence. It would seem that the eligibility for this position in a promotional exam should mirror that for department heads.

Two employees of the Public Works Department have appealed the Commission's decision as to the eligibility for the promotional examination for a Deputy Public Works Director. As an option, they have requested an open exam to all internal and external qualified candidates.

ANALYSIS

The eligibility for department head promotional examinations allows both Civil Service and non-Civil Service employees who have completed six months of actual service to compete in the examination. By amending the Civil Service code provision related to a promotional exam for a department head to include assistant and/or deputy department heads, the eligibility would expand to include non-Civil Service employees who have at least six months actual service with the City.

This would preserve the Commission's decision to have a "Promotional" examination for Deputy Public Works Director while avoiding the legal difficulties outlined by the City Attorney to the Civil Service Commission where qualified internal candidates are prejudicially excluded from the examination process.

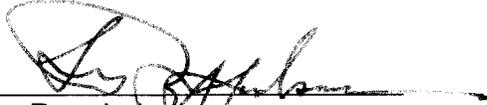
Clearly this does not resolve the long-term issue of the status of "non-Civil Service" employees as it relates to general Civil Service promotional exams. This broader issue needs to address what criterion there might be to justify "non-Civil Service" positions; whether or not there are currently non-Civil Service positions which should be Civil Service; how to resolve the status of current incumbents in such positions if the positions were to be made Civil Service; and, a discussion of the City Charter requirements of competitive examinations in relationship to ordering Promotional examinations.

Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By 
Mary K. Giordano,
Assistant City Manager

CONCUR:


LeRoy J. Jackson
City Manager

MKG/dle

- Attachments:
- A) Proposed Ordinance
 - B) Appeals filed with respect to Civil Service Commission decision
 - C) Civil Service Commission Agenda Item dated February 26, 2007
 - D) Excerpt of minutes from City Council meeting of September 1, 1998
 - E) Ordinance #3457 approved September 1, 1998
 - F) City Council Agenda Item #12C dated September 1, 1998

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE AMENDING SECTION 14.1.29 OF THE TORRANCE MUNICIPAL CODE, RELATING TO ELIGIBILITY OF CITY EMPLOYEES TO PARTICIPATE IN EXAMINATIONS FOR DEPARTMENT HEAD, ASSISTANT DEPARTMENT HEAD, OR DEPUTY DEPARTMENT HEAD POSITIONS

The City Council of the City of Torrance does ordain as follows:

SECTION 1

That Section 14.1.29 of the Torrance Municipal Code shall be amended to read in its entirety as follows:

"The Civil Service Board shall determine in advance of every examination whether such examination shall be a promotional examination or an open examination or an open and promotional examination; provided, however, that an examination for a department head shall be either a promotional examination or an open examination and such determination shall be made by the City Council after recommendation by the Board. Such determination shall be recorded in the minutes of the Board and the City Council, as the case may be.

Applicants to take a promotional examination for a department head, deputy or assistant department head position must be actually in the City employ at the time of the examination and have completed six (6) months of actual service in either a permanent civil service position or a non-civil service position."

SECTION 2

Any provision of the Torrance Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4

This ordinance shall take effect thirty (30) days after the date of its adoption and prior to the expiration of fifteen (15) days from the passage thereof shall be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.

Introduced and approved this _____ day of _____ 2007.

Adopted and passed this _____ day of _____, 2007.

Mayor of the City of Torrance

ATTEST:

City Clerk of the City of Torrance

APPROVED AS TO FORM:

John L. Fellows 111
City Attorney

By: _____
Ronald T. Pohl,
Assistant City Attorney

CITY OF TORRANCE**INTEROFFICE COMMUNICATION****DATE: March 7, 2007**

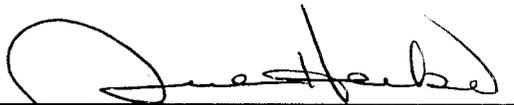
TO: City Council
FROM: City Clerk's Office
SUBJECT: Appeal 2007-08

Attached is Appeal 2007-08 received in this office on March 7, 2007 from Craig Bilezerian, City of Torrance, 20500 Madrona Avenue, Torrance, CA 90503. This appeal is of the Civil Service Commission's decision made on February 26, 2007 regarding Reconsideration Ordering of Examination – Deputy Public Works Director/City Engineer.

The appeal fee is not applicable.

SECTION 11.5.3. PROCEDURE AFTER FILING.

- a) Upon receipt of the notice of appeal, and the appeal fee, the City Clerk shall notify the concerned City officials, bodies or departments that an appeal has been filed and shall transmit a copy of the appeal documents to such officials, bodies or departments.
- b) The concerned City officials, bodies or departments shall prepare the necessary reports for the City Council, provide public notices, posting, mailing or advertising in the same manner as provided for the original hearing or decision making process, request the appeal be placed on the agenda for hearing before the City Council within thirty (30) days of receipt of the said notice of appeal, and notify the applicant in writing of the time, date and place of the hearing not less than five (5) days before the Council hearing.



Sue Herbers
City Clerk

cc: City Manager
City Attorney
Civil Service Manager



CITY OF TORRANCE APPEAL FORM

AN APPEAL TO:

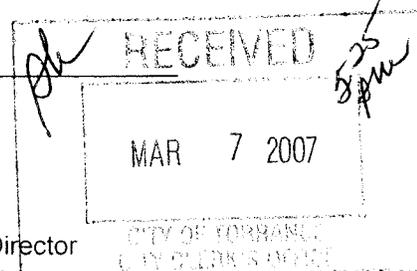
- City Council
- Planning Commission
- _____

RETURN TO:

Office of the City Clerk
 3031 Torrance Boulevard
 Torrance CA 90509-2970
 310/618-2870

RE: Civil Service Commission on February 26, 2007 – Written Comm. Item No. 4
 (Case Number and Name)

Address/Location of Subject Property: Not Applicable
 (If applicable)

**Decision of:**

- | | |
|---|---|
| <input type="checkbox"/> Administrative Hearing Board | <input type="checkbox"/> License Review Board |
| <input type="checkbox"/> Airport Commission | <input type="checkbox"/> Planning Commission |
| <input checked="" type="checkbox"/> Civil Service Commission | <input type="checkbox"/> Community Development Director |
| <input type="checkbox"/> Environmental Quality & Energy Conservation Commission | <input type="checkbox"/> Special Development Permit |
| | <input type="checkbox"/> Other _____ |

Date of decision: Feb. 26, 2007 **Appealing:** APPROVAL DENIAL

Reason for Appeal: *Be as detailed as necessary. Additional information can be presented at the hearing. Attach pages as required with additional information and/or signatures.)*

The Civil Service Commission voted against the Civil Service Manager's and the Public Works Director's recommendation for an "Open" exam for the position of Deputy Public Works Director/City Engineer in the Public Works Department and instead ordered a "Promotional" exam. The Commission also voted against the recommendations from its own Legal Council to order an "Open" exam. An "Open" exam was recommended, in part, because it is unclear as to whether City employees in non-civil service positions are eligible for promotional exams. There are five City employees in non-civil service positions that are qualified for the position and all should be eligible to compete in a "Promotional" exam. The **Torrance City Charter Section 1300** states "All appointments and promotions in the classified service of the City shall be made according to merit and fitness, to be ascertained, so far as practicable by competitive examination." The Torrance City Charter does not prohibit or exclude any City employee from competing in promotional exams. The action requested is to determine that current City employees in non-civil service positions are eligible for the promotional exam for Deputy Public Works Director/City Engineer. Otherwise, one option for the City Council is to order the exam be "Open".

Name of Appellant Craig Bilezerian

Address of Appellant c/o City of Torrance, 20500 Madrona Ave, Torrance, CA 90503

Telephone Number (310) 618-3054

Signature *S. Bee* 3/7/2007

Appeal Fee paid \$ <u>N/A</u>	For office use only: Date <u>3/6/07</u>	Received by <u><i>ph</i></u>
Notice to: Community Development Department: <input type="checkbox"/> Planning <input type="checkbox"/> Building & Safety		
<input type="checkbox"/> City Council <input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input checked="" type="checkbox"/> Other Department(s) <u>CIVIL SERVICE</u>		

CITY OF TORRANCE
INTEROFFICE COMMUNICATION

DATE: March 7, 2007

TO: City Council
FROM: City Clerk's Office
SUBJECT: Appeal 2007-07

Attached is Appeal 2007-07 received in this office on March 7, 2007 from David Ringland, City of Torrance, 20500 Madrona Avenue, Torrance, CA 90503. This appeal is of the Civil Service Commission's decision made on February 26, 2007 regarding Reconsideration Ordering of Examination – Deputy Public Works Director/City Engineer. SEE ATTACHMENT.

The appeal fee is not applicable.

SECTION 11.5.3. PROCEDURE AFTER FILING.

- a) Upon receipt of the notice of appeal, and the appeal fee, the City Clerk shall notify the concerned City officials, bodies or departments that an appeal has been filed and shall transmit a copy of the appeal documents to such officials, bodies or departments.
- b) The concerned City officials, bodies or departments shall prepare the necessary reports for the City Council, provide public notices, posting, mailing or advertising in the same manner as provided for the original hearing or decision making process, request the appeal be placed on the agenda for hearing before the City Council within thirty (30) days of receipt of the said notice of appeal, and notify the applicant in writing of the time, date and place of the hearing not less than five (5) days before the Council hearing.



Sue Herbers
City Clerk

cc: City Manager
City Attorney
Civil Service Manager



CITY OF TORRANCE APPEAL FORM

AN APPEAL TO:

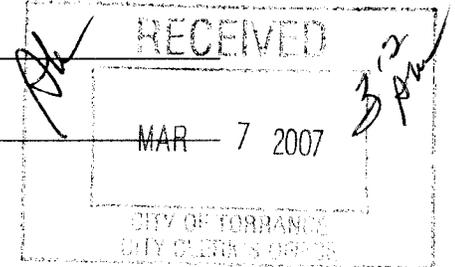
- City Council
 Planning Commission

RETURN TO:

Office of the City Clerk
 3031 Torrance Boulevard
 Torrance CA 90509-2970
 310/618-2870

RE: Civil Service Commission on February 26, 2007 – Item No. 4
 (Case Number and Name)

Address/Location of Subject Property: Not Applicable
 (If applicable)


Decision of:

- | | |
|---|---|
| <input type="checkbox"/> Administrative Hearing Board | <input type="checkbox"/> License Review Board |
| <input type="checkbox"/> Airport Commission | <input type="checkbox"/> Planning Commission |
| <input checked="" type="checkbox"/> Civil Service Commission | <input type="checkbox"/> Community Development Director |
| <input type="checkbox"/> Environmental Quality & Energy Conservation Commission | <input type="checkbox"/> Special Development Permit |
| | <input type="checkbox"/> Other |

Date of decision: February 26, 2007 **Appealing:** APPROVAL DENIAL

Reason for Appeal: *Be as detailed as necessary. Additional information can be presented at the hearing. Attach pages as required with additional information and/or signatures.*

The Civil Service Commission voted against City staff's recommendation for an "Open" exam for the position of Deputy Public Works Director/City Engineer and instead ordered a "Promotional" exam available only to City employees in the Civil Service System, excluding City employees not in the Civil Service System. The Commission also voted against the recommendation of its own Legal Council to hold an "Open" exam.

This appeal is based on the legal opinion presented to the Civil Service Commission by the Commission's own attorney on the same issue on September 12, 2005 and the legal opinion provided by the Commission's attorney for the February 26, 2007 meeting.

The following is offered for additional consideration:

I started with the City 5½ years ago as an Associate Civil Engineer and was later promoted to Project Manager. I have served the City faithfully as a supervisor and Project Manager for 5+ years and have received extensive management training from the City (including a UCLA Certificate for Public Works Managers). I have over 35 years of extensive experience in administration of municipal capital improvement programs.

This position will oversee a multimillion dollar capital improvement program and should have a substantial list of qualified applicants.

It is requested that the exam for Deputy Public Works Director/City Engineer be open to the current City of Torrance Project Managers in addition to other eligible candidates working for the City. Otherwise it is requested that the exam be advertised as an "Open" exam. A broad selection of candidates should be available to fill this important position.

Name of Appellant David L. Ringland _____

Address of Appellant c/o City of Torrance, 20500 Madrona Ave, Torrance, CA 90503

Telephone Number (310) 318-3073

Signature David L. Ringland 3/7/07 _____

Appeal Fee paid \$ <u>N/A</u>	<small>For office use only:</small> Date <u>3/07/07</u>	Received by <u>[Signature]</u>
Notice to: Community Development Department: <input type="checkbox"/> Planning <input type="checkbox"/> Building & Safety		
<input type="checkbox"/> City Council <input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input checked="" type="checkbox"/> Other Department(s) <u>CIVIL SERVICE</u>		

SECTION 11.5.2. CONTENTS OF NOTICE OF APPEAL, FEES.

(Amended by O-3416)

- a) The notice of appeal shall contain the following information in addition to the information given by the applicant thereon or reasonably required by the City Clerk therefor:
 - 1) The name, address, and telephone number of the applicant.
 - 2) The type of permit desired or action requested.
 - 3) The date on which said permit was issued or refused or the decision was made and the name of the City officer, body, or department taking such action.
 - 4) The grounds on which the appeal is taken.
- b) A fee for filing an appeal shall be charged as provided by resolution of the City Council.

CITY OF TORRANCEOFFICE OF THE
CITY MANAGER**INTEROFFICE COMMUNICATION**

07 MAR -07 PM 4:23

DATE: March 6, 2007

TO: City Council
FROM: City Clerk's Office
SUBJECT: Appeal 2007-06

Attached is Appeal 2007-06 received in this office on March 6, 2007 from LeRoy J. Jackson. This appeal is of the Civil Service Commission's decision made on February 26, 2007 regarding Reconsideration Ordering of Examination – Deputy Public Works Director/City Engineer. SEE ATTACHMENT.

The appeal fee is not applicable.

SECTION 11.5.3. PROCEDURE AFTER FILING.

- a) Upon receipt of the notice of appeal, and the appeal fee, the City Clerk shall notify the concerned City officials, bodies or departments that an appeal has been filed and shall transmit a copy of the appeal documents to such officials, bodies or departments.
- b) The concerned City officials, bodies or departments shall prepare the necessary reports for the City Council, provide public notices, posting, mailing or advertising in the same manner as provided for the original hearing or decision making process, request the appeal be placed on the agenda for hearing before the City Council within thirty (30) days of receipt of the said notice of appeal, and notify the applicant in writing of the time, date and place of the hearing not less than five (5) days before the Council hearing.



Sue Herbers
City Clerk

cc: City Manager
City Attorney
Civil Service Manager



CITY OF TORRANCE

APPEAL FORM

RECEIVED

MAR - 6 2007

AN APPEAL TO:

- City Council
- Planning Commission
- _____

RETURN TO:

Office of the City Clerk
 3031 Torrance Boulevard
 Torrance CA 90509-2970
 310/618-2870

RE: Agenda Item 4. Reconsideration Ordering of Examination - Deputy Public
 (Case Number and Name) Works Director/City Engineer

Address/Location of Subject Property N/A
 (If applicable)

Decision of:

- | | |
|---|---|
| <input type="checkbox"/> Administrative Hearing Board | <input type="checkbox"/> License Review Board |
| <input type="checkbox"/> Airport Commission | <input type="checkbox"/> Planning Commission |
| <input checked="" type="checkbox"/> Civil Service Commission | <input type="checkbox"/> Community Development Director |
| <input type="checkbox"/> Environmental Quality & Energy Conservation Commission | <input type="checkbox"/> Special Development Permit |
| | <input type="checkbox"/> Other _____ |

Date of decision: Feb. 26, 2007 **Appealing:** APPROVAL DENIAL Other

Reason for Appeal: *Be as detailed as necessary. Additional information can be presented at the hearing. Attach pages as required with additional information and/or signatures.*

See attached text.

Name of Appellant LeRoy J. Jackson

Address of Appellant 3031 Torrance Blvd., 3rd Flr., Torrance, CA 90503

Telephone Number (310) 618-5880

Signature

Appeal Fee paid \$ <u>N/A</u>		For office use only: Date <u>3/06/07</u>		Received by
Notice to: Community Development Department		<input type="checkbox"/> Planning		<input type="checkbox"/> Building & Safety
<input checked="" type="checkbox"/> City Council	<input checked="" type="checkbox"/> City Manager	<input checked="" type="checkbox"/> City Attorney	<input checked="" type="checkbox"/> Other Department(s) <u>CIVIL SERVICE MGR</u>	

NOTICE OF APPEAL

The City Manager of the City of Torrance hereby appeals the decision of the Torrance Civil Service Commission made on February 26, 2007 ordering that the exam for the position of Deputy Public Works Director/City Engineer be a “promotional exam.” This decision, which was made in opposition to the advice of Commission’s Legal Counsel, has the effect of prohibiting certain qualified City employees from participating in the testing process. This appeal is made pursuant to Torrance Municipal Code Section 11.5.1 et seq. on the following grounds:

1. The decision violates Section 1300 of the Torrance Charter.
2. The exclusion of certain qualified City employees from participating in the test potentially denies the residents of the City the most qualified Deputy Director of Public Works/Engineer.
3. The decision may violate the right to equal protection under the law of those employees prohibited from participating in the test and subject the City to liability.

The City Manager believes the City Council should assess the legal implications of eligibility and of the exclusion of certain permanent employees who may not have Civil Service standing but would appear to be legally entitled to participate in the exam in light of certain court decisions. He additionally believes that the examination eligibility for an Assistant Department Head or Deputy Department Head should mirror the

provisions for a Department Head which allows eligibility to all employees with at least six months of service with the City.

Respectfully submitted,



Leroy Jackson
City Manager



**Civil
Service
Commission**

The Civil Service Commission is an advisory body to the City Council that meets on the second and fourth Mondays of each month at 6:00 p.m. in the Council Chambers and on other Mondays as required. All meetings are open to the public except for those portions related to personnel issues that under law may be considered in closed session. Those who wish to speak on any matter on the agenda are asked to complete a "Speaker Information" card (available at the meeting) and relay it to the staff before leaving the meeting.

Staff reports are available for review at the Human Resources office, Civic Center Main Library and the City Clerk's Office. Direct any other questions or concerns to the Civil Service Manager, Stacey Lewis at 310.618.2968. Agendas are posted on the City of Torrance Home Page www.torrnet.com.

In compliance with the Americans with Disabilities Act, if special assistance is needed to participate in this meeting, please call 310.618.2968. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28CFR 35.102-104 ADA Title II]

HOURS OF OPERATION
Monday through Friday from
7:30 a.m. to 5:30 p.m.
Offices are closed alternate
Fridays.

CIVIL SERVICE COMMISSION

CITY COUNCIL CHAMBERS
CITY HALL
3031 TORRANCE BOULEVARD
TORRANCE, CALIFORNIA 90503

MONDAY, FEBRUARY 26, 2007
6:00 P.M.

AGENDA

CALL TO ORDER

ROLL CALL

FLAG SALUTE

ORAL COMMUNICATIONS #1 (Limited to a 30 minute period)

CONSENT CALENDAR

Disposed of by a combined motion unless separate consideration is requested by Commission or audience.

1. Motion to Accept and File Affidavit of Posting
2. Ordering of Examination: *Water Service Technician III*

WRITTEN COMMUNICATIONS

3. Reconsideration Ordering of Examination – Secretary (item continued from February 5, 2007)
4. Reconsideration Ordering of Examination – Deputy Public Works Director/City Engineer (item continued from February 5, 2007)

HEARING

5. Appeal of suspension by Michael Paolozzi. Consideration of Public Employee discipline may be conducted in a closed session per California Government Code 54957.

ORAL COMMUNICATIONS #2

ADJOURNMENT

ROLL CALL: Dean, Donnellan, Doty, Furey, Herring, Shwarts, McPhail

January 31, 2007

Commission Meeting
February 5, 2007

Honorable Chair and Members
of the Civil Service Commission
City Hall
Torrance, California

SUBJECT: RECONSIDERATION ORDERING OF EXAMINATION – DEPUTY PUBLIC WORKS
DIRECTOR/CITY ENGINEER

BACKGROUND:

At your meeting of July 25, 2005, staff recommended conducting the Deputy Public Works Director/City Engineer on an Open basis. After a lengthy discussion, your Honorable Body directed staff to order the examination for Deputy Public Works Director/City Engineer on a Promotional basis. An appeal was filed by the Project Managers regarding this action with regard to the City Charter and a legal opinion was issued by Michael H. Miller, former Legal Counsel to the Civil Service Commission. This opinion is attached for your review and information (Attachment A). At your meeting on September 12, 2005, after reviewing the submitted material, your Honorable Body again voted to direct staff to order the examination on a Promotional basis. The position was subsequently placed on hold due to budgetary restraints. The new salary has been approved by the City Council and the department is now requesting an examination.

In addition to Mr. Miller's opinion, Brad Wohlenberg, Legal Counsel to the Civil Service Commission has also issued an opinion regarding this matter. This opinion is attached for your review and information (Attachment B). Based on the opinions of Mr. Miller and Mr. Wohlenberg, staff has brought back the Ordering of Examination for the Deputy Public Works Director/City Engineer for consideration by your Honorable Body.

SALARY: \$9201 to \$12697 per month.

BASIS: Open is recommended. No previous examinations have been conducted. This is a new position.

EXAMINATION PARTS/WEIGHTS:

In-Basket Performance Test (50%) - Oral Interview (50%) is recommended. The In-Basket exercise will consist of realistic managerial problems requiring analysis and written responses. The factors measured will be leadership style, handling priorities and sensitive situations, conflict resolution, and organizational practices. The oral interview will assess preparation for the position, management principles, interpersonal and related skills.

For this examination, staff recommends the retention of an executive search firm to conduct the recruitment. The Civil Service Commission approved the use of an executive search firm for a similar position (Division Engineer).

EXAMINATION SCOPE:

Refer to Knowledge and Abilities listed in the Minimum Qualifications section of attached Job Specification (Attachment C).

REASON FOR EXAMINATION:

Vacancy due to new position; no list.

Respectfully submitted,



Melody Lawrence
Human Resources Manager

NOTED:

Stacey Lewis
Civil Service Manager

Attachments: A: Summary Legal Opinion – Michael H. Miller
 B: Summary Legal Opinion – Brad Wohlenberg
 C: Classification Specification for Deputy Public Works Director/City Engineer

CITY OF TORRANCE

INTEROFFICE COMMUNICATION

DATE: AUGUST 15, 2005

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: RONALD T. POHL, ASSISTANT CITY ATTORNEY 

CC: LEROY J. JACKSON, CITY MANAGER
STACEY LEWIS, CIVIL SERVICE MANAGER 

SUBJECT: OPINION OF CIVIL SERVICE COMMISSION LEGAL COUNSEL
REGARDING DEPUTY PUBLIC WORKS DIRECTOR/CITY ENGINEER

As you may know, the Civil Service Commission recently rejected staff recommendation that the examination for the position of "Deputy Public Works Director/City Engineer" be made an open exam. As is customary with Commission meetings where there is no hearing on the agenda, the Commission's legal counsel was not present.

Subsequent to the decision by the Commission to limit the taking of the exam to only Torrance employees who are members of the Civil Service System, the Commission's independent counsel, Michael H. Miller, reviewed the action of the Commission and issued the attached opinion.

It is my understanding that Staff will be placing the matter on the Commission Agenda for reconsideration in light of the opinion issued by their attorney.

Attachment A

2005 AUG 16 PM 4:21
CITY OF TORRANCE
HUMAN RESOURCES DEPT.

MEMORANDUM
Summary Legal Opinion ¹

August 15, 2005

TO: The Honorable Chairperson and Members of the Civil Service Commission
Stacey Lewis, Civil Service Manager

FROM: Michael H. Miller, Legal Counsel-Torrance Civil Service Commission (Commission) *MHM*

RE: Deputy Public Works Director/ City Engineer (Engineer)-Commission action to preclude Project Manager (Public Works) from competition for Engineer position.

INTRODUCTION

I have reviewed the recent action of the Commission set forth above. This legal opinion is based on concerns that such action may be inconsistent with the City Charter and, in part, because of the appeals filed by the Project Managers contesting the validity of the Commission action.

ISSUE

Is the action of the Commission to preclude those Torrance employees designated as Project Managers from competition for the Engineer position consistent with Torrance City Charter Section 1300 - Civil Service System ? (Charter section attached)

ANSWER

No. Exclusion of a class or group of city employees from competition for a civil service position is a violation of Charter Section 1300 because the exclusion is based on factors that are unrelated to considerations of merit and fitness as set mandated by the referred to Charter Section.

DISCUSSION

The Torrance Project Manager position involves the performance of difficult engineering work. Likewise as to the Associate Engineer position. In terms of hierarchy, responsibility, and qualifications, the Project Manager position exceeds that of the Associate Engineer position. This does not mean that an Associate Engineer cannot exceed the merit and fitness of a Project Manager in competition for the Engineer position. At the same time, amongst city employees, the Project Managers possess all of the qualifications to serve in the Engineer position. Their exclusion from

¹This opinion is in summary format addressing key points. A full blown legal opinion can be prepared with complete legal authority.

the competitive exam process based on their at-will (non civil service status) is not consistent with the goals of the civil service system to base all appointments and promotions according to merit and fitness (Charter Section 1300).

Two decisions of the California Supreme Court attest to the primacy of preserving civil service systems by not allowing employment decisions to be based on considerations that are not related to competence. The most recent case decided on July 28, 2005 involved the California State Personnel Board v. California State Employees Association, Local Seiu, Afl-Cio (No. S 122058), hereinafter called Personnel Board.

In Personnel Board the Supreme Court ruled that the California Constitution requirement that employment and promotion in the State Civil Service System be based on merit, precludes the legislature from approving collective bargaining agreements that base appointment and promotion on the basis of seniority with regard to all qualified candidates. The Court determined that seniority may or may not reflect fitness for a position. The Court decision supports hiring and promotions on the basis of a broad range of criteria related to fitness and efficiency. Anything else, according to the Court, is in conflict with the Constitutional command that "all appointments and promotions be made solely on the basis of merit."

In Personnel Board the Court cited and confirmed their 1980 decision in the case of Lucchesi v. City of San Jose, 104 Cal. App. 3d 323, 163 Cal. Rptr. 700. (Lucchesi) In Lucchesi the Court invalidated a City ordinance giving preference to City employees for firefighter positions.

Comparable to the Constitutional provision in the Personnel Board case and Section 1300 of the Torrance City Charter, the City of San Jose Charter provides that "All appointments and promotions ...shall be made on the basis of merit and fitness, demonstrated by examination..." In view of this Charter provision establishing civil service requirements, the Court reviewed a San Jose ordinance and related employment process that accorded priority to city employees versus non-city employees who were also qualified for the position (of firefighter). The Court determined that "the ordinance takes into account the status of employment rather than performance. No consideration is given to a City employee's performance record... Thus, a City employee with an extensive ..poor work record..would be placed on the promotion eligible list and offered an available firefighter position before a non-City employee who scores 100% ..." The Court pointed out that the City's approach gave preference to a City employee with no experience in a field related to the position sought versus a non-City employee with years of experience in a related field. Accordingly, the Court determined that San Jose's system entailed an irrational approach to the determination of job competence and was therefore inconsistent with the Charter mandate based on merit and fitness.

As stated by the Court:

"The preferential treatment of City employees over non-City employees provided by the Ordinance here,...does not bear any reasonable basis or bear any rational relationship to a conceivable , legitimate state purpose. City employment, in and of itself, is not evidence of competence."(p.333)

The Court confirmed the long standing law that "an ordinance can no more change or limit the effect of a charter than a statute can modify or supercede provisions of the State Constitution." Accordingly, the Court determined that the San Jose ordinance was invalid because it was in conflict with the City Charter. (cases cited at page 328: *Simons v. Los Angeles* (1977) 72 Cal.App. 3d 924, 140 Cal. Rptr.484; *McDonald's System of California Inc. v. Board of Permit Appeals*, (1975) 44 Cal. App. 3d 525, 119 Cal. Rptr. 26, and other cases cited at page 328).

Torrance City Charter Section 1300 is directly analogous to the Constitutional and City Charter civil service provisions which were the subject of the Supreme Court cases discussed above. The elimination of Project Managers from competition for the Engineer position because they are classified "at will" and therefore non-classified bears less of a relationship to merit and fitness than the seniority and employee status factors litigated in both Personnel Board and Lucchesi. In fact, the Project Manager positions in Torrance appears to be the amongst the most qualified for the position. Accordingly, there is little doubt that a Court would strike down the current action of the City and mandate inclusion of the Project Managers in the competition for the position of Deputy Public Works Director/ City Engineer. It is far less likely that a suit brought by the proponents of the current practice (California Employees Association--Associate Engineers) would achieve a court mandate to effectively eliminate a qualified class of employees from competition.

THE APPEALS

In sum, the appeals filed by individual Project Managers seek allowance for non-civil service employees to be eligible for the pending promotional opportunity. They also allege that City Charter section 1300 does not preclude their inclusion in the competition and that no other ordinance establishes grounds for their exclusion. Finally, as set forth in one of the appeals, it is contended that the act of excluding them "limits the pool of potential candidates to a relative few ...and does not take advantage of the many other qualified candidates..." Assurance that the best qualified candidates compete and that the Civil Service system requires this for the benefit of the City government and the public is an integral part of the pending appeals.

CONCLUSION

The Civil Service Commission exercised its discretion without the opportunity to be apprised of the City Charter and legal precedent. The subsequent appeals of the Commission action are premised on concerns dealt with by the California Supreme Court. Thus, the City should consider possible action to allow the Project Managers to compete. This can be accomplished through different means including re-calendaring the issue for commission reconsideration in view of this legal opinion or by City action to decide the appeals consistent with legal requirements.

c. LeRoy J Jackson, City Manager
 John L. Fellows, City Attorney
 Ronald T. Pohl, Assistant City Attorney

THE CHARTERARTICLE 13 - CIVIL SERVICE

SECTION 1300. CIVIL SERVICE SYSTEM.

All appointments and promotions in the classified service of the City shall be made according to merit and fitness, to be ascertained, so far as practicable by competitive examination. The civil service system existing on April 10, 1962, whether created or amended in whole or in part by ordinances adopted by vote of the People or by ordinances adopted by the City Council shall continue in full force and effect; provided, however, that the City Council may amend, delete or replace any provisions of said ordinances by ordinance or ordinances by a five-sevenths vote of the City Council after consideration thereof by the Civil Service Commission. The City Council shall not have the authority to withdraw any departments, appointive officers or employees from the operation of such system, either by outright repeal of the civil service ordinances or otherwise, unless and until the withdrawal thereof shall have been submitted to the qualified electors of said City at a regular or special municipal election held in said City. Nothing contained in this Section 1300 shall repeal or modify any of the provisions of Article 9 of this Charter which established the City Manager form of government. (Ratified Gen. Mun. Elec. 4/10/62, Amend. No. 3; Approved by State Legislature Concurrent Res. No. 21, 4/13/62).

August 25, 2005

Note: TO THE HONORABLE CIVIL SERVICE COMMISSION

I was going to distribute the attached at the meeting of August 22, however, since the item for reconsideration was continued, I am distributing it now via mail.

The attached shows that the current issue has a definite history in Torrance. Please review as part of your consideration for the September 12 agenda.

M HM

Michael H. Miller, legal counsel to the Commission

c. John Fellows, City Attorney
Stacey Lewis, Civil Service Manager ✓

CITY OF TORRANCE
HUMAN RESOURCES DEPT.
2005 AUG 31 11:11:09

AUGUST 22, 2005

¹
SUPPLEMENT TO AGENDA ITEM 8 (attached)-Deputy Public Works Director/City Engineer.

Re: Background information consistent with current legal opinion and recommendation.

Please see attached 1998 Staff Report and City Attorney Note concerning Charter Section 1300 and a related ordinance based on the fact that civil service status is not a reasonable basis for discriminating between potential applicants.

mm

August 19, 1998

Council Meeting
September 1, 1998

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Proposed Change to Civil Service Rules to allow non-Civil Service Employees to Compete in Promotional Examinations for Department Head Classifications.

ABSTRACT

It is recommended that your Honorable Body concur in the recommendation of staff and the Civil Service Commission to modify Municipal Code section 14.1.29 to allow non-civil service employees to participate in promotional examinations for department head positions.

BACKGROUND

At their meeting of August 17, 1998, a recommendation was presented to the Civil Service Commission to alter the Civil Service Rules and Regulations to allow non-civil service employees to compete in promotional examinations for department head positions (Attachment I). The Civil Service Commission, on a divided vote, approved the staff recommendation (see minutes, Attachment II).

The Torrance Engineers Association submitted a letter of protest to the Commission with a recommendation that all at-will employees be converted to civil service positions instead (Attachment III).

ANALYSIS

The current rules allow department head examinations to be given on an open basis (i.e., open to the public in general) or on a promotional basis (i.e., restricted to current employees in the City's civil service). The City has created a number of non-civil service mid-management level positions in recent years. These non-civil service positions involve all the skills and responsibilities that prepare one to assume a department head job, however they are not eligible to compete for a department head position on a promotional basis, as are the employees holding civil service status.

When filling a department head position, especially when there are a number of City employees ready to promote, it is desirable to do so on a promotional examination. When there are non-civil service employees, otherwise eligible, such a decision will preclude them from being considered, no matter how well qualified they may be. On the other hand, when both civil service and non-civil service employees are involved, and the recruitment is given on an open basis, it is typical that one of the internal candidates will fill the vacancy. This creates an image of unfairness in the eyes of the outside candidates. In the end, a great amount of additional time and resources, both for the City and the open candidates, will have been spent and a great deal of ill will is engendered. This could be avoided if all the City employees had the opportunity to compete in a promotional examination.

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The Civil Service Commission has discussed the topic of allowing non-civil service employees to compete in all promotional examinations in the past. However, each time there has been opposition by most City employee organizations and no change has been made. Recognizing this, staff is making a limited recommendation at this time. Rather than change the rules for all examinations, we are proposing that a rule affecting only department head examinations be adopted. The current rule governing department head promotional exams is:

Torrance Municipal Code Section 14.1.29

The Civil Service Board shall determine in advance of every examination whether such examination shall be a promotional examination or an open examination or an open and promotional examination; provided, however, that an examination for a department head shall be either a promotional examination or an open examination and such determination shall be made by the City Council after recommendation by the Board. Such determination shall be recorded in the minutes of the Board and the City Council, as the case may be.

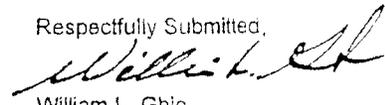
To the above rule we would add.

Applicants to take a promotional examination for a department head position must be actually in the City employ at the time of the examination and have completed six (6) months of actual service in either a permanent civil service position or a non-civil service position.

RECOMMENDATION

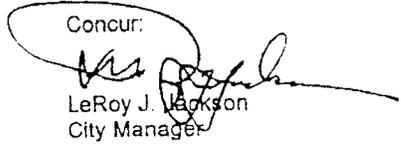
It is recommended that your Honorable Body concur in the recommendation of staff and the Civil Service Commission to modify, as described above, Municipal Code section 14.1.29 to allow non-civil service employees to participate in promotional examinations for department head positions.

Respectfully Submitted,



William L. Ghio
Civil Service Administrator

Concur:



LeRoy J. Jackson
City Manager

Attachments

X:\slew\word\item.doc

CITY ATTORNEY NOTE:

Section 1300 of the City Charter requires that all appointments and promotions in the civil service be made on the basis of merit and fitness. Lucchesi v. City of San Jose (1980) 104 Cal.App.3d 323, 330 invalidated a city hiring process that gave preference to current city employees merely by reason of their employment status. Civil service status is not a reasonable basis for discriminating between potential applicants. Thus, the proposed ordinance significantly advances the goal of making the City's civil service ordinance consistent with the City charter.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE
AMENDING SECTION 14.1.29
OF THE TORRANCE MUNICIPAL CODE, RELATING TO THE
ELIGIBILITY OF CITY EMPLOYEES TO PARTICIPATE
IN EXAMINATIONS FOR DEPARTMENT HEAD POSITIONS

The City Council of the City of Torrance does ordain as follows:

SECTION 1

That Section 14.1.29 of the Torrance Municipal Code shall be amended to read in its entirety as follows:

The Civil Service Board shall determine in advance of every examination whether such examination shall be a promotional examination or an open examination or an open and promotional examination; provided, however, that an examination for a department head shall be either a promotional examination or an open examination and such determination shall be made by the City Council after recommendation by the Board. Such determination shall be recorded in the minutes of the Board and the City Council, as the case may be.

Applicants to take a promotional examination for a department head position must be actually in the City employ at the time of the examination and have completed six (6) months of actual service in either a permanent civil service position or a non-civil service position.

SECTION 2

Any provision of the Torrance Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

JENKINS & HOGIN, LLP
A LAW PARTNERSHIP

MICHAEL JENKINS
CHRISTI HOGIN
MARK D. HENSLEY
BRADLEY E. WOHLBERG
KARL H. BERGER
GREGG KOVACEVICH
JOHN C. COTTI
LINDA A. BURROWS
LAUREN B. FELDMAN

October 24, 2006

Stacey Lewis, Civil Service Manager
CITY OF TORRANCE
3031 Torrance Boulevard
Torrance, California 90503

Reference: Examination Status of Deputy Public Works Director Position

Dear Ms. Lewis:

You asked for an opinion from our office regarding whether the position of Deputy Public Works Director for the City of Torrance should be filled by a promotional or an open examination. After careful consideration of this issue, including a thorough review of the City Charter, local employment rules, and applicable law, we have concluded that the position should be filled by open examination.

Analysis

1. Controlling Charter Provision

Torrance City Charter section 1300 states in part, "All appointments and promotions in the classified service of the City shall be made according to merit and fitness, to be ascertained, so far as practicable by competitive examination."

Fortunately for our interpretation of this language, the California Court of Appeal has interpreted language from another city charter that is very, very similar. In *Lucchesi v. City of San Jose* (104 Cal.App.3d 323 (1980)), the Court of Appeal reviewed the applicability of a San Jose charter section that read, "All appointments and promotions to positions in the Classified Services shall be made on the basis of merit and fitness,

JENKINS & HOGIN, LLP

October 24, 2006

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demonstrated by examination and other evidence of competence, in accordance with Civil Service Rules adopted in the manner provided in this Chapter.”

Aside from some semantic differences, the San Jose Charter language and the Torrance Charter language are essentially identical. Based on that language, the *Lucchesi* court set aside an ordinance that created a hiring preference for current city employees when filling new firefighter positions.

The reasoning of the *Lucchesi* court explained how this preference violated the charter requirement for hiring on the basis of “merit and fitness”:

“[T]he Ordinance takes into account only the status of employment rather than performance. No consideration is given to a City employee's performance record, attendance record, quality of work, or other substantive factors, in order to be placed on the preferred ‘promotional eligible’ list. Thus, a City employee with an extensive disciplinary record, poor work record, but a written test score of 80 percent or better, would be placed on the promotion eligible list and offered an available firefighter position before a non-City employee who scores 100 percent and who is on the ‘open competitive’ list.

“Further, in order to be on the preferred ‘promotional’ list, the City employee's prior employment history with the City does not have to include experience related to the position sought. City employment, in and of itself, is not evidence of competence. No evidence to the contrary was introduced by the City. For example, a City employee with no experience in a field related to the position sought, is not more competent than a non-City employee with 25 years of experience in a related field. Experience as a secretary, gardener or custodian within the City for even a considerable period of time is not more indicative of competence as a firefighter with the City than actual experience as a firefighter in another jurisdiction.” (329-330)

The court concluded that the use of existing city employment was an unreasonable classification, especially since it could result in employees with lower scores being appointed over non-employees with higher scores. There is nothing to support mere existing employment as “merit and fitness” for a particular position. The existing

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October 24, 2006

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employment could be in an unrelated field, resulting in an employee without relevant experience being selected over a non-employee with relevant experience.

The parallels to the current situation with the Deputy Public Works Director position are clear. The tasks assigned to the unclassified Project Managers are similar to those for classified Associate Engineers, and as noted in previous counsel's opinion (dated August 15, 2005), the Project Manager position exceeds the Associate Engineer position in hierarchy, responsibility, and qualifications. With equal or greater work requirements for the Project Manager positions, it cannot reasonably be said the Project Managers lack "merit and fitness" or are not as qualified as the Associate Engineers for the Deputy Public Works Director position. If Project Managers were excluded from the examination for the Deputy Public Works Director position, it would be solely on the basis of their status as unclassified employees, and not on the basis of "merit and fitness" as dictated by the City Charter. By permitting the Project Managers and the Associate Engineers to all compete through the examination, the selection of the Deputy Public Works Director would be made on the basis of merit and fitness, as determined by competitive examination in accordance with the Charter.

2. Municipal Code Provisions

In California, a city charter, "represents the supreme law of [a city], subject, of course, to conflicting provisions in the United States and California Constitutions and to preemptive state law" *Harman v. City and County of San Francisco* (7 Cal. 3d 150, 161 (1972)(citations omitted)). The City's Civil Service rules were passed by ordinance, which must comply with the greater authority of the Charter. Therefore, when analyzing any of the Civil Service rules of the City, they cannot conflict with any applicable section of the City Charter.

Torrance Municipal Code section 14.1.15 states, "In the event examinations are held, the same shall be open and competitive. In such event appointments subsequently made shall be from those certified as being qualified as a result of such examinations and in accordance with the rules and regulations duly adopted." There is no language in this section regarding preference for existing employees in the classified service over non-classified employees. As discussed above, the Charter and case law would prevent using mere employment status as a qualification for examination. The plain language of this section supports the use of an open examination for the Deputy Public Works Director

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October 24, 2006

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position, and does not appear to conflict with the Charter mandate for selection on merit and fitness.

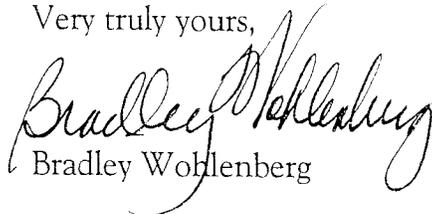
Division 1, Article 12 of the Torrance Municipal Code contains the rules for employment examinations. However, as explained above, this section must be interpreted in accordance with the controlling Charter provision. Sections 14.12.6 through 14.12.8 set up two types of competitive promotional examinations, one for employees in the same department as the promotional position, and one for employees in other departments. These are further limited by a requirement that employees be actually in the City's employ (or on leave) and have completed six months of service. There may be examinations where these requirements do provide some rational basis for exclusion of otherwise qualified applicants. However, in the case of the Deputy Director of Public Works position, where two groups of employees likely are qualified for the promotional position, these sections appear to exclude candidates based solely on existing employment status, and so may conflict with the Charter "merit and fitness" mandate.

We also examined section 14.1.29, but that applies only to department heads. The Deputy Director of Public Works is not considered a department head, and so Section 14.1.29 is not relevant to this issue.

Conclusion

Under the Charter, the guiding principle of appointments and promotions in the classified service is "merit and fitness," which is determined by competitive examination whenever practicable. With regard to the examination for Deputy Public Works Director, it is contrary to that Charter mandate to allow only certain categories of qualified employees to attempt to demonstrate that merit and fitness through examination. Solely using classified status to differentiate among employees with similar qualifications for the position does not appear to be a reasonable standard under Torrance City Charter section 1300 and applicable case law.

Very truly yours,



Bradley Wohlenberg

cc: John Fellows, City Attorney

Deputy Public Works Director/City Engineer

Definition

Under general direction, manages the activities of the Engineering division; manages specialized engineering work in the analysis, design and construction of public works infrastructure; acts for and represents the Director in specified areas; and performs related work as required.

Distinguishing Characteristics

The Deputy Public Works Director/City Engineer is distinguished from the Public Works Director in that the incumbent does not have responsibility for the entire department. Distinguished from division managers in that the incumbent is responsible for developing long-range plans for construction functions that cross divisional lines; and acts on behalf of the department head. Work is performed within a broad framework of general policy and requires creativity and resourcefulness to accomplish goals and objectives and to apply concepts, plans and strategies that may require non-traditional methods to achieve established goals and objectives. The incumbent exercises broad judgement in defining work objectives and determining methods and systems to meet objectives. Work is reviewed for overall results.

Supervision Exercised/Received

Receives general direction from the Public Works Director; provides direct supervision to managers, supervisors and support staff of the department.

Examples of Essential Duties

The following duties represent the principal job duties; however, they are not all-inclusive.

- Manages the work of staff including: coaching staff for improvement and development, training, assigning, reviewing and evaluating work performance; coordinating activities, maintaining standards, allocating personnel, selecting new employees, acting on employee problems and recommending and implementing employee discipline.
- Provides leadership, maintains effective employee relations and works with other department managers in the development and retention of competent personnel.
- Develops, implements and evaluates department plans, policies and procedures to achieve annual goals and objectives.
- Plans, assigns and directs the design and construction of municipal engineering projects.
- Plans, organizes, directs and reviews professional civil engineering work in the areas of development review, geographic imaging systems (GIS), permits and records, public works and water inspection, and utility standards review.
- Manage the administration of subdivisions, vacations, easements and encroachments.
- Reviews and recommends approval of engineering plans and specifications, cost estimates, and contract provisions.
- Plans and develops future infrastructure for community needs.
- Coordinate franchising licensing and grants.
- Supervises field inspections of contract construction work.
- Inspects field work in progress for compliance with policies, procedures, safety guidelines and work specifications.
- Plans, assigns and directs the operations and maintenance of roads, bridges, traffic control devices and other related public infrastructure.

- Develops and administers division budget; reviews and coordinates financial sources for funding projects; maintains accountability for all revenue generated by the Division.
- Develops and implements department programs and capital improvements.
- Develops and recommends a five (5) year Capital Improvement Program (CIP) of Public infrastructure projects and provides project management; conducts CIP and non-CIP review as required.
- Conducts project and non-project field review.
- Acts as the department liaison with internal and external teams and committees and other outside agencies including local and State officials and utility companies, the community, and other interested groups.
- Keeps abreast of current engineering principles and practices, technology, regulations and literature that apply to City Public Works or infrastructure projects.
- Stays abreast of current developments in legislation and trends, which may affect the City and/or department.
- Implements and maintains Federal, State and local mandates.
- Prepares reports and makes recommendations for City Council and commission agenda items.
- Attends and conducts meetings as required.

Examples of Other Duties

The following duties represent duties that are generally performed by this position, but are not considered to be principal job duties:

- Receives and responds to public inquiries and requests for assistance regarding current or planned projects and takes appropriate action to resolve problems.
- Develops and reviews reports and other documents submitted by subordinates.
- Participates in EOC operations as needed.
- Performs related duties as required.

Qualification Guidelines

Knowledge of:

- Civil Engineering principles and practices as applied to the field of public works, design, construction and operations including street and highway, hydraulic and mechanical operations, water and sewer systems, and urban drainage and hydrology, planning and development, inspections and GIS.
- Professional, technical, legal and financial issues involved in municipal engineering programs.
- Project management methods and practices, including methods of preparing designs, plans, specifications, estimates, reports and recommendations.
- Management and supervisory principles and practices.
- Budget preparation and administration principles and practices.
- Applicable Federal, State and local regulations.
- High quality customer service methodology and principles.
- Safety regulations as required by OSHA and other regulatory agencies.
- Hazards and safety principles involved in the construction and maintenance of public infrastructure.
- City ordinances and administrative rules and regulations affecting departmental operations and personnel matters.
- General City operations.

Ability to:

- Manage the work of subordinates including coaching, training, assigning, monitoring and evaluating work, counseling and disciplining staff, and resolving grievances.
- Plan, organize, assign, coordinate and manage the activities of professional, support staff, and outside contractors.

- Develop and monitor the division budget and establish budgetary controls.
- Evaluate projects and determine cost-effective approaches.
- Negotiate project or maintenance contracts on behalf of the division.
- Analyze complex issues, evaluate alternative solutions, develop sound conclusions, and recommend a course of action.
- Interpret and apply Memoranda of Understanding, City ordinances and administrative rules and regulations affecting departmental operations and personnel matters.
- Develop, understand, interpret laws and execute rules, regulations, policies and procedures.
- Establish and maintain effective working relationships with the City Council, public officials, other department heads, staff, private and community organizations and others encountered in the course of work.
- Present proposals and recommendations effectively in public meetings.
- Develop clear, concise, and comprehensive studies, reports, and agenda items.
- Communicate effectively orally and in writing.
- Read and understand technical reports, maps, drawings, contracts and specifications.
- Operate office equipment including a computer, calculator, copier, and related systems such as Supervisory Control and Data Acquisition (SCADA).

License and/or Certificate

Must possess and maintain the following:

- An appropriate, valid California driver's license.
- A valid certificate of registration issued by the California State Board of Registration for Civil and Professional Engineers.

Education and/or Experience

Any combination of education and experience that provides the required knowledge and skills is qualifying. A typical way of obtaining the necessary knowledge and abilities is:

Bachelor's degree from a college or university in Civil Engineering or a related field and eight (8) years of progressively responsible professional civil engineering experience involving the design and construction of a variety of public works projects, which includes at least five (5) years of management or supervisory experience.

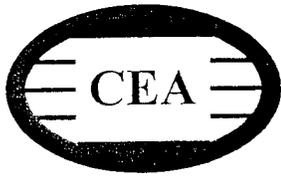
Special Requirements

Performance of the essential duties of this position includes the following physical demands and/or working conditions:

Requires the ability to exert a small amount of physical effort in sedentary to light work involving moving from one area of the office to another; requires sufficient hand/eye coordination to use standard office equipment. Tasks require color and visual perception and discrimination, as well as oral communications ability; requires the ability to operate a motor vehicle. Tasks are regularly performed without exposure to adverse environmental conditions.

Career Ladder Information

Experience gained in this classification in addition to training and course work may serve towards meeting the minimum requirements for promotion to Public Works Director.



City Employees Associates

254 B Lindero Avenue
 Long Beach, CA 90803
 562-433-6983 (voice)
 562-433-1264 (fax)
 cea01@charter.net

February 12, 2007

Civil Service Commission
 City of Torrance
 3031 Torrance Blvd.
 Torrance, CA 90503-5059

RE: Examination for Deputy Public Works Director/City Engineer

Honorable Commissioners:

On July 25, 2005 and again on September 12, 2005 your honorable body voted to support of the integrity of the Torrance Civil Service System by deciding to allow the exam for Deputy Public Works Director/City Engineer to be promotional. Despite your direction, the City has not tested for, nor filled this position. Instead, the City has now solicited a third legal opinion in its attempt to convince you that the exam should be open for this position.

The City's newest argument appears to be that Your Honorable Body does not have the right to order promotional examinations at all. As the authority to decide whether an exam will be "open and competitive" or "promotional" is clearly established in the Civil Service Rules (Section 14.1.29), and since your honorable body has most certainly approved hundreds, if not thousands, of promotional exams (including several which are pending) and since one of the primary functions of ALL Civil Service Systems is to make such determinations, we are amazed at the lengths to which the Public Works Department will go, in order to be able to get its way.

Before we go on to explain that the City's latest argument lacks cogency, we would like to ask a more fundamental question: **Why has the City not acted on your directive of September 12, 2005?** Why are you once again considering this matter, when it was thoroughly debated and decided upon twice within the last year-and-a-half? We respectfully request that you review your minutes from that meeting and vote, once again, to order the City to conduct a promotional exam.

Second, we have a question about the Commission's process. We do not find any authority in your rules providing for the setting aside of an eligibility exam on the basis of an "opinion letter" after the Your Honorably Body has already made your decision. **We do not understand why this matter is on your Agenda, nor why you are considering this "opinion" at all.**

The "opinion" (which if taken to its conclusion would eliminate the need for your Commission, because it eliminates the distinction between Civil Service and non-Civil Service employees) is

OFFICE OF THE
 CITY CLERK
 3031 TORRANCE BLVD.
 TORRANCE, CA 90503-5059
 TEL: 562-433-6983
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specious. Very simply, the City's argument is that since the Torrance Charter is similar to the San Jose Charter which says that "all appointments shall be made on the basis of merit and fitness" and since a lawsuit against the City of San Jose struck down the right of city employees with no experience to have priority for firefighters jobs over experienced firefighters from other jurisdictions, *you* must not have the right to establish an eligibility list composed of current employees only.

The lack of applicability of the San Jose (*Luchisi*) decision to the current City of Torrance decision is glaring for three reasons. First, the current civil service employees who are interested in composing the pool for a promotional exam (Engineers) are fully experienced and eligible to fill the higher position (City Engineer.) They are not clerical employees applying to be firemen. As a matter of fact, several of the employees have filled the job for extended periods in acting capacities.

Second, there are *many* current employees who are both experienced and who meet the eligibility requirements of the job. If there were not a reasonable pool of applicants, the Commission would not consider a promotional-only exam.

Third, the Commission has authority to decide when it will, or will not, limit the pool of applicants to current employees. When, for any reason, it decides that a particular job is so challenging that the current employees lack the skills necessary, calling an open-and-competitive exam is within the Commission's prerogative. (Please be reminded, that for the Deputy Public Works/City Engineer's position you have already made this decision.)

All employers must have mechanisms for screening and limiting the number of experienced, eligible people who may be considered for a job. The most time-honored method for accomplishing this in public employment involves the use of promotional exams whenever there are large numbers of current employees who meet the requirements of the position. This is not simply to reward long-term employees for their efforts, but an understanding that *experience with the same employer is a great predictor of success in another position with the same employer.* It is obvious that an Engineer who is not only certified and experienced, but who is also experienced with operations of the Public Works Department, may have greater ability to function within the Department than someone who has never worked in for City of Torrance. Experience with the same employer is unquestionably a legitimate criterion for screening applicants.

Municipal Code Provisions

The City's "opinion letter" states that "in California a city charter represents the supreme law of {a city...}." We concur, and also want you to know that the Meyers-Milias-Brown Act, the state collective bargaining law, similarly supports the notion that cities have "local control" over the establishment of rules affecting "wages, hours and conditions of employment." Promotional ladders are frequently a subject of bargaining in cities and, because the Torrance Civil Service System has excellent language on this subject, the Engineers (and other bargaining units) have had no need to address this matter in their individual negotiations. You should know that if the Commission should decide to take direction from the City's "opinion letter" to eliminate this language, this would trigger an obligation on the City's part to negotiate with all bargaining units. The loss of promotional language in the Civil Service Rules would be a serious loss to the employees in Torrance.

We do not understand the attorney's statement that there is no language regarding preference for existing employees in the Civil Service Rules. Here are the salient sections:

SECTION 14.12.7. TYPES OF PROMOTIONAL EXAMINATIONS.

Examinations for the creation of eligible lists for the higher positions in the competitive service of the City shall be ordered as often as may be necessary to meet or anticipate the needs of the higher class. Such examinations shall be known as:

- a) Departmental Promotional. Limited to eligible employees of the department embracing the position for which the examination shall be given unless there are four (4) employees filed and accepted except when specifically approved by the Civil Service Commission.
- b) Interdepartmental Promotional. Open to eligible employees in the classified service.

SECTION 14.12.8. ELIGIBILITY FOR PROMOTIONAL EXAMINATIONS.

No person shall be eligible to take either of said promotional examinations unless actually in the City employ at the time of examination or on leave of absence and the employee has completed six (6) months of actual service after permanent appointment.

The City's legal opinions also point to *Personnel Board vs. SEIU*, a seminal decision on the subject of merit verses seniority in the filling of Civil Service positions. In this case, the court held that seniority was not a distinguishing characteristic for purposes of obtaining a promotion. It did not in any way address the question of whether promotional testing interfered with merit-based hiring. There are no rules in Torrance pertaining to the use of seniority lists for hiring criteria. *This is a false issue*, intended, we believe, to distract you from the real matter: Torrance's rules for promotional testing are completely reasonable, normal and common. There are no legal precedents challenging such rules because they are used successfully in most large and medium-sized cities in California.

The Torrance Engineers Association is before you *for the third time on the same subject* not only because it objects to the City's repeated efforts to hire non-Civil Service employees for this position, but because it objects to the City's efforts to undermine the entire Civil Service System to accomplish this goal. It would like to remind the Commission that the concept of promotionalism is rooted in the State Constitution precisely to protect the concept of merit. To quote the Supreme Court's decision in *State Personnel Board*

"In 1913, the California Legislature enacted a statute creating California's first civil service system in an attempt to combat the 'spoils' system of political patronage in state. By the early 1930's, however, that statutory system was failing due to abuse in the creation of exemptions and authorizations for temporary employment that were not subject to the civil service statutes. In response to the perceived statutory failures, the people of California, in 1934, adopted article XXIV of the State Constitution 'to establish, as a constitutional mandate, the principle that appointments and promotions in state service be made solely on the basis of merit.' (emphasis added.)

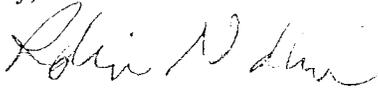
The system in Torrance devised by the Civil Service Commission is not arbitrary. It is a traditional exam process designed to create promotional ladders from among experienced and qualified employees who obtained their original positions as civil service employees. The City's attempts first in 2004 and 2005, to define at will employees as permanent employees so they may participate in promotional exams and -- when that didn't work -- to challenge the Commission's

right to conduct promotional exams at all (!) not only flies in the face of all legal precedent but is an insult to the intelligence of the Commission and to all practitioners of public sector employment law.

Finally, the TEA is concerned about the content of the materials that the City's staff have provided you in its report, and about the lack of objectivity which this selection of materials belies. **The Association has responded to every document that the City's attorneys have generated in their "opinion letters," but none of these materials have been included in your packet.** We will include them with this most recent communication. In recent years, there have been numerous legal actions brought by employees and their organizations reinforcing the need for neutrality in hearing officers and hearing bodies, such as Civil Service Commissions. Most pointedly, the Courts have said that hearing bodies must retain independence from the employers over which they adjudicate. We believe we are raising reasonable concerns about the independence of your staff and your attorneys and would like you to consider these biases in their context on the matter before you.

The Torrance Engineers Association thanks you for your time and hopes you will understand the City's effort to do away with promotional ladders in Torrance as a very serious attack on the integrity of our shared System. We hope you will take no action in response to the newest "opinion letters" and direct staff to comply with the orders you gave in September, 2005.

Respectfully,



Robin Nahin, Association Staff

c: Engineers Association Board
M. Koskie, Esq.

ROTHNER, SEGALL & GREENSTONE

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BERNHARD ROHRBACHER
JEAN SHIN
MICHELE SHERER ANCHETA

September 12, 2005

Honorable Chairperson and Members
of the Civil Service Commission
City of Torrance
3031 Torrance Boulevard
Torrance, California 90503

Re: Promotional Examination for Deputy
Public Works Director/City Engineer

Dear Honorable Chairperson and Members of the Commission:

This law firm represents AFSCME Local 1117. This letter is in response to the legal opinion issued on August 15, 2005, by Michael H. Miller, legal counsel to the Civil Service Commission. Contrary to Mr. Miller's conclusion, it is my legal opinion that this Commission's decision to order the examination for the above-referenced position on a promotional basis does not conflict with the provision in section 1300 of the City Charter that "[a]ll appointments and promotions in the classified service of the City shall be made according to merit and fitness, to be ascertained, so far as practicable, by competitive examination."

Most importantly, the plain language of section 1300 itself, by referring to "promotions in the classified service" (emphasis supplied), allows for examinations on a promotional basis. Notably, the section does **not** refer to "promotions to the classified service." Promotions in the classified service are, by definition, promotions of employees who are already employed in the classified service. This should be distinguished from promotions to the classified service, which are, also by definition, promotions of employees in the unclassified service. Note also that "promotions" necessarily refer to the advancement of current City employees, not to the hiring of new City employees. Thus, the plain language of section 1300, by referring not only to "appointments," but also to "promotions," does not compel all examinations to be open, as Human Resources Manager Melody Lawrence recommends in her memorandum August 22, 2005, but also allows for examinations on a promotional basis, as this Commission decided on July 25, 2005. A contrary conclusion, such as the one advocated by Mr. Miller and Ms. Lawrence, renders the plain language of section 1300 nugatory.

California State Pers. Bd. v. California State Employees Ass'n, 36 Cal.4th 758 (2005), and *Lucchesi v. City of San Jose*, 104 Cal.App.3d 323 (1980), relied upon by Mr. Miller, are both distinguishable and, therefore, do not support a contrary conclusion.

September 12, 2005
Page 2

At issue in *California State Personnel Board* was article VII of the California Constitution, which provides in pertinent part that, regarding state employees, "permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination." 36 Cal.4th at 770. Collective bargaining agreements between the parties contained "post and bid" programs under which permanent appointment and promotion of certain state employees was to be based on seniority. *Id.* at 763. The California Supreme Court held that basing the permanent appointment and promotion of state employees on seniority violated the requirement in article VII of the constitution that such appointment and promotion be based on merit ascertained by competitive examination.

California State Personnel Board is distinguishable first because it, like the article of the constitution which it interprets, applies only to **state** employees, but **not** also to **city** employees. Moreover, article VII of the California Constitution differs in important ways from section 1300 of the City Charter: Whereas the former demands, without qualification, the "merit" be "ascertained by competitive examination," the latter qualifies that "merit and fitness" be "ascertained, so far as practicable, by competitive examination."

Most importantly, however, is that *California State Personnel Board* involved seniority, whereas as seniority is not involved in any way, shape, or form here. This difference is crucial: Basing promotion and hiring decisions on seniority straightforwardly contradicted the requirement in article VII that such decisions be based on merit. Restricting the applicant pool to current City employees does not similarly contradict the requirement in section 1300 that promotion and hiring decisions be based on merit and fitness. On the contrary: From that vast applicant pool, the successful applicant will be chosen on the basis of merit and fitness alone, with no regard to seniority. Such procedure is clearly in keeping with section 1300, contrary to the conclusion by Mr. Miller and Ms. Lawrence. As discussed above, section 1300 otherwise would not allow any "promotions in the classified system," in direct contradiction to the plain language of that section.

Lucchesi involved a city charter section that provided that "[a]ll appointments and promotions to positions in the Classified Services shall be made on the basis of merit and fitness, demonstrated by examination and other evidence of competence." 104 Cal.App.3d at 326 (citations omitted). A city ordinance provided that openings for entry level firefighter positions be filled first from a "promotional eligible" list consisting of current city employees who scored 80 percent or higher on a written test, and only if they could not be filled from that list from an "open competitive" list consisting of current city employees who scored between 70 and 80 percent on the test and non-employees. *Id.* at 327. The Court of Appeal held that the ordinance was inconsistent with the charter.

September 12, 2005
Page 3

Please contact me with any questions you might have in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Bernhard Rohrbacher', with a stylized initial 'B' and a long, wavy horizontal line extending to the right.

Bernhard Rohrbacher

BR/dm

cc: AFSCME Local 117
James A. Murphy



City Employees Associates

254 B Lindero Avenue
 Long Beach, CA 90803
 562-433-6983 (voice)
 562-433-1264 (fax)
 cea01@charter.net

Via e-mail and U.S. Mail

September, 2005

Stacy Lewis, Civil Service Director
 3031 Torrance Blvd
 Torrance, CA 90503

Dear Ms. Lewis,

The purpose of this letter is to initiate a grievance on behalf of the Torrance Engineers Association over the Civil Service Department's failure to conduct an exam for the position of Public Works Deputy Director/ City Engineer. The Commission ordered the exam at its meeting of July 25th, but to this date, five weeks later, no exam has been scheduled.

We understand that the Commission's attorney, without request from the Commission, has issued an "opinion letter," suggesting that the Commission reconsider its authority to conduct promotional exams. We have read the opinion letter and find the argument specious. The intent is clearly to dissuade the Commission from conducting this particular exam, not to cancel all other scheduled exams, nor disqualify all other applicants hired under the authority of promotional exams.

More significantly, we do not find any authority in the Commission's rules, which provides for an exam to be set aside based on an opinion letter, particularly an unsolicited one.

The Public Works Deputy Director/ City Engineer position has been vacant for many months. There are eleven current, eligible applicants for the position. The Engineers Association has taken all necessary steps to insure that the position be included as a "rung" in the negotiated career ladder for its members and to encourage its members to apply. We do not believe it is within the Commission staff's authority to contravene or "reconsider" this agreement.

The remedy we seek is that staff immediately conduct the exam ordered by the Commission. If the City does not comply, we are prepared to file a complaint with the Public Employment Relations Board.

Yours truly,


 Kathleen Sage,
 Attorney for the Torrance Engineers Association

c: Engineers Board of Directors

CITY OF TORRANCE
 HUMAN RESOURCES DEPT.
 2005 SEP -7 AM 7:07

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	At 7:46 p.m., the meeting was adjourned to Tuesday, September 8, 1998, 5:30 p.m. for an executive session, with the regular meeting commencing at 7:00 p.m.	

*

*Adjourned in Memory of
Donald Roser and Ila Ewing*

*

RESOLUTION NO. 98-105**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF TORRANCE AMENDING RESOLUTION NO. 98-84
GOVERNING THE UNREPRESENTED EMPLOYEES**

MOTION: Councilman Nakano moved for the adoption of Resolution No. 98-105. The motion was seconded by Councilman Walker and passed by unanimous roll call vote (absent Councilwoman O'Donnell).

12c

**PROMOTIONAL EXAMINATIONS FOR DEPARTMENT HEAD
CLASSIFICATIONS****Recommendation**

The Civil Service Commission and the Civil Service Administrator recommend that Civil Service Rules be changed to allow non-civil service employees to compete in promotional examinations for Department Head Classifications.

Civil Service Administrator Ghio presented the staff report (per written material of record).

ORDINANCE NO. 3457**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
TORRANCE AMENDING SECTION 14.1.29 OF THE TORRANCE
MUNICIPAL CODE, RELATING TO THE ELIGIBILITY OF CITY
EMPLOYEES TO PARTICIPATE IN EXAMINATIONS FOR
DEPARTMENT HEAD POSITIONS**

MOTION: Councilman Nakano moved for the approval of Ordinance No. 3457. The motion was seconded by Councilman Walker and passed by unanimous roll call vote (absent Councilwoman O'Donnell).

13. ADMINISTRATIVE MATTERS**13a. REALIGNMENT OF POLICE DEPARTMENT BUDGET****Recommendation**

The Finance Director and the Chief of Police recommend that the Police Department's fiscal year 1998-99 budget be realigned with a reduction of approximately \$78,000.

Finance Director Tsao presented the staff report (per written material of record). Police Chief Herren advised that Option #1 was being recommended because it would have the least impact on Police Department operations.

ORDINANCE NO. 3457**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF TORRANCE AMENDING SECTION 14.1.29
OF THE TORRANCE MUNICIPAL CODE, RELATING
TO ELIGIBILITY OF CITY EMPLOYEES TO PARTICIPATE
IN EXAMINATIONS FOR DEPARTMENT HEAD POSITIONS**

The City Council of the City of Torrance does ordain as follows:

SECTION 1

That Section 14.1.29 of the Torrance Municipal Code shall be amended to read in its entirety as follows:

"The Civil Service Board shall determine in advance of every examination whether such examination shall be a promotional examination or an open examination or an open and promotional examination; provided, however, that an examination for a department head shall be either a promotional examination or an open examination and such determination shall be made by the City Council after recommendation by the Board. Such determination shall be recorded in the minutes of the Board and the City Council, as the case may be.

Applicants to take a promotional examination for a department head position must be actually in the City employ at the time of the examination and have completed six (6) months of actual service in either a permanent civil service position or a non-civil service position."

SECTION 2

Any provision of the Torrance Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4

This ordinance shall take effect thirty (30) days after the date of its adoption and prior to the expiration of fifteen (15) days from the passage thereof shall be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.

Introduced and approved this 1st day of September, 1998.

Adopted and passed this 8th day of September, 1998.

/s/ Dee Hardison
Mayor of the City of Torrance

ATTEST:

/s/ Sue Herbers
City Clerk of the City of Torrance

APPROVED AS TO FORM:
John L. Fellows III, City Attorney

By: /s/ Ronald T. Pohl
Ronald T. Pohl, Assistant City Attorney

August 19, 1998

Council Meeting
September 1, 1998

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Proposed Change to Civil Service Rules to allow non-Civil Service Employees to Compete in Promotional Examinations for Department Head Classifications.

ABSTRACT

It is recommended that your Honorable Body concur in the recommendation of staff and the Civil Service Commission to modify Municipal Code section 14.1.29 to allow non-civil service employees to participate in promotional examinations for department head positions.

BACKGROUND

At their meeting of August 17, 1998, a recommendation was presented to the Civil Service Commission to alter the Civil Service Rules and Regulations to allow non-civil service employees to compete in promotional examinations for department head positions (Attachment I). The Civil Service Commission, on a divided vote, approved the staff recommendation (see minutes, Attachment II).

The Torrance Engineers Association submitted a letter of protest to the Commission with a recommendation that all at-will employees be converted to civil service positions instead (Attachment III).

ANALYSIS

The current rules allow department head examinations to be given on an open basis (i.e., open to the public in general) or on a promotional basis (i.e., restricted to current employees in the City's civil service). The City has created a number of non-civil service mid-management level positions in recent years. These non-civil service positions involve all the skills and responsibilities that prepare one to assume a department head job, however they are not eligible to compete for a department head position on a promotional basis, as are the employees holding civil service status.

When filling a department head position, especially when there are a number of City employees ready to promote, it is desirable to do so on a promotional examination. When there are non-civil service employees, otherwise eligible, such a decision will preclude them from being considered, no matter how well qualified they may be. On the other hand, when both civil service and non-civil service employees are involved, and the recruitment is given on an open basis, it is typical that one of the internal candidates will fill the vacancy. This creates an image of unfairness in the eyes of the outside candidates. In the end, a great amount of additional time and resources, both for the City and the open candidates, will have been spent and a great deal of ill will is engendered. This could be avoided if all the City employees had the opportunity to compete in a promotional examination.

The Civil Service Commission has discussed the topic of allowing non-civil service employees to compete in all promotional examinations in the past. However, each time there has been opposition by most City employee organizations and no change has been made. Recognizing this, staff is making a limited recommendation at this time. Rather than change the rules for all examinations, we are proposing that a rule affecting only department head examinations be adopted. The current rule governing department head promotional exams is:

Torrance Municipal Code Section 14.1.29

The Civil Service Board shall determine in advance of every examination whether such examination shall be a promotional examination or an open examination or an open and promotional examination; provided, however, that an examination for a department head shall be either a promotional examination or an open examination and such determination shall be made by the City Council after recommendation by the Board. Such determination shall be recorded in the minutes of the Board and the City Council, as the case may be.

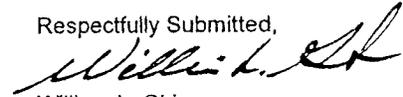
To the above rule we would add:

Applicants to take a promotional examination for a department head position must be actually in the City employ at the time of the examination and have completed six (6) months of actual service in either a permanent civil service position or a non-civil service position.

RECOMMENDATION

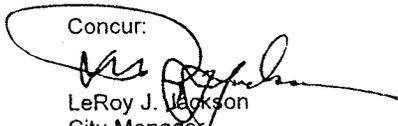
It is recommended that your Honorable Body concur in the recommendation of staff and the Civil Service Commission to modify, as described above, Municipal Code section 14.1.29 to allow non-civil service employees to participate in promotional examinations for department head positions.

Respectfully Submitted,



William L. Ghio
Civil Service Administrator

Concur:



LeRoy J. Jackson
City Manager

Attachments

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CITY ATTORNEY NOTE:

Section 1300 of the City Charter requires that all appointments and promotions in the civil service be made on the basis of merit and fitness. *Lucchesi v. City of San Jose* (1980) 104 Cal.App.3d 323, 330 invalidated a city hiring process that gave preference to current city employees merely by reason of their employment status. Civil service status is not a reasonable basis for discriminating between potential applicants. Thus, the proposed ordinance significantly advances the goal of making the City's civil service ordinance consistent with the City charter.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE
AMENDING SECTION 14.1.29
OF THE TORRANCE MUNICIPAL CODE, RELATING TO THE
ELIGIBILITY OF CITY EMPLOYEES TO PARTICIPATE
IN EXAMINATIONS FOR DEPARTMENT HEAD POSITIONS

The City Council of the City of Torrance does ordain as follows:

SECTION 1

That Section 14.1.29 of the Torrance Municipal Code shall be amended to read in its entirety as follows:

The Civil Service Board shall determine in advance of every examination whether such examination shall be a promotional examination or an open examination or an open and promotional examination; provided, however, that an examination for a department head shall be either a promotional examination or an open examination and such determination shall be made by the City Council after recommendation by the Board. Such determination shall be recorded in the minutes of the Board and the City Council, as the case may be.

Applicants to take a promotional examination for a department head position must be actually in the City employ at the time of the examination and have completed six (6) months of actual service in either a permanent civil service position or a non-civil service position.

SECTION 2

Any provision of the Torrance Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3

If any section, subsection, sentence, clause or phrase or this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4

This ordinance shall take effect thirty (30) days after the date of its adoption and prior to the expiration of fifteen (15) days from the passage thereof shall be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.

Introduced and Approved this ____ day of _____, 1998.

Adopted and Passed this _____ day of _____, 1998.

Dee Hardison, Mayor

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By _____
Ronald T. Pohl
Assistant City Attorney

July 29, 1998

Commission Meeting
August 17, 1998

Honorable Chairman and Members
of the Civil Service Commission
City Hall
Torrance, California

Honorable Members:

SUBJECT: Proposed Change to Civil Service Rules to allow non-Civil Service Employees to Compete in Promotional Examinations for Department Head Classifications.

BACKGROUND

The subject of non-civil service employees, and their inability to compete in promotional examinations, was first presented to your Honorable Body in January of 1985. The current rule, supported by a City Attorney opinion, states that a non-civil service employee is not eligible to compete in a promotional examination.

In 1985 the staff recommendation to allow non-civil service employees to take promotional examinations was adopted by your Honorable Body and referred to the meet and confer process. Ultimately, no changes were made regarding this rule.

The subject was again submitted for consideration in 1993. Again, the proposed rule change was recommended by your Honorable Body, but met opposition from civil service employees and the employee organizations. Later, in an effort to accommodate both sides, the Commission determined it would support a policy would to convert all non-civil positions into civil service positions, which would obviate the need for such a change.

Copies of the minutes from those meetings and the 1985 City Attorney opinion are enclosed as background.

ANALYSIS

While a number of the non-civil service positions have been converted to civil service, there has been an overall increase in the number of non-civil service positions. This has been particularly true at the mid-management level.

Within the last few years, the following non-civil service mid-management positions have been established:

Transportation Planner	Theater Operations Manager
Cultural Services Administrator	Risk Manager
Cultural Arts Center Manager	Transit Assistant Manager – Operations
Transit Assistant Manager -Admin.	Asst. Employment & Training Manager
Facility Operations Chief	Finance Manager - Accounting
Finance Manger – Audits	Finance Manager - Budgets

These mid-level positions involve skill sets that prepare the incumbent for department head jobs.

When filling a department head position it is often desirable to order a promotional examination. Under the current rule, the only employees eligible to compete in a promotional examination are employees holding civil service status. However in many cases there are civil service and non-civil service employees who meet the qualifications and wish to compete for the vacancy.

Promotional examinations are established by our rules to reward internal achievement and recognize employees who have contributed to the City's success. Generally, the City advocates promoting from within where there are sufficient internal candidates to create a competitive field. In the past the City has done an excellent job in this, however with the increase in non-civil service positions at the mid-management level, this ideology could be viewed as unfair if all qualified employees are not given the opportunity to advance in their position, regardless of classification.

Under current rules, when both civil service and non-civil service employees are involved, the only option is to request an open examination. This makes the non-civil service employees eligible to compete for the vacancy. When a relatively large number of well-qualified internal candidates compete with the open public their experience and "inside" understanding will give them an advantage. Typically, one of the internal candidates will fill the vacancy. To many, this implies a degree of unfairness to the outside candidates. In the end, a great amount of additional time and resources, both for the City and the open candidates, will have been spent and a great deal of ill will is engendered. This could be avoided if all the City employees had the opportunity to compete in a promotional examination.

Recognizing this has been an emotional issue in the past, staff is making a limited recommendation at this time. Rather than change the rules for all employees, we are proposing that a rule affecting only department head examinations be adopted. The current rule governing department head promotional exams is:

Torrance Municipal Code Section 14.1.29

The Civil Service Board shall determine in advance of every examination whether such examination shall be a promotional examination or an open examination or an open and promotional examination; provided, however, that an examination for a department head shall be either a promotional examination or an open examination and such determination shall be made by the City Council after recommendation by the Board. Such determination shall be recorded in the minutes of the Board and the City Council, as the case may be.

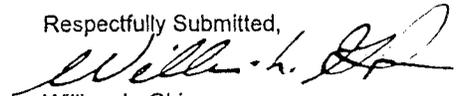
To the above rule we would add:

Applicants to take a promotional examination for a department head position must be actually in the City employ at the time of the examination and have completed six (6) months of actual service in either a permanent civil service position or a non-civil service position.

RECOMMENDATION

It is recommended that your Honorable Body concur in the staff recommendation to modify, as described above, Municipal Code section 14.1.29 to allow non-civil service employees to participate in promotional examinations for department head positions.

Respectfully Submitted,



William L. Ghio
Civil Service Administrator

Enclosures

X:\s\ford\item.doc

April 15, 1985

TO: William L. Ghio, Civil Service Administrator
FROM: Stanley E. Remelmeyer, City Attorney
SUBJECT: Eligibility of Non-Civil Service Employees for
Promotional Examinations, OPINION 85-6

QUESTION PRESENTED

Are permanent non-Civil Service employees of the City eligible to compete in Civil Service promotional examinations?

ANSWER

No.

DISCUSSION

Rule VII Section 4 covering eligibility for promotional examinations provides that "no person shall be eligible to take either of said promotional examinations unless he is actually in the City employ at the time of examination or on leave of absence and must have completed six (6) months of actual service after permanent appointment." The phrase "either of said promotional examinations" refers to the Departmental Promotional and the Interdepartmental Promotional examinations described in Section 3.

Departmental Promotional examinations are limited to eligible employees of the department while Interdepartmental Promotional examinations are open to eligible employees in the classified service. While it is arguable that an employee must be in the classified service only for an Interdepartmental Promotional examination, past practice and the definition of employee dictate otherwise.

For purposes of Rule VII the term employee is defined in Rule I as follows: "EMPLOYEE signifies an appointive officer or any person holding a position in the Competitive service." Thus, for purposes of these rules, employee only refers to those persons in the Civil Service system and only employees in that Civil Service system are eligible to compete in Civil Service promotional examinations.

Historically, the City has consistently denied permanent non-Civil Service employees the right to compete in Civil Service promotional exams. Furthermore, the definition of the term "employee" in Section 14.8.2(f) recently amended for the Employee Relations portion of the Code only from "any person employed by the City in a permanent position in the classified civil service" to "any person employed by the City in a permanent position." The purpose of this amendment was to allow non-civil service employees the right to participate in employee groups.

It will be necessary to amend the definition of employee in Rule I much the same as it was amended in Section 14.8.2(f) to enable permanent non-Civil Service employees to compete in Civil Service promotional examinations.

STANLEY E. REMELMEYER
City Attorney

By *Elizabeth G. Clark*
ELIZABETH G. CLARK
Deputy City Attorney

EGC:rs

Civil Service Commission
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24. Workshop to Review the Eligibility of Non-Civil Service Employees to take Promotional Civil Service Examinations.

Recommendation of the Civil Service Administrator

That the Commission concur in the selection of Option II and direct staff to draft the necessary changes to the Municipal Code.

Civil Service Administrator Ghio advised that this workshop was requested by the Commission some time ago; and, staff being so instructed, backup information was distributed to each department, each employee organization and each non-Civil Service employee of the City for review on June 18, 1985, with this as the announced date of the workshop. Parties were invited to submit a written response to be included in the agenda packet, he said, noting that one handwritten note was received from Pat Unangst of the Manpower Division concurring with the recommendation of the Civil Service Administrator, but was inadvertently excluded from the packet.

Past policy relative to allowing or not allowing certain non-Civil Service employees to take Civil Service Examinations was explored, Mr. Ghio explained, including the opinion of the City Attorney that non-Civil Service employees should not be allowed to take promotional Civil Service tests under current rules (April 15, 1985, correspondence of record). Three options and their pros and cons were presented (information of record):

1. No Change

Continue to have two kinds of service with non-Civil Service employees not eligible for promotional examination;

2. Revise the Civil Service Rules

Revise Civil Service Rules to allow non-Civil Service employees to compete in promotional examinations; or

3. Conversion of non-Civil Service Employees

Convert non-Civil Service employees to Civil Service status resolving the problem.

Option 2 was favored by Mr. Ghio because it would preserve all of the advantages of nonclassified service (listed in material of record) while conferring upon these employees the ability to take promotional examinations. He explained this conclusion, which he said was based on the fact that the employees would have already served a minimum of six months, would be subject to normal performance evaluation process within the City, would have to meet requirements to qualify, would be competing in a standard Civil Service examination to gain a promotion, and would be subject to a six-month probationary period following that promotion.

The Commission was further informed by Mr. Ghio of a recent City policy change wherein all non-Civil Service employees are hired after an examination process conducted by the Civil Service Department, which is, although not under the auspices of the Civil Service Commission, parallel to that process employed by Civil Service. With that he recommended modifying the Civil Service Rules as recommended by the City Attorney (correspondence of April 15, 1985, of record) to redefine the concept of an employee from being one who is a member of the classified service to one who is simply "an employee of the City in a permanent position."

Representing AFSCME Local 1117, Mr. Don Smith reiterated that organization's stated objection (of record) to allowing nonclassified employees to take promotional Civil Service tests.

The Commission next heard from Vivian Rescalvo, Redevelopment Specialist, Planning Department, who reminded this forum of her memorandum of April 23, 1985, (of official record) wherein she asked the Commission to consider allowing qualified externally-funded employees to participate in promotional exams in the future. Ms. Rescalvo spoke in favor of the Civil Service Administrator's recommendation, speaking on behalf of those employees who want to continue their employment with the City - a reflection of their dedication to the City, in this speaker's opinion.

On behalf of the Personnel Department, Personnel Specialist Young supported Option 2. She noted the large number of employees within the purview of that Department who are exempt from Civil Service, and echoed earlier statements of Mr. Ghio and Ms. Rescalvo. Ms. Young said she was not supportive of either Option 1 or Option 3.

Further, Personnel Specialist Young advised that a meeting held with exempt employees revealed their preference to remain in that status, which would be allowed with Option 2.

As no one else present wished to speak, Commissioner Rizzardi proposed the following.

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MOTION: Commissioner Rizzardi moved to concur with the Civil Service Administrator's recommendation to approve Option 2 and to direct staff to draft the necessary changes to Code, accordingly (seconded after discussion; see below).

Clarification relative to differences between exempt and classified employees was provided by staff, it being noted that the latter are dues paying union members and that exempt employees are usually hired for externally funded programs of uncertain duration. Vice Chairman Cahill noted that none of the nonclassified positions fall within Civil Service testing.

Proceeding with Option 2 and evolving into Option 3 as vacancies occur, was suggested by Commissioner Massey and received as a viable alternative by both Civil Service Administrator Ghio and Commissioner Rizzardi. Mr. Ghio observed that Option 3 is currently in practice, positions becoming classified as programs become long-term, such as with cable television.

Mr. Rizzardi's earlier MOTION TO APPROVE OPTION 2 (see above) was now SECONDED by Commissioner Massey.

Commissioner Cribbs questioned what negative effects the approval of Option 3 would have on classified employees. It was Civil Service Administrator Ghio's opinion that the question of seniority may affect these employees if one of the externally funded programs were to be discontinued, causing a redistribution of employees.

It was indicated by Vice Chairman Cahill that he would have no objection to non-Civil Service employees taking promotional exams within the system if the Civil Service Ordinance so specified.

The motion on the floor to concur with Option 2 and direct staff to draft changes to the Civil Service Ordinance for approval by the Commission and further recommendation to the City Council was clarified by Civil Service Administrator Ghio, and now CARRIED BY UNANIMOUS VOICE VOTE (absent Commissioner Federle and Chairman Amato).

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MINUTES OF AN ADJOURNED REGULAR MEETING
OF THE TORRANCE CIVIL SERVICE COMMISSIONWRITTEN COMMUNICATIONS:

10. Proposed Civil Service Rule Change to Extend Promotional Examination Rights to Non-Civil Service Employees and Transfer Various Rules to the Municipal Code.

Mr. Rod Brierley, 23025 Madison Street, Executive Board Member, AFSCME's Local 1117, appeared before the Commission to request that Item 10 be removed from the Civil Service Commission agenda to allow AFSCME the opportunity to complete the meet and confer process on the matter of extending promotional examination rights to non-Civil Service employees.

It was explained by this speaker that Mr. Don Smith, Representative of AFSCME, who heretofore addressed the Commission on this subject, could not be present due to the death of his mother.

On behalf of Mr. John Garfield, Council 36, Mr. Brierley clarified that Local 1117 was properly notified by Civil Service; however, due to internal changes within the organization, the Union failed to address this matter in a timely fashion.

Stating the Union's position, of record, Speaker Brierley said this issue is a matter for meet and confer. It is the Union's belief, he concluded, that the transfer of such rules to the Municipal Code would potentially alter the bargaining

relationship between the Union and the City by forcing the Union to negotiate with the City Council over future rule changes.

The Civil Service Commission returned to regular agenda order, having determined by consensus that Mr. Brierley's request would be considered in turn. Mr. Brierley left at this time, and regular agenda order was resumed.

Mr. Brierley's earlier request for postponement pending completion of the meet and confer process by AFSCME was set forth by Chairman Amato (See Page 1).

Reminding those present of previous postponements of this matter, Commissioner Rizzardi proposed that action be taken without further delay in consideration of those employees who would be positively affected by the rule change.

Chairman Amato clarified that non-Civil Service employees have been allowed to take promotional Civil Service examinations subsequent to the Commission's favorable determination in this regard, and pending formal rule change. He personally commended staff for an excellent job of amending rules to comply with the Commission's action, and echoed Mr. Rizzardi's suggestion for action at this time.

That AFSCME is on record in opposition to extending promotional examination rights to non-Civil Service employees was verified by Civil Service Administrator Ghio. Reviewing the events leading to the rule change under consideration, Mr. Ghio explained that the rule change language was drafted and submitted to employee organizations and departments on September 30, 1985, with a request for review and comment, and an invitation to hold meet and confer sessions, if desired. It was Mr. Ghio's understanding that the postponement requested by Mr. Brierley was intended to accommodate a meet and confer session because the Union failed to ask for one earlier.

During the ensuing discussion, Commissioner Cahill, who opposed the rule change, made the following points:

- Non-Civil Service employees who have never taken a Civil Service examination are being grandfathered into the promotional Civil Service examination process by Commission Action.
- There is no language in the Civil Service Rules that allow for this action.
- These non-Civil Service employees are non-Civil Service by choice in many cases.
- The rule change proposed does not stipulate which individuals, classifications, or departments will be allowed to take promotional Civil Service examinations.

Mr. Cahill advised that his objection to this rule change would be "loud and long" when it is considered by the City Council.

MOTION: Commissioner Rizzardi moved to recommend approval of changes to Rules VI and VII of the Civil Service Rules and Regulations and Torrance Municipal Code Sections 14.1.15, 14.1.29, 14.12.1, and 14.12.2, subject to amended Page 42 of agenda material (of record). His motion was seconded by Mr. Basen, and carried by majority vote. Mr. Cahill voted no for reasons of record, and requested that the record so state.

WRITTEN COMMUNICATIONS

6. Proposed Change to Civil Service Rules to allow non-Civil Service Employees to compete in Promotional Examinations

RECOMMENDATION

It is recommended that your Honorable Body approve the proposed rule and recommend its adoption by the City Council.

Upon legal advice for the purpose of clarity, staff reported that the first sentence of the proposed changes to Rule VII, "PROMOTIONAL EXAMINATIONS," (of record) be changed to read:

"Examinations for the creation of employment lists for the higher positions shall be ordered as often as may be necessary to meet or anticipate the needs of the higher class."

and further reported that the remainder of the proposed changes to Rule VII continue to read:

"No promotional examination shall be given unless there are four employees filed and accepted, except when specifically approved by the Civil Service Commission. Promotional examinations shall be limited to eligible employees of the City who:

a) are actually employed by the City at the time of the examination or on a leave of absence; and,

b) have completed six (6) months of actual service in a permanent position."

Noting the request from one employee organization that Rule VII not be considered until management meets with the

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employee groups, staff reiterated the recommendation to approve the preceding rule changes.

Regardless of whether there is agreement through the meet and confer process, Commissioner Tamoush stated that, in his opinion, the Commission can directly recommend to the City Council matters applicable to non-represented employees. He commended staff on the completeness and follow-through on this matter.

Staff explained that the meet and confer session would occur prior to City Council action and that the proposed rule changes would affect the promotional rights of other employees.

MOTION: Commissioner Tamoush moved to approve the proposed rule changes to Rule VII, as recommended by the staff, and to recommend its adoption by the City Council. The motion was seconded by Commissioner Amato.

In response to questions from Commissioner Adelstein, staff clarified that the existing Sections 3 and 4 would be eliminated from Rule VII of the Civil Service Rules and Regulations and that the proposed language would be included in the Torrance Municipal Code.

For Chairman Billett, staff further clarified that the sections on Departmental Promotional and Interdepartmental Promotional examinations would be eliminated.

Commissioner Rische expressed her concern regarding staff's confirmation that non-civil employees could work for six months and then take a promotional examination.

For Commissioner Adelstein, staff confirmed that non-civil service employees upon application to one of the higher positions would be given a similar examination for civil service employment.

Commissioner Tamoush expressed his suggestions about the Commission taking further action on the issue of non-civil service employees.

Chairman Billett concluded that a review of non-civil service jobs would be considered as a separate issue.

In response to an inquiry from Commissioner Adelstein, staff clarified that the proposed language reflects the Commission's past and existing practice.

Mr. Bob Hildebrand, First Vice President of the Torrance Professional and Supervisory Association (TPSA), believed that TPSA would agree with Commissioner Tamoush's suggestion to include a rule change, converting all non-civil service employees to civil service, and to have one permanent employee classification in the City. He voiced support of non-civil service employees having the opportunity to be represented in bargaining units.

Staff clarified that the non-civil service employees have the right to participate in the employee organizations.

Ms. Irene Alvarez, President of the Torrance City Employees' Association (TCEA), voiced TCEA's support of TPSA's position and echoed Mr. Hildebrand's comments.

Mr. Rick Bongard, President of the Torrance Firefighters' Association, addressed his concern pertaining to a change in the number of employees for the Departmental Promotional examinations. Staff clarified the existing language.

Noting the Fire Department rules, Mr. Bongard also inquired about the affect of the proposed rule changes on the Department.

Chairman Billett confirmed that the Fire Department would not be affected.

Recalling that she had appeared at the December 14, 1992, Civil Service Commission meeting on behalf of the applicants for the Senior Administrative Analysts' examination, Employment Supervisor Barbara Aranguren thanked the Commission for its supportive comments and asked the Commission to set a deadline for completion of the meet and confer process.

For Chairman Billett, staff recommended that a final motion could be that changes in the language would be returned for Commission review and that the Commission could establish that a status report be provided in three months.

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In response to questions from Commissioner Tamoush, staff confirmed that the Senior Administrative Analysts would not participate in the meet and confer process and reiterated that represented employees could be affected by the proposed rule changes.

SUBSTITUTE MOTION: Commissioner Tamoush moved to approve the proposed rule changes as recommended by staff and to recommend its adoption by the City Council with the amendments that the staff return to the Commission any significant changes to the proposed language as a result of the meet and confer process and provide a status report in three months. The motion was seconded by Commissioner Amato and passed as amended by a majority voice vote (Commissioner Rische voted no).

In response to the inquiry from Chairman Billett about non-civil service jobs, staff noted that the appropriate action would be to direct staff to return with a recommendation on this subject.

For the Commission, staff reviewed the analysis on non-civil service classifications (of record).

Hearing no recommendations from the Commission, the Chairman proceeded to the next agenda item.

(Subject to Approval)

August 17, 1998

**EXCERPT OF MINUTES OF A SPECIAL MEETING
OF THE TORRANCE CIVIL SERVICE COMMISSION**

CALL TO ORDER

The Civil Service Commission of the City of Torrance convened in a special meeting at 7:06 PM on Monday, August 17, 1998 in the City Council Chambers for the City of Torrance, Torrance, CA.

FLAG SALUTE

Chairperson La Bouff led the Flag Salute.

ATTENDANCE

Present: Commissioners: Drevno, McIntyre, Nishioka, La Bouff,
Billett, Scotto, Sutherland

Also Present: Civil Service Administrator Ghio
Personnel Analyst Bonnie Botello
Personnel Analyst Melody Lawrence

COMMISSION CHAIRPERSON

Commissioner La Bouff

WRITTEN COMMUNICATION

4. **Proposed Change to Civil Service rules to allow non-Civil Service employees to Compete in Promotional Examinations for Department Head Classifications.**

Ezekiel Hill
Vice President of the Torrance Engineer's Association

Addressing the Commission, Mr. Hill noted that John D. Kulluk, Ph.D., President of the Torrance Engineer's Association, had requested that Mr. Hill appear before the Commission and read a letter of protest, written by Mr. Kulluk, in which it was stated that the proposed change to the Civil Service rules, to allow non-Civil Service employees to compete in promotional examinations for department head classifications, is not equitable to the Torrance Engineer's Association membership, and that if anything is

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done in this regard, the Commission should determine that all at-will employees should be Civil Service employees.

Responding to questions by various members of the Commission, Administrator Ghio explained that an at-will employee is the same as a non-civil service employee. Continuing, he noted that the City Charter established civil service, and states that positions in existence at the time of the establishment of the Charter must remain civil service positions, and cannot be removed. However, he noted, the Charter does not state what one is to do with newly created positions, and that the practice has been to create positions outside the civil service as these new positions come along. A problem has been created because rule restrictions do not permit non-civil service employees to take promotional exams. Mr. Ghio explained that giving an open exam creates problems because persons outside the City of Torrance feel they cannot compete against a well-trained staff of city employees. Believing that the City would have opposition to the change, Staff decided to restrict the rule change to the heads of departments only.

In response to additional questions, Administrator Ghio detailed the wide breadth of experience held by various at-will employees, and noted that the use of such individuals was a coming trend. He further noted that it is a common system within various public jurisdictions. Additionally, he informed the Commission that he believed approximately 20% of management positions were currently at-will positions.

Jeff Gibson, of the Planning Department, concurred with Administrator Ghio's analysis, noting that approximately one-third (or ten of the thirty members) of the Torrance Management Employee's Organization members are non-civil service status.

Mr. Ghio continued, stating that, if the change was put into effect, the City of Torrance desires that an at-will employee be in a budgeted position and employed with the City for six months before they are permitted to take a promotional examination. Further, he noted that at-will employees receive the same management benefits as other employees, and that the difference between an at-will employee and civil service employee is transparent as far as paychecks and benefits.

MOTION: By Commissioner McIntyre to accept the change in wording, and accept Staff's recommendation that the Civil Service rules be changed to allow non-Civil Service employees to compete in promotional examinations for Department Head classifications. The Motion was seconded by Commissioner Scotto, and approved 4 to 3 in a roll call vote, with Commissioners Billett, Drevno and Nishioka voting in the negative.

-- END OF EXCERPT --
(Subject to Approval)

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City of Torrance
City Hall
Torrance, California

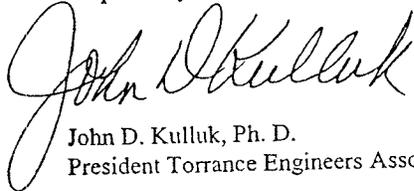
SUBJECT: Agenda Item on At Will Employees participation in Promotional Examinations

Member of the Commission:

As President of the Engineers Association we must protest allowing at-will employees to participate in promotional examinations for department head positions. Historically, the City has not permitted our at-will members to participate in any promotional tests. It is our position that allowing this to occur is not equitable to our members.

We believe the best manner in which to make this equitable is to make all at-will employees Civil Service. This way all employees can have a chance for promotions and not just aspiring to department head positions.

Respectfully Submitted,



John D. Kulluk, Ph. D.
President Torrance Engineers Association

cc