Council Meeting of
September 11, 2007

SUPPLEMENTAL

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

Members of the Council:

SUBJECT: Supplemental Material to Council Agenda Item #12A

Attached are additional materials received after the original item was prepared.

Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By _____
Viet Hoang
Acting Civil Service Manager

NOTED:

_____
LeRoy J. Jackson
City Manager

Attachments: A) Correspondence from Michael McGill dated September 10, 2007

12A

PROUDLY SERVING MEMBERS OF THE FOLLOWING PUBLIC SAFETY UNIONS:

ADELANTO CORRECTIONAL PEA
ALHAMBRA POA
ANAHEIM POA
AZUSA POA
AZUSA CAFP
BALDWIN PARK POA
BARSTOW POA
BEAUMONT POA
BELL POA
BUENA PARK POA
BURBANK AIRPORT POA
BURBANK POA
CALEXICO POA
CALIFORNIA CITY PEA
CA CORRECT. SUPV. ORG.
CATHEDRAL CITY POA
CHAFFEY COLLEGE POA
CHINO PMA
CHINO POA
CLAREMONT POA
COLTON POA
COMPTON USD POA
CORONA POA
COSTA MESA POA
CULVER CITY POA
CYPRESS POA
DELANO POA
DESERT HOT SPRINGS POA
EAST SAN GABRIEL POA
EL MONTE POA
FONTANA POA
FONTANA SCHOOLS POA
FRESNO POA
GARDENA POA
GARDEN GROVE POA
GLENDALE PARK RANGERS
GUENOGRA POA
HEMET PMA
HERMOSA BEACH POA
HUNTINGTON PARK POA
IMPERIAL POA
INGLEWOOD POA
INGLEWOOD SCHOOLS POA
INYO DSA
IRWINDALE POA
LA HABRA POA
LA VERNE POA
LONG BEACH AIRPORT POA
LONG BEACH CC POA
L.A. AIRPORT POA
L.A. COPS
L.A. CROWNS INF. ASSN.
L.A. COUNTY POA
L.A. GENERAL SERV. POA
L.A. POLICE PROTECTIVE LEAGUE
L.A. POPE POA
L.A. SCHOOLS POA
MAMMOTH LAKES POA
MAYWOOD POA
MONO COUNTY DSA
MONO COUNTY PSA
MONROVIA POA
MONT CLAIR POA
MONTEBELLO POA
MONTEREY PARK POA
MONTEREY POA
MURRIETA POA
PLACENTIA POA
POMONA SLEF
RETIRED POAC
RIALTO PEA
RIALTO POA
RIDGECREST POA
RIVERSIDE POA
RIVERSIDE SHERIFFS LEMU
SAN BERNARDINO POA
SAN BERNARDINO COUNTY PGA
SAN DIEGO COLLEGE POA
SAN FERNANDO POA
SAN GABRIEL POA
SAN MARINO POA
SANTA PAULA POA
SIERRA MADRE POA
SIGNAL HILL POA
SOUTH GATE POA
TEAMSTERS, LOCAL 911
TORRANCE POA
TRINIDAD POA
UPLAND PEA
UPLAND POA
U.C. BERKELEY POA
U.C. DAVIS POA
U.C. IRVINE POA
U.C. LOS ANGELES POA
U.C. MERCED POA
U.C. RIVERSIDE POA
U.C. SAN DIEGO POA
U.C. SAN FRANCISCO POA
U.C. SANTA BARBARA POA
U.C. SANTA CRUZ POA
VICTORVILLE PEA
WESTMINSTER POA

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September 10, 2007

Via Facsimile and U.S. Mail
(310) 618-2927

Viet Hoang
Acting Civil Service Manager
City of Torrance
3231 Torrance Boulevard
Torrance, California 90503

Re: Torrance Police Officer [redacted]

Dear Ms. Hoang:

I am in receipt of your correspondence of today's date, faxed to me at approximately 10:18 a.m. Your correspondence indicates that you are placing the Officer [redacted] matter on the council's agenda for tomorrow evening, September 11, 2007. You further indicate that you are requesting that a hearing be set for September 25, 2007, with the parties to "brief" the matter in advance. More specifically, your proposed recommendation expects Officer [redacted] to outline his position regarding "Petitioner's revived interest in employment." However, your letter misunderstands the City's obligations.

The superior court has already determined that Officer [redacted] has a revived interest in employment. The court would not have granted the writ of mandate if he did not. To verify this, you need only review that portion of the writ which unequivocally states "Petitioner, being a permanent employee before he was discharged, is entitled to same due process as other permanent employees of Torrance." However, what you have failed to consider is that the City has been ordered to conduct a hearing "as set forth in Tuffli v. San Diego Unif. Sch. Dist., (1995) 30 Cal.App.4th 1398." In Tuffli, on facts nearly identical, the court noted "in light of the reversal of his conviction and the dismissal of the charges, there remains no basis for the continuing deprivation of his interest in continued employment." Id. at 1401. "An employee who is subject to dismissal only for cause has a property interest in continued employment which is entitled to constitutional protection. [citation]." Id. at 1407.

As such, the court stated "[n]ow that that [the conviction] has been removed, **we believe due process considerations require that a continuing deprivation of his property right to continued employment, after dismissal of the charges, be supported by procedural protections**, which have not yet been afforded here. [citations omitted]." Id. at 1408. Fortunately, the question of what due process is due

was also answered in Tuffli. After Tuffli's conviction was overturned, he became "entitled to the protections of dismissal for cause proceedings, since the predicate for his summary dismissal no longer exists." (Emphasis added). Id.
The Tuffli court explained that "**equal protection considerations require that he have a hearing like other permanent employees charged with misconduct**." Id. at 1408-1409.

Furthermore, to the extent that the city council, and your recommendation, vests discretion in the City to decide whether Officer [redacted] is reinstated absent any procedural due process, you are wrong. The Tuffli court addressed this very point: the employer is not vested with the discretion to simply decide whether it *wanted* to reinstate Tuffli, since such "would be adequate to deal with a non-permanent employee's employment rights; however, it does not suffice to protect a permanent employee's rights to continued employment, where no cause for dismissal has been found and the predicate for a summary dismissal no longer exists." Id. at 1408.

Therefore, your recommendation needs to be specific to the ruling in Tuffli. Your recommendation does not include any procedural due process protections, and does not afford Officer [redacted] with any notice of proposed discipline, or any cause for that matter that would disqualify him from reemployment. The protections set forth in Tuffli require that Officer [redacted] receive minimal standards of due process prior to imposition of discipline, including notice of action proposed; grounds for discipline; charges and material upon which action is based; and an opportunity to respond in opposition to the proposed action before a reasonably impartial and non-involved reviewer. Linney v. Turpen (1996) 42 Cal.App.4th 763; and Titus v. Los Angeles County Civil Service Comm. (1982) 130 Cal.App.3d 357.

I have no reason to draft a brief to the city council explaining a point made clear in the writ and in the Tuffli decision. As the superior court indicated, if the City of Torrance has a basis to not reinstate Officer [redacted], bring it to his attention through appropriate due process procedures and we will respond. However, you have not done this. I do not think you understand your obligations. Further, be advised that Officer [redacted] does not consider your recommendation compliance in any

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way with the writ of mandate and will take all appropriate measures to bring this to the court's attention. Your actions appear designed to delay the inevitable, that is, Officer [redacted] return to active duty.

Very truly yours,

LACKIE & DAMMEIER APC

Michael A. McGill

cc: Officer [redacted]
J. Scott Tiedemann, Esq. (via facsimile only)