Council Meeting of
May 13, 2008

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

SUBJECT: **City Manager - Resume the hearing to determine the extent to which the Petitioner, a former Torrance police officer, has revived interest in employment. (Confidential under Penal Code 832.7 and Copley Press v. Superior Court 39 Cal.4th 1272 (2006)). Consideration of employment matters may be conducted in a closed session per California Government Code 54957.**

RECOMMENDATION:

Recommendation of the City Manager that the City Council resume its hearing held on September 25, 2007 in order to comply with the writ of mandate issued by the Los Angeles Superior Court ordering the City to hold a hearing regarding the extent to which the Petitioner, a former Torrance police officer, has a revived interest in employment. Specifically, the City Manager recommends:

(1) That the City Council conduct a hearing to consider the findings of fact and conclusions as contained in the Police Department's background report;
(2) That the Petitioner and the Department have the opportunity to argue their respective positions regarding the findings of fact and conclusions of the Police Department's background investigation to determine if the report represents legal cause to deny the Petitioner's reinstatement; and
(3) That after considering the findings of fact and conclusions and arguments by both parties, the City Council makes a determination of the Petitioner's revived interest in employment, or to continue the matter for further consideration of additional evidence.

FUNDING:

Not applicable

BACKGROUND:

Petitioner was employed by the City of Torrance as a police officer. In 1998, he was found guilty of one felony count of Penal Code Section 136.1(c)(1) – Dissuading a Witness By Force Or Fear; one felony count of 136.1(b)(2)— Dissuading a Witness From Assisting in The Prosecution; and one Misdemeanor Count of 243(e)(1)—Spousal Battery. Accordingly, the Petitioner was terminated from the Torrance Police Department.

Petitioner filed a timely appeal to the Civil Service Commission, which subsequently sustained the decision of the department and the administrative hearing officer on January 15, 1999. Petitioner then appealed to the City Council, which upheld the decision of the Civil Service Commission on April 13, 1999. Thereafter, Petitioner filed several appeals to his felony convictions, one of which lead to the convictions being overturned, effective May 22, 2005.

In light of the reversal of his convictions, Petitioner then requested an appeal to both the Council and the Civil Service Commission, which the City and the Commission denied.

On or about August 16, 2005 Petitioner filed a writ to the Los Angeles Superior Court, requesting that the Court overturn the City Council's former decision upholding the termination of Petitioner. Petitioner also requested immediate reinstatement and back pay, or alternatively a hearing before the City Council.

The Superior Court rejected Petitioner's request to overturn the City Council's decision upholding the termination of Petitioner. The Court further rejected Petitioner's request for reinstatement. However, on June 18, 2007, the court issued a writ ordering the City to conduct a hearing to determine the status of Petitioner's revived interest in employment. The City was served with the writ on July 16, 2007.

The writ further ordered that the City "return" to the Court within sixty days of the service of the writ. To comply with the writ, the City Council held a hearing on September 25, 2007 regarding the status of the Petitioner's revived interest in employment and issued the following orders:

(1) The City Council orders the Torrance Police Department to conduct a full background check of the Petitioner as described in California Government Code section 1031, and the applicable regulations as described in the Respondent's Hearing Brief.
(2) The City Council orders the Torrance Police Department to conduct the background check and to complete the background check as quickly as is practicable.
(3) The background check shall cover the approximately nine-year period between the Petitioner's termination and the present, as discussed by the Superior Court during June 1, 2007 hearing on the issuance of its Writ of Mandate.
(4) The results of the background check shall be returned to the City Council for completion of the determination of the status of Petitioner's revived interest in employment as ordered by the Superior Court, and if appropriate, the determination of back pay as ordered by the Superior Court.

After Council issued its orders, Torrance Police Department and the attorneys for Petitioner exchanged correspondence on how the background investigation should proceed; specifically, each party desired to have the background investigation administered by practitioners of their own choosing. On February 15, 2008 the Petitioner filed a Motion to Enforce Judgment. At that time, the Judge ruled that the City has the right to determine whether anything happened during those nine years that would disqualify the Petitioner from serving as a police officer and that the City had the right to utilize its own practitioners to administer the necessary examinations. The Court denied the Petitioner's Motion to Enforce Judgment and ordered the City conclude its examinations within 30 days from February 15, 2008. The Court also set a return date of 90 days from February 15, 2008 to determine the Petitioner's revived interest in employment.

On April 29, 2008, the Police Department produced the results of its background investigation and forwarded copies to the Petitioner and to the Civil Service Manager.

Analysis:

In the Writ of Mandate, the Court ordered that a hearing take place to determine the status of the Petitioner's revived interest in continued employment, and that if the City could find no legal cause for not reinstating the Petitioner to his employment as a peace officer with the City, the City should also determine the amount of back pay and other benefits, if any, that he may be entitled to receive commencing June 9, 2005. However, the Court did not mandate how your Honorable Body should proceed in this matter. The Torrance Municipal Code does not provide for any procedures in this situation.

On September 25, 2007, your Honorable Body conducted the first phase of this hearing by reviewing briefs and hearing arguments by attorneys for both the Petitioner and the Department. After deliberating on the matter in closed session, your Honorable Body ordered the Department to conduct a background investigation in accordance with California Government Code Section 1031. To continue this hearing, the City Council must consider the results of the background investigation resulting from your order. In preparation for your consideration, Civil Service has forwarded your Honorable Body a copy of this report and also afforded each party the opportunity to brief their position. These briefs were also included in the materials your Honorable Body received prior to tonight's hearing.

In addition to the information you have already received, tonight's proceedings will also provide the opportunity for both parties to argue their case in the format shown below:

(1) Petitioner will argue first for 15 minutes or less.
(2) Respondent will then argue for 15 minutes or less.

(3) Petitioner will then have 10 minutes to reply to the Respondent's argument.
(4) Finally, Respondent will have 10 minutes to rebut any new arguments raised in the Petitioner's reply.

At this evening's hearing, the City Council has the following options:
(1) Adopt the findings and recommendations contained in the Police Department's report and find that the City does in fact have a legal cause for not reinstating the Petitioner to employment;
(2) Reject the findings and recommendations contained in the Police Department's report and find that there is no legal cause for not reinstating the Petitioner to employment and to calculate the amount of back pay and benefits, if any, due to the Petitioner commencing with the date of June 9, 2005; or
(3) Find that there is insufficient information to determine if legal cause exists for not reinstating the Petitioner to employment and continuing the matter for further presentation of evidence by both parties.

It should be noted that the Torrance Municipal Code does not allow the City Council to conduct fact finding; therefore, if the third option is chosen, staff recommends that the matter should be returned to the Civil Service Commission for consideration of additional evidence.

Respectfully Submitted,

LEROY J. JACKSON
CITY MANAGER

By: _____
Laura J. Lohnes
Acting Civil Service Manager

CONCUR:

_____
John L. Fellows III
City Attorney

CONCUR:

_____
LeRoy J. Jackson
City Manager

ATTACHMENTS: A) Agenda Item for September 25, 2007
B) City Council orders dated September 27, 2007

Council Meeting of
September 25, 2007

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

Members of the Council:

SUBJECT: **City Manager - Conduct a Hearing to Determine the Status of Petitioner's Revived Interest in Employment with the City of Torrance (Confidential under Penal Code 832.7 and Copley Press v. Superior Court 39 Cal.4th 1272 (2006)). Consideration of employment matters may be conducted in a closed session per California Government Code 54957.**

RECOMMENDATION

The City Manager recommends that the City Council comply with the Writ of Mandate issued by the Los Angeles Superior Court by conducting a hearing to determine the status of Petitioner's revived interest in employment with the City of Torrance. The hearing and deliberation of this matter shall occur in Executive Session, unless requested by the Petitioner to be open.

Funding

Not applicable.

BACKGROUND

The Petitioner was employed by the City of Torrance as a police officer. In 1998, he was found guilty of one felony count of Penal Code Section 136.1(c)(1) – Dissuading A Witness By Force Or Fear; one felony count of 136.1(b)(2) – Dissuading A Witness From Assisting In The Prosecution; and one Misdemeanor Count of 243(e)(1) - Spousal Battery. Accordingly, the Petitioner was terminated from the Torrance Police Department.

The Petitioner filed a timely appeal to the Civil Service Commission, which subsequently sustained the decision of the department and the administrative hearing officer on January 15, 1999. The Petitioner then appealed to the City Council, which upheld the decision of the Civil Service Commission on April 13, 1999. Thereafter, the Petitioner filed several appeals to his felony convictions, one of which led to the convictions being overturned, effective May 22, 2005.

In light of the reversal of his convictions, the Petitioner then requested an appeal to both the City Council and the Civil Service Commission, which the City and the Commission denied.

On or about August 16, 2005, the Petitioner filed a writ to the Los Angeles Superior Court, requesting that the Court overturn the City Council's former decision upholding his termination. The Petitioner also requested immediate reinstatement and back pay, or alternatively a hearing before the City Council.

The Superior Court rejected the Petitioner's request to overturn the City Council's decision upholding his termination. The Court further rejected the Petitioner's request for reinstatement. However, on June 18, 2007, the Court issued a writ ordering the City to conduct a hearing to determine the status of the Petitioner's revived interest in employment. The Court also ordered that if the City could find no legal cause for not reinstating the Petitioner to his employment as a peace officer, the City shall also determine the amount of back pay and other benefits, if any, that the Petitioner may be entitled to receive commencing June 9, 2005. The City was served with the writ on July 16, 2007.

At the City Council meeting of September 11, 2007, staff recommended that your Honorable Body schedule a hearing regarding the status of the Petitioner's revived interest in employment for September 25, 2007. Additionally, staff recommended that both parties be granted an opportunity to submit briefs by September 17, 2007, and reply briefs by September 21, 2007. Your Honorable Body concurred with staff's recommendation.

ANALYSIS

In the Writ of Mandate, the Court ordered that a hearing take place to determine the status of the Petitioner's revived interest in continued employment, and that if the City could find no legal cause for not reinstating the Petitioner to his employment as a peace officer with the City, the City shall also determine the amount of back pay and other benefits, if any, he may be entitled to receive commencing June 9, 2005. However, the Court did not mandate how your Honorable Body should proceed in this matter. The Torrance Municipal Code does not provide for any procedures in this situation.

Copies of the following were distributed to your Honorable Body on September 21, 2007, for your study prior to hearing oral arguments:

1. Writ of Mandate issued by the Los Angeles Superior Court,
2. Findings of Fact and Conclusions of Law issued by the Civil Service Commission of the City of Torrance,
3. Notice of Decision issued by the City Council of the City of Torrance,
4. Initial and reply briefs, if any, of the petitioner and respondent submitted to the City Council,

5. Written exceptions, if any, of the petitioner and respondent, and
6. Memorandum from Bradley Wohlenberg, Legal Counsel to the Torrance Civil Service Commission, identifying legal considerations in this matter and recommendations on how Council should proceed to comply with the Writ of Mandate.

Staff recommends that your Honorable Body conduct a hearing to determine how to proceed in complying with the Los Angeles Superior Court Writ of Mandate.

Respectfully submitted,

LEROY JACKSON
City Manager

By _____
Viet Hoang
Acting Civil Service Manager

CONCUR:

_____
John L. Fellows III
City Attorney

CONCUR:

_____
LeRoy J. Jackson
City Manager

ATTACHMENT B

CITY OF
TORRANCE

Sue Herbers
City Clerk

September 27, 2007

I , Sue Herbers, as City Clerk of the City of Torrance, do hereby certify that the following is a true and complete record of action taken by the City Council of the City of Torrance in the Council Chambers at 3031 Torrance Boulevard at its regular meeting of September 25, 2007.

Members present: Councilmembers Barnett, Brewer, Drevno, Nowatka, Witkowsky, and Mayor Scotto

Members absent: Sutherland

On September 25, 2007, at a regularly scheduled meeting of the Torrance City Council, the City Council conducted a closed session hearing as ordered by Writ of Mandate from the California Superior Court (Case No. BS 097 255) to set a schedule for compliance with the Writ of Mandate. The Petitioner was represented by John Pearson of Lackie & Dammeier, and the City was represented by J. Scott Tiedemann of Liebert Cassidy Whitmore. After hearing argument from both representatives and having reviewed the record in the matter, Council adjourned into Closed Session to deliberate.

The City Council re-convened in open session and announced its orders. Six members of the Council voted in favor of the orders, with Mr. Sutherland not present or voting due to an excused absence.

The City Council ordered as follows:
1. The City Council orders the Torrance Police Department to conduct a full background check of the Petitioner as described in California Government Code section 1031, and the applicable regulations as described in Respondents' Hearing Brief.
2. The City Council orders the Torrance Police Department to conduct the background check, and to complete the background check as quickly as is practicable.
3. The background check shall cover the approximately nine-year period between the Petitioner's termination and the present, as discussed by the Superior Court during the June 1, 2007 hearing on the issuance of its Writ of Mandate.
4. The results of the background check shall be returned to the City Council for completion of the determination of the status of Petitioner's revived interest in employment as ordered by the Superior Court, and, if appropriate, the determination of back pay as ordered by the Superior Court.

Sue Herbers
City Clerk of the City of Torrance

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