

Date: March 5, 2024

To: Mayor and Members of the City Council

From: Thomas B. Modica, City Manager

Subject: **Response to Civil Service Letter of Concern (dated March 1, 2024)**

On March 1, 2024, Erik Frost Hollins, President of the Civil Service Commission, issued a Letter of Concern (Attachment) regarding the proposed Charter Amendment for Civil Service reform. As is the City's practice when we receive communications from our Commissions, I am forwarding on their letter to the City Council.

In reviewing the concerns outlined in the letter, City staff have responses as outlined below. These will be provided to the Civil Service Commission prior to their meeting tomorrow.

Civil Service Commission Concerns: Preferences

- New preferences will weaken/eliminate existing Veterans Preferences.
- City Manager/Human Resources will universally eliminate all banding.

City Response

Currently under the Charter, veterans receive ten (10) preference points and disabled veterans receive fifteen (15) points. The new preferences proposed under this Charter amendment would allow applicants to get up to a maximum of ten (10) preference points if they qualify for two of the preference categories: local residency, local educational institution, tenured Non-Career City employee, and participant in an approved internship/apprenticeship program. If the applicant is a qualified veteran or disabled veteran these new points will count in addition to the veteran or disabled veteran preference points already established. This means that there could be a scenario where an applicant happens to be a disabled veteran who resides in Long Beach and attended a Long Beach higher educational institution and receives 25 preference points, virtually assuring them to be ranked in the top band for the specific position they are applying. A non-disabled veteran earning the maximum new preference points could achieve a total of 20 preference points, making it highly likely that they score at the top of applicants. Additionally, the proposal carefully ensures that in no case will new preference points be higher than an applicant's veteran's points because the maximum preference points that a non-veteran can earn under the proposal is ten (10), equal to (and not greater) than existing veteran's preference points. This proposal ensures that veteran's preference points are not taken away but rather strengthened by the possibility of adding new preference categories for which a veteran can qualify for in many instances.

The City Manager and City Department Heads have never portrayed a desire to universally eliminate all banding. Management recognizes that banding can be an appropriate and effective strategy, however, there is recognition that the overall timeline and practicality for Civil Service to produce good eligibility lists with qualified candidates is lacking. Concerns in the

past surrounding banding have been about how the bands have been created, the size of applicant pools where banding has been applied that significantly limits the ability to look at large groups of similarly qualified candidates at the same time, and what criteria, testing and standards have been used for banding. Many lists are extended several times (in some cases 2+ years) even when departments have assessed all candidates and requested Civil Service to expire the list. Additionally, there are many instances of departments having to wait several months (or in some cases over a year) to get an original list established. The current hiring process for classified positions creates barriers for qualified candidates. These practices frustrate City departments that are looking to make timely hires and who recognize that highly qualified candidates are not going to wait that long to get a City job. Under this proposal, the City aims to streamline efficiencies in the hiring process by unifying hiring to one central department, reduce the bureaucracy of having administrative duties go before a Commission that cause unnecessary time to be added to the hiring process, and apply modern recruitment and selection practices aimed to be more user friendly to applicants and hiring departments. The obvious need is to recruit and select candidates better than the way we are today, and by establishing the correct structure to and ensuring that the system is performing optimally, the practice of banding will not be as much of a hinderance as it is today. Banding will still need to occur to implement the new preference categories. The goal with banding will be to deploy the new preferences to help create large categories of qualified candidates. We see the practice of continuing banding as a beneficial trade off and workable solution provided that the banding creates large groups of qualified applicants to choose from. Hiring departments will have a greater chance of selecting candidates that live locally in the community, have obtained higher education in the surrounding area, served the City as a Non-Career employee, and have significant internship/apprenticeship experience. This will help alleviate many of the concerns departments presently have with banding. There will still be a practice (as is the case today) of some recruitments being run on a “non-competitive” basis, but we do not envision that being used more frequently than today. Also, we believe that the efficiencies that would result in general from this proposal will help to create new lists on a more regular basis which provides even greater opportunities to both potential applicants and hiring departments. Being more efficient with the recruitment process allows more time to be allocated to this approach to banding and ensures that preference points are correctly granted to applicants. Overall, we view this as a “win” both for candidates and the hiring department all while maintaining fundamental merit system principles.

Civil Service Commission Concerns: Disciplinary and Industrial Retirement Appeals

- Appeals will take place under full City Manager control.
- Successor Commission will need to rely on someone under City Manager’s control for expert guidance, investigatory information, and processing.
- Due process will not be properly provided for appellants.

City Response

Employee protections for the permanent Classified Service are critical and the proposed amendment carefully preserves an independent appeals process that ensures due process rights are maintained. The process for employee disciplinary and industrial retirement appeals will ensure that appeals are continued to be heard by an independent commission that will

make final decisions on all appeal matters brought forth just as it is today. Any permanent Classified employee who is suspended, dismissed, or demoted for disciplinary reasons pursuant to Section 40 of the Civil Service Rules and Regulations is entitled to an appeal under Section 1103 of the City Charter and/or the Civil Service Rules and Regulations. The Commission hears evidence and testimony from both the employee and the City designated representative. The Commission has a right to investigate anything related to the appeal, as well as issue subpoenas and hear witness testimony. None of these powers would change because of the proposed amendment. After the hearing, the Commission may, at its discretion, either sustain, reduce, or deny the charges, which are final unless either side petitions their case to the Superior Court. The proposal maintains these very important functions and empowers the Commission to focus on the most significant duties related to disciplinary appeal hearings.

Under the proposal, the Commission will continue to receive important information related to employee appeals in a way that maintains integrity in the process. The Civil Service Executive Director and Civil Service staff's current role in the disciplinary appeals process is administrative in nature, and not in an advisory capacity. The Executive Director and staff do not provide expert guidance related to disciplinary appeals, nor do they weigh into the merits of the case or provide testimony that would influence the Commission's decision one way or another. Their primary administrative functions include:

- Receiving the official appeal filed by the employee or the employee's representative.
- Ensuring both the employee/employee's representative and the City receive proper noticing related to the disciplinary appeal hearing.
- Scheduling the appeal hearing, including reserving meeting space to conduct the hearing.
- Entering any evidence into the record that either the employee or City may submit.
- Ensuring both the employee and City receive proper notice of the Commission's final decision.
- Maintaining records related to the appeal process.

The Executive Director and staff do not take any actions in the appeals process other than performing the various administrative duties listed above. The role of providing expert guidance and legal advice is done by the City Attorney, an independently elected office separate from the City Manager or Human Resources that assigns an attorney specifically to the Commission. The proposed amendment maintains this structure, with Human Resources staff performing the administrative duties of the disciplinary appeals process and the City Attorney providing counsel and expert guidance to the Commission, just as it is today. Human Resources staff will be required to ensure all disciplinary appeal administrative tasks are performed in accordance with established Civil Service Rules and Regulations which clearly lay out the various requirements at each step of the process. This will follow similar structures for other City commissions, such as the Planning Commission, Recreation Commission, Cultural Heritage Commission, and the Board of Examiners, Appeals, and Condemnation (BEAC). There are several examples of Commissions in the current Charter that have appeals authority and

function independently, without the need for independent staff to the Commission. The Planning Commission regularly hears appeals of projects that are decided by the department. The Planning Commission hears from the appellant and the applicant, and then makes an independent decision. The BEAC hears appeals of code enforcement citations. The issues involved are very important to the impacted property owner, are often technical and complex. The BEAC follows the law and follows the facts, and the City Attorney assists them in that factfinding mission. Staff implements the decisions of the respective Commissions even if there is a disagreement. There has never been a case where the Planning Commission or the BEAC rules and the City staff ignore their directives. If this were to happen, the independent and elected City Attorney would intervene and require the decision to be upheld. The Recreation Commission also hears appeals. Having dedicated staff reporting to a Commission is the exception rather than the rule, and those bodies function well utilizing their independent appeals authority while working with City staff. The City Attorney's Office would continue to staff the Commission during appeals and ensure both the law and the Charter are being upheld.

The industrial disability retirement process has several check and balance processes built in from the moment a safety employee files for this option. The various stages of the process include direct engagement from the requesting employee, their legal representative, the City Attorney's Office, the Worker's Compensation Division, their labor association, and the State of California via the CalPERS Industrial Disability Retirement group.

Civil Service Commission Concerns: Complaints Related to the Hiring Process

- The Commission will be powerless and ineffectual to take action to correct issues.
- The Commission will not have the power to resolve any disputes related to the hiring process.
- Potential investigations will not be "independent."
- Employees will not have true recourse or rights, and will be at risk for harassment, discrimination, and retaliation.

City Response

The proposed amendment ensures that a proper level of checks and balances remain in place to ensure integrity in the civil service process. Civil Service Rules and Regulations will continue to be in place and must be adhered to just as it is today. Any potential rule changes or deviations from the rules would require the City Council to adopt the rule change, which could only occur after meet and confer with the affected labor organizations is completed. The Commission would maintain its power and authority to create rules and make changes related to employee disciplinary appeals, subject to approval by the City Council and following the meet and confer process.

Additionally, many of the current Commission tasks are considered routine and administrative in nature, and nearly every other public agency across the state has delegated these duties to professional and technical staff within their Human Resources Department to administer following established Civil Service Rules and Regulations. These tasks include:

- Extensions of non-career hours
- Review of provisional appointments
- Extensions of probationary periods
- Maintaining eligibility lists
- Establishing classifications
- Reversions to Classified positions

The proposed amendment ensures the Commission can continue to serve as an appeal body for any issues and complaints in the hiring process. Applicants can continue to appeal to the Commission each step of the hiring process should they feel there are issues, and the Commission is empowered to resolve those complaints in whatever manner prescribed by the Commission just as it is today. The specific language in the proposed amendment that establishes that power is: "Receive and resolve complaints relative to the hiring process of the Classified service..." and includes the ability to hear such employee/candidate appeals as:

- Applications (late submission of application or being denied into an exam process based on the application submitted)
- Exam components (written exams, writing skills exercise, performance exams, interview processes)
- Layoff (calculation of seniority)
- Disability Retirements

Employee appeals of these items would follow the current process as it is today. Under the present system, applicants/employees first attempt to resolve any issues with Civil Service staff. Often, issues get resolved at the staff level and never make their way to the Commission level. That process under the proposal would reflect that current practice, with applicants/employees working with Human Resources staff to first resolve their issues. If a satisfactory resolution cannot be made at the staff level it would go before the Commission in an open session meeting for final determination just as it is today. The current process of the Administrative Law Judge first ruling on industrial disability retirements and then moving to the Commission for final approval would remain in place. Just as it is today, harassment, discrimination, and retaliation will be strictly prohibited against employees for exercising these appeal rights.

The proposed amendment establishes a structure for independent investigations like other investigations across the City. Under the proposal, the City Council can order an investigation if it believes the Charter provisions related to the Civil Service system and/or the Civil Service Rules and Regulations are not being followed. The independently elected City Attorney plays a key role in these types of investigations, including selecting the outside entity that would conduct such investigations. The City Attorney is the lead department receiving the investigative report and disseminates it to proper City staff as needed, and the City Council will receive a report on any investigatory findings. This ensures appropriate safeguards around the

integrity of the investigation and that any issues will be fully investigated by an independent source. Additionally, under the proposal the City has committed to engaging in routine audits utilizing outside firms to ensure the merit system is functioning as it should, and that the City is complying with the established Civil Services Rules and Regulations. The results of these audits will be publicly available and reported as part of the City's annual report on hiring to the Commission and City Council to ensure transparency in the City's hiring practices.

City Attorney Review of Response

The independent and elected City Attorney has reviewed the entirety of this response and has agreed that this accurately represents their role and independent authority to ensure appeals and investigations will be conducted appropriately.

ATTACHMENT

CC: DAWN MCINTOSH, CITY ATTORNEY
DOUGLAS P. HAUBERT, CITY PROSECUTOR
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CHRIS GARNER, GENERAL MANAGER, UTILITIES DEPARTMENT
CHRISTINA WINTING, EXECUTIVE DIRECTOR, CIVIL SERVICE



Memorandum

Date: March 1, 2024

To: Mayor Richardson, City Manager Modica, City Councilmembers, City Attorney, City Prosecutor, City Auditor, City Clerk, Harbor Commission, Utility Commission, Charter Amendment Committee, and Employee Representatives

From: Erik Frost Hollins, President

Subject: **LETTER OF CONCERN: Proposed Charter Amendment**

On Wednesday, February 28, 2024, the Civil Service Commission met in open session and unanimously directed that our initial concerns regarding the proposed charter amendment be documented in this letter. The basis of these concerns is the redlined charter language provided to the Civil Service Commission on Wednesday, February 14, 2024. While little time was given to evaluate the full effects of this proposed amendment, we did hold public meetings in the intervening two weeks to hear presentations and gather responses from management and staff. We will meet again in public session on February, March 6, 2024, to provide further opportunity for discussion and allow development of additional response to the proposed amendment.

Please see below three initial areas of concern regarding preferences, disciplinary and industrial retirement appeals, and complaints related to the hiring process.

Preferences

Amendment language claims to add local residency, local higher education attendance, internal hire, and internship/apprenticeship preferences to existing veteran, disabled veteran, and surviving spouse preferences.

In reality, this amendment would render all new preferences meaningless, and weaken if not eliminate the value of the existing veteran-related preferences.

Reasoning: Preferences are implemented in the charter through the assignment of points, presuming that those with higher points will be considered for employment first. The city manager and several department heads under direction from the city manager have openly and publicly stated hostility toward Civil Service ranked consideration or "banding" requirements, ranked consideration and banding being the literal and logical extension of a fair and transparent point



system. Under this amendment, the city manager or his surrogates in Human Resources would have the power to eliminate ranked consideration and banding from the hire process as a universal exception, allowing managers to choose at will whom to consider and hire from the entire list in every search – eliminating any benefit of a fair and transparent point system.

Disciplinary and industrial retirement appeals

Amendment language claims to maintain independent authority for disciplinary and industrial retirement appeals investigations and decisions through the newly formed Civil Service Employee Rights and Appeals Commission.

In reality, this amendment ensures that these appeals will take place under full city manager control.

Reasoning: All independent staff, including the executive director, have been eliminated in this proposal, depriving the commission of any independent information and advice. The successor commission would need to rely on investigatory information, expert guidance, and process support from an entity under the general authority of the city manager, such as Human Resources, or another appointing authority with possible vested interests. The city manager is the listed complainant on a majority of employee appeals, is in fact the individual whose decision is being appealed, and it would defy all due process to allow a person under control of the city manager to take part in any hearings and deliberations as an advisor.

Complaints related to the hiring process

Amendment language claims to maintain independent authority to receive and resolve complaints relative to the hiring process through the newly formed Civil Service Employee Rights and Appeals Commission.

In reality, this amendment renders the successor commission powerless and ineffectual in taking any step to correct abuses.

Reasoning: Powers related to recommending changes to rules and regulations, setting employee classifications, and maintaining eligibility lists are removed from the successor commission and delegated to Human Resources, which serves under the authority of the city manager. Human Resources has also stated its intent to assume all authority over non-career hour extensions, provisional appointments, and extensions of probationary periods. Powers related to investigations are all delegated to the city manager via referral from the City Council. These are titled "independent" but in fact the city manager would be given authority to oversee any investigation into his own practices and those of his departments.

As stated previously, the successor commission would have no staff. Further, no language in this charter amendment suggests that the commission has any ability to direct any entity or individual to "resolve" anything. The only oversight mechanism given to the successor commission is an annual report on hiring.



Conclusion

As presented in the redlined language provided to the Civil Service Commission on Wednesday, February 14, 2024, this proposed charter amendment gives vast unchecked power to the city manager either directly or through his authority over Human Resources. Further, any functions remaining to the Civil Service Employee Rights and Appeals Commission are corrupted or falsely stated. With no power of information gathering, no ability to seek independent advice, and no agency to act independently, the Civil Service Employee Rights and Appeals Commission will serve as nothing more than a fig leaf. The false illusion of a merit system with independent oversight could lead employees to assume recourse is available where none exists, putting themselves at risk for discrimination, harassment, and retaliation for exercising their perceived employee rights.

On behalf of the Civil Service Commission,



ERIK FROST HOLLINS
President

CC: Department Heads

