Civil Service Board Standing Committee Memorandum

To: Mayor Woodards and Members of the Tacoma City Council
From: Eric Hansen, Chair of the Tacoma Civil Service Board
Presenter: Eric Hansen, Civil Service Board
Subject: Proposal for new and amended civil service rules addressing the erosion of the civil service
Date: September 16, 2025

PRESENTATION TYPE: POWERPOINT

SUMMARY AND BACKGROUND:

As you may know, under section 6.12 of the City Charter, the Civil Service Board (CSB) is required to advise the Council on all matters relating to the civil service and personnel administration in the city service. The CSB is also required to investigate matters relating to conditions of employment. In furtherance of this mandate, the CSB recently conducted an investigation regarding the classification of City employees.

Individuals employed by the City are either classified or unclassified. Classified employees are covered by the civil service provisions of the City Charter, but unclassified employees are not. Several months ago, it was brought to the attention of the CSB by the Joint Labor Council that the Human Resources Department (HR Department) had been improperly designating almost a third of the labor force as unclassified employees for the past several years in violation of the City Charter.

Sections 6.1 and 6.2 of the Charter provide that only a limited number of individuals can be designated as unclassified including high-level employees and their assistants, individuals hired to work on special projects, elected officials, and professional employees in the City Attorney's office. The vast majority of employees are required to be designated as classified.

The City Charter provides that only classified employees are subject to a merit system of employment requiring extensive testing before hiring or promotion. Moreover, City management must prove, in a hearing before the CSB, that it has just cause to severely discipline or terminate a classified employee. Unclassified employees are excluded from this just-cause requirement under the Charter. In mandating a merit system of employment, the drafters of the Charter were obviously concerned with nepotism and cronyism in the hiring and promotion of employees. Further, in requiring City management to prove just cause, the drafters sought to ensure that employees are treated fairly and equitably. Without a just cause requirement, management can impose discipline or terminate an employee for little or no reason, resulting in low morale and productivity in the workplace.

On behalf of the CSB, which recently voted to approve distribution of this memo to the City Council, the following will seek to explain the legal ramifications of the HR Department's failure to follow the terms of the Charter as well as informing the Council of amended and new

personnel rules currently under consideration by the CSB, which intend to define with greater clarity the employees to be included in the unclassified category. These rules also provide that the CSB shall have the authority to approve or reject the HR Department's determination regarding employees who are designated as classified or unclassified to ensure that the terms of sections 6.1 and 6.2 are not violated.

The benefit to the citizens of Tacoma in having a workforce covered by the civil service is apparent. Employees who are treated equitably and fairly have higher morale and provide better services. Moreover, civil service employees are hired and promoted based on merit, not who they may know, their familial relation to supervisors, or other non-job-related factors.

ISSUES:

1. **The City Charter provides that only a limited number of employees should be designated as unclassified.**

Under Sections 6.1 and 6.2 of the City Charter only a limited number of employees are considered to be unclassified. Section 6.1 of the charter provides the following:

> 6.1 - The civil service of the City is hereby divided into the classified and unclassified services. The unclassified service shall consist of: (a) officers elected by the people and persons appointed to fill vacancies in elective offices; (b) the members of boards and commissions; (c) officers appointed by the Mayor and Council or by boards and commissions, as provided by law or this charter; (d) all department heads, one confidential secretary for the City Manager and one for the Director of Utilities, and such other principal officers and assistants to department heads as the Council may prescribe by the affirmative vote of not less than six members; (e) not more than three administrative assistants or aides to the City Manager; (f) professional personnel in the office of the City Attorney; (g) persons employed in a professional or scientific capacity to conduct a special inquiry, investigation, or examination; (h) persons employed on special projects of limited duration, including but not limited to special major construction projects, projects or programs financed by grant-in-aid agreements with either federal or state governments, etc., and (i) event workers in Public Assembly Facilities.
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> Section 6.2 - The classified service shall comprise all positions not specifically included in the unclassified service.

Subsection 6.1(d) provides that unclassified employees include all department heads, one confidential secretary for the City Manager and one for the Director of Utilities, and such other principal officers and assistants to department heads as the Council may prescribe. Because principal officers and assistants to department heads are not defined, there is some ambiguity with regard to what those terms mean. In cases where ambiguity is present in a statute, courts resort to principles of statutory interpretation. Because city charters, as well as statutes, have the force of law, the same analysis would apply to terms in a charter.

The published decisions of the courts in the State of Washington, otherwise known as the common law of the state, have set forth a number of guidelines to consider in interpreting ambiguous terms in a statute. Initially it should be noted that courts have held that the purpose of statutory, or in this case, City Charter, interpretation is to determine and give effect to the intent of the legislature or the intent of the drafters of the City Charter. State of Washington v. Evans, 177 Wn. 2d 186 (2013). (The volume number appearing first and the page number of published decisions of the Washington State Supreme Court are referred to as Wn or Wn 2d. Published decision of the Washington State Court of Appeals are referred to as Wn.App. or Wn.App 2d).

Section 6.1(d) contains a list of specific terms; department heads and confidential secretaries, followed by a list of general terms; principal officers, and assistants to department heads. In McDermott v. Kaczmarek, 2 Wn. App. 643, 648 (1970), the Court held the following:

> The doctrine of ejusdem generis is that general and specific words in a statute which are associated together, and which are capable of an analogous meaning, take color from each other, so that the general words are restricted to a sense analogous to the less general…The general words are deemed to have been used, not to the wide extent which they might bear if standing alone, but as related to words of a more definite and particular meaning with which they are associated.

In other words, under the principle of ejusdem generis, general terms when used in conjunction with specific terms, should be deemed to incorporate only those things similar in nature or comparable to the specific terms. Dexheimer v. CDS, Inc., 104 Wn. App. 464 (2001).

Therefore, under the rule of ejusdem generis, the meaning of the general terms “principal officers” and “assistants to department heads” is limited to the specific terms,” department heads” and “confidential secretaries.” Accordingly, the term “principal officer” refers to a department head or higher-level employee and the term “assistants to department heads” refers to secretaries and individuals who, like secretaries, provide administrative support to a department head or higher.

Section 6.1 (g) provides that the unclassified service includes, “persons employed in a professional or scientific capacity to conduct a special inquiry, investigation, or examination.” From various statements made by representatives of the HR Department, it appears that the Department considers this section to include all professional employees and persons employed in a scientific capacity whether or not they were hired to conduct a “special inquiry, investigation, or examination.” This interpretation conflicts with well-settled principles of statutory construction.

Washington courts have held that a statute, or in this case the City Charter, cannot be interpreted in a way that renders any portion meaningless or superfluous. State of Washington v. K.L.B., 180 Wn. 2d 735, 742 (2014). If the Department’s interpretation were accepted, it would render the phrase “special inquiry, investigation, or examination” meaningless and superfluous.

Moreover, the term “special” does not mean all work performed in the ordinary course of an employee’s regular duties. If words are not defined in a statute, courts look to the common dictionary meaning of the term. State of Washington v. Martinez, 123 Wn. App. 841, 846 (2004). The Cambridge Dictionary (as found on dictionary.cambridge.org), defines the term

"special" in part as something not ordinary or usual. Accordingly, the term "special" would not include work performed as part of an employee's normal job duties. Further, the phrase "special inquiry, investigation, or examination" suggests an activity of a transitory nature because inquiries, investigations or examinations are not activities that last indefinitely. Finally, if the drafters of the City Charter had intended to include all professional employees or people employed in a scientific capacity in the unclassified service, they would not have limited those terms to only employees who conduct special inquiries, investigations, or examinations.

2. **The HR Department violated section 6.1 and 6.2 of the City Charter by asking the City Council for the past several years to approve their assignments of employees to the unclassified category in compensation plan ordinances.**

From the foregoing, it is apparent that only a limited number of employees can be assigned to the unclassified service. These include very high-level employees and their administrative assistants, elected officials, members of boards and commissions, officers appointed by the mayor and boards, and professional personnel in the City Attorney's office. However, for the past several years, the HR department has asked the Council to approve in the compensation plan ordinances, the assignment of numerous employees to the unclassified category who are actually classified employees.

Attached hereto is a list of unclassified employees provided to the CSB by the HR Department and a list of classified employees. The list of unclassified employees includes over a thousand employees who clearly do not fall under the parameters of section 6.1 of the City Charter. A brief sampling of employees designated as unclassified includes the following:

1. Advanced Registered Nurse Practitioner
2. Applications/System Engineer
3. Behavioral Health Case Manager
4. Behavioral Health Crisis Responder
5. Budget Officer
6. Business Services Analyst
7. Civil Rights Investigator
8. Client Technology Support Specialist
9. Communications and Marketing Analyst
10. Continuous Improvement Consultant
11. Contract/Program Auditor
12. Dam Safety Engineer
13. Data Analyst
14. Data Scientist
15. Day Ahead Energy Trader

It is apparent that none of the above-listed positions are in the limited categories contained in section 6.1.

3. **Ordinances improperly assigning employees to the classified service are invalid.**

It is well settled law that ordinances cannot conflict with a city charter. State ex rel. Ausburr, et al. v. City of Seattle, 190 Wn. 222 (1937). Therefore, the portion of ordinances that improperly assign unclassified status to employees are not valid.

Further, ordinances that enact the compensation plan and assign unclassified status to employees in the same ordinance are invalid under section 2.11 of the City Charter. That section provides that, "Every legislative act of the Council shall be by ordinance, which shall be numbered consecutively, clearly entitled and contain but one subject which shall be expressed in the title."

The HR Department for several years has included their designation of unclassified status for certain employees in ordinances enacting the compensation plan. However, this designation is unrelated to the compensation the particular employee receives. Moreover, the City Charter does not provide that classified or unclassified status depends upon the compensation an employee receives. Therefore, the portion of ordinances assigning unclassified status to certain employees are invalid because the ordinance contains more than one subject.

The purpose of constitutional provisions prohibiting a bill from embracing more than one subject is to prevent "logrolling" or pushing legislation through by attaching it to other necessary or desirable legislation and to assure that the members of the legislature and the public are generally aware of what is contained in the new laws. Washington Education Association, et al. v. State of Washington, et al., 97 Wn. 2d 899 (1982). In this case, assignments of employees to the unclassified category were slipped into the necessary legislation approving the compensation of employees. In many instances, this was done only by placing the letter "A" next to the employee's name on the ordinance. Based on my conversations with a former Mayor of Tacoma and former Tacoma Councilmember, these individuals were not even aware that they had been asked to determine whether someone should be designated as unclassified. It is unknown whether the present council was informed, prior to the vote on a compensation plan ordinance, of the reasons why the HR Department was asking that certain employees be designated as unclassified or how or whether that designation complied with the City Charter.

4. **Unclassified employees are not subject to the civil service provisions of the City Charter.**

As previously stated, the City Charter mandates that there will be a "merit system" of employment in the city service for classified employees including competitive examinations to test the fitness of each applicant. Moreover, classified employees are entitled to a hearing before the CSB to determine if there is just cause for discipline or discharge. Unclassified employees are not included in these provisions of the charter.

Section 6.14 of the City Charter provides, in part, the following:

> (a) It is the intention of this article to provide for a merit system of employment in the City Service. The City Council shall establish and maintain a comprehensive plan setting forth goals and policies regarding the employment and personnel system in the City. The Civil Service Board…shall make and promulgate all Civil Service and Personnel Rules, and amendments thereto, necessary to carry out and enforce the purpose of this Article…
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> ***(c)*** Such civil service and personnel rules shall, among other things, provide:
> (1) For the classification of all positions in the classified service

(2) For open, free, and competitive examinations to test the relative fitness of applicants for such positions, and for reasonable publication and advertisement of all examinations
(3) For the creation of eligible lists upon which shall be entered the names of successful candidates in the order of their standing on the examination and for the certification of those on the appropriate list to department heads for appointment to fill vacancies and for the manner in which appointments shall be made from such list.…
(4) For the period of time in which eligible lists shall continue in effect.
(5) For promotions based upon competitive examination and records of efficiency, conduct and seniority.

Section 6.14(c)(10) also provides that, "no employee in the classified service shall be suspended for more than thirty days, demoted or discharged except for cause." Employees suspended for more than thirty days, demoted, or discharged may appeal the discipline to the CSB under section 6.14(c)(12). Employees filing such appeals have a right to an evidentiary hearing before the board, including the right to call witnesses, cross-examine witnesses and offer documentary evidence. Under Section 6.12, the findings, and decisions of the CSB in such hearings are final and binding.

The obvious purpose of a merit system of employment is to prevent nepotism and cronyism in the hiring of employees and to ensure that the most qualified persons are hired regardless of their family ties or friendships with supervisors who make hiring decisions. Further, requiring a showing by management of just cause for discipline or discharge before a neutral decision maker such as the CSB ensures that employees are treated equitably and fairly. If employees can be disciplined or discharged at will, management can adversely affect the employment of individuals for little or no reason. This may cause, among other things, low morale, and stress in the workplace, which can affect work performance. During my thirty-seven years as a labor lawyer representing public employees, I have witnessed the adverse effects of employees subject to stress caused by unfair treatment in the workplace.

The stated policy of the City of Tacoma since 1959 has been to treat employees equitably and fairly so that the citizens of Tacoma receive the best services possible. Tacoma Municipal Code Section 1.24.020, enacted in 1959, provides the following:

> These Rules set forth the principles and procedures that are to be followed by the City administration in its personnel program, to the end that the City of Tacoma and its employees may have a reasonable assurance that personnel problems will be dealt with on a uniform, equitable basis under a single personnel administrator and that the citizens of Tacoma may derive the benefits and advantages which can be expected to result from a competent staff of City employees.

This stated policy cannot be realized by excluding a third of employees, in violation of the terms of the charter, from the classified service because those employees are not subject to the merit system of employment and may be disciplined or discharged, with or without cause, without a pretermination hearing and a post termination hearing before the CSB.

5. <u>The City Charter provides that the CSB, with the approval of at least four members of the City Council, has the authority to enact rules to preserve the integrity of the City's Civil Service.</u>

Under Section 6.14 of the City Charter the CSB, "shall make and promulgate all Civil Service and Personnel Rules, and amendments thereto, necessary to carry out and enforce the purpose of this Article." This section also provides that the City Council, "by an affirmative vote of not less than two-thirds of its membership, may change, alter, amend, add to, or repeal any such proposed Civil Service Rules or amendments. Therefore, any rule proposed by the CSB may be enacted with the approval of at least four members of the City Council. Section 1.24.270 also provides that, "The Civil Service Board shall make and promulgate all Civil Service and Personnel Rules and amendments thereto necessary to carry out and enforce the purpose of the Civil Service provisions of the City Charter…."

6. <u>Proposed New Rules</u>

Pursuant to the authority of the CSB to enact rules under the charter and the personnel rules, the CSB is considering the following new and amended rules to ensure that the City Charter is followed in determining whether an employee is classified or unclassified (amendments to the existing rule will be underlined). Please note that these rules are under consideration by the CSB. However, the CSB has not yet voted to enact these rules for submission to the City Council. The proposed rules are being provided at this time for the Council's consideration and discussion in anticipation of an actual vote by the CSB and ultimately a vote by the City Council to approve or reject the rules.

<u>TMC 1.24.290 Classified and Unclassified Service</u>

The City Service is divided into the Classified and Unclassified Services:

A. The Unclassified Service shall consist of:
   1. Officers elected by the People and persons appointed to fill vacancies in elective offices.
   2. The members of boards and commissions.
   3. Officers appointed by the Mayor and Council or by boards and commissions, as provided by law or by the Charter.
   4. All department heads, one confidential secretary for the City Manager and one for the Director of Utilities, and such other principal officers and assistants to department heads as the Council may prescribe by the affirmative vote of not less than six members.
   5. Not more than three administrative assistants or aides to the City Manager.
   6. Professional personnel in the office of the City Attorney.
   7. Persons employed in a professional or scientific capacity to conduct a special inquiry, investigation, or examination.

B. <u>The term "principal officer" shall mean a department head or senior leader at a higher level than a department head responsible for a division or office that encompasses a large function or body of work with the City including those positions listed in 1.06.070 and 1.06.500.</u>

C. <u>The term "assistants to department heads" shall mean a confidential secretary and/or administrative assistant reporting directly to a department head or other principal officer.</u>

D. The term "special inquiry, investigation, or examination" shall mean an inquiry, investigation, or examination not in the ordinary course of business of the City or regular job duties of an employee.
E. The Classified Service shall comprise all positions not specifically included in the Unclassified Service.

New Section:

TMC 1.24.295 Determination of Classified or Unclassified Status

Recommendations to the City Council or determinations to assign employees to the unclassified or classified categories made by the Human Resources Department, other departments of the City, City Officers, or other employees shall be provided to the Civil Service Board and will be subject to board approval to ensure that the placement of the position in the classified or unclassified service does not violate Article VI of the City Charter. The Civil Service Board may reclassify any position improperly designated as classified or unclassified under Article VI of the City Charter. The board may waive any provision of these personnel rules for individuals redesignated as classified including the requirement of a probationary period.

The Human Resources Director shall provide to the Civil Service Board on a quarterly basis a report of all employees designated as unclassified and classified during that particular quarter.

The definitions in the proposed amended TMC Section 1.24.290 comport with rules of statutory construction and provide guidance in determining whether an employee is classified or unclassified. The proposed new rule, TMC section 1.24.295, allows the CSB to act as a gatekeeper to restore employees to their proper classification and to prevent the further erosion of the City's civil service. As the court stated in City of Yakima v. Yakima Police and Fire Civil Service Commission, 29 Wn. App. 756, 761-762, a civil service commission, "acts as a sentinel to safeguard the system and effectuate that purpose…".

The definitions in the proposed rules will include higher level supervisors and professional employees previously categorized as unclassified. Although this is contrary to past practice, if the drafters had intended to exclude them from the classified category, they could have provided in the charter that those employees are unclassified. Moreover, requiring hiring and promotion of these employees based on merit and just cause for discipline and discharge is a sound employment practice for the reasons set forth in this memo. Further, supervisors and professional employees are commonly covered by merit and just cause principals in other areas of employment, especially public employment.

7. Unclassified employees who are improperly designated as such may have grounds for a lawsuit for damages against the City for violation of their constitutional right to due process.

Public employees who can be dismissed only for cause have a property right in continued employment protected by the due process clause of the Federal constitution. This includes public employees who can be discharged only for cause pursuant to civil services ordinances. The right to due process includes a right to a pretermination opportunity to respond to the charges coupled with post-termination administrative procedures. Danielson v. City of Seattle, 108 Wn. 2d 788, 796-797 1987). The federal Civil Rights Act of 1871, 42 U.S.C. section 1983, provides a cause of action for damages against any person who, under color of law, subjects

another to the deprivation of any right guaranteed under the Constitution. White v. State of Washington, 131 Wn. 2d 1, 9 (1997).

Unclassified employees who are improperly designated as such could sue the City for damages if, prior to their termination, they are not granted a right to respond to the charges against them and they are not granted a hearing after termination before the CSB to determine whether there is just cause for their termination. These damages can be substantial.

The United States Supreme Court has held that damages in section 1983 lawsuits are designed to provide compensation for the injury caused to the plaintiff. These damages can include out-of-pocket loss and other monetary harms as well as monetary damages for such injuries such as impairment of reputation, personal humiliation and mental anguish. Memphis Community School District, et al. v. Stachura, 477 U.S. 299, 306-307, 106 S. Ct. 2537, 91 L. Ed. 2d 249 (1986). Out of pocket loss can include back pay and benefits and front pay or pay the plaintiff would have otherwise received had they not been terminated. Additionally, under 42 U.S.C. section 1988, successful plaintiffs can recover attorney's fees. These fees can be substantial.

ALTERNATIVES:

The CSB discussed the matter of excluding employees from the classified category with the HR Department for a number of months. We asked several times what criteria the HR Department used in assigning employees to the classified and unclassified categories. We were told that the criteria were subject to the attorney-client privilege and would not be disclosed. The HR Department ultimately provided, to a limited extent, criteria to be used in the future. However, the criteria they proposed were contrary to the terms of the City Charter. For this reason, the CSB developed criteria that would conform to the terms of the charter in the proposed rules referenced above.

The alternative to the proposed rules would be to maintain the status quo. Given that the status quo is to assign employees to the classified or unclassified categories on an ad hoc basis without conforming to any discernible criteria that does not conflict with the City Charter, the CSB is proposing the criteria to follow in the new and amended proposed rules in order to ensure that the terms of the Charter are followed.

FISCAL IMPACT:

The CSB is not aware of any fiscal impact that would result from the new and amended proposed rules.

RECOMMENDATIONS:

The recommendations of the CSB are addressed in the proposed new and amended rules. As stated above, these rules are preferable to maintaining the status quo.

I would like to finally note that this memo is not meant to disparage the excellent work the HR Department has done for the City of Tacoma. However, the exclusion of employees from the classified service has resulted in the erosion of the civil service and the benefits and advantages the citizens of Tacoma can realize from a competent staff of City employees subject to a merit system of employment and fair and equitable treatment.