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the City that the City has to remedy; a court is not likely to find a compelling governmental interest to justify current use of expanded certification.

Second, I will look at the issue of whether the expanded certification program is narrowly tailored, in particular with respect to the duration of the program. Civil Service Commission Rule 8.03B was created in 1994, modified in 2002, and has a sunset provision so that the existing rule will expire March 14, 2007, at which time the Civil Service Commission will determine the need for continuation of the rule. If the expanded certification rule is extended beyond March 14, 2007, it may appear to a court that the rule is indefinite and is therefore not narrowly tailored and does not meet the strict scrutiny standard. If a court determines that the program is not narrowly tailored, any use of expanded certification could be deemed to be unconstitutional and the hiring of employees under the unconstitutional program might need to be reversed or modified in some way.

There does not appear to be a history of discrimination by the City to remedy. Further, the expanded certification program of the City could be seen by a court not to be narrowly tailored because of the long length of the duration of the program (i.e., since 1994). Because the City does not have the evidence sufficient to meet the strict scrutiny standard at this time, it is the City Attorney Office's recommendation to Human Resources that the Civil Service Commission allow Rule 8.03B to expire on March 14, 2007.

Allowing Rule 8.03B to expire would not necessarily mean the end of expanded certification. If, in the future, the City does have sufficient evidence to show a compelling governmental interest to implement a new expanded certification program, the Civil Service Commission could create a new expanded certification rule that would be written to survive strict scrutiny. The new rule could then be used at that time. Having a shorter duration for the expanded certification program would bolster the City's future argument to a court that the program is narrowly tailored.

If you have questions, feel free to contact me at Ext. 2754.