

June 13, 2024

The Honorable City Council
c/o Holly Wolcott, City Clerk
200 North Spring Street
City Hall—3rd Floor
Los Angeles, CA 90012

Re: Proposed Amendments to Charter §§ 700-712
Council File No. 23-1027

FOR COUNCIL CONSIDERATION

Dear Councilmembers:

On May 14, 2024, the City Council asked the City Attorney to prepare documents necessary to place on the November 2024 ballot amendments to Article VII of the Los Angeles City Charter (Charter) regarding the Ethics Commission's authority. On June 10, the City Attorney's office submitted documents in response to the City Council's request, including draft language to amend various Charter provisions. We need to highlight two important issues in the draft language and request important amendments be made to the draft language.

First, the language proposed for **Charter section 711** identifies a minimum annual operating budget of \$6.5 million, which was based on current operating expenses. This is drafted to take effect with the budget for Fiscal Year 2025-26. However, in order to maintain current staffing levels, the Ethics Commission's operating budget will need to be \$7.1 million in Fiscal Year 2025-26. The increase is due to additional staff added to our budget for Fiscal Year 2024-25, mandatory step increases, and mandatory cost-of-living adjustments.

We urge you, therefore, to update the minimum operating budget to \$7.1 million, to reflect our actual budgetary requirements. It is our understanding that, to avoid immediate obsolescence, the minimum operating budget will be increased to accommodate mandatory step increases and mandatory cost-of-living adjustments.

We further urge you to clarify in the draft language that the minimum operating budget is adjusted to reflect increases in the City's revenues and that, when the Ethics Commission's operating budget is increased, that amount becomes the new minimum. Each fiscal year's budget should become the baseline for any increases in the next fiscal year. If the dollar value specified in the Charter is always used as the basis for calculating and assigning increases, the Ethics Commission's operating budget will quickly become inadequate.

Second, the draft language for **Charter section 708 needs to be amended**. The City Council approved Charter language that would permit the Ethics Commission to retain independent outside counsel “in limited circumstances”. As drafted, however, those circumstances are extremely limited to circumstances not discussed by the City Council. Draft section 708 would allow for outside counsel only in investigations and enforcement matters involving elected City officials, their offices, and their election campaigns. This would prevent the option of outside counsel when the Ethics Commission conducts many of its confidential investigations and enforcement proceedings. The Charter confers broad authority and substantial responsibility on the Ethics Commission to investigate and enforce against “violations of state law, the Charter and City ordinances relating to campaign financing, lobbying and conflicts of interest and governmental ethics.” The Charter further provides that, “Any person who violates any provision of the Charter or of a City ordinance relating to campaign financing, lobbying, conflicts of interest or governmental ethics, or who causes any other person to violate any provision, or who aids and abets any other person in a violation, shall be liable” See Los Angeles City Charter § 706.

We urge you to amend the draft language to clarify that the Ethics Commission may use outside counsel on matters relating to any of its investigative or enforcement duties. Because the City Attorney’s office provides legal services to all City departments, there is an inherent potential or appearance for conflicts when any City personnel are involved in an Ethics Commission investigation or enforcement matter. Without the requested amendment, outside counsel would not be permitted when an enforcement matter involves, for example, city commissioners, department heads, opponents of elected City officials, former city officials, lobbyists, or developers.

Because of the strict confidentiality mandate imposed on Ethics Commission investigations (*see* Los Angeles City Charter § 706; Los Angeles Administrative Code §§ 24.23(a)(4), 24.29(c)), we also urge you to clarify that, when the Ethics Commission retains outside counsel either directly or from a pre-approved panel, it may do so independently of any other City office or position. This will help to ensure that confidential information is not disclosed as a result of the process for obtaining outside counsel.

We have attached proposed amendments to the draft language for these two sections (redlined to indicate where our recommendations differ from the current draft). Thank you for supporting ethics reform and for your attention to these important issues.

Sincerely,



Jeffery Daar
President



David Tristan
Executive Director

Amendments Recommend by the Ethics Commission
Council File No. 24-1100-S8

Charter § 708

The City Attorney shall provide legal services to the commission, except that notwithstanding Section 275, the commission may retain its own legal counsel, independent of the City Attorney, to provide advice to the commission and to take such action as the commission may direct when necessary under the two circumstances described in this Section. First, ~~independent of the City Attorney~~, the commission may employ or contract for staff counsel to give advice to the commission and to take such action as the commission may direct on matters that directly involve the conduct of the City Attorney, the City Attorney's office, or the City Attorney's campaign. Second, the commission may retain its own legal counsel for legal services relating to carrying out the commission ~~staffs~~ responsibilities and duties under Section 706 ~~on a specific investigative or enforcement matter of another elected officer, their office, or their election campaign~~. In this second circumstance, the commission and the City Attorney shall approve a panel of law firms or attorneys from which the commission may select legal counsel for these services.

Charter § 711

- (a) Starting with the 2025-2026 fiscal year budget, the Council shall appropriate a minimum of ~~six and one half million (\$6,500,000)~~ seven million, one hundred thousand (\$7,100,000) dollars for each fiscal year for the commission's annual operating budget. The appropriation amount shall be adjusted each fiscal year based on ~~the change increases~~ to the City's revenues in the prior year as applied to the current fiscal year's operating budget. However, adjustment to the commission's annual budget based on ~~the change increases~~ to the City's revenues in the prior year is not required if the Council finds that exigent circumstances exist such that an adjustment should not be made for that fiscal year. The Council shall appropriate funds for the commission at least one year in advance of each subsequent fiscal year.
- (b) The expenditures of the commission shall not require prior approval of City offices or personnel where the expenditures are within the commission's budget, unless Council makes a finding of exigent circumstances. The commission shall comply with applicable City requirements, procedures, and laws relating to the expenditures.
- (c) The commission is not subject to hiring freezes when it operates within its budget, unless the Council makes a finding of exigent circumstances.