

January 19, 2024

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

Re: Ethics Commission's Charter Reform Recommendations
Council File No. 23-1027
FOR COUNCIL CONSIDERATION

Dear Councilmembers:

On December 12, 2023, the Los Angeles City Council voted to adopt a motion instructing the City Attorney and City Clerk to report on best practices for reforming the Los Angeles City Charter (Charter) and to provide options for creating a commission to make Charter reform recommendations. The City Council also asked 12 City departments, including the Ethics Commission, to report on recommendations regarding Charter sections under their purviews that would benefit from reform. This letter responds to that request by providing Charter reform recommendations from the Ethics Commission.

A. Background

In December 2021, the Ethics Commission formed the Ad Hoc Charter Reform Subcommittee to explore possible amendments to Article VII (sections 700-712) of the Charter, which establishes the powers, duties, and responsibilities of the Ethics Commission. The subcommittee extensively solicited public comment and conducted interested persons meetings on March 31 and May 3, 2022.

Based on input received from the public, as well as on the Ethics Commission's own experiences administering its laws for more than 30 years, the subcommittee proposed a set of recommended changes to these laws. On August 17, 2022, the Ethics Commission voted unanimously to establish its position on the following recommended changes to Article VII of the Charter. The recommended changes are also the subject of Council File No. 22-1232, a pending City Council motion asking the City Attorney to prepare the documents necessary to place before the voters on the next available ballot the Ethics Commission's Charter reform recommendations.

B. Recommendations

1. Administration

a. Budget

Currently, the Ethics Commission's budget process is identical to that of other City agencies. The Ethics Commission is required to submit a budget request to the Mayor, which is expected to align with the Mayor's vision and priorities. The Mayor and the City Administrative Officer then analyze the budget request in light of these priorities, and the Mayor makes a recommendation to the City Council. The City Council considers the budget request, makes adjustments it determines are appropriate, and votes on the final iteration for the upcoming fiscal year. The approved budget is sent to the Mayor for signature or veto.

The Ethics Commission recommends increasing the independence of its budget process to make the Commission more independent from those it is required to regulate as well as foster public confidence in the independence of the Ethics Commission. Specifically, it recommends amending Charter sections 702(k) and 711 in the following ways: 1) establish a minimum annual budget that is adjusted each year to reflect changes in the Consumer Price Index (CPI); 2) specify that the Ethics Commission's expenditures and budget requests are not subject to approval by any other City office or position when the commission operates within its budget; and 3) specify that the Ethics Commission is not subject to hiring freezes when it operates within its budget.

These recommendations were made because the Ethics Commission, in contrast to other agencies, regulates the conduct of all City candidates and elected and appointed City officials. Approval of these recommendations would eliminate the current process, which requires regulated individuals to allocate resources to their regulators. It would ensure that the Ethics Commission is able to carry out its many functions mandated by the Charter, the Los Angeles Municipal Code (LAMC), and the Los Angeles Administrative Code (LAAC). Further, it would help to promote public confidence that the Ethics Commission's budget is not negatively affected when it engages in its legislative and enforcement mandates.

Granting the Ethics Commission the freedom to operate independently, so long as it stays within the confines of its annual budget, is also consistent with existing Charter section 702(k). That section states that the Ethics Commission "shall ... have full charge and control of its office [and] be responsible for its proper administration...." *Id.* These recommendations would ensure that the Ethics Commission is able to operate in a way that is independent, fiscally responsible, and in compliance with its mandates under the Charter.

On September 15, 2023, Councilmembers Hernandez and McOsker underscored the need for a more independent budget by introducing a motion requesting the Chief Legislative Analyst to report on the feasibility of establishing a budgeting process for the Ethics Commission outside of the Mayor's traditional process. *See* Council File No. 23-1010. The motion suggests considering the model for the Library Department, which reserves a fixed percentage of the total assessed property value in the City for the Library. *See* Charter § 531. This recommendation was made in part to ensure that the Ethics Commission has access to a stable and independent source of funding in order to carry out its oversight functions.

b. Outside Counsel

The City Attorney's office provides legal services to all City departments, including the Ethics Commission. However, unlike other City departments, the Ethics Commission is charged by law with regulating all City officials, employees, commissioners, and candidates—including the City Attorney and everyone in that office.

When the City Attorney's office provides legal services to the Ethics Commission, issues concerning advice and confidentiality can arise. That office advises both the Ethics Commission and the employees, commissioners, and elected officials the Ethics Commission regulates. In addition, when legal guidance and representation are needed on enforcement matters, the current structure requires the Ethics Commission to disclose confidential information to the City Attorney's office regarding investigations and enforcement actions involving individuals who are also the City Attorney's clients.

These issues raise conflict concerns regarding dual representation and can present challenges for the City Attorney's office when it communicates with City officials as clients. Conflicts involving the City Attorney's office can be exacerbated by the fact that the City Attorney, an elected official regulated by the Ethics Commission, is the individual who decides whether or not that office should be recused.

The City Attorney's office is critical for the City. They work diligently to provide outstanding legal services Citywide. However, to avoid conflicts and promote public confidence in the inner workings of City government, it is essential for the Ethics Commission to have outside counsel. That said, the two offices have historically had an excellent working relationship, and the Ethics Commission is committed to ensuring the continuation of that relationship.

The Ethics Commission recommends amending **Charter section 708** to specify that the Ethics Commission's legal services are provided by independent outside counsel. This model has been employed for over 20 years by the San

Diego Ethics Commission. *See* San Diego Municipal Code § 26.0411. Where legal issues and City processes intersect, the Ethics Commission and its outside counsel would continue to work collaboratively with the City Attorney's office.

2. Legislation

a. Ordinances

The Ethics Commission cannot adopt changes to the LAMC or the LAAC. It must transmit its recommended changes to the City Council for action. Ethics Commission recommendations regarding the LAMC may be approved, disapproved, or amended by the City Council before advancing to the Mayor for final approval. Further, the City Council is not required to act on proposed amendments to the LAMC. If the City Council does not take any action on recommendations within two years, the matter expires. *See* Council File No. 05-0553.

Similarly, when the Ethics Commission adopts, amends, or rescinds a rule or regulation under the LAAC, it transmits its recommendation to the City Council. However, the City Council may only approve or disapprove the Ethics Commission's LAAC recommendations; it may not amend them. If the City Council does not act on a rule or regulation within 60 days after the Ethics Commission adopts it, it is automatically transferred to the Mayor for approval or veto. If the Mayor does not act, the rule or regulation becomes law.

The Ethics Commission recommends amending ***Charter section 703*** to specify that all of its policy recommendations follow the same procedures currently applied to its proposed rules and regulations. This recommendation would require the City Council to either approve or disapprove all policy recommendations transmitted by the Ethics Commission, including proposed amendments to both the LAMC and LAAC. This recommendation would provide additional transparency and accountability for the public regarding the laws within the Ethics Commission's jurisdiction.

Because of the often complex and challenging nature of these recommendations, and in recognition of the sheer volume of issues handled by the City Council at any given time, the Ethics Commission also recommends extending the deadline for City Council action from 60 days after the Ethics Commission votes to 90 days after the recommendations are transmitted to the City Council. The recommended timeline would offer a more realistic window for the City Council to receive public input, hold public hearings, and take an informed action.

b. Ballot Measures

The Ethics Commission recommends further amending Charter section 703 to authorize the Ethics Commission to submit a disapproved policy recommendation directly to the City's voters. This recommendation would increase the Ethics Commission's ability to act independently of the City officials it regulates. It would also foster civic participation by giving voters a direct say in the administration of the laws within the Ethics Commission's jurisdiction.

A model for the Ethics Commission's recommendation has been in place in San Francisco for over 20 years. The San Francisco Ethics Commission may place ordinances directly on the ballot with a four-fifths vote. See San Francisco Charter § 15.102. A current example of this process in action is Proposition D, which the San Francisco Ethics Commission voted to put before the voters and is on the ballot for the election being held March 5, 2024. See sfethics.org/ethics/2023/12/propd.html.

3. **Enforcement**

a. Probable Cause Conferences

The Ethics Commission's enforcement mandate is safeguarded by many due process protections for respondents. See Charter § 706; LAAC §§ 24.21-24.29. When there is a possibility that a violation of the Ethics Commission's laws has occurred, the enforcement division conducts an investigation. If, through that investigation, compelling evidence is discovered to support the conclusion that a violation did occur, the enforcement team presents the respondent with a proposed stipulation to resolve the case. If the respondent declines to agree to a stipulated settlement, the case proceeds to the administrative hearing process.

One of the current steps in the administrative hearing process is a probable cause conference. The conference is a preliminary meeting that can be requested by the respondent. It is an opportunity for the respondent and Ethics Commission enforcement staff to verbally present their respective positions regarding the case to the Executive Director, who is required to decide whether probable cause exists. If probable cause does exist, the case is then sent to an administrative law judge or the Ethics Commission for a hearing, after which the Ethics Commission makes a final decision regarding whether a violation occurred.

The Ethics Commission recommends amending Charter section 706(b) by eliminating the probable cause conference. A requested conference follows a significant and lengthy investigative process, and other procedural requirements sufficiently protect the extensive due process rights of respondents. For example, the Director of Enforcement is required to determine whether, based on the

evidence, an enforcement action should be initiated and to obtain the Executive Director's concurrence prior to initiating an action. LAAC §§ 24.25(a), (b). Those requirements will not change if the probable cause conference is eliminated. In addition, respondents will continue to have the same opportunities to present their cases to both staff and the members of the Ethics Commission.

This recommendation streamlines the administrative hearing process. It will help to more timely resolve cases, eliminate a step that is used at times to delay enforcement proceedings, and save considerable taxpayer resources. It will also eliminate the current challenges associated with requiring the Executive Director to both manage the staff's work and serve as a quasi-judicial decision maker regarding the staff's work.

b. Administrative Remedies

When a violation of the governmental ethics laws occurs, the Ethics Commission is currently authorized to order a respondent to do one or more of the following: cease and desist the violation; file required reports, statements, and other documents or information; and pay a monetary penalty up to the greater of \$5,000 per violation or three times the amount of money at issue.

The Ethics Commission recommends amending Charter section 706(c)(3) by increasing the fixed maximum penalty from \$5,000 to \$10,000 per violation. This recommendation raises the fixed cap to account for inflation in the time since the current maximum penalty was established more than 30 years ago. Other values in the governmental ethics laws, including contribution limits, are routinely adjusted to reflect changes in the CPI, but the administrative penalties have not kept pace.

An increase would permit the Ethics Commission to impose penalties more commensurate with egregious violations that involve comparatively small amounts of money. Higher penalties exist in multiple jurisdictions around the country. For example, the Chicago Board of Ethics recently increased its maximum penalty to \$20,000. See Chicago Ethics Ordinance § 2-156-465(b)(6).

The Ethics Commission also recommends adding a new Charter section 706(c)(4) to give the Ethics Commission the discretion to order a respondent to pay to the City's General Fund the costs of an enforcement action, when appropriate, in addition to any other penalties or remedies that are imposed. This recommendation reflects the significant time and resources that must be devoted to enforcement matters, as well as the direct and out-of-pocket costs incurred by the City and its taxpayers. Allowing the Ethics Commission to order a respondent to pay the true and full costs of a violation would both enable the City to be made whole and deter prospective violations.

c. Special Prosecutor

The Charter currently recognizes the potential for conflicts involving the City Attorney's office. It states that, when the City Attorney determines that a real or potential conflict of interests exists, "the office should not investigate or prosecute alleged violations" of the laws within the Ethics Commission's jurisdiction. In that case, the Ethics Commission must request the appointment of a special prosecutor by a three-judge panel. The special prosecutor selected by the panel is granted the authority to file both civil and criminal actions on behalf of the people.

The Ethics Commission recommends two changes. First, it recommends amending Charter section 710(b) by eliminating the requirement that a three-judge panel be required to appoint a special prosecutor when the City Attorney's office has an actual or apparent conflict. Instead, the Ethics Commission should be permitted to select a special prosecutor from a list of pre-approved special prosecutors.

Second, the Ethics Commission recommends amending Charter section 710(c) by increasing the existing annual special prosecutor appropriation from \$250,000 to \$500,000. The appropriation is required annually to pay costs associated with the retention of a special prosecutor. Like the cap on administrative penalties above in Section 3.b, the special prosecutor appropriation is not automatically adjusted for inflation and has not been updated in 30 years.

These recommendations would streamline the selection process and allow the Ethics Commission's enforcement division to act swiftly when navigating complex and potentially time-sensitive investigations. They would also ensure that the Ethics Commission has sufficient resources to retain a special prosecutor when necessary.

4. **Leadership**

a. Commissioner Prohibitions

Members of the Ethics Commission must be registered voters of the City. In addition, the commissioners are prohibited from holding other public offices, from participating in or contributing to City and Los Angeles Unified School District Board of Education (LAUSD) election campaigns, and from employing or being employed as a person required to register as a City lobbyist. These prohibitions are designed to help ensure that Ethics Commission decisions are fair and impartial.

The prohibition against employing or being employed by a lobbyist is also designed to minimize the potential for conflicts between the role of commissioner

and a commissioner's private interests. However, since the prohibition was first adopted, the City has passed additional laws that have increased the types of communities regulated by the Ethics Commission. *See, e.g.,* LAMC §§ 49.7.35 – 49.7.37. To create consistency and limit potential conflicts, the Ethics Commission recommends amending **Charter section 700(d)(5)** by adding a prohibition against commissioners employing or being employed by a City bidder, contractor, or developer.

The Ethics Commission also recommends adding a new **Charter section 700(d)(6)** to prohibit a commissioner from having a direct and substantial financial interest in any business, work, or action taken by the City. This would further help to ensure that Ethics Commission decisions are fair and impartial.

b. **Commissioner Removal**

The five members of the Ethics Commission are appointed by five different elected City officials: the Mayor, the City Attorney, the Controller, the President of the City Council, and President Pro Tempore of the City Council. Each appointment is subject to the approval of a majority vote of the City Council. *See* Charter § 700(b).

A commissioner may be removed from office for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office, or a violation of Article VII of the Charter. *See* Charter § 700(e). However, in contrast to the appointing authority that is vested in five different elected officials, a commissioner may only be removed by the Mayor, with a majority vote of the City Council, or by a two-thirds vote of the City Council.

The Ethics Commission recommends amending **Charter section 700(e)** by allowing the individual appointing authorities to remove their own appointees, subject to a majority vote of the City Council. This change would shift the ability to initiate removal proceedings from the Mayor to an individual commissioner's appointing authority, while retaining the limited reasons for removal and approval by the City Council as appropriate checks on that authority.

c. **Commissioner Vacancies**

Commissioners serve staggered terms, so the Ethics Commission has at least one vacancy every year. Additional vacancies can also occur when a commissioner resigns. Currently, an appointing authority has 30 days to nominate a replacement when a vacancy occurs.

The Ethics Commission recommends amending **Charter section 700(f)** by extending the deadline for making an appointment to fill a vacancy from 30 days to either 90 or 120 days. This recommendation is made to ensure that appointing

authorities have adequate time to find, vet, and appoint a qualified replacement, while still maintaining a defined period for action.

d. Executive Director

The Ethics Commission is required to have an Executive Director, who oversees the day-to-day activities of the commission. The Executive Director position has a 10-year term limit, and the salary for the Executive Director is currently set by the City Council and Mayor, subject to a recommendation made by the Director of the Office of Administrative and Research Services.

The Ethics Commission recommends amending **Charter section 701(a)** in two ways. First, the commission recommends eliminating the 10-year term limit. The commission's Executive Director is the only executive director position among ethics commissions throughout the country that is subject to a term limit.

Second, the Ethics Commission recommends updating the salary provision. The Office of Administrative and Research Services no longer exists, and the current process for reviewing the salary lies entirely with individuals who are regulated by the Ethics Commission. To create consistency, reduce potential conflicts, and modernize the hiring process, the Ethics Commission recommends establishing a salary range for the Executive Director, specifying that the members of the Ethics Commission select an individual's initial salary within the range upon hiring, automatically adjusting an individual's salary annually to the next step in the range, and automatically adjusting the range to reflect changes in the CPI.

Eliminating the term limit and updating the salary provision will eliminate an obsolete process, will bring the Executive Director position in line with comparable positions in the City and in other governmental agencies, and will help the Ethics Commission attract and retain the most qualified candidates.

e. Staff Positions

The Executive Director appoints and oversees all Ethics Commission staff members. Currently, all staff other than clerical personnel, are exempt from civil service. The Ethics Commission recommends amending **Charter section 701(b)** by specifying that all Ethics Commission staff positions are exempt from the City's civil service provisions. This recommendation, which is technical because the Ethics Commission does not have any clerical staff, will help to ensure consistency for all of its staff members. Additionally, creating a truly uniform exemption from the City's civil service provisions would recognize and underscore the important reasons for exempting Ethics Commission staff.

C. Conclusion

The Ethics Commission strongly supports the recommended Charter changes identified above. At this time, the Ethics Commission has not considered changes to Charter sections outside of Article VII. For example, other policy decisions, such as increasing the size of the City Council or creating a public financing program for LAUSD, could significantly affect Charter sections 470, 471, and 803. If changes to these sections are necessary or desired, the Ethics Commission will be happy to engage with any Charter reform commission that is established and recommend additional changes.

We would be happy to discuss the Ethics Commission's recommendations with you at any time. If you have questions, please do not hesitate to contact President Jeffery Daar, Executive Director David Tristan, or Policy Director Tyler Joseph.

Sincerely,



Jeffery Daar
President



David Tristan
Executive Director

