



Office of the Los Angeles City Attorney
Hydee Feldstein Soto

REPORT NO. R24-0342
JUN 24, 2024

REPORT RE:

REVISED DRAFT CHARTER AMENDMENT GRANTING THE CHIEF OF POLICE THE AUTHORITY TO TERMINATE A POLICE OFFICER FOR SERIOUS MISCONDUCT; CORRECTED DRAFT CHARTER AMENDMENT GRANTING THE CHIEF OF POLICE THE AUTHORITY TO TERMINATE A POLICE OFFICER FOR CAUSE; DRAFT BALLOT RESOLUTIONS AND ELECTION ORDINANCE PLACING THE REVISED CHARTER AMENDMENT ON THE NOVEMBER 5, 2024 BALLOT

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

On June 21, 2024, the City Council's Rules, Elections, and Intergovernmental Relations Committee (Committee) requested this Office to prepare the documents necessary to revise the June 20, 2024 Charter amendment transmitted by this Office changing the Board of Rights composition, authorizing the Chief of Police to terminate police officers for cause, and establishing binding arbitration as the appeal process following terminations that are directed by the Chief of Police. Specifically, the Committee requested that, among other conforming changes, the revised Charter amendment authorize the Chief of Police to directly terminate police officers for serious misconduct, as that term is used in state law, rather than for cause. This Office hereby transmits a revised draft Charter amendment and the ballot resolutions and election ordinance necessary to place the revised Charter amendment on the ballot at the City's General Municipal Election to be held on November 5, 2024. We have approved the revised Charter amendment, draft ordinance, and resolutions as to form and legality.

This Office also transmits a corrected attachment to the ballot resolution dated June 20, 2024, relating to the Charter amendment authorizing the Chief of Police to terminate police officers for cause (Corrected Attachment). The Corrected Attachment fixes typographic errors in the existing text of Charter Section 1070 and changes the word “Board” to “arbitrator” in the fifth line of Subsection (k) of the original draft submitted by this office on June 20, 2024. We have approved the Corrected Attachment as to form and legality.

Summary of the Revised Charter Amendment

The revised Charter amendment would amend Section 1070 involving “Disciplinary Procedures for the Police Department.” The language of the revised Charter amendment is based on the directions adopted by the Committee. Technical and language changes were made for clarity and to accomplish the Committee’s instructions.

We have summarized the primary provisions of the Charter amendment provisions below.

1. Requiring New BOR Composition as One Sworn and Two Civilians

The Charter presently provides for the BOR to be composed of two sworn officers of the rank of captain or above and an individual who is not a member the Department (the civilian member). As noted above, in 2019, pursuant to Charter Amendment C, the City Council adopted an ordinance allowing officers facing disciplinary action to request a three-member all-civilian BOR panel (Ordinance No. 186100).

The proposed Charter Amendment would require the BOR to be composed of one sworn officer with the rank of Captain or above, and two civilian hearing officers, as well as delete the second paragraph of Charter Section 1070(h), effectively repealing Ordinance No. 186100 that allowed for an all-civilian Board option.

2. Authority of Chief of Police to Terminate for Serious Misconduct

As noted above, presently, Charter Section 1070 does not permit the Chief to terminate an officer prior to a BOR hearing. The revised Charter amendment would give the Chief, separate from the Chief’s existing authority, the additional authority to terminate a member for serious misconduct, subject to a post-termination appeal to binding arbitration in lieu of a BOR. As requested by the Committee, serious misconduct is defined to mean those offenses set forth in California Code of Regulations Title 11, Section 1205.

Subsection (a)(6) of Title 11, Section 1205, specifies that acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, "as determined by the Commission (on Peace Officer Standards and Training)," constitute serious misconduct. Consistent with testimony during the Committee hearing, the revised Charter amendment would give the authority to make such determinations (i.e. those contemplated under Subsection (a)(6)) to the Chief of Police, in the Chief's sole discretion, in lieu of the Commission.

3. *Binding Arbitration as the Appeal Process for Termination*

In recognizing that terminated officers must still be afforded an appeal process after termination, the City Council has directed that the Charter be amended to establish binding arbitration as the post-termination appeal process for terminations directed by the Chief. The parties would be bound by the arbitrator's decision as final except in rare circumstances, which are specified in state law.

In binding arbitration, an arbitrator would apply the law to the facts of the case and make determinations on the sufficiency of the evidence to support findings of misconduct and would determine whether the termination should be upheld. The revised Charter amendment includes procedural and technical language changes to maintain consistency with the City's existing binding arbitration process as set forth in the Los Angeles Administrative Code. More specifically, the draft language of the Charter amendment establishes that the post-termination appeal shall be held before an arbitrator selected from the list of neutral professional arbitrators maintained by the City of Los Angeles Employee Relations Board (ERB) and that the selection process would be governed by the pertinent provisions of the Los Angeles Administrative Code. The revised Charter amendment also provides that the authority to issue subpoenas for the attendance of witnesses and the production of evidence shall be consistent with ERB rules.

Finally, under the revised Charter amendment, if an arbitration has been scheduled for purposes of a hearing and the accused, without reasonable excuse, fails or refuses to appear before the arbitrator at the time and place designated, the arbitrator may proceed with the hearing in the absence of the accused.

Voter Approval and Election Requirements

The Charter amendment requires approval by a majority of the voters of the City of Los Angeles to be adopted.

City Election Code Section 601 requires that final resolutions to place a measure on the ballot must be adopted no less than 110 days before the election. For the November 5, 2024 election, in light of the City Council's recess schedule, the deadline

for the City Council to adopt the resolutions containing the final language of the Charter amendment at a regular meeting is July 3, 2024.

Council Rule 38 Referral

A copy of the draft Charter amendment was sent, pursuant to Council Rule 38, to the Department and the Department's comments have been incorporated or will be presented to the City Council when it considers this matter.

If you have any questions regarding this matter, please contact Assistant City Attorney Wayne Song at (213) 978-8380. A member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

HYDEE FELDSTEIN SOTO, City Attorney

By



MICHAEL J. DUNDAS
Senior Assistant City Attorney

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Transmittals