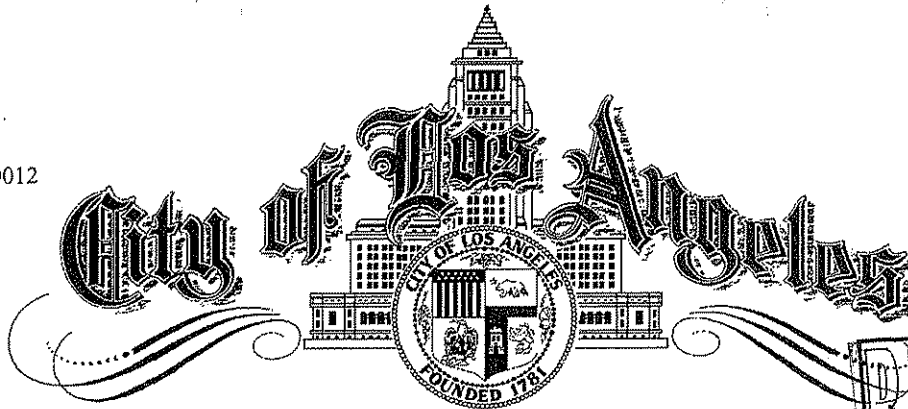
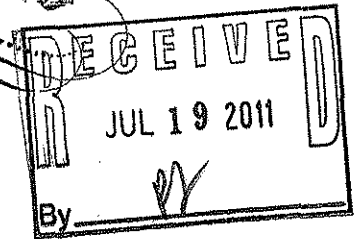


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CARMEN A. TRUTANICH  
City Attorney



July 19, 2011

The Honorable Eric Garcetti  
President, Los Angeles City Council  
200 North Spring Street  
Room 470, City Hall  
Los Angeles, CA 90012

Re: Motion regarding Legal Services

Dear President Garcetti:

City Charter Section 270 et seq. establishes the Office of the Los Angeles City Attorney as the "One City Attorney" for the municipal corporation, and mandates that this Office provide all civil and criminal legal services to the City, except for certain Charter-defined exceptions. For more than 160 years, with the exception of a short period between 1911 and 1933, the City has been served by an independent, elected "One City Attorney," who acts as both the City Attorney and City Prosecutor. Similarly, the largest cities in the state, including San Francisco, Oakland, Long Beach, San Diego and San Bernardino, have recognized the merit of an independent, elected City Attorney.

In June 2011, Councilmembers Parks and Perry presented a motion requesting that the Chief Legislative Analyst prepare a report that reviews various models for providing civil and criminal services in California and, to the extent where relevant, "across the nation." The ultimate purpose for such a proposed motion appears to be another attempt to question the wisdom of and change the long-standing provisions of the Charter mandating an independent, elected City Attorney, which can only be accomplished through the approval of the voters.

The apparent underlying purpose for the proposed motion is not new. Over the past century, there have been several failed attempts rejected by both the voters and other elected officials to remove the independence of the City Attorney from the City Charter. The history of the City also amply demonstrates that an independent, elected "One City Attorney" provides the most effective legal services for representing both the municipal

corporation and the People of the City of Los Angeles, as well as maintaining transparent, open and good government.

This Office therefore believes that the motion is imprudent and would unnecessarily consume City time and resources. Moreover, as provided in the Charter, an independent, elected City Attorney assures professional and objective legal advice free from political influence or coercion, and ultimately, is accountable to the voters of the City. In short, an independent, elected City Attorney will more effectively stand up to political influence and coercion in providing his/her best legal representation, as opposed to an appointed City Attorney, who may be less objective, more compliant and perhaps, downright submissive to special interests and thereby, not accountable to the voters of the City.

The following is a brief historical summary of previous attempts to dismantle the Charter-mandated independence of the City Attorney's Office.

#### **A. Historical Foundation for the City Attorney**

The Office of the Los Angeles City Attorney has existed since "at least" 1822. (L. David, *Law and Lawyers: One Hundred Twenty Eight Years in the History of Los Angeles As Seen From the City Attorney's Office* (1950; David), at 1.)<sup>1</sup> Under both Spanish and later Mexican rule, the *sindico-procurador* was the attorney for the City of Los Angeles. (David, at 4.) California secured independence from Mexico in 1846 and joined the Union in 1850. (110 Ops.L.A.CityAtty. 1, 5 (1986).)<sup>2</sup> At section 37 of the 1850 California Constitution, the Legislature authorized the formation of municipal corporations. (*Ibid.*) On March 11, 1850, the Legislature in its first session passed the "Act for the Incorporation of Cities" which provided for an elected "City Attorney." (*Id.*, at 6.) At section 27 of the Act, the City Attorney's duties were set forth as:

"[i]t shall be the duty of the City Attorney to attend to all suits, matters, and things in which the City may be legally interested; to give his advice and opinion, in writing, whenever required by the Mayor or Common Council, and to do and perform all such things touching his office, as the Common Council may be required of him." (*Ibid.*, citation omitted.)

On April 4, 1850, pursuant to the Act for the Incorporation of Cities, (stats. 1850, ch. 30, at 88), the City of Los Angeles was incorporated by statute. (Stats.1850, ch. 60, at 155.)

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<sup>1</sup> Leon Thomas David was a former attorney at the Los Angeles City Attorney's Office, and served as both a Municipal and Superior Court Judge.

<sup>2</sup> This opinion is sometimes informally cited as Ops.L.A.CityAtty. No. 85-46.

The structure of the Office of the Los Angeles City Attorney remains largely unchanged since at least 1850. Integral to that structure has been the Charter requirement that there to be "One City Attorney," *i.e.*, one attorney who represents all of the interests of the municipal corporation, including the simultaneous representation all of the interests of the municipal corporation's sub-units.

By an ordinance of November 29, 1872, the City Attorney was required to be present at regular meetings of the Council and to draft ordinances for consideration of the Mayor and Council when requested by them. (W. McPherson, *Charter and Revised Ordinances of the City of Los Angeles (1873)*, at 187.) (110 Ops.L.A.CityAtty., *supra*, at 6.) In the following years, the Charter has been amended numerous times; each time retaining an independent, elected One City Attorney. (See Cal. Const. art. III, § I, stats. 1873-74, at 636; Cal. Const. art. V, §7, stats. 1873-74, at 642; Cal. Const. art. V, §4, 1875-76 stats., at 702; Cal. Const. art. V, §3, stats. 1878, ch. 440, at 652; 1889 Charter §49, 1889 stats., at 472; stats.1925, at 1047-48); stats.1953, ch. 202, at 4252; stats. 1975, app., at 63-65.)

On June 8, 1999, the voters adopted the City's current Charter. (Eff. Jul. 1, 2000 [Charter, § 110(a)].). Consistent with the City's unbroken history since at least 1850, the City retained an independent, elected City Attorney, who serves as the municipal corporation's exclusive legal representative.

## **B. The City Attorney As The Municipal Prosecutor: Origins and Development**

When the City's statutory Charter was amended on April 1, 1876, the City Attorney for the first time was authorized to prosecute violations of municipal ordinances and resolutions. (Cal. Const., art. V, § 4, 1875-76 stats., at 702.) In 1911, the City's 1889 Charter was amended, the Office of the City Prosecutor was created to prosecute municipal crimes. (1889 Charter, § 50, 1911 stats., at 2099-2100.)

In 1929, the Legislature amended the Municipal Courts Act of 1925 by adding Section 24½, which authorized cities of certain populations holding freeholders charters to prosecute "misdemeanor offenses arising upon violations of the laws of the state." (1929 stats., ch. 751, at 1429.) Accordingly, for the first time, California city attorneys were accordingly authorized by state law to prosecute state law crimes, *i.e.*, crimes arising under the Penal Code.<sup>3</sup>

Effective January 10, 1933, an amendment to the City of Los Angeles' 1925 Charter abolished the Office of City Prosecutor. At that time, the Office's duties to prosecute

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<sup>3</sup> The current descendant of the Municipal Courts Act of 1925 is Government Code section 72193 which authorizes city prosecutors of charter cities to prosecute state law misdemeanors committed within the city limits.

municipal crimes were transferred to the City Attorney, which was authorized to prosecute state law misdemeanors. (1933 stats., ch. 4, at 2742-44, 1925 Charter, §§ 42(8),43.) Under the current Charter adopted on June 8, 1999, the City Attorney continues to serve as the municipal prosecutor pursuant Government Code section 72193. (Charter, § 271(c).)<sup>4</sup>

### C. Historic Failed Efforts To Eliminate The Charter's One City Attorney

Over the past one hundred years, there have been several unsuccessful attempts to eliminate the Charter's "One City Attorney" mandate. In 1912, the year after the City Prosecutor was created, the voters rejected a revised Charter that would have created an appointed City Attorney. (Menzies, at 8.) In the early 1920s, a twelve member "Board of Freeholders" (Charter Reform Commission) was elected by the voters of the City to update the 1889 Charter (Menzies, at 12.), which resulted in the 1925 Charter. (*Ibid.*)

During the 1925 Charter debates, Mayor George E. Cryer and City Attorney Jess E. Stephens strenuously argued the issues regarding the organization of the City Attorney's Office. (*Ibid.*) On one side, Mayor "Cryer insisted that the [City Attorney] should be an appointee of the Mayor in order that harmony among the various departments and officers of the city might be achieved. [On the other side, City Attorney] Stephens. . . upheld the argument that the City Attorney ought to be under the control of no officer or department of the city lest his opinions be influenced by fear of removal. It will be recalled that a previous attempt to make the City Attorney an appointee of the Mayor had received opposition of civic groups in 1915, and; in 1925, it did not appear that the electorate of the City was dissatisfied with the existing selection, the office remained elective." (*Id.*, at 14.)

The pervasive and well-documented corruption and scandals of the 1920s and 1930s within the City lead the voters and other elected officials to the wisdom of maintaining an independent, elected and unified City Attorney, who both represents the City and municipal corporation in all civil matters and prosecutes all misdemeanor criminal violations within the City's jurisdiction. The voters and the City Charter have mandated such independence and unified responsibilities since 1933.

In 1990, the Ethics Commission was created when the Charter was amended by the passage of Proposition H. (Former Charter, § 600 et seq.)<sup>5</sup> During the debate on the

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<sup>4</sup> The Los Angeles City Attorney is also authorized to prosecute violations of the Charter and City ordinances. (Charter, § 271 (c).)

<sup>5</sup> Former Charter Section 600(Q) provided: "The City Attorney shall provide legal services to the Commission. Notwithstanding Section 42 of the Charter, the Commission may employ or contract for staff counsel to give advice

Charter amendment's language, former Councilmember Gloria Molina introduced Motion No. 3, which would have authorized the Commission to hire its own lawyers, not subject to the supervision by the City Attorney. (Transcript of Council Debate (Jan. 17, 1990), at 1.) Former Councilmember Michael Woo, in opposition to the motion, argued that the proposed motion "sets a very dangerous precedent of other departments coming and asking for their own lawyers." (*Id.*, at 1.) Late Council President John Ferraro added, "including the City Council." (*Id.*, at 2.) Former Councilmember Hal Bernson also correctly noted that a Charter amendment would be required to authorize the Ethics Commission to hire its own lawyers "because under the current Charter the City Attorney is the official representative of the City." (*Id.*, at 2-3.) Former Councilmembers Richard Alatorre and Marvin Braude expressed their concerns about the cost to the City for the Ethics Commission to retain independent counsel. (*Id.*, at 2.) Councilmember Braude also expressed a concern that independent counsel for the Ethics Commission would set a "precedent" for other departments. (*Id.*, at 3.)<sup>6</sup> The Council thereafter voted 12-3 against the motion. (*Ibid.*)<sup>7</sup>

In 1991, former City Attorney Burt Pines also addressed the need and wisdom for One City Attorney, stating: "[P]roposals presented by the Mayor, among others, have suggested that there will be improved efficiency and cost savings if the City Attorney reports directly to the Mayor and the City Council is given the opportunity to seek its own counsel. Instead of efficiency, this would create chaos. In instances where the lawyers for the Mayor and City Council disagree, the only possible arbiter would be a court of law." (B. Pines, *No Conflict Because There is One Client*, Los Angeles Times, April 30, 1991 at B7.)

In 1992, two years after the passage of Proposition H, in a letter to former City Attorney Hahn (Jan. 23, 1992), then-City Ethics Commission President Dennis Curtis opined that the Ethics Commission should be able to select its own employee attorney subject to the City Attorney's veto, and that such an attorney should be "housed" at the Ethics Commission, supervised by the Ethics Commission executive director and work exclusively on Ethics Commission matters. (*Ibid.*) In his January 27, 1992 response, City Attorney Hahn stated that "except for those investigatory and enforcement matters

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to the Commission and take such action as the Commission may direct on matters which directly involve the conduct of the City Attorney, his or her office, or his or her election campaign." (Compare 1999 Charter, § 708 [language substantially unchanged].)

<sup>6</sup> Councilmember Molina rejected the argument that a precedent would be established for other City departments, arguing that the Ethics Commission was unique, as an independent body. (*Id.*, at 3.)

<sup>7</sup> A few years after the approval of the 1999 Charter, the City Ethics Commission once again raised the issue as to whether it was entitled to independent counsel. In a letter (May 20, 2003) from City Attorney Senior Counsel Frederick N. Merkin to the City Ethics Commission, Mr. Merkin again reiterated that the commission was not entitled to independent counsel.

involving the staff of the City Attorney's Office itself, all legal services to the Commission are to be provided by my office. The City Council specifically considered and rejected a proposal that the Ethics Commission have other or outside counsel. The City's electorate ratified that decision." (*Id.*, at 1.) City Attorney Hahn further stated that the Charter "*mandates*" (emphasis original) that he select the Ethics Commission attorney and that he supervise that attorney. (*Id.*, at 12.)<sup>8</sup>

In 1998, both the appointed and elected Charter Reform Commissions considered the structure of the City Attorney's Office. At that time, then-Mayor Richard Riordan argued that the Mayor, Council and various departments should be allowed to hire their own attorneys. (Letter (Jul. 20, 1998) from Mayor Richard Riordan to Elected Charter Reform Commission, at 3.) City Attorney James Hahn, however, argued that the City Attorney should continue be an independent, elected One City Attorney. (See, e.g., Letter (Jun. 24, 1998) from City Attorney James Hahn to Members of the Los Angeles Elected Charter Commission, at 1-3.)

At that time, City Attorney Hahn also responded to a proposal by a Charter Reform Commissioner, who urged that the One City Attorney be replaced by (1) an elected City Attorney (City Prosecutor), (2) a General Counsel appointed by the Mayor and City Council and (3) a Legislative Counsel appointed by the City Council. (*Id.*, at 4.) In rejecting the creation of such a proposed troika, City Attorney Hahn argued that such a proposal would result in increased and redundant costs, such as libraries and office space, and that each office would "work at cross purposes." (*Id.*, at 5.) For example, according to City Attorney Hahn, the positions of the General Counsel and the Legislative Counsel could differ. In such an event, assuming the differences could be resolved, and the elected City Prosecutor would enforce the law, there is "no mechanism" for ensuring that the three proposed city attorneys would agree on the application or interpretation of the law, thereby causing a "disconnect" between the three lawyers. (*Ibid.*)

In a later speech entitled, "The Importance of an Elected, Independent City Attorney"), City Attorney Hahn again argued that an independent City Attorney provides "checks and balances" between the Mayor and City Council. (*Id.*, at 12-13.) City Attorney Hahn further concluded that only an independent, elected City Attorney "**directly answerable to the electorate can have the necessary independence to withstand the pressure that inevitably occurs when the public interest and the parochial interest of other public officials conflict. . . Under the present system, those officials are not guaranteed legal opinions to their liking; they are guaranteed an independent analysis taking into account the interest of the ultimate client, the residents of the city.**" (*Id.*, at 24-25, emphasis added.)

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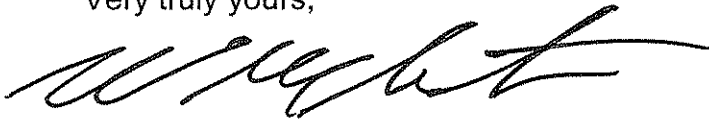
<sup>8</sup> Throughout the Ethics Commission's entire existence, legal services have been provided by the City Attorney's Office under the direction of the City Attorney.

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From its very beginning, this City has been served by an independent, elected City Attorney. The City's "One City Attorney" structure provides economical, professional, objective and voter-accountable legal and prosecution services to the municipal corporation and its residents. Without voter approval, such Charter-mandated independence cannot be eliminated. Hopefully, these important historical perspectives and good government issues will be considered in reviewing the proposed motion.

Thank you for your consideration of this letter. If necessary, additional information, materials and authority will be provided to the Council.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Carter", written in a cursive style.

WILLIAM W. CARTER  
Chief Deputy

cc: Los Angeles City Council