

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: June 3, 2024 **MEMORANDUM NO. 24-010**

TO: Honorable Members of City Council

FROM: Kenneth Mejia, City Controller *Kenneth Mejia*

**SUBJECT: RESPONSE TO CHARTER REFORM RECOMMENDATIONS, AS
SUMMARIZED IN THE MAY 30, 2024 MEMO FROM THE CHIEF
LEGISLATIVE ANALYST**

As the City's elected Controller with the Charter-mandated authority and responsibility to be the City's chief accountant, auditor and paymaster, I wanted to express my concerns about several Charter reform recommendations presented by the City Administrative Officer (CAO) and City Attorney for possible inclusion on the November ballot.

While these proposals were presented to the Ad Hoc Committee on City Governance Reform as "technical" and "non-controversial" seeking only to "clarify" what is already in the Charter, in reality, they could have far-reaching effects that have not been adequately considered by Council, subject-matter experts, and the people of Los Angeles. **Neither the CAO nor City Attorney consulted our office on these changes even to this day, so we feel compelled to make our case directly to City Council in order to prevent controversial and potentially damaging Charter amendments from being rushed to the ballot.**

1. The CAO Is Not the Chief Financial Officer (CFO) of the City

In his May 7 memo to City Council and his May 20 presentation to the Ad Hoc Committee on City Governance Reform, CAO Matt Szabo proposed two Charter Amendments that he characterized as "technical" and "non-controversial." The first of these is the CAO's proposal to add language to Charter Section 291 to describe his office as the "Chief Financial Officer of the City." (Item 10 in the CLA's May 30 memo.) The rationale, according to his May 7 memo, is that "[u]sing established terminology that is understood by most, this change provides additional clarification on the role of the

CAO and indicates that the powers and duties listed in this section stem from the CAO's position as the Chief Financial Officer of the City.”

This is incorrect and reflects a fundamental misunderstanding by the CAO regarding the responsibilities of a “Chief Financial Officer” and what a CFO does.

Throughout the private and non-profit sectors, and most public sector agencies, the position of “CFO” has clear and distinct meaning. This is the point person for the fiscal health of the institution across a whole range of accounting and financial reporting and management duties. It is a full-time and exclusive responsibility for a person with financial training, skills and experience commensurate with the scope of the institution. Being the “CFO” is not a part-time role for a city administrator, especially for the second largest city in the country with an annual budget of nearly \$13 billion.

To see how the role of CFO is “understood by most,” we can look to the City of San Diego, which has an established and respected Chief Financial Officer. That office describes their role of CFO as being “responsible for the City's accounting and financial reporting functions, debt issuance, risk management, treasury and investments, and establishment of internal controls over financial reporting.”¹ In Los Angeles, the CAO is not responsible for accounting and financial reporting (that's the Controller), treasury and investments (that's the Office of Finance), or establishment of internal controls over financial reporting (again, that's the Controller). The most important responsibility of the CAO is working on the City's budget before and after it has been adopted.

In addition, the proposed changes would mean that the City's CFO would be a political appointee who isn't required to have any financial background or independence from their appointing authorities. To have credibility with the public and financial markets, a CFO should bring to the position a breadth of knowledge of municipal accounting, finances, and best practices. Experience navigating the labyrinthine Los Angeles bureaucracy isn't enough.

2. The City Already Has a CFO

As in other major cities, the City Controller is publicly and widely known as the Chief Financial Officer of the City due to the work that we carry out. Our civil service staff's responsibilities include overseeing the entire City's:

- Financial condition
- Accounting operations

¹ https://www.sandiego.gov/sites/default/files/fy21ab_v2cfo.pdf

- Internal control processes
- Financial reporting
- Financial Management System (FMS)
- Collection of receipts and disbursements including the signing of all checks
- Payroll process
- Production of required federal, state and local compliance reports, including tax reports, the Annual Comprehensive Financial Report (ACFR), and Annual Revenue Forecast.

Both San Francisco's Controller² and New York City's Comptroller³ are referred to as their City's CFOs. In fact, the last Los Angeles City Controller, Ron Galperin, describes himself as the "[f]lormal elected City Controller and Chief Financial Officer, City of Los Angeles" in his LinkedIn profile.⁴

If the Charter were to identify a secondary CFO, this redundancy would cause confusion as to which department is in charge of these functions, which could be especially damaging when it comes to financial reports like the ACFR.

Finally, in his May 7 memo, the CAO argued that the CAO's powers and duties "stem from the CAO's position as the Chief Financial Officer of the City." This is not supported by the history of the CAO position in Los Angeles. According to Raphael Sonenshein, the Executive Director of the 1999 Appointed Charter Reform Commission, the role of the CAO was created by Charter Amendment in 1951 to expand Mayoral power and "bring executive direction to the budget."⁵ It is that role, as the lead budget official and head administrator, from which the power of the CAO stems, not the role of CFO, which is not and has never been an accurate description of that office. Moreover, as a result of the 1999 Charter Reform, the focus of the CAO was redefined as administration and research, as captured in the title change of the office to "Office of Administrative and Research Services (OARS)."

Designating the CAO as CFO is not a "technical" change. This change would cement the City's current divided and duplicative financial oversight and management among a range of City offices for the foreseeable future. If the City were going to make such a change, which we would argue against, that change must come from a robust Charter reform process, and should not be done hastily under the cover of being "non-controversial." The City's current financial woes are indicative of the need for more

² <https://www.sf.gov/departments/controllers-office/about>

³ <https://comptroller.nyc.gov/about/duties-of-the-comptroller/>

⁴ linkedin.com/in/lacontroller

⁵ Sonenshein, Raphael J. *The City at Stake*, 2004, p. 34

comprehensive and effective long-term fiscal management which our Office has been advocating for and actually providing via our financial reports.

Therefore, we ask City Council to amend the CLA report to strike items 10 and 10a before being referred to the City Attorney to develop ballot language.

3. The CAO Does Not, And Should Not, Conduct Performance Audits

In his presentation to the Ad Hoc Committee on City Governance Reform, the CAO claimed that he wished to “clarify” Section 292 of the City Charter by adding language that specifies the CAO can “conduct performance audits.” (Item 11 in the CLA’s report) The CAO went on to claim that the existing language in Section 292 (“evaluating programs and developing performance measures concerning the duties of the various positions, the methods and the standards of efficiency”) essentially describes a performance audit.

Once again, this is incorrect and represents a basic misunderstanding of what a performance audit is as well as the historical evolution of the authority to conduct performance audits under the Los Angeles City Charter.

Contrary to the CAO’s claims, a performance audit is much more than evaluating programs and coming to conclusions. Auditing is a process as much as an end product. The Audit Services Division (ASD) of the Controller’s Office performs its work under the auspices of GAGAS, or Generally Accepted Government Auditing Standards. These rules and procedures, known as the Yellow Book, require all audits to meet demanding standards of fairness and peer review, while ensuring impartiality and limiting outside influence. The authority and credibility of the audits produced by ASD stems from their adherence to these standards. **The CAO can still perform research and write reports, but these reports are not, and should never be, called audits.** To do so would be misleading to the public by suggesting that the work of the CAO, an appointed position that serves the Mayor and City Council, has the same rigor and objectivity as the work of the ASD under an independent Controller, elected by the people.

Furthermore, the authority to conduct performance audits is incompatible with the CAO’s role as Citywide budget manager. The CAO’s budgetary decisions and recommendations have a direct impact on the performance of every single program across the City. It is an inherent conflict of interest for that office to then assess the results of their own decisions and call it an audit, and it certainly would not be consistent with auditing best practices.

Next, in his letter to the City Council, the CAO suggests that the existence of a Management Audit Group in the CAO's office before the 1999 Charter Reforms is evidence of the CAO's historic authority to conduct performance audits. **The exact opposite is true. The 1999 Charter Reform process intentionally eliminated the CAO's Management Audit Group and expressly transferred the authority to conduct performance audits to the Controller.** According to Sonenshein, Mayor Riordan "called for granting performance audit authority to the elected controller, in an apparent move to reduce the authority of the CAO, who had the power to conduct management audits."⁶ **That is why the new Charter that came out of the 1999 reform process deleted Section 53 of the old Charter which had given the CAO this authority.**⁷ During the May 20 meeting of the Ad Hoc Committee, Councilmember Raman asked the CAO why the CAO's "Management Audit Group" went away. While the CAO could not provide an answer at that time, the reason is clear: because that was the will of the people.

In fact, removing the performance audit authority of the CAO and transferring it to the Controller was among the most popular items in the 1999 Charter Reform package.⁸ It was a decision that was carefully considered by two different Charter Reform Commissions who held over 300 meetings over the course of two years⁹ and it was approved by the voters by an overwhelming 60-40 margin.¹⁰ Any effort to alter the balance of power in conducting performance audits in Los Angeles should go through a similarly rigorous and public process. Rushing through a Charter amendment to overturn a key pillar of the 1999 Charter under the guise of it being "technical" or "non-controversial" is inappropriate and will only further degrade the public's confidence in City Hall.

In his presentation to the Ad Hoc Committee, the CAO referenced an ongoing audit of Vision Zero as an example of the kind of performance audit being carried out by his office. That audit, however, is not being performed by the CAO but instead by an outside consultant at the cost of \$500,000. As a result of the 1999 Charter Reform, the Charter authority to conduct citywide performance audits lies solely with the Controller. If the Mayor and/or City Council would like a performance audit to be conducted, there is a process in place whereby they can transmit a formal request to the Controller. It is true that the Controller's Office is limited in the number of performance audits they conduct, but this limitation is a direct result of budgetary constraints applied to the

⁶ Sonenshein,, p. 113

⁷You can find the section of the pre-1999 Charter that was deleted by the voters here:
https://codelibrary.amlegal.com/codes/los_angeles/cae3fd37-c1c1-4dbb-9231-20516db8cd09/laocharter/0-0-1488

⁸ Sonenshein, p. 188

⁹ <https://www.latimes.com/archives/la-xpm-1999-jun-10-me-46263-story.html>

¹⁰ <https://ens.lacity.org/clk/elections/ND4508.htm>

Controller by the Mayor and Council themselves. This year, like in many years past, the Mayor and Council have cut the Audit Services Division in the Controller's Office at the recommendation of the CAO, reducing that division from a high of 42 positions in 2010¹¹ to 17 in next year's budget.¹² Overturning 1999 Charter Reform and giving the CAO explicit performance audit authority would further siphon city resources and tax dollars to be used to hire expensive outside contractors and possibly be used in the future to justify creating the exact kind of audit division in the CAO's office that the voters overwhelmingly rejected in 1999. Alternatively, the City could uphold the will of the people and adequately fund the Controller's Office.

Therefore, we ask City Council to amend the CLA report to strike items 11 and 11a before being referred to the City Attorney to develop ballot language.

4. The Controller's Office Does More Than Audits, So Auditing Standards Can't Apply to All Their Work

Item 32 in the CLA's report is a proposal by the City Attorney to amend Charter section 261(e) of the City Charter to "clarify and confirm" that "all work of the City's [sic] Controller is to be conducted in accordance with generally accepted government auditing standards." This proposal is confusing, unnecessary, could damage the Controller's ability to produce legally mandated financial reports, and does not reflect the actions of the Ad Hoc Committee on City Governance Reform in their May 20, 2024 meeting.

First, Section 261(e) of the City Charter already explicitly requires the Controller to perform financial audits according to "generally accepted government auditing standards." In fact, that section begins with those exact words. It states that the City Controller shall:

in compliance with generally accepted government auditing standards, audit all departments and offices of the City, including proprietary departments, where any City funds are either received or expended; be entitled to obtain access to all department records and personnel in order to carry out this function; establish an auditing cycle to ensure that the performance, programs and activities of every department are audited on a regular basis, and promptly

¹¹ 2009/2010 City of Los Angeles Budget, page 59

<https://firebasestorage.googleapis.com/v0/b/lacontroller-2b7de.appspot.com/o/Budget-2009-10.pdf?alt=media&token=bd54bb66-291a-4df3-9e98-9203131fb9f1>

¹² 2024/2025 City of Los Angeles Budget, page 80

https://cao.lacity.gov/budget24-25/2024-25Proposed_Budget.pdf

provide completed audit reports to the Mayor, Council, and City Attorney and make those reports available to the public;¹³

Far from providing clarity, adding the duplicative language to Charter Section 261(e) is redundant, confusing, and unnecessary.

More concerning, the City's Attorney's proposal is to apply "generally accepted government auditing standards" to "all work" of the Controller's Office. This represents a misunderstanding of the breadth of work the Controller's Office performs as well as the purpose and application of "generally accepted government auditing standards." While the ASD of the Controller's Office performs their audits in accordance with GAGAS and the "Yellow Book" (which contains standards for financial audits, attestation engagements, and performance audits as well as specific requirements for individual auditors and audit organizations), the other divisions of the Controller's Office (Financial Analysis & Reporting, Accounting Operations, Management Services, and Executive Office) do not perform audits and therefore their work is not, cannot, and should not be performed under those standards.

For example, the legally mandated Annual Comprehensive Financial Report produced by the Financial Analysis & Reporting Division, is done according to Generally Accepted Accounting Principles or GAAP, not GAGAS. Another example is our Office's responsibility in processing the City's payroll which has nothing to do with auditing. To force accountants to follow auditing guidelines would make no sense – it would be like requiring the city's zookeepers to do their work under the rules of the California State Bar. Considering that the ACFR is used by financial markets to assess the City's financial health, any Charter change that could affect how or if it is produced could impact the City's borrowing costs and financial stability.

Finally, the language in the CLA's report does not reflect the will of the Ad Hoc Committee on City Governance Reform. In the Committee's May 20, 2024 meeting, Councilmember Hernandez suggested that the language be changed to "explicitly" say that auditing standards should only apply to financial audits. President Krekorian concurred and there was no objection, stating that the Committee will "consider this recommendation so amended."¹⁴

It is our understanding that the CLA will be updating the language in their report to accurately reflect the action of the Ad Hoc Committee, which we appreciate. However,

¹³ Los Angeles City Charter, Section 261(e)

https://codelibrary.amlegal.com/codes/los_angeles/latest/laac/0-0-0-776

¹⁴ <https://www.youtube.com/live/z7-4m0aVHUC?si=pw-9bmJIA0CtBIVz&t=14580>

as stated above, Section 261(e) begins by explicitly referencing “generally accepted government auditing standards” meaning that even with the CLA’s update, this recommendation is still duplicative and redundant.

Therefore, we ask City Council to amend the CLA report to strike the last sentence of item 32 (“*The section should also be clarified to confirm that all work of the City’s [sic] Controller is to be conducted in accordance of generally accepted government auditing standards.*”) before being referred to the City Attorney to develop ballot language.

Conclusion

Our Office supports much of the great work being done by the Ad Hoc Committee on City Governance Reform, especially their proposal to create an independent redistricting commission, even though such a commission removes appointment power not just from Council and the Mayor, but from the City Controller (and City Attorney) as well. Our Office is happy to cede that power to create a fairer, more independent redistricting process. However, as we make these important changes to the Charter, we believe that it is essential that we not detract from effective reforms with contentious proposals that haven’t been adequately debated or analyzed. We look forward to working with the Mayor, City Council, City Attorney, and the appointed Charter Reform Commission to identify structural changes to the organization and administration of our City in order to make Los Angeles a better place for all.