



Office of the Los Angeles City Attorney
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October 28, 2025

Sent Via Email

Charter Reform Commission
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Honorable Charter Reform Commission,

Professor Erwin Chemerinsky told this Commission at its September 6 meeting that some of the prior Charter reform commission's most important decisions were about what *not* to change. Chief among those were the decisions not to change the office of the City Attorney or Controller to appointed offices. "I came to believe," Professor Chemerinsky said of an *elected* City Attorney and Controller, that those "were essential as separate checks on government power."

Professor Chemerinsky is correct. The City is best served by *not* changing the Charter's providing for a single, elected City Attorney. (I believe this is true, too, of an elected Controller.) I say this acknowledging that, by the time an approved ballot-measure providing for an appointed City Attorney would become effective, I would be termed-out and not personally affected. Nonetheless, and for the reasons presented below, I am convinced that an elected—unlike an appointed—City Attorney, who is accountable only to the voters, benefits from the independence essential to serving the best interests of the City.

Independence

An elected City Attorney represents an indispensable independent voice in City government, similar to the independence of the Mayor, City Council, and Controller. The City Attorney is responsible for providing objective, independent legal advice to other elected officers and department heads. Were such objective legal advice always welcome—giving the City Council or Mayor, for example, exactly what they want to hear—an appointed City



Attorney might suffice. Not infrequently, however, the City Attorney often needs to provide unwelcome advice—what the Council or Mayor needs to, but does not want to, hear. An appointed City Attorney will face constant pressure to conform his or her legal advice to the Council’s or Mayor’s preferences. An *elected* City Attorney is insulated from such “client capture.” For an elected City Attorney, the client-in-mind remains what is the client-in-fact: the City. Not the City Council, not the Mayor, but the City as a whole, the municipal corporation.

The elected City Attorney’s independence is especially critical in two situations. The first arises when different offices or departments of the City disagree about a legal matter. In those cases, the City Attorney serves as the arbiter of the disputes. As an independent elected, the City Attorney may objectively and fairly apply the law in these controversial situations, where different constituent elements of the client-City, such as the Council and Mayor, may disagree. If the City Attorney were beholden to an appointing authority, such as the City Council, which could seek the City Attorney’s removal, the City Attorney’s role as referee would lack the appearance, and possibly the reality, of objectivity.

Before my time in office, prior City Councilmembers and prior Mayors have raised the possibility of having their own legal counsels, in effect, appointed city attorneys (plural). Similar proposals are being made now. In such a situation, the City would lack a single arbiter of legal disputes, with the two appointed attorneys each advancing the interests of their own, distinct clients. You could anticipate the Council and the Mayor suing each other whenever they view their legally-based interests as opposing and uncompromisable and the City would be paying for all sides of that dispute, a use of taxpayer dollars that could itself be questioned.

The second, even more critical, situation arises when the City Attorney defends the public’s interest, against the preferences of other elected offices, in the correct interpretation of the City’s Charter. In that circumstance, the independence of an elected City Attorney—answerable to the voters—becomes of utmost importance.

Direct Accountability to the Voters

The City Attorney is currently elected by approximately 2,190,000 voters¹, representing every demographic and interest group in the City. Having an elected City Attorney enhances the democratic, representational power of the voters. Those 2,190,000 constituents should remain empowered to directly decide whom they believe will be most responsive to the City’s needs and will best serve as the City’s chief legal officer. An elected City Attorney provides the voters an additional avenue to shape and balance their government. Just as voters may want a Councilmember with certain experiences and policy priorities, they may also want a City Attorney—as the City’s top legal officer—with certain experiences and priorities, which may not coincide with what they seek in a Councilmember, the Mayor, or the Controller. The voters may also want a City Attorney with experiences and priorities that are not those the City Council or Mayor would choose if they were empowered to appoint the City Attorney.

¹ As of February 2025. See Los Angeles Almanac at <https://www.laalmanac.com/election/el18.php>.

History of an Elected City Attorney

The City of Los Angeles had an elected City Attorney at its incorporation in 1850, and has continued to have an elected City Attorney throughout its 176-year history except for a single failed experiment between 1911 and 1933. In 1998, then City Attorney James Hahn explained the historical significance of an elected City Attorney in a letter to the chairs of the two charter reform commissions: “For only 22 of its 148-year history [now 176-year history] has the office of the city attorney been fundamentally changed. From 1911 to 1933, the city attorney’s office was bifurcated into a civil division managed by an elected city attorney and a criminal division managed by an appointed city prosecutor. Before 1911, the city attorney’s office had operated as a single department managed by one attorney, elected by the people, responsible for both civil matters and criminal prosecutions.” Hahn characterized the City’s short “experiment” with an appointed city prosecutor as “a failure” and cited two negative consequences from the 1911-1933 experience: 1) high turnover, with 10 individuals holding the office in 22 years and none serving longer than three years; and 2) higher costs necessary to operate a bifurcated legal department, which he describes as amounting to an additional 33% in costs. (See James Hahn Letter dated March 18, 1998; James Hahn dated June 24, 1998; James Hahn Transcript of Speech, undated.)

One City Attorney

Cities are municipal corporations and like private corporations, they are recognized as legal persons with the capacity to sue and be sued. A corollary to the private corporate form of existence is that sub-units within the corporation such as a division or officer lack the capacity to act independently from the corporation. In the municipal corporation model a department, board, commission or officer lacks capacity to act independently from the municipal corporation.

Because the structure of the City has remained largely unchanged over the many years, the structure of the Office of the Los Angeles City Attorney remains largely unchanged since at least 1850 as well. Integral to that structure has been the Charter requirement that there be “One City Attorney,” i.e., one attorney who represents all of the interests of the municipal corporation, including the simultaneous representation of all of the interests of the municipal corporation's officials and sub-units.

Prior city leadership has considered whether to change the long-standing design of the Office many times over the decades, ultimately rejecting the idea in each instance. A twelve member “board of freeholders” elected by the citizens of the City convened to update the 1889 Charter. Their work resulted in the 1925 Charter. The board of freeholders was the functional equivalent to today’s Charter Reform Commission. During that process the board of freeholders considered and rejected the request of Mayor George E. Cryer that the City Attorney be an appointee of the Mayor. Similarly, in 1990, when the City Council considered the creation of the Ethics Commission, it addressed whether the Commission should be authorized to hire its own lawyers. Prior to rejecting the motion on a 12-3 vote, then-Council President John Ferraro considered the idea to move away from having “One City Attorney” to be a dangerous precedent and stated that the same reasoning should be applied to the City Council itself.

Ultimately, those and other City policy makers realized that having multiple attorneys assigned to advise the City not only removed the City Attorney from being answerable to the people, but

would result in: 1) City officers getting conflicting advice from different counsel; 2) legal opinions that would be framed from the parochial perspective of particular bodies and officials and not from the perspective of the entire municipal corporation; 3) the loss of the ability of the City Attorney to serve as arbiter between competing departments, particularly in jurisdictional conflicts; 4) an increased likelihood that intra-City litigation would be attempted by and against dissident bodies and officials; 5) where bodies or employees are defendants in litigation and there is conflicting legal advice that caused the body or employee to act or not act, the ability of a plaintiff to divide and conquer by using conflicting opinions to harm the city's defense; and 6) as a general proposition, increased overhead for City legal representation.

Costs

An elected City Attorney's office with a combined civil and criminal branch not only costs City taxpayers less than an appointed bifurcated office (See James Hahn Letter dated March 18, 1998 [describing 33% cost savings achieved in 1933 when the office was restored to a combined civil/criminal office under an elected City Attorney after a brief period when the office was bifurcated and partly under an appointed city attorney]), but is fundamental to the checks and balances of our local government and critical to the democratic process enshrined in the City Charter and 176 years of history. Instead of the more than 2 million voters of the City of Los Angeles choosing the City Attorney, just the councilmembers (whether 15, 21, or some other number) would get permanent political appointment over the office.

Taking away the voters power over the office is in and of itself antithetical to our democratic principles but an appointed position also loses its independence from the other elected offices and turns the office into a political football. Contrary to the statements of those who argue that an appointed city attorney who could be hired and fired at will depoliticizes the office, the opposite is true. An independently elected City Attorney is the least politicized of the available alternatives and the dangers of an appointed lawyer to represent the government is demonstrated clearly in looking at the politicized and compromised positions of our current United States Attorney General and her minions.

The independence we have come to expect from our legal officials is clearly compromised when the position is appointed and subject to the immense pressure of politicians who are paying them and are willing to make reckless claims and ignore or subvert the law to suit their own interests. We cannot allow that to happen to the residents and the taxpayers of Los Angeles, the second largest city in the country. Less democracy and more concentrated power and control in the hands of a few elected officials are not solutions. Los Angeles has for more than 175 years concluded that the best form of local government is to maintain the independence and accountability that a democratically elected City Attorney provides. There is no reason to join the Trump administration in steering away from democracy and toward the concentration of power to provide a pet lawyer to those who would work to obtain legal advice that would better suit their own political plans. We need an independently elected voice in our City Attorney now as we have since the City of Los Angeles enacted its first charter in 1888.

For these reasons, I urge you to recommend leaving the office of the City Attorney unchanged, as an independently elected citywide office and as Professor Chemerinsky wisely

urged the prior commissions over twenty years ago. That was the right decision then, and remains the right decision today.

Very truly yours,


HYDEE FELDSTEIN SOTO, City Attorney