

# MOTION


In December 2021, the Ethics Commission created an Ad Hoc Charter Reform Subcommittee to explore possible amendments to the Los Angeles City Charter relating to the powers and responsibilities of the Commission. After significant public input, the subcommittee proposed a set of recommendations that the Ethics Commission then approved. These recommendations would make the Ethics Commission more independent, streamline and expand enforcement processes, and increase the integrity and effectiveness of the Ethics Commission.


I THEREFORE MOVE that the City Attorney be requested to prepare and present the documents necessary to place before the voters on the next available ballot a measure to:


- Prohibit members of the Ethics Commission from employing or being employed by a City bidder, contractor, or developer, and from having any direct and substantial financial interest in any work taken by the City;
- Permit appointing authorities to remove their appointees to the Ethics Commission;
- Change the 30-day deadline for filling Ethics Commission vacancies to 90 days;
- Eliminate the term limit for the Executive Director and establish a salary range for the Executive Director;
- Specify that all Ethics Commission staff positions are exempt from the City's civil service provisions;
- Establish a minimum annual budget for the Ethics Commission, specifying that while the Commission is within budget, its budget requests and expenditures are not subject to approval or hiring freezes;
- Apply to all legislation recommended by the Ethics Commission the same procedure that applies to rules and regulations it adopts and change the deadline for City Council action to 90 days after the legislation is transmitted to the City Council;
- Eliminate the requirement that the Executive Director conduct a probable cause hearing in an enforcement matter;
- Increase the fixed maximum administrative penalty to \$10,000 per violation and authorize the Ethics Commission to enforce this penalty;
- Specify that the Ethics Commission's legal services be provided by independent outside counsel;
- Eliminate the three-judge panel from the special prosecutor selection process, allow the Ethics Commission to select a special prosecutor from a list of pre-approved special prosecutors, and increase the special prosecutor appropriation to \$500,000;
- Authorize the Ethics Commission to place its policy recommendations directly on the ballot and submit them to the City voters in the event that (i) those recommendations are first proposed for enactment by the Council, and (ii) the Council fails to enact such recommendations within 120 days.

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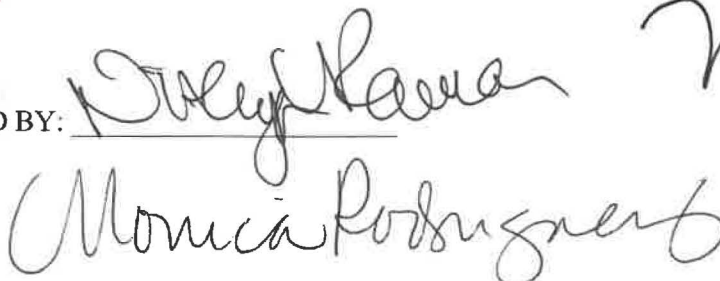
PRESENTED BY:

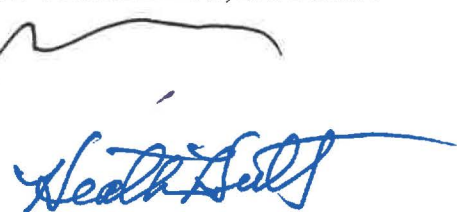
  
PAUL KORETZ  
Councilmember, 5th District

  
MITCH O'FARRELL  
Councilmember, 13th District

  
PAUL KERKORIAN  
Councilmember, 2nd District

SECONDED BY:

  
Monica Rodriguez

  
Heath Salt

OCT 18 2022

## Recommended Changes to Article VII of the City Charter

*In December 2021, the Ethics Commission formed and appointed then Vice President Jeffery Daar and Commissioner Laura Genao to the Ad Hoc Charter Reform Subcommittee. This subcommittee was created to explore possible amendments to Article VII (sections 700-712) of the Los Angeles City Charter, which establish and provide the powers, duties, and responsibilities of the Ethics Commission.*

*The subcommittee solicited public comment by email and through its website, and it 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 over the past 30 years, the subcommittee proposed a set of recommended changes to these laws.*

*At its meeting on August 17, 2022, the Ethics Commission voted to establish its position on recommended changes to Article VII. If Charter provisions are put before the voters, the Ethics Commission recommends making the changes identified in the table below. You may provide your thoughts on the recommended changes by emailing [ethics.policy@lacity.org](mailto:ethics.policy@lacity.org).*

Recommended Changes to Article VII of the Los Angeles City Charter Approved by the Ethics Commission 8/17/2022		
Section	Recommendation	Rationale
700(d)	<ul style="list-style-type: none"> <li>Prohibit members of the Ethics Commission from employing or being employed by a City bidder, contractor, or developer.</li> <li>Prohibit members of the Ethics Commission from having any direct and substantial financial interest in any business, work, or official action taken by the City.</li> </ul>	<p>Members of the Ethics Commission are currently prohibited from:</p> <ul style="list-style-type: none"> <li>Holding other public offices;</li> <li>Participating in or contributing to City and Los Angeles Unified School District Board of Education election campaigns; and</li> <li>Employing or being employed as a person required to register as a City lobbyist.</li> </ul> <p>Since Article VII was adopted, additional laws have been enacted, which require the Ethics Commission to regulate City bidders, contractors, and developers, just as they regulate lobbyists. This recommendation is made to help ensure that Ethics Commission decisions are fair and impartial.</p>
700(e)	Permit appointing authorities to remove their appointees to the Ethics Commission.	<p>The five members of the Ethics Commission are appointed by five different officials: the Mayor, the City Attorney, the Controller, the President of the City Council, and President Pro Tempore of the City Council. See Charter § 700(b). Currently, a member may be removed by the Mayor with a majority vote of the City Council, or by a two-thirds vote of the City Council. Removal is permitted for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office, or a violation Article VII. This recommendation also allows appointing authorities to remove their appointees, subject to a majority vote of the City Council, if the reasons for removal are met.</p>

**Recommended Changes to Article VII of the Los Angeles City Charter**  
*Approved by the Ethics Commission 8/17/2022*

<b>Section</b>	<b>Recommendation</b>	<b>Rationale</b>
700(f)	Change the 30-day deadline for filling Ethics Commission vacancies to 90 or 120 days.	Currently, an appointing authority is required to fill a vacant position on the Ethics Commission within 30 days. Vacancies occur annually, because the members of the Ethics Commission serve staggered terms. See Charter § 700(c). However, vacancies also occur when a member resigns, which may be unexpected. This recommendation helps to ensure that an appointing authority has adequate time to find, vet, and appoint a qualified replacement, while still maintaining a defined period for action.
701(a)	<ul style="list-style-type: none"> <li>• Eliminate the 10-year term limit for the Executive Director.</li> <li>• Establish a salary range for the Executive Director, specify that the members of the Ethics Commission select the initial salary within the range upon hiring, adjust the salary annually to the next step in the range, and automatically adjust the range annually to reflect changes in the Consumer Price Index (CPI).</li> </ul>	<p>Currently, the Ethics Commission's Executive Director is the only non-elected position in the City that is subject to a term limit. It is also the only executive director position among ethics commissions throughout the country that is subject to a term limit. The recommendation eliminates the term limit is made to bring the position in line with the City and with other governmental ethics agencies so that the Ethics Commission can attract the most qualified candidates.</p> <p>The salary for the Executive Director was originally set by the City Council, approved by the Mayor, and based on a recommendation from the obsolete position of Director of the Office of Administrative and Research Services. The recommendation regarding the Executive Director's salary eliminates a process in which individuals who are regulated by the Ethics Commission determine the Executive Director's salary. The recommendation is similar to the process for other City department heads, in which their appointing authority (the Mayor) sets their salaries.</p>
701(b)	Specify that all Ethics Commission staff positions are exempt from the City's civil service provisions.	Currently, all Ethics Commission staff positions are exempt from the civil service provisions, except for clerical staff. This recommendation helps to ensure consistency for all staff positions and to recognize that the reasons for having exempt Ethics Commission staff apply regardless of what type of position is at issue.
702(k), 711	<ul style="list-style-type: none"> <li>• Establish a minimum annual budget for the Ethics Commission of \$4,500,000, adjusted annually for CPI.</li> <li>• Specify that, when the Ethics Commission operates within the parameters of its</li> </ul>	Currently, the Ethics Commission's budget goes through the same process as budgets for 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 analyze the budget request in light of their priorities for the year, and the Mayor makes a recommendation to the City Council. The City Council then considers the budget request, makes adjustments it determines are appropriate, and votes on it. The

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	<p>established budget, the Ethics Commission's budget requests and expenditures are not subject to approval by the City Attorney, the City Administrative Officer, or another City position.</p> <ul style="list-style-type: none"> <li>Specify that, when the Ethics Commission operates within the parameters of its established budget, the Ethics Commission is not subject to hiring freezes.</li> </ul>	<p>approved budget is sent to the Mayor for signature or veto. These recommendations are made because the Ethics Commission, in contrast to other agencies, regulates the conduct of all City candidates and elected and appointed City officials. The recommendations would eliminate the current process, in which regulated individuals determine what resources the Ethics Commission has in order for the Ethics Commission to comply with its mandates. The recommendations are consistent with the mandate of Charter § 702(k), which states that the Ethics Commission "shall ... have full charge and control of its office [and] be responsible for its proper administration...." As long as the Ethics Commission stays within its budget, it should be able to operate independently, including establishing, removing, and upgrading staff positions without having to obtain approval from other City departments.</p>
703	<ul style="list-style-type: none"> <li>Apply to all legislation recommended by the Ethics Commission the same procedure that applies to rules and regulations it adopts.</li> <li>Change the deadline for City Council action to 90 days after adopted rules, regulations, or legislation is transmitted to the City Council.</li> </ul>	<p>Currently, all City ordinances must be adopted by the City Council. When the Ethics Commission adopts, amends, or rescinds a rule or regulation, it must transmit its recommendation to the City Council for action. The City Council may approve or disapprove—but not amend—the Ethics Commission's recommendation. 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. When the Ethics Commission recommends legislation other than a rule or regulation, the City Council may approve, disapprove, or amend the legislation, and it has no requirement to act on the proposed legislation at all. If no action is taken on a recommendation within two years, the matter expires. See Council File No. 05-0553.</p> <p>These recommendations would require the City Council to either act on all legislation recommended by the Ethics Commission or permit it to become law. The recommendations would also create a more realistic timeframe within which action must be taken.</p>
706(b)	<p>Eliminate the requirement that the Executive Director conduct a probable cause hearing in an enforcement matter.</p>	<p>The Ethics Commission's enforcement mandate is safeguarded by many due process procedural requirements. See Charter § 706; Los Angeles Administrative Code §§ 24.21-24.29. Currently, the Executive Director is required to conduct a hearing to determine whether probable cause exists before an enforcement matter may be sent to the Ethics Commission or an administrative law judge to determine</p>

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		<p>whether violations occurred. The probable cause hearing, itself, involves a significant process. A written probable cause report must be served on a respondent to initiate an enforcement case, and the respondent may respond in writing to the report and request a probable cause hearing. At the hearing, both the respondent and the Director of Enforcement may present evidence, including witnesses, in support of their case. The Executive Director must issue a written determination regarding probable cause within 45 calendar days. Probable cause is a low burden and may be found if there is sufficient evidence to lead a reasonable person to believe that a violation occurred and that the respondent committed or caused the violation. If probable cause is found, the Director of Enforcement must prepare a formal accusation within 14 calendar days. Only then may the Ethics Commission move forward with an enforcement action against a respondent.</p> <p>This recommendation streamlines the enforcement process by eliminating an unnecessary and protracted step. This would also save considerable taxpayer resources. The Director of Enforcement will continue to be required to determine whether, based on the evidence, enforcement action should be initiated. Respondents will continue to be afforded extensive due process protections through the investigation and administrative hearing stages of an enforcement matter. This would also remove a step that is used at times to delay enforcement proceedings.</p>
706(c)	<ul style="list-style-type: none"> <li>• Increase the fixed maximum administrative penalty to \$10,000 per violation.</li> <li>• Authorize the Ethics Commission to order a respondent to pay to the General Fund the costs of an enforcement action, in addition to any other penalties or remedies that are imposed.</li> </ul>	<p>When a violation occurs, the Ethics Commission is currently authorized to order a respondent to do one or more of the following:</p> <ul style="list-style-type: none"> <li>– Cease and desist the violation.</li> <li>– File required reports, statements, and other documents or information.</li> <li>– Pay a monetary penalty up to the greater of \$5,000 per violation or three times the amount of money at issue.</li> </ul> <p>The recommendation increases the fixed cap to take into account inflation over the past 30 years and to permit the Ethics Commission to impose penalties more commensurate with egregious violations that involve comparatively small amounts of money. For comparison, the Chicago Board of Ethics recently increased its maximum penalty to \$20,000.</p>

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		The recommendation regarding cost recovery reflects the significant time and resources that must be devoted to enforcement matters, as well as the real and out-of-pocket costs incurred by the City and its taxpayers.
708	Specify that the Ethics Commission's legal services are to be provided by independent outside counsel.	<p>Currently, the City Attorney's office provides legal services for the Ethics Commission.</p> <p>This recommendation eliminates the potential for real and perceived conflicts of interests resulting from the fact that the City Attorney, all candidates for City Attorney, and the entire staff in the City Attorney's office are regulated by the Ethics Commission. Where legal issues and City processes intersect, the Ethics Commission would continue to work collaboratively with the City Attorney's office. For comparison, the San Diego Ethics Commission has independent outside counsel.</p>
710(a)	<ul style="list-style-type: none"> <li>• Eliminate the three-judge panel from the special prosecutor selection process and allow the Ethics Commission to select a special prosecutor from a list of pre-approved special prosecutors.</li> <li>• Increase the special prosecutor appropriation to \$500,000.</li> </ul>	<p>The Charter currently acknowledges that it is possible for the City Attorney's office to have a conflict, in which case it should not investigate or prosecute alleged violations of the laws within the Ethics Commission's jurisdiction. If the City Attorney determines that a conflict exists, a request for a special prosecutor must currently be made to a three-judge panel, which then selects a special prosecutor. An annual appropriation of \$250,000 to the Ethics Commission is required to pay for any special prosecutor costs.</p> <p>These recommendations streamline the special prosecutor selection process. They also address inflation over the past 30 years and ensure there will be sufficient resources for a special prosecutor, particularly during potentially time-sensitive investigations.</p>
New	Authorize the Ethics Commission to place its policy recommendations directly on the ballot and submit them to the City voters.	<p>Some of the laws within the Ethics Commission's jurisdiction are contained in the Charter. Changes to the Charter must be placed on a ballot and decided by City voters. Currently, measures may be placed on a ballot only by the City Council or through a lengthy petition process. See Los Angeles Election Code § 600(b). In addition, only the City Council is currently empowered to pass ordinances relating to areas overseen by the Ethics Commission.</p> <p>This recommendation expedites important amendments to the Charter provisions and ordinances that affect the Ethics Commission. The recommendation also increases the Ethics Commission's ability to act independently of the</p>

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		City officials it regulates. It would also foster civic participation by giving voters a direct say in the laws administered by the Ethics Commission. For comparison, the San Francisco Ethics Commission has the authority to place policy measures on the ballot. See San Francisco Charter § 15.102. Such authority also would likely encourage robust consideration by the City Council of Ethics Commission policy recommendations.