



OFFICE OF THE CITY PROSECUTOR
Long Beach, California

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November 27, 2006

**Hon. Bob Foster
Mayor
City of Long Beach
333 W. Ocean Blvd., 14th Floor
Long Beach, CA 90802**

**Re: Charter Change Committee – Proposed Change to Article VII of the
City Charter, City Prosecutor**

Dear Mayor Foster:

In July 2006 I wrote to this committee regarding a proposal I have for a change in the City Charter. I have attached a copy of my letter for your ready reference. On December 12, 2006 the Charter Amendment Committee agenda included the consolidation of the City Attorney's Office and the Office of the City Prosecutor as an item for discussion. Of course, I want to make a presentation to your committee on any proposal to merge these two offices, but I also want to reserve five minutes of that hour-long meeting to discuss why my proposed charter change should be on the ballot.

The Charter Change Committee has stated that it will look at every aspect of the Charter to improve city government operations. My proposed Charter change will improve city governmental operations by eliminating the potential ethical problems detailed in my attached letter. For questions regarding this letter, please call me directly at (562) 570-5614.

Regards,


THOMAS M. REEVES

cc: City Councilmembers
City Attorney Robert E. Shannon
City Clerk Larry Herrera
Civil Service Executive Director Mario R. Beas



LONG BEACH CITY PROSECUTOR

July 21, 2006

City Councilmember
City of Long Beach
333 W. Ocean Blvd., 14th Floor
Long Beach, CA 90802

Re: Charter Amendment Committee Request for Information – City Prosecutor's
Recommendation for Charter Amendment

Dear Councilmember:

When I last addressed the Charter Amendment Committee, I proposed an amendment to the City Charter relative to the duties of the City Prosecutor. I write this letter to further explain my proposed Charter amendment.

The City Prosecutor's duties are set out in Section 703 of Article VII of the Charter. My recommended amendment to the Charter is to delete subsection (f) of section 703, which reads:

(f) The City Prosecutor shall prosecute, attend and conduct on behalf of the City Manager or other appointing authorities at their request, all hearings before the Civil Service Commission.

Hearings before the Civil Service Commission are appeals of employee discipline imposed by an appointing authority (suspensions, demotions and terminations). Under Section 703(f), a prosecutor will act like a labor lawyer and present "management's" discipline case. These cases originate with the City Manager or other appointing authorities, i.e., the Harbor Commission and the Water Commission and are heard by the Civil Service Commission as a body or are delegated by the Commission to a hearing officer.

To understand the reason for recommending this Charter amendment, I must briefly explain the process of handling misdemeanor cases and some facets of how our work is done. Criminal cases are presented for filing by a law enforcement agency, typically the Long Beach Police Department. Law enforcement personnel have had considerable training in conducting investigations and preparing crime reports. If additional investigation is needed, a prosecutor will request that a law enforcement officer conduct it.

Due to the volume of misdemeanor cases, the process does not begin with a case being assigned to a particular prosecutor. Prosecutors will work in the Arraignment Court, the Pre-Trial Court, and the Trial Courts on a rotation basis. From filing, to arraignment, to pre-trial, up to the trial, a misdemeanor case will be passed from one prosecutor to another with each handling a discrete part depending on the rotation cycle. It is only when a case reaches the trial stage that it is assigned to a specific prosecutor and that prosecutor will be one that is assigned to the trial rotation on the date set for trial.

Civil Service appeals cannot be handled in the same fashion. Representation in these cases requires specialized legal training more akin to that found in the City Attorney's Office rather than the City Prosecutor's Office. To prepare these cases, the attorney must work with the various departments, often conducting interviews and parts of the investigation personally. Therefore, a Civil Service appeal cannot be handled by a series of prosecutors working in rotation. Prosecutors assigned to Civil Service appeals will be solely responsible for that case and simply have to fit the appeal into their rotation duties.

There are other reasons to amend the Charter and remove this duty from the City Prosecutor's responsibilities. Among the employees who appeal their discipline to the Civil Service Commission are police officers. This presents the peculiar situation in which prosecutors will present management's discipline case against a police officer one day and call the same officer as a witness in a criminal trial the next. Understandably, this situation creates friction between police officers and prosecutors.

Acting as management's labor lawyer also collides with the unique responsibilities of prosecutors to provide "discovery" to criminal defendants. Criminal discovery includes more than the statements of witnesses or the evidence seized by the police. It may also include revealing to the criminal defendant the discipline history of the arresting officer when that history might be adverse to the police officer as a witness.

The state of the law has evolved considerably since 1929 when the City Charter placed the responsibility for criminal prosecutions and civil service appeals in the City Prosecutor's Office. As I have outlined, the combination of these duties in the office of the City Prosecutor continually raises ethical issues, produces considerable working friction and erodes working relationships. This circumstance can be eliminated by simply striking Section 703(f) from the Charter.

Under the law, the City Charter is a document of limitation. In terms of Section 703(f), this means that only the City Prosecutor can "prosecute, attend and conduct on behalf of the City Manager or other appointing authorities at their request, all hearings before the Civil Service Commission." By striking this section, representation would no longer be limited to the City Prosecutor. The appointing authorities could then be represented before Civil Service by any representative appropriate under the Charter.

Again, because the City Charter is a document of limitation, it would be the responsibility of the City Attorney, under Article VI, Section 603(a) to determine representation for the appointing authorities. This is so because the City Attorney is the sole legal advisor to all the city's officers and commissions. Therefore, only the City Attorney can decide who will represent appointing authorities.

For the reasons stated above, I strongly urge you to approve this proposed amendment to the City Charter and have it placed on the November 2006 ballot.

Of course, if you have further questions or require more explanation, I am at your service. As always, you have my

Best regards,

Tom Reeves
City Prosecutor