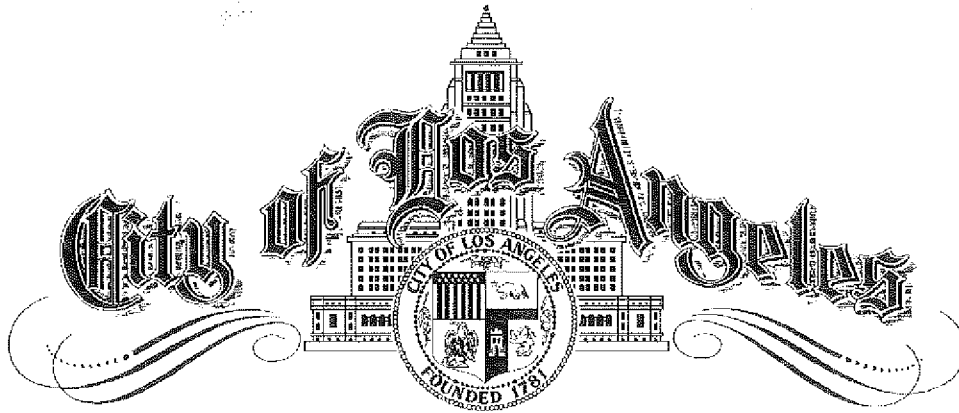


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**CARMEN A. TRUTANICH**  
City Attorney

REPORT NO. R 1 1 - 0 3 8 9  
NOV 0 9 2011

REPORT RE:

**DRAFT ORDINANCE TO ESTABLISH  
PROCEDURES FOR REMOVAL OF THE EXECUTIVE DIRECTOR  
OF THE OFFICE OF PUBLIC ACCOUNTABILITY**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 11-0452-S3

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality, establishing procedures for removal of the Executive Director of the Office of Public Accountability (OPA) for the Department of Water and Power. Charter Amendment I called for such an ordinance:

The Council shall by ordinance provide for the removal of the Executive Director in a procedure similar to that set forth in City Charter Section 575(e), and only for the reasons provided by ordinance.

Charter § 683(b).

The draft ordinance places these provisions in a new Subsection (b) of Section 23.145 of the Los Angeles Administrative Code (LAAC). This Office's report to the Council dated June 27, 2011 (R11-0245), transmitting the ordinance to establish procedures for formation of the Citizens Committee for Appointment of the Executive Director of the OPA in new LAAC Section 23.145(a) indicated that a subsequent ordinance would concern itself with procedures for removal of the Executive Director.

1. A removal procedure modeled after the Charter's procedure for removal of the Chief of Police.

Charter Amendment I calls for a removal procedure for the Executive Director "similar" to the one used for removal of the Chief of Police by the City Council. See Charter Section 683(b). The removal procedure for the Chief of Police is set forth in Charter Section 575(e). The provisions contained in proposed new LAAC Section 23.145(b)(1) adhere closely to that model. The language regarding appellate procedures will accommodate the contingency that because a removal must be "only for the reasons provided by ordinance," *id.* at § 683(b), case law may regard a property interest to have been thereby created to which due process principles (including the right of appeal) would attach. See *Brown v. City of Los Angeles*, 102 Cal.App.4th 155, 169-172 (2d Dist. 2002) (court applied post-deprivation requirements to the loss of a police officer's advanced paygrade assignment because the Police Department's manual "imposes sufficiently specific and substantive criteria controlling the Department's discretion as to create a property interest in the pay grade"); *Allen v. City of Beverly Hills*, 911 F.2d 367, 370 (9th Cir. 1990) ("Thus, in determining whether California state law or City rules and regulations confer upon Allen a property interest in continued employment, we must inspect whether they 'impose particularized standards or criteria that significantly constrain[ed],' (citation), the City's discretion to terminate Allen's employment in the office of the City Attorney.") Whether there will be such a right of appeal will depend on the state of case authority at the time of removal. Charter Amendment I did not express any intention to create a property interest and, indeed, exempted the Executive Director from the civil service.

2. Reasons for removal substantially follow City civil service policies on discipline.

The provisions contained in proposed new LAAC Section 23.145(b)(2) set forth "reasons" for removal as required by Charter Section 683(b). These "reasons" generally adopt by reference the disciplinary policies contained in the Personnel Department's Guide to Disciplinary Standards, *Policies of the Personnel Department* § 33.2 (December 11, 2008, and as amended or superseded) (Personnel Department's Guide). It was thought that doing so was superior to attempting to craft a newly devised set of standards because the standards of the Personnel Department's Guide offer the following advantages:

- They are comprehensive.
- They reflect the City's view of what misconduct means, having evolved in the light of the City's long experience as a large governmental employer.

- They have withstood the test of time in serving the City well for decades.
- They are accompanied by "offenses," which give practical instruction beyond abstractions, although the policy importantly provides that "[a] specific offense need not be listed in order for disciplinary action to be taken for conduct that violates one of the standards of employee behavior." Such guidance would seem to diminish whatever potential may exist for a successful due process challenge that a particular standard fails to "provide sufficient definite notice" that an employee's "conduct may be cause for discipline." *Cranston v. City of Richmond*, 40 Cal. 3d 755, 772 (1985) (footnote omitted).

In addition, with regard to the Personnel Department Guide's higher standard of conduct for supervisors, the draft ordinance states that such "higher standard of conduct for supervisors warrants additional emphasis for this position because as head of the Office of Public Accountability the Executive Director serves (a) as a guardian of the public trust, (b) without supervision by an appointing authority, and (c) as the appointing authority for employees in that office." Proposed LAAC Section 23.145(b)(2).

3. Procedure for suspension pending investigation.

Largely because the Executive Director does not serve under the supervision of an appointing authority, it was thought advisable that the ordinance provide a means of suspending the Executive Director pending investigation. The draft ordinance puts the Council President in this role, but requires consultation with the Mayor and prompt referral of the matter to the Council for ratification, modification, or nullification. The logic of placing the Council President in this role is based on removal being the exclusive province of the Council. The roles of the Council President and Mayor conceivably could be reversed, however, based on the Mayor's roles as the "Chief Executive Officer of the City," Charter Section 230, and as appointing authority of most of the City's general managers. The Mayor would be called upon to suspend most of the City's general managers in such circumstances. Either governmental model will work, since each is sufficiently consistent with the Charter's overall design.

If you have any questions regarding this matter, please contact Frederick N. Merkin, Outside Counsel Assisting the City Attorney at (213) 367-4620. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA  
Chief Assistant City Attorney

PBE:FNM:ac  
Transmittal

cc: The Honorable Antonio R. Villaraigosa, Mayor  
The Honorable Wendy Greuel, Controller  
The Board of Water and Power Commissioners  
Ronald O. Nichols, General Manager, Department of Water and Power  
Maggie Whelan, General Manager, Personnel Department  
Gerry F. Miller, Chief Legislative Analyst  
Miguel A. Santana, City Administrative Officer

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending Section 23.145 of the Los Angeles Administrative Code by adding a new Subsection (b) to establish procedures for removal of the Executive Director of the Office of Public Accountability pursuant to Charter Section 683(b).

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. A new Subsection (b) is added to Section 23.145 of the Los Angeles Administrative Code to read as follows:

(b) Removal of the Executive Director.

(1) Removal Procedure. The Council may remove the Executive Director from his or her position of employment in accordance with the following procedures. The Council, by two-thirds vote, may initiate removal proceedings by giving ten days written notice of a public hearing on the proposed removal to the Mayor, the Board of Water and Power Commissioners, and the Executive Director. Such notice shall cite one or more reasons for removal authorized by subsection (b)(2). At the hearing, the Mayor and the Board of Water and Power Commissioners shall appear to discuss with the Council whether the Executive Director should be removed from his or her position. The views of the Executive Director shall be heard and considered at his or her request. Thereafter, the Council, by two-thirds vote, may act to remove the Executive Director from employment, and the removal shall be effective immediately. Should the provision of an appeal from the removal be required by law, the Council shall, by ordinance, provide an appellate procedure in conformance with the law. Any such ordinance shall provide that the Executive Director may request an appeal by letter to the City Clerk within five days of the effective date of the removal.

(2) Reasons for Removal. The Executive Director may be removed from his or her position for any reason or reasons that would serve as the basis for removing the City's civil service employees, as set forth in the Personnel Department's Guide to Disciplinary Standards, *Policies of the Personnel Department* Section 33.2 (December 11, 2008, and as amended or superseded), except that those standards' establishment of a higher standard of conduct for supervisors warrants additional emphasis for this position because as head of the Office of Public Accountability the Executive Director serves (a) as a guardian of the public trust, (b) without supervision by an appointing authority, and (c) as the appointing authority for employees in that office. Consequently, the Executive Director is expected to demonstrate a higher level of

conscientiousness and integrity with respect to that position and thus should be held to a higher standard of conduct and potentially more severe levels of discipline.

(3) Suspension Pending Investigation of Alleged Misconduct. The Council President may suspend the Executive Director pending investigation of alleged misconduct for a period not to exceed 30 days upon written notice to the Executive Director and to the Council stating the necessity of such action. Prior to ordering such a suspension, the Council President shall consult the Mayor; provided, however, that if urgent action is necessary, such consultation shall occur at the earliest opportunity thereafter. Any such order shall be presented to the City Council for ratification at the earliest opportunity after its issuance. The Council may act to ratify, modify, or nullify the order. Should the Council not initiate removal proceedings within twenty-one days of such suspension, unless such time period shall have been extended by the Council, the suspension shall terminate at the end of that time period.

Sec 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of \_\_\_\_\_.

JUNE LAGMAY, City Clerk

By \_\_\_\_\_  
Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By  \_\_\_\_\_  
HARIT U. TRIVEDI  
Deputy City Attorney

Date 11/7/11

File No. 11-0452-S3