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City Attorney

**REPORT NO. R 13 - 0 0 1 9**  
JAN 1 0 2013

## **REPORT RE**

### **DRAFT ORDINANCE REGARDING THE ADMINISTRATION AND OPERATION 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-S2

Honorable Members:

On July 3, 2012, your Honorable Body requested that this Office prepare and present an ordinance for administration and operation of the Office of Public Accountability (OPA) "consistent" with the outline of such an ordinance detailed in the joint report of June 19, 2012, of the OPA, Office of the City Administrative Officer, and the Chief Legislative Analyst's Office. The accompanying draft ordinance, approved as to form and legality, tracks that outline.

#### Background

Charter Amendment I, adopted on March 8, 2011, provides in Charter § 683(d) that the Council shall adopt an ordinance regarding the operation and administration of the OPA:

The City Council shall by ordinance establish provisions for the administration and operation of the OPA, which provisions shall include at a minimum: (1) reporting requirements and schedules; and (2) consumer protection and complaint procedures.

The accompanying draft ordinance would effectuate this mandate. The ordinance will add new Administrative Code § 23.144 and constitute the final building block in the initial legal structure for the OPA in the Administrative Code. Previously, the Council adopted ordinances establishing in § 23.145(a) procedures for appointing the OPA's Executive Director (Ord. No. 181,768, eff. 8-7-11), in § 23.145(b) procedures for removing the Executive Director (Ord. No. 181,969, eff. 1-23-12), and in § 23.146(a) budget for the OPA (Ord. No. 181,965, eff. 1-23-12).

### Summary of Ordinance Provisions

The draft ordinance builds upon the framework erected by Charter Amendment I, particularly the voters' vision that the OPA provide independent analysis of LADWP actions as they relate to water and electricity rates. From this foundation, the draft ordinance addresses the OPA's mission and its independence. The draft ordinance then sets forth the particulars of the Executive Director's authority established by Charter § 683(c), but provides somewhat greater detail on the budgetary process than set forth in § 683(c)(6) and § 683(g). Reporting obligations of the OPA are established as are consumer complaint procedures, which include discretion to audit individual ratepayer cases and obtain customer data to develop analyses of customer service performance at the LADWP.

This ordinance on administration and operation should not be seen as limiting the authority of the OPA conferred on that office by Charter Amendment I. For organizational coherence and administrative convenience, this ordinance restates provisions of that Charter amendment related to administration and operation of the OPA. No inference should be drawn from that restatement that this ordinance must be in effect for authority vested by the Charter in the OPA to be operative.

### Rule 38 and Review of Working Group

Consistent with Rule 38, the draft ordinance was reviewed by a working group consisting of representatives of offices involved in OPA implementation: the OPA, City Administrative Officer, Chief Legislative Analyst, and City Attorney. The working group recommended that two clarifications were desirable in fleshing out the outline mentioned above:


- The outline acknowledges in § III(A) that Charter Amendment I intended that the OPA is to "function independently of the DWP and City officials," but in § III(B) states only that "the OPA's existence outside of the DWP is critical to its independence." The suggestion was made to have the ordinance read "... outside of the DWP and other City departments and offices" in order to place the two provisions in parallel and thereby clarify the desired independence. The attached draft ordinance reflects this suggestion in proposed Administrative Code § 23.144(c)(1).

- The outline at § V(B) includes among the OPA's reporting obligations that the OPA provide information "regarding the development of the DWP's long-term strategic plans (e.g., IRP), the annual proposed DWP budget, and departmental policies, practices, and other actions that may impact rates." The working group recommended that the words "programs, contracts, agreements.." be added after the word "practices" to specify some of what otherwise would be "other actions that may impact rates." The attached draft ordinance reflects this suggestion in proposed Administrative Code § 23.144(e)(2).

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:pj  
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  
Dr. Frederick H. Pickel, Executive Director/Ratepayer Advocate, OPA  
Gerry F. Miller, Chief Legislative Analyst  
Miguel A. Santana, City Administrative Officer

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

An ordinance amending Article 4 of Chapter 7 of Division 23 of the Los Angeles Administrative Code regarding the Office of Public Accountability for the Department of Water and Power.

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

Section 1. Section 23.144 is added to the Los Angeles Administrative Code to read as follows:

**Sec. 23.144. Office of Public Accountability.**

**(a) Legislative Findings.**

On March 8, 2011, the voters of the City of Los Angeles adopted Charter Amendment I to establish an Office of Public Accountability for the Department of Water and Power (DWP). Charter Amendment I provides in Charter Section 683(a) that "[t]he role of the Office of Public Accountability (OPA) shall be to provide public independent analysis of department [DWP] actions as they relate to water and electricity rates." The ballot argument in favor of the measure argued that it would establish the OPA "to shed greater light on the DWP's operations and finances" and that the OPA would be "charged with analyzing proposed increases in our water and power rates on a timely and continuous basis."

Charter Amendment I intended that the OPA function independently of the DWP and City officials. The measure in Charter Section 683(c)(1) provides that while the Executive Director is to "report directly" to the Board of Water and Power Commissioners (Board), he or she is "not to be instructed" by the Board. The ballot argument in favor of the measure argued that the OPA is to serve as an "independent watchdog." Critical to the OPA's independence is that it exists outside of the DWP and other City departments and offices.

The ballot argument in favor of Charter Amendment I argued that consumer protection would be increased by authorizing the OPA "to investigate legitimate complaints" from customers and "to propose recommendations" to address these issues.

**(b) Mission of the OPA.**

(1) The OPA shall seek to improve the performance of the DWP by analyzing and reporting on the reasonableness of water and power utility rates, the DWP's long-term strategic planning documents, and other DWP policies, procedures, decisions, contracts, and programs, including assessing the

reasonableness of such proposals and the assumptions upon which they are based.

(2) The OPA shall provide information and make recommendations to the Board, the City Council, the Mayor, Neighborhood Councils, and the public to assure the DWP's transparency and accountability to its customers and reasonableness of its policies and rates.

(3) The OPA shall provide information and advice, as opposed to direction, to the DWP, the Mayor and Council.

**(c) Independence of the OPA.**

(1) While substantively the OPA shall function independently of the DWP and its management structure, and of the City Council, Mayor and Controller, administratively the OPA shall be given ongoing support by City departments and offices in a manner that does not compromise the OPA's independence.

(2) The Office of the City Administrative Officer (CAO) shall provide the OPA with ongoing support and advice on administrative matters, including, but not limited to, personnel, payroll, administrative, budgetary, and other general matters.

**(d) Authority of the Executive Director.**

Consistent with the Charter Section 683(c) prescription of the authority of the Executive Director, the Executive Director shall have the following powers and duties:

(1) Report to, but not be instructed by, the Board.

(2) Have full charge and control of all the OPA's work and be responsible for the proper administration of its affairs.

(3) Appoint, discharge, suspend, or transfer its employees, subject to the Civil Service provisions of the Charter.

(4) Issue instructions to OPA employees in the line of their duties, subject to the Civil Service provisions of the Charter.

(5) Prior to the beginning of each fiscal year and in accordance with a schedule prescribed by ordinance, submit to the CAO, in accordance with City procedures, a proposed annual budget covering the anticipated expenditures of the OPA. The CAO shall review the proposed budget and submit it with recommendations to the Mayor and City Council for approval by ordinance. The

approved budget will be forwarded to the DWP for funding. The budget shall be set at a level not less than 0.025 percent of department annual revenues from the sale of water and electric energy for the previous fiscal year.

(6) Expend the funds of the OPA (including, without limitation, awarding contracts), in accordance with the provisions of the adopted budget, any subsequent budget amendments, and subject to applicable City provisions.

(7) Perform other related duties as may be prescribed by ordinance.

**(e) Reporting Obligations.**

(1) The OPA shall provide reports to the Board, the City Council, the Mayor, the Neighborhood Councils, and the public on the reasonableness of rate actions and any modifications to them.

(2) The OPA shall provide information to the Board, the City Council, the Mayor, the Neighborhood Councils, and the public regarding the development of the DWP's long-term strategic plans (e.g., Integrated Resource Plan), the annual proposed DWP budget, and departmental policies, practices, programs, contracts, agreements, and other actions that may impact rates.

(3) The OPA shall have the discretion to make recommendations to the Board, the City Council, the Mayor, and the public on ways to improve the reasonableness and transparency of DWP policies and rates.

(4) The OPA shall provide information to the public and maintain a repository for all reports produced by the Office.

**(f) Consumer Protection and Complaint Procedures.**

The OPA shall have the discretion to audit individual ratepayer cases and obtain customer data to develop analyses of customer service performance at the DWP. Reports of waste, fraud and abuse will be coordinated with the City Controller, the City Ethics Commission and other concerned departments, offices or governmental agencies, as applicable.

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

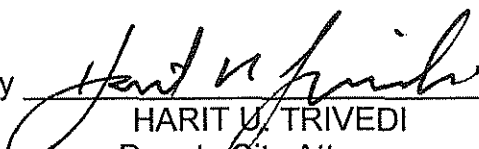
By \_\_\_\_\_ Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

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

Date 1/10/13

File No. CF 11-0452-S2