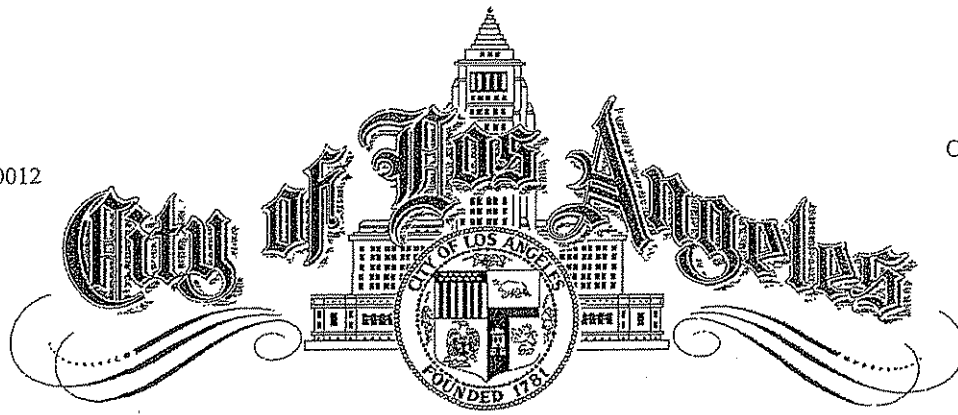


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CARMEN A. TRUTANICH
City Attorney

October 26, 2012

Honorable Councilmember Paul Krekorian
Chair, Budget and Finance Committee
Los Angeles City Council
Room 435, City Hall
Los Angeles, California 90012

Re: First Financial Status Report (FY 2012/13)

Honorable Chair Krekorian:

The City Attorney's Office strenuously and respectfully objects to the recommendations made by the CAO in the First Financial Status Report dated October 23, 2012, in which he recommends, among other things, the firing of 50 criminal prosecutors and other trial attorneys within this Office on or before December 31, 2012. This recommendation is not only unwarranted, but will also recklessly expose the City and its residents to increased crime and public health risks, as well as threats to the City's treasury.

The Committee and the full Council should contrast the CAO's recommendation to fire criminal prosecutors with other City departments, where the Mayor and CAO have regularly authorized new hiring, including within their own offices. Pursuant to the mandates of the City Charter, our prosecutors and attorneys are the essential right hand not only to LAPD and LAFD, but to all other City departments, including Planning, Building and Safety, Housing, Public Works, Recreation and Parks and General Services. The need to timely prosecute criminal cases, as well requests for ordinances, contracts, environmental reports, and land use documents, remain at all-time highs. These unrelenting demands are compounded by the never-ending volume of civil liability lawsuits filed against the City, in which our trial attorneys' record of success in defending the City's treasury is unparalleled. In the face of the obvious need for more criminal prosecutors and trial attorneys, not less, the agenda of the Mayor and the CAO appears to be to decimate the Charter's mandate for a transparent and independent legal counsel and, in its place, outsource these much-needed and hard-working public services to outside private law firms at a far greater taxpayer expense and with less accountability to the voters.

The CAO apparently bases his layoff recommendation on the specious belief that during the last six months of FY 2012/13, the City Attorney's Office should discontinue its imposition of furloughs on its employees, who are members of MOU 29. At this time, we cannot opine directly on the pending federal action regarding the furlough issue, since that matter is being handled by outside conflict counsel. However, in regard to the pending state action regarding the issue of furloughs, which is being handled by attorneys within this Office, we have been successful to date and are currently scheduled to argue the matter before the California Supreme Court. As such, the management of the City Attorney's Office continues to believe that it is appropriate to impose furloughs for the remainder of FY 2012/13, rather than fire criminal prosecutors and trial attorneys, in order to address any budget shortfalls, as was previously contemplated and approved by the Council and the Mayor in this Office's FY 2012/13 Budget.

While this Office certainly agrees that the long term use of furloughs is not desirable, we equally believe that the CAO's recommendation is misguided and does not warrant the precipitous termination of 50 criminal prosecutors and trial attorneys, which will greatly prejudice the City and its residents.¹ The solution to any projected budgetary short fall is not the CAO's seemingly panicked recommendation to fire employees who are focused on public safety and risk management, but rather, to work with this Office, as it has in the past, to identify and implement other cost-saving and revenue-generating measures between now and the end of this fiscal year.

Typically, at this point in the fiscal year, when the CAO generates the First FSR, there are projected budget deficits. These budget gaps, however, are usually resolved through a variety of cost-saving and revenue-generating strategies that collectively impact all General Funded departments.²

As you may recall, during the depths of the City's economic crisis, in the First FSRs for FYs 2009/10 and 2010/11, the CAO projected astronomical deficits for this Office of \$18.1 and \$11 million, respectively. This Office, through the implementation of several cost-saving and

¹ In addition to any court-ordered mediation in the pending legal actions, the City Attorney proposes that the Council President attempt to mediate or "broker" a possible resolution between the City and MOU 29, where the CAO has failed to do so. Perhaps the Council President could identify a number of independent and well-respected members of the community, including former City Attorneys, former Councilmembers, retired judges and/or county officials to serve either singularly and/or on a panel to mediate this ongoing dispute, which has apparently involved much distrust and miscommunication between the parties. As you are aware, the City Attorney is precluded by applicable laws from directly participating in such negotiations.

² For example, the Proprietary Departments that we serve have requested that this Office end furloughs for attorneys working on behalf of those departments, and have indicated that they would be willing to finance additional salary expenses. In response, this Office requested that the CAO consider such additional funding in the First FSR in order to address any budget shortfalls. The CAO, however, did not mention our suggestion in the First FSR.

revenue-generating measures, ended those fiscal years not with a deficit, but with a surplus, just as it did in FY 2011/12.

Here, fortunately, as noted in this First FSR for FY 2012/13, the CAO projects that this Office will have a surplus of at least \$118,000, in comparison to several other City departments, including the LAFD, LAPD, General Services and Emergency Management Department, projected to have deficits of \$5.2 million, \$2.4 million, \$1.4 million and \$810,000, respectively.

Interestingly, although the City Attorney's Office is one of the three public safety departments established under the City Charter, and is currently projected to have a surplus, the CAO recommends layoffs only for this Office and anticipates finding funding sources for those other departments, including the LAPD and LAFD, which both rely so heavily upon the services of this Office. Although this Office is not recommending layoffs for any of those departments, it certainly questions the fairness, wisdom and motives of recommending layoffs for this Office, especially in an improving economy for both the nation and this City.

In dramatic contrast to previous years, rather than working with this Office, the CAO in the First FSR now recommends the immediate (within 60 days) firing of 50 criminal prosecutors and trial attorneys, who are currently assigned thousands of cases and other City-related matters, in order to resolve a relatively small gap in overall funding, when compared to previous deficits projected for this Office in the recent past (which were all handily overcome). The CAO's recommendation is an extraordinary departure from past practice in dealing with perceived budget shortfalls in such an early phase of annual budget administration. One could certainly argue that this Office and its employees are being singled out for unfair treatment by the CAO.

It is equally remarkable that the CAO presumes in the First FSR to dictate where and upon whom the layoffs would fall in this Office. Given the City Attorney's current Layoff Policy (Rule 2, established in 1975), while we can anticipate that there will be considerable impacts to the Criminal Branch, the cascading or "bumping" effect of 50 proposed layoffs will send a seismic shock wave throughout the entire Office, negatively impacting all employees and operations, including the defense of civil lawsuits and other municipal functions.³ These proposed layoffs will therefore not be limited to one particular branch, but rather, will visit much financial and human tragedy directly upon hundreds of employees and their families in this Office, in addition to sending undercurrents of anxiety, distraction and uncertainty through its nervous system. The anticipated devastating consequences of the CAO's proposed firings are not only shocking to our sensibilities as members of the City family, but also show an alarming callousness toward the dedicated and conscientious employees of this Office, who have

³ Currently, there are approximately 200 prosecutors assigned to the Criminal Branch. Assuming all 50 of the CAO's proposed layoffs are made from and/or impact the Criminal Branch, those layoffs would constitute a staggering 25% potential reduction of our criminal prosecutors. In such a situation, the Council might as well consider sidelining 25% (or 2,500) of LAPD's officers and directing them to make fewer arrests, since there will not be a sufficient number of prosecutors available to review the arrest reports for criminal filing.

successfully worked so hard protecting both public safety and the City during these tough economic times.

Whether a deliberately-designed consequence or not, the CAO's targeting of our criminal prosecutors will impact the entire Office and disrupt the extraordinary successes accomplished by both our Criminal and Civil Branches since July 2009. Notwithstanding severe budget and staff reductions since July 2009, including the imposition of furloughs (ranging from 26 to 36 days), supply shortages, outdated technology and equipment, and the loss of more than 175 employees (a 20% reduction from 1057 to a current total of less than 880), the employees of this Office have achieved incredible successes and productivity - far surpassing the results of previous decades.⁴ The proposed 50 layoffs, however, will be the tipping point and will materially impair this Office's ability to perform its City Charter mandated responsibilities, including prosecuting criminal cases and defending the City against civil lawsuits demanding billions of dollars in damages, which the City cannot afford to pay.

In spite of these daunting challenges, since July 2009, during the depth of the greatest economic downturn since the Great Depression, our employees have successfully and professionally represented the City in thousands of civil cases and prosecuted tens of thousands of criminal cases on behalf of the People, who have been victimized by crimes. Rather than penalizing these employees with layoffs, the Mayor, CAO and Council should recognize and thank them for their outstanding efforts. Our employees' accomplishments, which dwarf those achieved during far better economic times, include the following:

The legal guidance and assistance provided by this Office has helped the City remain solvent and avoid bankruptcy, as well as protected public safety by fighting crime – and keeping crime rates at historic lows.⁵ During this difficult period, this Office provided (and continues to provide) advice, guidance, negotiation and litigation support and representation on a wide-range of issues facing the second-largest city in the United States, including labor relations, municipal governance and reform, financial transactions, complex tax and business matters, development agreements and partnerships and pensions.

⁴ It is important to note that in the Mid-Year FSR for FY 2009/10 (dated January 28, 2010), at the bottom of City's economic crisis, the CAO recommended the layoff of 100 employees in this Office, stating that this Office should have no more than 750 General Funded positions. Without suffering any layoffs, this Office reached the CAO's stated benchmark of fewer than 750 General Funded positions on July 1, 2010. Today, this Office has approximately 674 General Funded positions – more than 100 less than recommended by the CAO during the height of the budget crisis. Given that the City is in a significantly better financial condition than it was in January 2010, it is hard to imagine why the CAO would now recommend that this Office reduce its General Funded positions to 624, which is 150 positions below what the CAO believes is the appropriate and financially prudent number for this Office.

⁵ As a result of our Office's efforts, in conjunction with LAPD and the DA's Office and other law enforcement agencies, violent crime levels have dropped to historic lows across the City and nation.

Our civil trial attorneys have saved the City over \$235 million in potential civil damage awards, by obtaining complete defense or favorable verdicts in 116 out of 134 civil jury trials. For example, in FY 2011/12 alone, our attorneys won or had favorable verdicts in 24 out of 27 civil cases that went to trial, saving the City over \$90 million. By comparison, in FY 2008/09, there were 32 civil trials, with only 21 favorable verdicts, with a savings of \$30 million.

Our environmental crimes and consumer protection prosecutors have recovered a record-breaking \$20 million in penalties for violations of our environmental and consumer protection laws, including unfair business practices. These cases included successes against Target, CVS, Time Warner, Blue Shield, Safety Kleen, Ralphs' Grocery and Crimson Oil, which paid the largest penalty in City history for an oil spill in LA Harbor. In FY 2011/12, this Office recovered over \$8.5 million in such penalties, which will be used to support further consumer and environmental protection efforts. By comparison, in FYs 2007/08 and 2008/09, the consumer/environmental penalties recovered by this Office were less than \$2 million.

Our Public Finance and Collections attorneys have recovered nearly \$15 million in business taxes and other monies owed the City. In FY 2011/12, this Office collected over \$7.8 million in debt owed to the City (which was over twice the \$3 million revenue target set for this Office by the City Council). By comparison, in FYs 2007/08 and 2008/09, the total amounts collected by the Office were \$983,000 and \$2.6 million, respectively.

In FY 2011/12, this Office also initiated a novel use of "keepers" from the LA County Sheriff's Department in order to collect \$2.6 million in unpaid occupancy taxes owed to the City by the Wilshire Hotel.

In March 2012, this Office, working in conjunction with the LA County District Attorney's Office, recovered \$309,000 in restitution from Jeffrey Stenroos, the former LAUSD school police officer, who committed a hoax by staging his own shooting, which triggered a response by LAPD and other City departments and the expenditure of City resources.

Since July 2009, there has been a significant reduction in the use of and expenditure on outside counsel. In FY 2008/09, outside counsel costs exceeded \$25 million. In FY 2009/10, outside counsel expenditures dropped to \$13.49 million, a nearly 50 percent reduction from FY 2008/09. Through the efforts of our trial attorneys and support staff, that trend continued into FY 2010/11, during which expenditures decreased by another \$5 million to \$8.2 million, a 40 percent reduction from the previous year. Currently, we anticipate, given ERIP and other staff attrition, annual outside counsel costs will stabilize at approximately \$12 million – a 50 percent reduction from pre-July 2009 expenditures.

During this period, this Office has drafted and submitted over 600 ordinances and reports requested and/or approved by City Council. In 2011, this Office prepared over 245 such reports and ordinances – which far exceed the number annually drafted by the previous Administration

that had 175 more employees on staff than today. For example, by comparison, in 2008, the previous Administration prepared only 198 such reports and ordinances.

These reports and ordinances have included the following, among others: Venice Boardwalk Ordinance; Mobile Billboards Ordinance; Hillside Ordinance; City Park Vendor Ordinance; Billboard Ban Ordinance; Oversized Vehicle Parking Ordinance; Upgraded Bus Bench Ordinance; Residential Floor Area Ordinance; New Car Dealership Tax Elimination Ordinance; Medical Marijuana Ordinance (which was affirmed by the California Court of Appeal); Documentary Transfer Tax Ordinance; and the Mill-Bred Animal Ban Ordinance.

Our Land Use and Real Property attorneys have negotiated, drafted and reviewed numerous development plans and agreements that will generate thousands of jobs and millions of dollars in revenue for the City, including those relating to Loyola Marymount, the Wilshire Grand Hotel, AEG's "Farmers' Field" Stadium and NBC/Universal Studios. As the economy improves, there will be even greater demands placed upon this Office to review such projects in a timely manner and to ensure that the agreements are executed in a lawful manner and address community benefits and potential environmental impacts.

Our civil attorneys also successfully resolved a number of longstanding and seemingly intractable disputes, including those involving Lincoln Place (in Venice), LAX's Solicitation Ban Ordinance, the LA Marathon and a number of matters relating to El Pueblo Historical Monument, including negotiating and obtaining long term leases with the Olvera Street Merchant Association and settling the civil lawsuit filed against the City by Old LA, which involved the Pico House and other historic buildings that were embroiled in years of litigation.

Our Office's Animal Cruelty Prosecution Team, working in conjunction with various local, state and federal law enforcement agencies, including the City's Department of Animal Services, LAPD, California Department of Fish and Game and United Fish and Wildlife Service, as well as non-profit and community organizations, such as the Humane Society of the United States, the SPCA LA and other local and national humane groups, successfully prosecuted over 300 criminal animal abuse and neglect cases, as well as protected and endangered wildlife cases, throughout the City. By comparison, during the years 2005 through June 2009, the Office prosecuted only 210 such cases.

While it is welcome news that crime rates are down throughout the City, including gang-related crimes, this Office continues to aggressively prosecute such crimes, enforce gang injunctions and implement gang alternative sentencing programs, in conjunction with our local, state and federal law enforcement and community partners, including the FBI, DEA, ATF, LAPD, LA County Sheriff's department and United States Department of Justice. For example, our Anti-Gang Section continues to review over 1,200 gang-related cases each year, including graffiti and high profile tagging defendants. Recent successful gang prosecutions and injunctions include pursuing actions against some of the most violent and notorious gangs in the City, such as those relating to: 38th Street; Rancho San Pedro; Black P-Stones; Denver Lane

Bloods; Oki's Dog Restaurant and Cottage Bar; MTA (tagging injunction); and Downtown (Skid Row) Recovery Zone.⁶

In light of the FSR's concession that the economy is improving, City revenues are increasing, the City's Reserve Fund is much more robust and the "Rainy Day Fund" is improving, it makes no sense whatsoever to fire these criminal prosecutors and trial attorneys, who have been so phenomenally successful, and whose termination will negatively impact both the public health and safety of our residents and the treasury and financial health of our City. It would be counterproductive and harmful to the City and its residents to fire any prosecutors and trial attorneys, who have demonstratively saved and earned tens of millions of dollars more than the speculative and relatively small budget shortfall projected by the CAO in this First FSR.

Moreover, assuming that this Committee and full Council were to even consider the CAO's proposed firings, aside from the severe financial and personal toll they will have on the affected attorneys and their families, I respectfully ask that you also consider the significant potential prejudice that the City and its residents will suffer, especially given the extremely short time period in which the proposed layoffs are expected to be implemented over the holiday season. Specifically, attempting to carry out the proposed layoffs in such a short time period using this Office's Rule 2 Layoff Policy, which contemplates and will result in a cascading or "bumping" effect, will be exceedingly difficult, if not impossible.

More significantly, the proposed layoffs will wreck havoc upon the thousands of pending pre-trial, discovery, law and motion, trial and appellate deadlines and commitments currently assigned to potentially affected criminal prosecutors and trial attorneys throughout the Office. Once any proposed layoffs are initiated, and the anticipated "bumping" begins, it is difficult to predict which attorneys will remain assigned to any particular case or matter, given the process and short time frame envisioned. Such uncertainty in the assignment, staffing and preparation of attorneys on any cases, and in particular, civil cases in which the City faces potentially large civil liability damage awards, is highly prejudicial to the City and to public safety.

At this time, it is difficult to assess the full carnage that will befall this Office after the proposed layoffs and bumping take place. It is, however, quite reasonable to expect that the state and federal courts before which our prosecutors and trial attorneys appear may be less sympathetic than we would like to any requests for needed continuances for trial and other matters, which would clearly prejudice our cases. Obviously, a newly-assigned prosecutor or trial attorney unnecessarily rushed into a major trial would be at a disadvantage for several reasons, including less time to develop or modify legal strategies and/or familiarize him or herself with the facts, evidence, client departments and witnesses – all of which will greatly

⁶ It should also be noted that the average caseload per prosecutor in the Criminal Branch has increased from approximately 335 in FY 2008/09 to approximately 380 in 2011/12.

Honorable Paul Krekorian
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affect the success of this Office's efforts in either prosecuting criminals on behalf of the People or defending the City against millions of dollars in damage claims.

Ironically, in addition to negatively impacting the City's ability to protect public safety through the prosecution of criminal cases and defending the City in civil cases, the proposed layoffs will unquestionably reduce the number of experienced attorneys available to review and analyze the increasing number of development agreements that are now being referred to this Office as the economy improves. By proposing a reduction in the number of attorneys available in this Office, the CAO will in effect be slowing down the review process for such agreements, which, as a consequence, will slow down any approval of the projects, the creation of jobs for our residents and the generation of tax revenues for the City - all of which could be used to further support essential City services.

Based on the foregoing, unnecessarily subjecting 50 criminal prosecutors, trial attorneys and their families to the proposed layoffs is too drastic a response and is detrimental to the City and its residents. We therefore respectfully request that the Budget and Finance Committee explore citywide alternatives to layoffs as a means to address any projected funding gap, which would result from any unwarranted "cessation" of furloughs as recommended by the CAO.

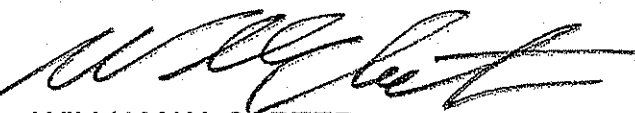
Given the stellar track record of this Office in winning lawsuits, cutting costs, collecting debts owed to the City and generating revenue, we fully expect, despite continuing challenges, to end FY 2012/13 with a surplus. Notwithstanding the CAO's dire and misguided warnings, this Office believes that the proposed layoffs would be harmful to the City and its residents and should therefore, be rejected.

There is no need for a sudden and reckless solution to a situation that has slowly, but steadily, been correcting itself for over three years. A more reasoned and mature approach is needed. Thank you for your consideration of our statements, which can be further clarified and supplemented at any hearing on these matters.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By



WILLIAM W. CARTER
Chief Deputy City Attorney

cc: Honorable Herb Wesson, President, Los Angeles City Council
All Council Members
Miguel Santana, CAO