



CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 2 - 0 1 5 8

REPORT RE:

MAY 31 2012

**DRAFT RESOLUTION DECLARING A FISCAL EMERGENCY AND AUTHORIZING
REDUCTION IN WORK HOURS BY APPOINTING AUTHORITIES**

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

Honorable Members:

On April 20, 2012, Mayor Antonio Villaraigosa presented a proposed 2012-2013 budget that, in part, requested that the City Attorney report back to Council with an updated emergency fiscal resolution. Your Honorable Body has approved that request.

Attached for your consideration is an updated draft resolution declaring a fiscal emergency and authorizing reduction in work hours. This revises the Emergency Resolution that was adopted by your Honorable Body on May 27, 2012. This draft resolution was prepared with the assistance of the Office of the Mayor and the Office of the City Administrative Officer.

If you have any questions regarding this matter, please contact Senior Assistant City Attorney Zna Portlock Houston at (213) 978-7182. She or another member of this Office will be present to answer any questions you may have when you consider this matter.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

RESOLUTION

WHEREAS, due to a continuing weak performance in the national, state, and regional economy and other factors, the City of Los Angeles is facing an approximate \$238 million General Fund deficit for Fiscal Year 2012-13; and

WHEREAS, as a result of the longest economic downturn since the Great Depression, the City has confronted unprecedented budget deficits of \$529 million, \$485 million, and \$336 million in Fiscal Years 2009-10, 2010-11 and 2011-12, respectively; and

WHEREAS, even though the budget deficits have been decreasing, projected General Fund revenue growth for Fiscal Year 2012-13 is still constrained by the slow economic recovery, most apparent in the depressed housing market and the 11 percent unemployment rate for Los Angeles County as reported by the State Employment Development Department for April 2012; and

WHEREAS, the City's Reserve Fund balance is currently below the amount established by the City's Financial Policies to ensure sufficient funding for unanticipated expenditures and revenue shortfalls in the City's General Fund; and

WHEREAS, the State Constitution prohibits the City from enacting or raising existing taxes without voter approval, preventing the City from expeditiously generating new revenue; and

WHEREAS, expenditures on healthcare and pension benefits for City employees continue to outpace revenue growth and currently represent 32 percent of the City's General Fund budget; and

WHEREAS, the City's General Fund budget deficit is expected to grow from \$199 million in Fiscal Year 2013-14 to \$315 million in Fiscal Year 2014-15 due to sluggish revenue growth and increases in health care, pension and retirement costs; and without immediate and effective action, these deficits will increase by over \$11 million; and

WHEREAS, the City has already taken extraordinary measures over the past three years to reduce General Fund expenditures including the implementation of severe controls on hiring, the mandatory furlough of civilian employees, the elimination of a \$2.6 million retirement contribution subsidy for certain City employees, the implementation of increases to employee pension contribution rates, and the elimination of 4,900 City positions, representing a 13 percent reduction in staffing; and

WHEREAS, the City has renegotiated contracts with willing vendors and service providers to reduce the costs of existing contracts and continues to pursue further reductions with vendors and service providers; and

WHEREAS, the City has decreased General Fund personnel expenditures by transferring over 900 employees from full or partial General Funded positions to special-funded positions; and

WHEREAS, the City has implemented a modified deployment plan for firefighters and deferred training classes for firefighters and police officers; and

WHEREAS, the City has achieved approximately \$4 million in annual General Fund savings by eliminating or consolidating smaller City departments; and

WHEREAS, the City expects to achieve approximately \$2.23 million in General Fund savings for Fiscal Year 2012-13 by consolidating security and basic law enforcement services from the Office of Public Safety into the City's Police Department; and

WHEREAS, on January 13, 2011, the City's Joint Labor Management Benefits Committee (JLMBC) approved plan design changes applicable to civilian healthcare benefits that are anticipated to provide \$12 million in 2012-13; and

WHEREAS, the City has previously renegotiated some labor agreements to achieve various cost saving concessions, including reductions in overtime payouts, changes in bonus pay structures, deferment of salary increases and benefit payments, and unpaid holidays, that will immediately save over \$80 million but resulted in deferring costs to be addressed over the next several years; and

WHEREAS, the City has successfully negotiated pension cost sharing agreements with the majority of its civilian employee bargaining units for their members to pay 4% of their salaries towards pension costs and thereby enable the City to fund retiree health care costs, which is expected to reduce the City's pension obligations by up to \$36 million in Fiscal Year 2012-13 and provide ongoing savings long-term; and

WHEREAS, on March 8, 2011, Los Angeles voters passed Measure G, a new pension tier for sworn officers and firefighters of the Los Angeles Fire and Police Pensions, which is anticipated to save the City \$152 million over the next ten years and will have saved the City almost \$1 million in 2012-13; and

WHEREAS, the City is currently exploring a new retirement tier for new civilian hires, which could save the City over \$250 million for every 1,000 new hires over a 30-year period; and

WHEREAS, on May 27, 2011, simultaneous with the adoption of the Fiscal Year 2011-12 Budget, the City Council declared a fiscal emergency authorizing layoffs, furloughs, and other methods of reducing payroll expenses to address, in part, a General Fund budget shortfall of \$336 million; and

WHEREAS, in June, 2011, the City successfully negotiated a pension cost-sharing agreement with representatives of sworn employee unions to allow members to either contribute 2% of their salaries towards pension costs and thereby enable the City to fund retiree health care costs or have their health care subsidy frozen; and

WHEREAS, on July 15, 2011, the City Council approved an ordinance to freeze retiree health subsidies at current levels for Los Angeles Fire and Police Pension System members that retire on or after July 15, 2011, who elect not to participate in a pension-cost sharing agreement, which reduced the City's pension contribution costs by approximately \$30 million in Fiscal Year 2011-12 and will provide ongoing savings; and

WHEREAS, on September 29, 2011, the City Administrative Officer released its First Financial Status Report indicating the trends of projected expenditures for civilian salary accounts, sworn overtime accounts, and department expense accounts result in a preliminary General Fund deficit projection of \$13.3 million for Fiscal Year 2011-12; and

WHEREAS, on October 12, 2011, the City Council directed City departments with identified deficits to revise their respective Operational Plans to address their deficits internally; and

WHEREAS, effective in Fiscal Year 2011-12, the City experienced an unanticipated 0.25% increase in its pension contribution rate for civilian employees as a result of action taken by the Board of Commissioners for the Los Angeles City Employees' Retirement System (LACERS); and

WHEREAS, on December 2, 2011, the CAO released its Second Financial Status Report, reporting that the projected General Fund deficit had increased from \$13.3 million to \$72 million due to unanticipated costs primarily in the Fire Department, petroleum prices, workers' compensation and retiree healthcare; and

WHEREAS, on December 6, 2011, the City Council adopted recommendations to offset the \$72 million deficit by directing City departments to develop Operational Plans to absorb \$20.8 million by implementing reductions to their respective Department budgets, using one-time revenues and savings to offset \$29.8 million, and directed the CAO to identify \$21.4 million in additional solutions to eliminate the deficit; and

WHEREAS, on February 9, 2012, the CAO released its Mid-Year Financial Status Report, reporting that the projected General Fund deficit had been eliminated provided that Departmental Operational Plans were implemented as proposed; and

WHEREAS, General Fund revenues for Fiscal Year 2011-12 are now projected to fall below budgetary estimates by approximately \$12.1 million, creating a year end budget deficit; and

WHEREAS, on April 20, 2012, the Mayor released the Fiscal Year 2012-13 Proposed Budget which identified a General Fund deficit of approximately \$238 million, which the Mayor proposed to address, in part, by eliminating 669 City positions, of which 209 are filled; and

WHEREAS, the City faces potential liability of up to \$750 million or more in Fiscal Year 2012-13 should the plaintiffs prevail in *Ardon v. City of Los Angeles*, a class action challenging the validity of the City's telephone users' tax; and

WHEREAS, the City faces potential liability of up to \$90 million in Fiscal Year 2012-13 from six separate Fair Labor Standards Act class action lawsuits filed against the City for alleged violations of the Act; and

WHEREAS, the City faces potential liability of up to \$30 million in Fiscal Year 2012-13 from various civil lawsuits including approximately 44 related state court actions challenging the City's original medical marijuana ordinance; and

WHEREAS, the City faces potential liability in excess of \$5 million in Fiscal Year 2012-13 from a pending United States Department of Justice investigation into alleged violations of the False Claims Act in connection with certifications from the City to the United States Department of Housing and Urban Development regarding compliance with federal accessibility laws and regulations protecting individuals with handicaps; and

WHEREAS, the City faces potential liability of approximately \$71 million in Fiscal Year 2012-13 from a lawsuit filed by the Los Angeles City Attorneys Association challenging the City's action to freeze the level of retiree health benefit subsidies at current levels for employees who elected not to participate in a pension-cost sharing agreement; and

WHEREAS, during the past five months the City has attempted to renegotiate labor agreements with various City employee unions, with the goal of securing cost saving concessions to mitigate the necessity for layoffs in Fiscal Year 2012-13; and

WHEREAS, to date, representatives for the majority of City employee unions have refused to reopen their contracts which are set to expire on June 30, 2013, or later; and

WHEREAS, on May 21, 2012, the City Council adopted the Mayor's Fiscal Year 2012-13 Proposed Budget as amended, restoring 209 of the 669 eliminated positions with only six months of funding to allow for a more comprehensive analysis of the positions to be deleted based on the City Council's priorities, with layoffs possible after January 1, 2013; and

WHEREAS, the Fiscal Year 2012-13 Adopted Budget includes \$91 million in one-time solutions that are mostly funding ongoing programs; and

WHEREAS, the Fiscal Year 2012-13 Adopted Budget includes \$72.1 million in uncertain revenue solutions, including the anticipated receipt of \$48.6 million in estimated property tax revenue from the dissolution of California Redevelopment Agencies and \$23.5 million in AB678 revenue from the federal government for reimbursement of Medicare transport costs, which are dependent upon actions to be taken by federal, state and other agencies; and

WHEREAS, the Fiscal Year 2012-13 Adopted Budget incorporates fee increases of over \$1 million, functional reorganizations savings of approximately \$2.2 million, and spending reductions including the elimination of filled and vacant full-time positions, saving over \$69 million; and

WHEREAS, on March 8, 2011, Los Angeles voters passed Measure H which removed the cap on the maximum amount that can be accrued in the Matching Campaign Trust Fund, which is anticipated to increase the City's costs by approximately \$3 million per year, subject to changes in the Consumer Price Index; and,

WHEREAS, the Council, by two-thirds vote, may reduce or eliminate the annual appropriation made to the Matching Campaign Trust Fund during the fiscal year provided that the Council declares a fiscal emergency, and the Trust Fund balance is greater than \$8 million in 1991 dollars adjusted to the Consumer Price Index, and the Council must also consider the Ethics Commission's analysis regarding projected costs and estimated public funding needs over the next four years; and

WHEREAS, the Fiscal Year 2012-13 Adopted Budget reduces the annual contribution to the Matching Campaign Trust Fund appropriation, which requires the declaration of a fiscal emergency in accordance with Measure H; and

WHEREAS, the Fiscal Year 2012-13 Adopted Budget suspends the annual 1 percent General Fund revenue contribution for infrastructure and capital improvements that is required by the City's Financial Policies; and

WHEREAS, even with all the drastic steps already taken by the City to close the Fiscal Year 2012-13 General Fund budget deficit, there is no feasible way to balance the budget and to preserve essential public services, without furloughs and other cost-saving measures; and

WHEREAS, the failure of the City's financial condition to improve since May, 2011, when the City Council adopted a resolution declaring a fiscal emergency, now requires additional, immediate cost saving actions to address the fiscal and cash crisis now facing the City; and

WHEREAS, immediate and comprehensive action to further reduce spending, including spending on employee payroll costs, must be taken to ensure, to the maximum extent possible, that essential services of the City are not jeopardized, public

health and safety are preserved, the City is able to pay its debts when due, and the City is able to pay its remaining employees for the work they perform.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Council of the City of Los Angeles, by virtue of the power and authority vested in it by the City Charter and the City Administrative Code, does hereby adopt the foregoing recitals as findings and does hereby determine and declare that an emergency pursuant to Government Code Section 3504.5 and Los Angeles Administrative Code Section 4.850 continues to exist and issues this order to become effective immediately; and
2. The City hereby suspends the annual contribution to the Matching Campaign Funds Trust Fund for Fiscal Year 2012-13, in accordance with Section 471(c)(1) of the City Charter; and
3. Effective July 1, 2012, the Mayor, through the appointing authorities, is hereby authorized to implement reduced work schedules or alternative means of generating payroll savings pursuant a plan adopted by the City Council. The plan shall be for the entirety of Fiscal Year 2012-13 and shall generate a sufficient amount of payroll savings to close Fiscal Year 2012-13 with an Emergency Reserve Fund balance of at least \$125.1 million. To the extent practicable and economical, any work schedule reduction plan shall: (a) be limited to employees whose salaries are funded in whole or in part by the General Fund, (b) generally seek to avoid diminishing the City's ability to generate and collect revenue, and (c) avoid causing the City to incur additional overtime costs; and
4. Working hour reductions, layoffs, and other methods of reducing employee payroll expense including, but not limited to, unpaid floating holidays for all employees, city office closure days, abolishment of positions, etc. shall continue in Fiscal Year 2012-13 in sufficient number and at the levels necessary to ensure and improve the City's fiscal stability; and
5. As of the date of its adoption, this Resolution supersedes the Emergency Resolution adopted by the City Council on May 27, 2011.