

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: March 30, 2017

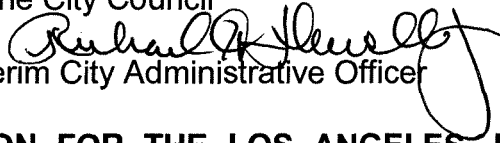
CAO File No. 15170059

Council File No. 17-0046

Council District: ALL

To: The Honorable Members of the City Council

From: Richard H. Llewellyn, Jr., Interim City Administrative Officer



Reference: **APPROVAL OF \$2 MILLION FOR THE LOS ANGELES JUSTICE FUND IN PARTNERSHIP WITH THE CALIFORNIA COMMUNITY FOUNDATION, THE COUNTY OF LOS ANGELES, AND OTHER PHILANTROPIC ORGANIZATIONS TO PROVIDE LEGAL SERVICES FUNDING FOR IMMIGRANTS**

Subject: **LOS ANGELES JUSTICE FUND**

RECOMMENDATIONS

That the City Council, subject to the approval of the Mayor:

1. AUTHORIZE the City Administrative Officer (CAO) to negotiate and execute an agreement for a one-year term with two one-year options to extend with the California Community Foundation in an amount not to exceed \$2 million, disbursed on the schedule outlined in this report, for the Los Angeles Justice Fund subject to the City Attorney as to form and legality;
2. APPROVE the proposed program framework, eligibility criteria, recommended priorities for the Los Angeles Justice Fund, including prioritizing at least seventy-percent (70%) of the City funds for the provision of legal services for individuals who are detained and who are otherwise unable to afford or have access to legal services, and the proposed agreement terms;
3. APPROVE the sole source findings as outlined in this report to enter into an agreement with the California Community Foundation to administer the Los Angeles Justice Fund; and
4. AUTHORIZE an exemption from Charter Section 1022, as described in this report.

SUMMARY

The City of Los Angeles' \$2 million contribution, in partnership with the County of Los Angeles (\$3 M), the California Community Foundation (\$1.2M), the Weingart Foundation (\$1M), and a Pooled Fund (\$2.08M) (comprised of funding from the California Community Foundation, the California Endowment, and the James Irvine Foundation), will provide up to \$10 million to fund the Los Angeles Justice Fund (LAJF). The LAJF will provide funding to nonprofit legal service organizations to bolster and expand access to legal services for Los Angeles' most vulnerable immigrants. The LAJF will be administered by the California Community Foundation (CCF) and will complement state level efforts to inject funding into deportation defense and national funder interest in supporting local government efforts to establish legal services programs for immigrants.

This report outlines the proposed LAJF services, recommended eligibility criteria, the proposed agreement terms, and the schedule of funding disbursements. The CAO consulted with the City Attorney, the County of Los Angeles, the CCF, and members of the LA Coalition for Universal Representation in the formulation of this report. The CAO will continue to coordinate closely with the County of Los Angeles on the LAJF agreement terms with CCF.

BACKGROUND

On February 8, 2017, the City Council approved a motion (CF# 17-0046) introduced by Councilmembers Gilbert A. Cedillo and Curren D. Price, instructing the CAO, with assistance from the Office of the City Attorney, to identify and report back on the potential establishment of an up to \$2 million contribution from the City of Los Angeles to the CCF for the proposed Los Angeles Justice Fund to provide qualified legal representation to immigrants at risk of facing deportation or removal proceedings who are otherwise unable to afford or access legal services. In addition, the motion required that the report include recommendations on a potential funding source, draft terms of the agreement, City Controller instructions, and any other necessary instructions to effectuate the intent of this motion.

The Budget and Finance Committee amended the motion to include: a) a legal analysis of the City's ability to provide funding to a nonprofit to provide for legal services for immigrants; b) recommendations on conditions that the City should consider for the use of any funds, including whether the recipient of any legal aid provided by City funding should be a resident of the City of Los Angeles and not have any criminal history more significant than a misdemeanor offense; c) recommendations in maintaining appropriate oversight, accounting and evaluation of the expenditure of funds provided by the city, including an analysis of whether appropriate transparency would be adversely impacted by the attorney-client privilege or the doctrine of attorney work product; and d) an analysis of the potential for such a program to give rise to future City liability to any third parties, or the creation of fiduciary or other responsibilities to the recipients of these legal services.

LOS ANGELES JUSTICE FUND (LAJF) PROPOSED PROGRAM FRAMEWORK

Eligibility Criteria

The CCF has hired an experienced national expert as the project manager for the LAJF who has developed a program framework. To ensure that the City's funds are not considered a gift of public funds, the following is the proposed minimum eligibility criteria:

- Residents of Los Angeles, with a preference to those individuals with community ties to Los Angeles, including family members who are U.S. citizens, Lawful Permanent Residents, and Deferred Action for Childhood Arrivals (DACA) recipients; and
- Low-income individuals with household incomes below 200% of the Federal Poverty Level.

Priority for services should also be provided to eligible individuals who are:

- Particularly vulnerable populations/Humanitarian populations, including heads of households with one or more dependent family members, children and young adults who arrived as children, veterans, individuals with protection-based claims, and victims of crime, victims of domestic violence, victims of human trafficking, and all individuals who would be entitled to protection under international treaty obligations and other immigration laws.

Proposed Services

CCF recommends funding for the following service-types:

- **Direct Representation:** Funding will support representation of detained immigrants, immigrants who were initially detained and subsequently released, and other vulnerable populations. Funding will be available to represent individuals through the full spectrum of immigration court proceedings, including hearings where individuals enter their initial pleading (Master Calendar Hearing), pursue avenues of relief (Merits Hearing), and seek release from detention (Bond Hearing).
- **Support Services:** Funding will support hiring of administrative assistants, paralegals, social workers, interpreters, expert witnesses, and other services.
- **Pro-Bono Coordination and Recruitment:** Funding will support pro-bono coordination, including the recruitment, training, and mentoring of private attorneys who can provide pro-bono representation to individuals in their deportation proceedings.

- **Low-Bono (Low-cost) Representation and Referrals:** Funding to subcontract with private attorneys in cases that require particular expertise and to build a bench of private attorneys willing to offer low-bono legal services.

Prioritizing Direct Representation for Detainees

According to The California Coalition for Universal Representation's June 2016 report, between 2012-2015 68% of detained and 32% of non-detained immigrants did not have legal representation in California. The data for Los Angeles County is similar at 68% of detained and 26% non-detained immigrants lacking legal counsel. Over the same period, detainees who had legal counsel succeeded more than five times as often in receiving a bond and being released than their unrepresented counterparts.¹

Detentions and/or deportations have a detrimental impact on the health and well-being of individuals and families who are directly affected as well as to the region's economy and social safety net. When a family's primary wage earner is detained or deported, not only does the family struggle to survive and meet their basic needs, but in many cases the child welfare system must step-in with the children becoming wards of the state. The County and the State must bear the cost of detained and deportation-related foster care costs. In addition, businesses are disrupted by the loss of their workers bearing the turnover costs.²

Because of the enormous harm that results from the detentions or deportations and the high percentage of detained individuals who lack legal counsel, we recommend that at least seventy percent (70%) of the City funds be prioritized for direct representation of detainees.

Eligibility based on Criminal History

In assessing whether an individual's criminal history should disqualify him/her from LAJF eligibility, we reviewed the current language in California Senate Bill 6 (SB 6), which is legislation to create a similar fund to the LAJF. To ensure consistency with the proposed state program, the CAO would recommend that the City eligibility requirement as it relates to an individual's criminal history mirror the SB 6 language with additional language as follows:

Under the City's contribution to the LAJF, services may not be provided to an individual who has been convicted of, or who is currently appealing a conviction for, a violent felony, as defined in subdivision (c) of Section 667.5 of the California Penal Code, and/or a conviction for Human Trafficking, Child Abuse, Domestic Violence, and/or Pimping, and the legal services provider has determined that the individual has no potentially meritorious claim for relief or defense from removal.

¹ The California Coalition for Universal Representation, *California's Due Process Crisis: Access to Legal Counsel for Detained Immigrants*, June 2016.

² Id

PUBLIC PURPOSE, FUNDING SOURCE AND PROPOSED AGREEMENT TERMS

Public Purpose

The City's goal in funding the LAJF is to ensure that families are not devastated by unfair immigration actions, and to protect the City's thriving economy. The majority of the City's immigrant population are long-time residents and represent an important part of Los Angeles' economic engine. The City cannot afford the costs resulting from detention and deportation related actions. This population must feel safe and supported when accessing City facilities and programs, and in their interaction with law enforcement. By providing funding for legal representation, the City will continue to bolster public safety and the City's economy.

Funding Source and Disbursement Schedule

The only source of funds that can be used for this type of legal fund is General Fund dollars. The CCF anticipates that this legal fund will be a two-year program starting on July 1, 2017. Therefore, the CAO recommends that the City allocate its \$2 million commitment, based on expenditures and performance on the following schedule:

The City would allocate to CCF up to \$1 million in Fiscal Year (FY) 2017-18 and up to \$ 1 million in FY 2018-19 as follows:

- July 15, 2017 - \$500,0000;
- January 1, 2018 - up to \$500,000;
- July 15, 2018 - up to \$ 1 million; and
- January 1, 2019 the remaining funds for a total of \$2 million.

The City, at its discretion, could alter the disbursement schedule at any time with 90 days written notice, and/or impose conditions on these disbursements at its discretion.

The CAO would recommend the additional agreement terms between the City and CCF:

- CCF should deposit the City's funds into a program fund which shall be separate interest and bearing account.
- The funds shall be used to make grants to selected nonprofit legal services organizations to provide legal services allowable under this agreement.
- CCF will conduct a competitive solicitation(s) to select and grant awards.
- CCF shall agree that the liability of the City will be limited to the payment of City funds pursuant to the terms of the agreement; all other contracts entered into or other obligations/liabilities incurred by CCF in connection to the agreement with the City will be CCF's sole responsibility.
- Any change to the Program design or use of the City funds requires advance expressed written approval by the City.
- The Foundation shall provide the City with a semi-annual accounting report of all program funds.

- The City will negotiate a service fee with CCF that will include administrative costs and indirect costs (which would include the cost of conducting an independent evaluation of the program).

Oversight and Reporting

Once CCF has executed the agreements with service providers using City funds, CCF shall provide the City with monthly reports detailing how the funds are being expended.

Such reports shall include but not be limited to:

- Name of the provider entity
- Identity of the executive director
- Brief description of the background and mission of the agency
- Address of the agency's administrative headquarters
- Physical location(s) of where legal services are provided
- Number of immigrant residents seeking legal services from the legal service provider, at risk of removal
- Number of individuals identified above unable to afford legal services
- Number of individuals for whom agency agreed to provide legal services
- Number of individuals for whom the agency was unable to provide services and an explanation of the reason why service could not be provided
- Number of invoices received during the month and the time period (i.e. the calendar month) each invoice covers
- Identification of which invoices were paid, the amount of each invoice, and an explanation of any discrepancy or unusual invoice or payment amount.

Independent Program Evaluation

CCF will procure an independent evaluation of the program's efficacy and fiscal and economic impacts, within one year of the LAJF launch date.

USE OF PUBLIC FUNDS, SOLE SOURCE FINDINGS AND LEGAL LIABILITY

Gift of Public Funds

The City Attorney has advised that the award of City funds to the LAJF is not a gift of public funds so long as the award is limited to those persons who meet a city residency requirement and maximum income level, such as income at or below 200% of the federal poverty level. To defeat a gift of public funds challenge, the City need only demonstrate a "reasonable basis" for the public purpose in creating the LAJF. *County of Alameda v. Janssen* (1940) 16 Cal 2d 276, 281. The legislative rationale is given deference by the court, even if there is an incidental private benefit to individuals that is separate and apart from the stated public purposes. *Redevelopment Agency of San Pablo v. Shepard* (1977) 75 Cal. App 3d 453. A strong and focused statement of public purpose, as we have stated above is critical.

Sole Source

The City Charter requires the City to make appropriate sole source justification findings whenever, as is the case here, the City foregoes a competitive process to award a contract. For a sole source contract, Charter Section 371(e) requires the awarding authority to adopt findings to detail why competitive bidding was “not practicable or advantageous.” In this case, the City Council should make the following findings to the award LAJF contract to CCF:

1. CCF is capable of coordinating a public-private partnership like the LAJF.
2. The fact that CCF is spending a substantial amount of its own funds to facilitate the LAJF is a strong justification supporting a sole source contract award.
3. CCF also has hired an experienced and well-regarded, national expert as the project manager for the LAJF.
4. The City’s funds are safeguarded, notwithstanding the sole source award to CCF because CCF will be utilizing a competitive process before issuing an award of any City dollars to the ultimate service providers.

Legal Liability

On the issue of potential liability arising from the recipients of these legal services, the City Attorney has opined that the policy decision to provide legal services must be distinguished from the specific attorney’s ultimate implementation of that decision. While the immigration attorney representing an undocumented client is held to a duty of care, the city’s policy decision to award funding for legal representation is generally afforded immunity under Government Code sections 815.4 and 820.2. See *Caldwell v. Montoya* (1995) 10 Cal.4th 972; *Polk County v. Dodson* (1981) 454 U.S. 312.

Charter 1022 Exemption

Under Charter section 271, the City Attorney is the legal officer for the city. Only the City Attorney is authorized to provide legal advice and the City Attorney’s only client is the municipal corporation, which means that the City Attorney cannot provide outside legal services as envisioned by the LAJF. The Charter also specifically prohibits City employees from providing legal services to persons outside of the municipal corporation, even though the deployment of outside counsel. Accordingly, the Council is not required to make a 1022 determination; the legal representation funded by the LAJF cannot be performed by City Attorney staff or outside counsel for the City. However, the City Attorney has recommended that this report request an exemption from Charter section 1022 out of an abundance of caution.

FISCAL IMPACT STATEMENT

The General Fund impact is up to \$2 million over a period of two fiscal years and will require that an initial appropriation be considered as part of the FY 2017-18 budget process recommendations.