Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed Charter language for section 40
Date: August 25, 2007

Per Subcommittee request, the staff has adapted the City Attorney-related charter provisions from the Los Angeles and San Francisco models for use in San Diego Charter section 40. As requested, the language proposed would address the issues of definition of the civil client, control of litigation, settlement authority, outside legal counsel and restriction on the political activities of the City Attorney. Where it is appropriate—such as in the provisions for employment of Assistants and Deputies in the City Attorney's Office, or in the authority of the City Attorney to restrain misapplication of funds and prevent fraud—the staff has retained the present terms of Charter section 40.

Proposed Charter Language

Sec. 40. City Attorney

(a) Qualifications, Election, Compensation and Vacancy.

(1) The City Attorney must be qualified to practice in all the courts of the state. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

(2) The City Attorney shall be elected for a term of four (4) years in the manner prescribed by section 10 of this Charter. Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

(3) The salary of the City Attorney shall be fixed in the manner set forth in Charter section 12.1, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than $15,000.00 per year.

(4) In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

(b) Powers and Duties.

The powers and duties of the City Attorney shall be as follows:

(1) The City Attorney shall represent the City in all legal proceedings against the City. The City Attorney shall initiate appropriate legal proceedings on behalf of the City.

(2) The City Attorney shall be the legal advisor to the City, and to all City Boards, Commissions, Committees, Departments, officers and entities. The City Attorney shall give advice or opinion in writing when requested to do so by the Mayor, the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such

advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions.

(3) The City Attorney shall prosecute on behalf of the people all criminal cases and related proceedings arising from violation of the provisions of the Charter and City ordinances, and all misdemeanor offenses arising from violation of the laws of the state occurring in the City.

(4) The City Attorney shall approve in writing the form of all surety or other bonds required by the Charter, or by ordinance, before the bonds are submitted to the proper body, board or officer for final approval, and no such bond shall be approved without approval as to form by the City Attorney. The City Attorney shall approve in writing the form of all contracts before the contracts are entered into by or on behalf of the City.

(5) The City Attorney shall keep records of all actions and proceedings in which the City or any officer or board is an interested party, and copies of all written opinions given by the City Attorney's office. The City Attorney shall comply with all requests for information from the Mayor or Council, and shall report on a regular basis to the Mayor and Council on all matters of litigation, in a form and at times specified by ordinance. In all litigation involving potential financial liability of the City, the City Attorney shall keep the Mayor and Council informed as to the status and progress of litigation.

(c) Control of Litigation.

The civil client of the City Attorney is the municipal corporation, the City of San Diego. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor, the Council, or the Ethics Commission in accordance with this section. However, the decision to settle litigation shall be made in accordance with subsection (d) of Charter section 40.

(1) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility. The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

(2) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(3) **Ethics Commission.** The Ethics Commission shall make client decisions in litigation exclusively involving matters over which the Charter gives this commission control.

(4) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

(d) Settlement of Litigation.

(1) **Ethics Commission.** The Ethics Commission shall have the authority to approve or reject settlement of litigation exclusively involving matters over which the Charter gives the

Ethics Commission control. The settlement of all other litigation shall be in accordance with subsections (d)(2) and (d)(3) of Charter section 40.

(2) **Settlements Involving Only Money Damages.** The Mayor and Council shall establish by ordinance a process for the approval or rejection of settlement involving money damages.

(3) **Other Settlements.** The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto, as provided under this Charter.

(e) Employment of Assistants.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

(f) Employment of Other Legal Counsel.

(1) The Ethics Commission shall be authorized to employ outside legal counsel, as provided by section 41(d) of this Charter. The City may otherwise contract with outside legal counsel to assist the City Attorney in the discharge of his or her duties under the Charter upon written approval of the Council and the City Attorney, and consistent with budgetary appropriations.

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, as well of the cost for any of the services of outside legal counsel, shall be charged against the appropriation of the entity requesting such counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

(g) Restrictions on Political Activities.

During his or her tenure, the City Attorney shall not contribute to, solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a City ballot measure or candidate for City elective office, other than himself or herself, or be an officer, director or employee of or hold a policy-making position in an organization that makes political endorsements regarding candidates for elective office or City ballot measures.

Staff Analysis

Elected versus Appointed City Attorney

The Subcommittee also expressed interest in recommending to the full Committee a discussion of whether San Diego should appoint or elect its City Attorney. If the full Committee were to recommend an appointed City Attorney, perhaps some of the language proposed would no longer be needed. Then, if a dispute arose over control of litigation, settlement of litigation or retention of outside legal counsel, the Mayor and Council could presumably dismiss the City Attorney. However, outside of the provisions for electing the City Attorney that are included in subsection (a), the rest of the proposed language would not pose any inherent problem that staff can identify. For example, it may be just as appropriate to restrict the political activities of an appointed City Attorney as those of an elected official serving in this capacity. Therefore, the staff would recommend the adoption

of the above language, even if the Subcommittee forwards to the full Committee discussion of the elected-versus-appointed question.

Rationale for Proposed Charter Language

Recently, the full Committee has expressed concern regarding proposed Charter language that seems verbose. Upon first glance, the language proposed by staff above seems wordy, because it contains 1546 words. However, the present length of Section 40 is 940 words. Therefore, this language would add only 606 words, and in return greatly specify processes that the City has presently left vague at its peril. As the Subcommittee knows, the whole point of a Charter is to protect the public from actions that its elected officials might take under California law unless they are otherwise restrained.

On the other hand, the staff is well aware of the need to write the language short, and to recommend that the Council place items in the Municipal Code wherever appropriate. In the spirit of that concept, the staff has abbreviated the Los Angeles and San Francisco language wherever possible. For example, Subsection (d) on settlement authority requires the Mayor and Council to establish a process for approving or rejecting settlements involving only money damages. Because Los Angeles wanted to leave nothing to chance, its charter commission approved language specifying this kind of settlement authority in more detail. However, the Los Angeles Charter language still provides that the amounts that trigger action by different parties are left up to ordinance. Therefore, if the Los Angeles City Council wanted to hold all settlement authority, it could set the amounts requiring Council action at a very low level. The L.A. charter commission staff pointed this out, but the commission was not receptive, and left the language needlessly verbose.

Yet another area where the staff has recommended Spartan brevity is in the assignment of outside legal counsel. The San Francisco Charter provides an extremely detailed process, which could be left to Municipal Code. Therefore, the staff has proposed language authorizing the Mayor and Council to establish a process by which a City entity could seek outside legal counsel. Because of the need to control the costs of outside legal counsel, the proposed Charter language includes San Diego's present provisions for charging the costs of such counsel against the budget of the City entity that has requested assistance. The staff would recommend that the Subcommittee forward the below suggested Municipal Code language (adapted from the San Francisco Charter, with the San Diego improvements) along with its Charter amendment recommendation, as an indication to the full Committee of a process the Subcommittee finds suitable:

Suggested Municipal Code Language Regarding Retention of Outside Legal Counsel

Employment of Outside Legal Counsel.

(1) The Ethics Commission shall be authorized to employ outside legal counsel, as provided by section 41(d) of the Charter. The City may otherwise contract with outside legal counsel to assist the City Attorney in the discharge of his or her duties under the Charter upon written approval of the Council and the City Attorney, and consistent with budgetary appropriations.

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter, subject to the following limitations and conditions:

(A) The elected officer, department head, board or commission shall first present a written request to the City Attorney for outside counsel. The written request shall specify the particular matter for which the elected officer, department head, board or commission seeks the services of outside counsel, a description of the requested scope of services, and the potential conflict of interest that is the basis for the request. Within five working days after receiving the written request for outside counsel, the City Attorney shall respond in writing to the elected officer, department head, board or commission either consenting or not consenting to the provision of outside counsel. If the City Attorney does not consent to the provision of outside counsel, the City Attorney shall state in the written response why he or she believes that there is no conflict of interest regarding the particular matter.

(B) If the elected officer, department head, board or commission continues to believe there are adequate grounds for outside counsel despite the City Attorney's response that there is no conflict of interest, the elected officer, department head, board or commission may, within thirty days after receiving the City Attorney's response, refer the issue of whether the City Attorney has a prohibited conflict of interest regarding a particular matter to a retired judge or justice of the state courts of California for resolution. If the elected officer, department head, board or commission and City Attorney cannot agree on a retired judge to hear the matter, the retired judge shall be selected at random by an alternative dispute resolution provider. If the matter is referred to a retired judge, the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of the Charter, shall be entitled to retain outside counsel to represent it solely on the issue of whether the City Attorney has a conflict of interest regarding the particular matter.

(C) In deciding whether the City Attorney has a conflict of interest regarding a particular matter, the retired judge shall be bound by and apply the applicable substantive law and Rules of Professional Conduct as if he or she were a court of law. To the extent practicable, the retired judge shall hear the matter within 15 days after its assignment to the retired judge, and within 15 days after the hearing, shall issue a written opinion stating the basis for the decision. The retired judge, but not the City Attorney or elected officer, department head, board or commission, shall have the power to subpoena witnesses and documents in this proceeding.

(D) The retired judge may request that the City Attorney secure written advice from the California Fair Political Practices Commission, the State Bar of California, or the California Attorney General on the question of whether the City Attorney has a conflict of interest regarding the particular matter. Upon such a request by the retired judge, the City Attorney shall secure such written advice. The retired judge may consider, but is not bound by, written advice so secured. The decision of the retired judge shall be final for the limited purpose of determining whether or not the elected officer, department head, board or commission may retain outside counsel for the particular matter.

(E) If the retired judge decides that the City Attorney does not have a conflict of interest regarding the particular matter, the City Attorney shall continue to be the legal adviser to the elected officer, department head, board or commission for such matter. If the retired judge decides that the City Attorney has a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall be entitled to retain outside counsel for legal advice regarding the particular matter, and the City Attorney shall thereupon cease to advise the elected officer, department head, board or commission on such matter. Any such finding of a conflict of interest shall not affect the City Attorney's role as legal advisor to the elected officer, department head, board or commission on all other matters.

(F) If at any time after the retention of outside counsel, the City Attorney believes that there is no longer a conflict of interest, the City Attorney shall state in writing to the elected officer, department head, board or commission why he or she believes that there is no longer a conflict of interest. Within five working days after receiving the written

statement from the City Attorney, the elected officer, department head, board or commission shall respond in writing, either agreeing or disagreeing that there is no longer a conflict of interest. If the elected officer, department head, board or commission agrees that there is no longer a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall cease employing outside counsel for legal advice regarding the matter, and the City Attorney shall serve as legal adviser to the elected officer, department head, board or commission regarding that matter. If the elected officer, department head, board or commission states in its written response that it believes the conflict of interest still exists, the City Attorney may, within ten working days after receiving the response of the elected officer, department head, board or commission, elect to refer the issue of whether the conflict of interest regarding the particular matter continues to exist to the same retired judge who originally heard the matter, if available. The same procedures as established herein shall apply thereafter.

(G) In selecting outside counsel for any purpose described in subsection (f) of Charter section 40, the elected officer, department head, board or commission shall give preference to engaging the services of a City attorney's office, a County counsel's office or other public entity law office with an expertise regarding the subject-matter jurisdiction of the elected officer, department head, board or commission. If the elected officer, department head, board or commission concludes that private counsel is necessary, that attorney must be a member in good standing with the Bar of California who has at least five year's experience in the subject-matter jurisdiction of the elected officer, department head, board or commission. In selecting private counsel, the elected officer, department head, board or commission shall ensure that the attorney retained does not have a conflict of interest that would prevent him or her from providing suitable assistance. The cost of any of the services of outside legal counsel and of the alternative dispute resolution process described in this ordinance shall be charged against the appropriation of the entity requesting such counsel.

Current San Diego Charter

SECTION 40. CITY ATTORNEY.

At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A City Attorney shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates

other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than $15,000.00 per year.

In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

Other Cities' Charter Language Regarding the City Attorney

San Francisco Charter

SEC. 6.102. CITY ATTORNEY.

The City Attorney shall:

1. Represent the City and County in legal proceedings with respect to which it has an interest; provided that any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officers department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter, subject to the following limitations and conditions.

The elected officer, department head, board or commission shall first present a written request to the City Attorney for outside counsel. The written request shall specify the particular matter for which the elected officer, department head, board or commission seeks the services of outside counsel, a description of the requested scope of services, and the potential conflict of interest that is the basis for the request. Within five working days after receiving the written request for outside counsel, the City Attorney shall respond in writing to the elected officer, department head, board or commission either consenting or not consenting to the provision of outside counsel. If the City Attorney does not consent to the provision of outside counsel, the City Attorney shall state in the written response why he or she believes that there is no conflict of interest regarding the particular matter.

If the elected officer, department head, board or commission continues to believe there are adequate grounds for outside counsel despite the City Attorney's response that there is no conflict of interest, the elected officer, department head, board or commission may, within thirty days after receiving the City Attorney's response, refer the issue of whether the City Attorney has a prohibited conflict of interest regarding a particular matter to a retired judge or justice of the state courts of California for resolution. If the elected officer, department head, board or commission and City Attorney cannot agree on a retired judge to hear the matter, the retired judge shall be selected at random by an alternative dispute resolution provider. If the matter is referred to a retired judge, the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of the Charter, shall be entitled to retain outside counsel to represent it solely on the issue of whether the City Attorney has a conflict of interest regarding the particular matter.

In deciding whether the City Attorney has a conflict of interest regarding a particular matter, the retired judge shall be bound by and apply the applicable substantive law and Rules of Professional Conduct as if he or she were a court of law. To the extent practicable, the retired judge shall hear the matter within 15 days after its assignment to the retired judge, and within 15 days after the hearing, shall issue a written opinion stating the basis for the decision. The retired judge, but not the City Attorney or elected officer, department head, board or commission, shall have the power to subpoena witnesses and documents in this proceeding.

The retired judge may request that the City Attorney secure written advice from the California Fair Political Practices Commission, the State Bar of California, or the California Attorney General on the question of whether the City Attorney has a conflict of interest regarding the particular matter. Upon such a request by the retired judge, the City Attorney shall secure such written advice. The retired judge may consider, but is not bound by, written advice so secured. The decision of the retired judge shall be final for the limited purpose of determining whether or not the elected officer, department head, board or commission may retain outside counsel for the particular matter.

If the retired judge decides that the City Attorney does not have a conflict of interest regarding the particular matter, the City Attorney shall continue to be the legal adviser to the elected officer, department head, board or commission for such matter. If the retired judge decides that the City Attorney has a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall be entitled to retain outside counsel for legal advice regarding the particular matter, and the City Attorney shall thereupon cease to advise the elected officer, department head board or commission on such matter. Any such finding of a conflict of interest shall not affect the City Attorney's role as legal advisor to the elected officer, department head, board or commission on all other matters.

If at any time after the retention of outside counsel, the City Attorney believes that there is no longer a conflict of interest, the City Attorney shall state in writing to the elected officer, department head, board or commission why he or she believes that there is no longer a conflict of interest. Within five working days after receiving the written statement from the City Attorney, the elected officer, department head, board or commission shall respond in writing, either agreeing or disagreeing that there is no longer a conflict of interest. If the elected officer, department head, board or commission agrees that there is no longer a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall cease employing outside counsel for legal advice regarding the matter, and the City Attorney shall serve as legal adviser to the elected officer, department head, board or commission regarding that matter. If the elected officer, department head, board or commission states in its written response that it believes the conflict of interest still exists, the City Attorney may, within ten working days after receiving the response of the elected officer, department head, board or commission, elect to refer the issue of whether the conflict of interest regarding the particular matter continues to exist to the same retired judge who originally heard the matter, if available. The same procedures as established herein shall apply thereafter.

In selecting outside counsel for any purpose described in this Section, the elected officer, department head, board or commission shall give preference to engaging the services of a City attorney's office, a County counsel's office or other public entity law office with an expertise regarding the subject-matter jurisdiction of the elected officer, department head, board or commission. If the elected officer, department head, board or commission concludes that private counsel is necessary, that attorney must be a member in good standing with the Bar of California who has at least five year's experience in the subject-matter jurisdiction of the elected officer, department head, board or commission Any private counsel retained pursuant to this Section shall be subject to the conflict of interest provisions of Section 13.103.5. The cost of any of the services of outside counsel and of the alternative dispute resolution process authorized by this Section shall be paid for by the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of this Charter.

2. Represent an officer or official of the City and County when directed to do so by the Board of Supervisors, unless the cause of action exists in favor of the City and County against such officer or official;

3. Whenever a cause of action exists in favor of the City and County, commence legal proceedings when such action is within the knowledge of the City Attorney or when directed to do so by the Board of Supervisors, except for the collection of taxes and delinquent revenues, which shall be performed by the attorney for the Tax Collector;

4. Upon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of the City and County;

5. Make recommendations for or against the settlement or dismissal of legal proceedings to the Board of Supervisors prior to any such settlement or dismissal. Such proceedings shall be settled or dismissed by ordinance and only upon the recommendation of the City Attorney;

6. Approve as to form all surety bonds, contracts and, prior to enactment, all ordinances; and examine and approve title to all real property to be acquired by the City and County;
7. Prepare, review annually and make available to the public a codification of ordinances of the City and County then in effect;
8. Prepare and make available to the public an annual edition of this Charter complete with all of its amendments and legal annotations; and
9. Establish in the Office of the City Attorney a Bureau of Claims Investigation and Administration which shall have the power to investigate, evaluate and settle for the several boards, commissions and departments all claims for money or damages. The Bureau shall also have the power to investigate incidents where the City faces potential civil liability, and to settle demands before they are presented as claims, within dollar limits provided for by ordinance, from a revolving fund to be established for that purpose. The City Attorney shall appoint a chief of the Bureau who shall serve at his or her pleasure. The chief of the Bureau may appoint, subject to confirmation by the City Attorney, investigators who shall serve at the pleasure of the chief.
10. During his or her tenure, not contribute to, solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than himself or herself or of a City ballot measure or be an officer, director or employee of or hold a policy-making position in an organization that makes political endorsements regarding candidates for elective office or City ballot measures.
(Amended November 2001; amended November 2002)

SEC. 6.103. DISTRICT ATTORNEY.
The District Attorney shall:
1. Investigate all allegations of violations of laws which the District Attorney has the power to prosecute in court or before any other trier of fact;
2. Prosecute all criminal cases in the appropriate courts and issue warrants for the arrest of persons charged with crimes to be prosecuted in such courts; and
3. Proceed in such civil cases as authorized by state law.

Los Angeles Charter

Sec. 270. Qualifications.
The City Attorney must be qualified to practice in all the courts of the state, and must have been so qualified for at least five years immediately preceding his or her election. The City Attorney shall devote his or her entire time to the duties of the office.
Sec. 271. Powers and Duties.
The powers and duties of the City Attorney shall be as follows:
(a) The City Attorney shall represent the City in all legal proceedings against the City. The City Attorney shall initiate appropriate legal proceedings on behalf of the City.
(b) The City Attorney shall be the legal advisor to the City, and to all City boards, departments, officers and entities. The City Attorney shall give advice or opinion in writing when requested to do so by any City officer or board.
(c) The City Attorney shall prosecute on behalf of the people all criminal cases and related proceedings arising from violation of the provisions of the Charter and City ordinances, and all misdemeanor offenses arising from violation of the laws of the state occurring in the City.
(d) The City Attorney shall approve in writing the form of all surety or other bonds required by the Charter, or by ordinance, before the bonds are submitted to the proper body, board or officer for final approval, and no such bond shall be approved without approval as to form by the City Attorney. Except as otherwise provided in the Charter, the City Attorney shall approve in writing the form of all contracts before the contracts are entered into by or on behalf of the City.

(e) The City Attorney shall keep records of all actions and proceedings in which the City or any officer or board is an interested party, and copies of all written opinions given by the City Attorney's office. The City Attorney shall comply with all requests for information from the Mayor or Council, and shall report on a regular basis to the Mayor and Council on all matters of litigation, in a form and at times specified by ordinance. In all litigation involving potential financial liability of the City, the City Attorney shall keep the Mayor and Council informed as to the status and progress of litigation.

Sec. 272. Control of Litigation.

The civil client of the City Attorney is the municipal corporation, the City of Los Angeles. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor, the Council, or boards of commissioners in accordance with this section. However, the decision to settle litigation shall be made in accordance with Section 273.

(a) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.

(b) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(c) **Boards.** The boards of the Proprietary Departments, the Ethics Commission, the Board of Fire and Police Pension Commissioners, the Board of Administration of the Los Angeles City Employees Retirement System, and the Board of Administration of the Water and Power Employees Retirement System shall make client decisions in litigation exclusively involving the policies and funds over which the Charter gives those boards control.

(d) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

Sec. 273. Settlement of Litigation.

(a) **Boards.** The boards of the Proprietary Departments, the Ethics Commission, the Board of Fire and Police Pension Commissioners, the Board of Administration of the Los Angeles City Employees Retirement System and the Board of Administration of the Water and Power Employees Retirement System shall have the authority to approve or reject settlement of litigation exclusively involving the policies and funds over which the Charter gives those boards control. The settlement of all other litigation shall be in accordance with subsections (b) and (c) of this section.

(b) **Settlements Involving Only Money Damages.**

(1) The Mayor shall have authority to approve or reject settlements involving only the payment or receipt of money damages not exceeding an amount set by ordinance, and shall make client decisions with respect to settlement of such litigation. The Mayor may delegate this authority to the City Attorney.

(2) A claims board comprised of the Mayor as chair, the President of the Council and the City Attorney, or their designees, shall have the authority to approve or reject settlement of litigation involving only the payment or receipt of money damages exceeding the amount that is within the Mayor's authority under the preceding subsection, and below an amount set by ordinance. The claims board shall make client decisions with respect to settlement of such litigation.

(3) The Council shall have the authority to approve or reject settlement of litigation that involves only the payment or receipt of money damages exceeding the amount that is within the authority of the claims board under the preceding subsection, subject to veto of the Mayor, and Council override of the Mayor's veto by a two-thirds vote of the Council. The Council shall make client decisions with respect to settlement of such litigation. The claims board shall make recommendations to the Council concerning settlement of litigation within the scope of this subsection.

(c) **Other Settlements.** The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto by a two-thirds vote of the Council.

Sec. 274. Employment of Assistants.

The City Attorney may appoint assistants, deputies, clerks and other persons as the Council shall prescribe by ordinance. Each Assistant City Attorney must, at the time of appointment, be qualified to practice in all courts of the state and must have been so qualified for at least two years immediately preceding the appointment. Employment in the City Attorney's office shall be subject to Section 1050 of Article X of the Charter.

Sec. 275. Employment of Other Legal Counsel.

Upon recommendation of a board enumerated in Section 272(c), and the written consent of the City Attorney, the City may contract with attorneys outside of the City Attorney's Office to assist the City Attorney in providing legal services to that department. The City may otherwise contract with outside legal counsel to assist the City Attorney in the discharge of his or her duties under the Charter only upon written approval of the Council and the City Attorney, and consistent with budgetary appropriations.