



Agenda Report

TO: CITY COUNCIL **DATE:** September 18, 2000
FROM: AD-HOC COMMITTEE ON CITY PROSECUTOR STRUCTURE
SUBJECT: CITY PROSECUTOR SERVICES

RECOMMENDATION:

It is recommended that the City Council

- (1) Appoint the City Attorney as the City Prosecutor;
- (2) Introduce an Ordinance amending Title 2 of the Pasadena Municipal Code to re-establish the City Prosecutor's functions within the City Attorney's Department, as a division of the City Attorney's Office; and
- (3) Adopt a resolution amending the Salary Resolution to change the title of the City Attorney to City Attorney/City Prosecutor and to establish a new position under Management-Top, entitled City Prosecutor/Assistant City Attorney. The City Prosecutor/Assistant City Attorney shall report to the City Attorney/City Prosecutor and shall supervise administration of the Criminal Division, subject to the direction of the City Attorney/City Prosecutor.

BACKGROUND:

Pursuant to City Charter Section 409, the City Council shall appoint the City Prosecutor. The Prosecutor prosecutes violations of State code provisions and City ordinances. Chapter 2.42 of the Municipal Code establishes the City Prosecutor's Department which is under the direction and control of the City Prosecutor. The Municipal Code provides that in the absence of a City Prosecutor or acting city prosecutor or assistant or deputy city prosecutor, the City Attorney shall perform the duties of the prosecutor.

In the past the City Prosecutor's position has at times been separate from the City Attorney's Department, and at other times, within the City Attorney's office. A summary of the chronology of the arrangement regarding City Attorney and City Prosecutor services for the past 25 years is as follows:

- 1975 Offices separate; charter study committee considered whether to merge the two offices or amend the charter. The Committee concluded that no change should be made to the Charter since under Section 410 of the Charter, the Board could combine the two offices if it desired.
- 1982 City Council review of City Prosecutor's Office. Report concluded that it was not the appropriate time to consolidate the offices, with new city attorney and recommendations made to improve communication and coordination between the Prosecutor's office and other entities (i.e., Board of Directors, judges and City Attorney's Office).
- 1984 City Attorney and City Prosecutor's Offices merged following departure of City Prosecutor from City employment. Assistant City Prosecutor position created.
- 1994 City Attorney retired. City Prosecutor's office separated from City Attorney's Office.
- 2000 City Prosecutor resigned; City Attorney named Acting Prosecutor pending decision by City Council regarding organizational structure of City Prosecutor's Office.

As indicated in an ordinance fact sheet dated August 23, 1994, "In November 1984, the City Attorney's Office and City Prosecutor's Office were merged under the City Attorney who took on the additional title of City Prosecutor as both positions are described in the City's Charter. The Offices were merged so that the City Attorney could provide overall management to the prosecution operation and see that its work flow systems were upgraded." In November, 1984, following separation from the City of the City Prosecutor who reported directly to the City Council, the City Council adopted an ordinance "establishing a dual-function City Attorney's Office," providing for the City Attorney to also serve as City Prosecutor, and establishing the position of Assistant City Prosecutor. At around that time, there was a legal challenge to, among other things, the City's ability to name the City Attorney as the Prosecutor. In that case (Murnane v. City of Pasadena), the Court of Appeal concluded that the City could appropriately appoint the City Attorney to serve as City Attorney and City Prosecutor, and have the prosecutorial services in the City Attorney's Office.

In 1994, the City Attorney retired and the City Council concluded that it was appropriate at that time to re-establish the City Prosecutor's Office as a separate department. Tracy Webb was appointed by the Council to serve as City Prosecutor and she served in that position until earlier this year. In February of this year, Ms. Webb announced her intention to resign. Ms. Webb's resignation became effective April 28, 2000. To ease in the transition from Ms. Webb as City Prosecutor, the City Council appointed City Attorney Michele Beal Bagneris to serve as Acting City Prosecutor until such time as a decision is made regarding the structure of the Prosecutor's Office.

Following the last discussion of the City Council regarding the City Prosecutor's position, the Council indicated that the following options are to be considered, having eliminated the possibility of contracting with the District Attorney's Office or other outside entity for provision of prosecutorial services: (1) Recruit for City Prosecutor and continue with the position as a City Council appointee; or (2) Combine Prosecutor's Office with City Attorney's Office and have City Attorney serve as City Prosecutor, where the City Attorney would appoint a City Prosecutor/Assistant City Attorney to supervise the Prosecutor's Office. An ad-hoc committee of the City Council, consisting of Mayor Bogaard, and Councilmembers Haderlein, Madison, and Streater, has looked at the structure of the Prosecutor's Office to arrive at a recommendation to the full City council regarding how the Prosecutor's Office should be structured. As set forth below, the Ad-hoc Committee recommends that the two offices be re-established under the City Attorney's Office, with the City Attorney/City Prosecutor appointing the City Prosecutor/Assistant City Attorney to supervise the Prosecutor's Office.

DISCUSSION:

The City Council has placed a high priority on public safety issues. The City Attorney attends all City Council meetings, and as a result of the constant and direct contact with the City Council, there is an increased likelihood of enhanced communication with the City Council regarding prosecutorial issues. The City Attorney, as a City employee, would have direct supervision of, and daily contact with, prosecutorial issues and with the City Prosecutor/Assistant City Attorney. These factors suggest that there would be optimal oversight and communication with the City Council. Having one person with the responsibility of oversight of both legal offices increases the knowledge of staffing needs and the opportunities to maximize utilization of skills by employees in those legal offices. The City Attorney solicited views from, among others, the staffs of both offices and some of the other benefits of merging the two offices include the following:

- Savings in economies of meeting needs regarding staffing and materials in both offices
- Avoid potential problem of City Prosecutor not being fully integrated with other City Departments and City Council not being kept abreast of activities in City Prosecutor's Office
- City Council can get information from both City Attorney's Office and City Prosecutor's Office from one person who always attends City Council meetings
- The current City Prosecutor's staff has a positive working relationship with City Attorney/Acting City Prosecutor

The overwhelming majority of cities in California which handle misdemeanor prosecutions have an organizational structure in which the City Attorney is the City Prosecutor, and prosecutorial services are handled in the City Attorney's department. Some of those cities include Anaheim, Burbank, Glendale, Inglewood, Los Angeles, Manhattan Beach, Oakland, Orange, Santa Monica, and Torrance. As a result of research by City staff, it appears that Long Beach and Pasadena are the only cities in which the City Prosecutor is separate from the City

Attorney (the Long Beach City Attorney and City Prosecutor are both elected positions). In many cities, there is a criminal unit or division and a civil division or unit within the City Attorney's Office. In many of those cities, there is a chief prosecutor who handles the day to day prosecutorial matters and reports to the City Attorney/City Prosecutor. In those entities, the City Attorney reports to the City Council and makes general policy and administrative decisions, consistent with the goals of the City Council.

In viewing the high priority of the City to enforcement of its laws, economies involved, and desire to ensure maximum reporting and oversight, the Ad hoc Committee recommends that the City Council appoint the City Attorney as the City Prosecutor, and return to an organizational structure where the City Attorney also holds the title of City Prosecutor. The City Attorney would appoint a City Prosecutor/Assistant City Attorney to manage the operations of the Prosecutor's Office and report to the City Attorney/City Prosecutor.

ORDINANCE/SALARY RESOLUTION:

Since the Municipal Code currently provides that the City Prosecutor's Department is a separate department from the City Attorney's Department, merger of the civil and criminal functions would require amending the Code. As in the past, the proposed ordinance provides that the City Attorney is the City Prosecutor, and sets forth prosecutorial responsibilities within the City Attorney's Department. The proposed ordinance amends Title 2 in a manner necessary to merge the two departments. The amendments set forth in the attached ordinance name the City Attorney as the City Prosecutor and create two divisions in the City Attorney's Department-civil and criminal. The ordinance also establishes certain duties of the City Attorney as the City Prosecutor to assure that all prosecutorial functions are appropriately handled.

The Ad-Hoc Committee recommends creating a new position (City Prosecutor/Assistant City Attorney) to handle the day-to-day operations of the Prosecutor's Office, supervising the Criminal Division of the City Attorney's Department. To assure that the highest qualified candidates are attracted to the City and in recognition of the many responsibilities of the City Prosecutor/Assistant City Attorney in supervising operations in the Prosecutor's Office under the general direction of the City Attorney, the attached Resolution establishes the position under the category of Management-Top and sets the control rate at \$119,932. This salary is comparable to the salary which was paid to the past City Prosecutor, and is viewed as competitive in order to obtain the highest caliber candidates and ensure a top rate prosecutor for the City. The person in that position would report to, and have constant contact with, the City Attorney/City Prosecutor, would make many of the managerial and filing decisions, and would have significant input and authority with respect to evaluations and policy decisions. Since the City places not only a high emphasis on prosecution, but also on prevention, the person would also make recommendations on effective programs and activities of the office, in addition to enforcement in court.

FISCAL IMPACT:

The amount currently budgeted for the City Prosecutor's salary and benefits would be paid to the City Prosecutor/Assistant City Attorney. The control rate is \$119,932, and approximately 15% (\$17,989) would be added for benefits for that position. There will be some savings realized if the two departments are merged, as a result of enhanced economies of utilizing staffing in both offices and in acquisition of legal materials.

Respectfully submitted,

Members of the City Council Ad-Hoc Committee
On Structure of City Prosecutor's Office

Mayor Bill Bogaard, Councilmembers Steve Haderlein,
Steve Madison and Joyce Streator