Council Agenda # _____
Meeting of January 11, 2005

Staff Report

DISCUSSION AND DIRECTION REGARDING CITY ATTORNEY SERVICES

Honorable Mayor and Council Members:

Summary

The City Council directed staff to explore the issues involved related to hiring a full-time city attorney as an employee. This report and the attachments respond to that request and provide a summary of the issues to consider. Staff recommends Council provide direction on the desired method of providing city attorney services or request specific additional information.

Background

On October 12, 2004, the Council discussed a "Number 9" titled: Discussion to Consider the Hiring of a Full-Time City Attorney on Staff. As a result of that dialogue, staff was directed to report back on the issues related to having an in-house attorney vs. a contract city attorney. Since the Council discussion, staff has surveyed all the cities in San Mateo County on their attorney services. Data was collected for 16 of the 20 cities and can be found in Attachment A. Staff also got a copy of a report done by Redwood City when they considered going in-house for attorney services (which they did). See Attachment B for a copy of the Redwood City report. It includes many things specific to Redwood City, but it also has a discussion of the pro's and con's of having a contract attorney vs. an in-house attorney that is useful for any city considering the options.

Discussion

As noted on the attached chart, six cities in the county have in-house attorneys and the remainder contract for services. The chart shows a variety of information on the cities, including the population, number of employees, monthly attorney cost, total legal expenditures, and cost per capita and per employee. It should be noted that much of this data is self reported by the cities and has not been verified. In addition, cities budget differently and some may spread attorney costs in other program areas and others "fully load" costs so internal administrative costs are added in. As a result, the numbers shown on the chart should be looked to for general trends, not absolute precision. Having said that, it appears the median monthly cost for an in-house city attorney is about $13,176 and the median retainer for a contract attorney is about $8,131. The

total legal cost per employee is closer and the order switches, with a median of $2,061 for in-house attorneys and $2,337 for contract attorneys. There are obviously a number of factors that impact the cost of services, including the size of the community, the scope of services provided by the city, the complexity and magnitude of legal issues facing the community, etc. There are certain "base" costs no matter what, so it is no surprise that a small community such as Colma has a much higher cost per capita than a larger community like South San Francisco, despite the fact that both cities use contract attorneys.

Issues –
There are a number of issues the Council may want to consider as it decides the future direction of legal services. Cost is obviously an important factor. It is likely, though not a guarantee, that using a contract attorney will cost less than an in-house attorney. But there are other factors to consider as well, such as level of service, responsiveness, accessibility, etc. Other issues to consider include start-up costs, and siting.

Contract Attorney –
The Council is familiar with the services of a contract attorney, as that has been the method used by Belmont historically. Attachment C is a chart provided by City Attorney Savaree summarizing the number of hours worked on retainer and on a billable basis over the past four years. The City pays a flat monthly retainer and an hourly rate for billable charges (currently $170/hour). On average, the City has used 64 hours per month of retainer services and 76 hours per month of billable hours. This is an average annual total number of hours of 1,679, or a little less than one full time employee. A contract attorney's fees and hours include the services of support staff, a law library, office expenses, and access to other attorneys in the firm. These are all costs a city has to pay directly with an in-house attorney. On the other hand, with a contract attorney, there is not someone in City Hall full-time that is available to staff and Council and it could be argued that the attorney is not "in the loop" as much as an in-house attorney would be.

With a contract attorney, it is normal to send some specialized work to other firms, at an hourly rate. For example, the Oakland firm of Goldfarb and Lipman does Belmont's Redevelopment law work. The services of other attorneys has been used for some land use issues, complex contracts such as architectural services, and some litigation. In the past two completed fiscal years, the City has spent $279,000 and $313,000 total for legal services.

In-house Attorney –
An in-house attorney would presumably be more available to Council and staff as a full-time city employee. It is argued an in-house attorney might be more "pro-active" and get involved in issues earlier by being "closer to the action." On the other hand, to support an in-house attorney, a city needs space, supplies and support services. Additional staff, such as a para-legal or legal secretary would be needed, as well as a law library, specialized software, etc. Even with an in-house attorney, it is likely that some legal work would still be contracted out (as noted in the chart in Attachment A). Work that is frequently contracted out with an in-house attorney

includes redevelopment work, litigation and some personnel matters. The amount and nature of the contracted work would depend on the size and expertise of the in-house staff.

It is likely there will be greater "start up" costs associated with an in-house attorney to establish the "infrastructure" including a library, office equipment, furniture, etc. Once those one-time expenses are incurred, the on-going costs should be relatively stable.

As can be seen on Attachment A, there is a wide range of costs for those cities using in-house attorneys. The cities most likely to have costs similar to Belmont are probably Burlingame and San Bruno. Their annual budgets are approximately $403,000 and $626,000 respectively.

If the Council were interested in an in-house attorney, space in City Hall would be needed. There will be two spaces available for lease in the renovated City Hall that could be used: approximately 600 square feet on the third floor, right off the elevator, or about 640 square feet on the second floor, next to the Police Administration area facing Sixth Avenue.

Timing –
In light of the fact that City Attorney Savaree has announced her resignation, the Council must secure the services of a new city attorney. Whether that is another contract for services or an in-house attorney, it will take some time. In all likelihood, the total time to hire a contract attorney, including developing a RFP and interviewing applicants, would take about 4-6 months. The timeline for an in-house attorney is estimated at 6-8 months, including hiring a recruiter to develop a candidate profile and manage the process. City Attorney Savaree's firm has said they are available to provide continued service during the search and to assist with a transition for as long as the Council desires.

Summary –
This report is not intended to cover all possible issues related to legal services, but to give enough general information for Council to have a dialogue on the future direction of city attorney services. There are a number of factors Council can consider before deciding whether to retain a contract attorney or to recruit for an in-house attorney. Should Council feel it has enough information at this time, direction can be given to staff to prepare an RFP or to begin a search for an in-house attorney. Should Council desire more information or analysis on one alternative or both, direction can be given to staff. Should Council determine additional expert assistance is needed before a decision can be made, a consultant could be hired.

Fiscal Impact

The fiscal impact will depend on the direction provided by Council. If Council intends to contract for legal services, the cost are anticipated to be similar to what has been previously experienced and budgeted. Should Council wish to hire an in-house attorney, the costs are unknown, but are likely to be higher. Based on the cost of similarly sized cities that have in-house attorneys, it is likely to cost between $100,000 and $300,000 more annually. Currently,

70% of the cost of the city attorney comes from the General Fund.

Public Contact

Posting of City Council agenda.

Recommendation

Staff recommends Council provide direction on the desired method of providing city attorney services or request specific additional information.

Attachments

A. Chart of City Attorney Services and Costs in San Mateo County
B. 2001 Report to Redwood City Council Regarding Legal Services
C. Summary of Belmont City Attorney Hours

Respectfully submitted,

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Daniel Rich
Interim City Manager