



Staff Report

ADDITIONAL DISCUSSION AND DIRECTION REGARDING CITY ATTORNEY SERVICES

Honorable Mayor and Council Members:

Summary

Last year, the City Council directed staff to explore the issues involved related to hiring a full-time city attorney as an employee. A report was presented in January providing a summary of the issues to consider. At that time, Council deferred action until the budget adoption and in February adopted a resolution naming Marc Zafferano as Interim City Attorney. During the Mid-Year Budget discussion, staff asked for more clarity on Council's direction in order to effectively build the budget for FY06. This report seeks that clarity.

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. In January, staff presented a report that included data on attorney services for 16 of the 20 cities in San Mateo County and the pro's and con's of in-house vs. contract services (see Attachment A). No final action on the long-term direction of attorney services was taken at that time. On February 22, 2005, Council approved a resolution appointing Marc Zafferano as Interim City Attorney and modifying the retainer and benefits provisions.

Discussion

The City Attorney reviews all contracts, contract specifications, leases, JPA agreements and MOU's to determine their legal sufficiency. The attorney also drafts numerous documents for staff and Council review, including easements, deeds, right of entry agreements, hold harmless agreements and releases. Additionally, Public Records Act requests, subpoenas and claims are directed to the City Attorney's office for review and/or response. The City Attorney drafts resolutions, ordinances and associated staff reports as requested by Department Heads, the City Manager and/or the City Council. Periodic reviews of City policies and ordinances are conducted to determine if amendments are needed to comply with current law. Memos are provided to staff and the City Council on a regular basis to report on recent developments in statutory or case law so that the City will proactively address new issues and legal requirements.

The services covered by the retainer include attendance at all regular and special City Council meetings and Planning Commission meetings. Additionally, the City Attorney attends bi-weekly Senior Management Team meetings held at City Hall. The City Attorney is also available to meet with Department Heads and staff members whenever necessary. The City Attorney also communicates through e-mail and telephone, on a daily basis, with Department Heads or staff members, on a wide variety of legal issues raised by all City departments.

Per the retainer, the City Attorney's office also provides two Deputy City Attorneys who are available to assist City staff and/or Council whenever necessary. The City Attorney's office also provides, pursuant to the retainer, all secretarial assistance necessary to accomplish the above-referenced tasks. The firm also employs a paralegal whose work is not separately billed to the City. Additionally, the retainer covers all costs associated with the maintenance of the City Attorney's office space, supplies and equipment including a computer system, which has Westlaw research capability, and a full service law library. In 2003, the retainer was adjusted to \$7,165 per month. In February, the retainer was increased to \$7717 at the same time health and retirement benefits were eliminated.

Non-retainer work includes litigation, representation of the City at administrative hearings and special projects or cases that require extensive research. Non-retainer services are billed at \$170 per hour.

As noted on the chart attached to the January report, six cities in the county have in-house attorneys and the remainder contract for services. Although the data is not intended to be precise given differing budget methodologies, it give an idea of the relative costs. 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. It appears that Burlingame and San Bruno are the two cities with in-house attorneys most similar in size and complexity to Belmont.

Additional data has been collected on these two cities (see Attachment B). For FY 05, Burlingame's total legal expenditures are expected to be \$328,000 and San Bruno's \$575,000. This number is lower for Burlingame than previously reported to us and the number for San Bruno is slightly different as well. Based on this newer data, it appears the average annual costs for Burlingame and San Bruno are approximately \$321,000 and \$645,000 respectively. The average total annual legal expenditures for Belmont over the past four completed years was \$280,000 (see Attachment C). Thus the difference between Belmont's cost for contract services

and Burlingame's for in-house services is relatively small.

Options –

It appears the Council has three general options for City Attorney services:

1. Direct staff to budget for an in-house attorney and begin a recruitment
2. Direct staff to prepare a RFP for contract city attorney services
3. Maintain the status quo with Marc Zafferano as interim city attorney

The January report discussed some pro's and con's of the first two options. In terms of timing, as noted in the previous report, it is anticipated that securing an in-house attorney would take about 6-8 months, including the likely hiring of a recruiter to develop a candidate profile and manage the process. This is the only option that has immediate budgetary implications. If Council wishes to pursue an in-house attorney, such direction should be given at this time so it can be budgeted for in FY 06. Council should also determine the desired level of initial staffing. For example, Burlingame's legal costs are relatively lower in part because they only utilize a .5 FTE in support staff. Other cities in the County with in-house attorneys have at least 1 other staff person in the office. Budgeting for an in-house attorney will require budget cuts elsewhere in the City. The amount of outside legal counsel needed on top of an in-house attorney (and thus the total cost) will depend on a number of factors including the hired attorney's expertise, the regular workload and the variety of unique legal situations facing the City.

The total time to hire a new contract attorney, including developing a RFP and interviewing applicants, is expected to be about 4-6 months. The third option was not fully discussed in the January report, as it was before an interim attorney had been named. Staff has spoken with Mr. Zafferano and he has indicated he is willing to continue under the current conditions. Council may want to consider extending the interim situation and readdressing options at the end of calendar 2005 so that any desired changes could be in place for FY 07 beginning in July 2006.

Clearly, there are a number of factors Council may want to consider before deciding whether to seek a permanent contract attorney or to recruit for an in-house attorney. In addition to the fiscal implications, there are other considerations such as the level of service, responsiveness, accessibility, etc.

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 \$40,000 and \$350,000 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. January Report on City Attorney Services
- B. Additional historical information on Burlingame and San Bruno
- C. Belmont average total legal costs

Respectfully submitted,

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