



# Agenda Report

**TO: CITY COUNCIL**

**DATE: May 4, 1998**

**FROM: CITY ATTORNEY**

**SUBJECT: WORKSHOP DISCUSSION REGARDING CITY ATTORNEY'S OFFICE**

**BACKGROUND:**

During the City Council discussion in December, 1997, I was asked to report back with further information regarding the options presented to the City Council regarding the City Attorney's office. A copy of my December, 1997 report is attached as Exhibit A. To recap, the options are as follows:

1. In-house (City Attorney and all staff are City employees, with outside counsel handling matters in instances of conflict, greater economy, lack of expertise in-house, or overflow needs);
2. Partial in-house, with the City Attorney contracted from a law firm (current situation where law firm contracts with City and City Attorney is partner of the law firm);
3. City Attorney is City employee with small in-house staff (contract out significant majority of legal services); and
4. Contract out all legal services, with the City Attorney being a representative of a law firm appointed by the City Council.

The current contract with the City Attorney and Richards, Watson & Gershon ("RW&G) for City Attorney services is for a one year period which **expires May 12, 1998**. A copy of that contract is attached as Exhibit B. **In order to continue those services, it would be appropriate to extend the contract on the same or different terms, with such extension approved by the City Council before May 12, 1998.**

Charts which show comparisons of the budget and actual expenditures for the Department since fiscal year 1992-93 are attached as Exhibit C.

## **DISCUSSION:**

A major goal of the City Attorney's Office, regardless of which option is chosen, is to provide high quality legal service in a timely and efficient manner. It is clear that success can be measured by providing sound proactive legal advice which could prevent lawsuits, settling in a manner favorable to the City, and winning cases before or after trial. Success is also determined based on accessibility, reliability, responsiveness, effectiveness in reaching solutions and maintaining the confidence of the client. Both in-house and contract lawyers can achieve high levels of success in these areas in representing the City. Generally, the lawyers in the Office have been very successful in their representation of the City, in working with others within the City and in handling adversarial matters, such as litigation.

With either of the four options, it is important to ensure that quality lawyers will be available to provide advice in a wide range of public law areas. The legal team must be able to work well with the City Council, Commissioners, City staff and the public and be equipped to respond to a broad range of issues. Success in accessibility can be achieved through in-house lawyers or contracted lawyers who maintain hours in City Hall during business hours and are available by telephone.

Perhaps by necessity due to reductions in staffing, staff in the City Attorney's Office has worked with staff in other departments to provide them with the tools to perform routine functions which may have been previously performed by the City Attorney staff. For instance, the City attorney's office worked with other departments to standardize contracts and procurement procedures, such that contracts which were routinely prepared before have been standardized and the lawyers do not need to spend as much time drafting such documents. Similarly, in law firms which represent multiple cities, lawyers can draw on the resources and documents previously addressed to save time and money in providing quality service.

It appears that approximately 10 to 15% of the work which most of the lawyers handle in the Office could be categorized as "routine", or something which a newer lawyer could successfully undertake, or is somewhat standard. The lawyers utilize the support staff to assist in such routine matters, enabling the lawyers to perform more "customized" or "specialized" work. The lawyers in the Department take great pride in their work and generally view virtually all of the work they perform as being "specialized" and not "routine."

Additional thoughts on issues regarding factors to consider in determining which approach to take are included in a report prepared by the Department staff and attachments thereto at Exhibit E; a report prepared by the Department's senior litigator, attached as Exhibit F; and a report presented to the City of Culver City in May, 1997, attached as Exhibit G. An analysis of the costs associated with each of the options is discussed below.

## Option 1 In-House Services

There are many benefits associated with legal services provided by an in-house legal department. Some of those benefits are outlined in the December, 1997 report attached at Exhibit A. A flow chart which describes the current operations of the City Attorney's office and responsibilities of the attorneys is attached as Exhibit D. This chart provides a sense of the services which have traditionally been handled in-house by the City Attorney's Department. The reports prepared by staff attached at Exhibits E and F highlight the benefits of retaining in-house staff.

### Costs

#### •Personnel

Since 1992, the Department has been staffed with City employees as follows:

	#Attorneys	#Support Staff (sec., paralegal, admin.)	Total
1992-93	10	9	19
1993-94	10	8	18
1994-95	9	8	17 (plus contract city attorney)
1995-96	8	8	16 (plus contract city attorney)
1996-97	8	8	16 (plus 3 mos. contract city attorney)
1997-98	6	8	14 (plus contract city attorney)

Under Option 1, the Department could operate efficiently and effectively with 8 to 9 in-house lawyers (including city attorney, 6 asst. city attorneys, 1-2 deputy city attorneys); 1-2 paralegals; 5 legal secretaries (including an administrative legal secretary); and 1 management analyst. As such, given the 1998 salary schedule, the total personnel costs for employees in the Department would be \$1,389,420; however, the Development and Water & Power Department budgets would include attorneys assigned to those departments. Accordingly, the budgeted personnel costs for the City Attorney's Department would be approximately \$1,188,380 (plus \$247,758 in the other departments for Assistant City Attorneys).

#### •Services & Supplies

Services and supplies include materials and supplies, computers, reference materials, dues, conferences, education, postage, internal services charges, etc. It also includes contract services, including vendors, and in recent years, contract city attorney and additional legal services for land use matters. The budget and expenditures for services and supplies since 1992 is referenced in Exhibit C. Under Option 1, the estimated costs for services & supplies would be approximately \$155,779 (this does not include costs previously included for contract city attorneys).

•Outside Legal

Even with a full in-house staff, there would be expenditures for outside counsel, due to conflicts, in-house workloads, and special expertise. Historically, since at least 1990, the outside legal expenditures have exceeded the budgeted amount, often by significant amounts. The amounts of the budget and actual expenditures for the Department since 1992 are listed on Exhibit C. The average of the costs of outside counsel in the City Attorney's Department budget since 1992 is \$1,741,778, while the average budgeted amount is \$604,983. There are additional amounts which have been expended for outside counsel which are included in various enterprise accounts (i.e., RBOC, Water & Power, PCDC, Development, etc.) and not included in the City Attorney budget. A number of steps have been outlined in the December report and in other articles which, if followed, should avoid excessive outside legal fees. It is reasonable to anticipate outside legal costs from the City Attorney's budget to be approximately \$1,200,000, given the City's history, and acknowledging that steps could be taken to reduce the amount from the \$1.6 million average over the last six years.

•Summary of Annual Costs Under Option 1

--City Attorney Department Costs			Costs to Other Departments
Personnel Costs	\$1,188,380	+	\$ 247,758
Services & Supplies	155,779		
Outside Legal	<u>1,200,000</u>		
Total	\$2,544,159		

**Option 2 - Partial In-House/Contract City Attorney**

This option involves continuation of the current situation in which the City Attorney is contracted from a law firm and supervises in-house staff. Lawyers from Richards, Watson & Gershon are utilized to supplement the in-house staff as needed. This arrangement began effective May 12, 1997. Under this option, the Office operates fairly smoothly and we have maintained and enhanced the service and high quality work product of the Office. It provides the opportunity to benefit from the institutional knowledge and experience of the in-house lawyers, while having the resources of a full service law firm with expertise in a wide range of areas.

Costs

•RW&G Contract

Pursuant to the contract with RW&G, services traditionally provided by in-house lawyers are billed at \$17,300 for the first 120 hours in one month, and at \$150 per hour for additional hours. Litigation and other matters traditionally referred to outside counsel are billed at the standard hourly rate less 15%. The City Attorney maintains office hours on days when city hall is open for business. A chart showing the fees billed to the City from May, 1997 through February, 1998 is attached as Exhibit H. For City Attorney services under the retainer for that 10 month period, the City has been billed a total of \$226,485 for legal fees and \$3,210 for costs, for a total of \$229,695. This includes the

services of the City Attorney and other attorneys who provide assistance to the Department on general matters, including some land use and other work previously handled by Ann Higginbotham. This averages out to approximately \$22,969 per month, and is annualized at \$275,628. In comparison, the salary and benefits of the City Attorney as an employee would be \$158,536, plus approximately 1/2 of the salary attributable to Ms. Higginbotham (in-house staff is also handling a portion of the land use work), \$61,939, would bring the annualized amount to approximately \$220,475. (See Exhibit H)

In addition, since the departure of Ted Reynolds in August, 1997, RW&G has provided legal services to the CDC and the Housing Department. Those services are billed as traditional city attorney services. A partner at RW&G maintains office hours in city hall two days per week and is available other times by telephone to provide these services. Also, other lawyers provide additional assistance as needed. The fees and costs billed to the City for these services totals \$64,279, which averages out to \$10,713 per month (6 month period), and is annualized at \$128,558. The salary and benefits attributable to Ted Reynolds, as an Assistant City Attorney would be \$123,879.

Further, since the departure of Scott Rasmussen, in January, 1998, RW&G has provided legal services to the Water & Power Department. In-house lawyers have also absorbed some of the work previously handled by Mr. Rasmussen, primarily in the areas of contracts, public records requests and a small amount of litigation. The total billed by RW&G for Water & Power Department fees and costs through February, 1998, is \$22,725. Using January and February, 1998 as a base, the amount would average out to \$11,275 per month, annualized at \$135,300. The salary and benefits attributable to Mr. Rasmussen, as an Assistant City Attorney would be \$123,879.

The other major item billed to the City by RW&G has been for telecommunications services, traditionally referred to outside counsel for handling, and is part of the outside legal budget line item. The total billed since May, 1997 on this matter is \$29,335. As discussed in Exhibit A at pages 10-11, it appears that the City has previously utilized firms located in Washington, D.C., which in view of the long distance relationship, would have resulted in higher costs and less convenience to the City. Moreover, utilizing RW&G, the City has received high quality legal advice from a partner with significant expertise in this field of law.

#### •Personnel Costs

The personnel costs for Option 2 would be approximately \$1,155,484, based on salary adjustments and reduction of one secretarial position. The Water & Power and Development department budgets would not have any "personnel costs" for Assistant City Attorneys. Rather those departments would be charged for legal services rendered by RW&G lawyers. Based on the past months, costs for lawyers from RW&G would be approximately \$128,000 for the Development Department and less than \$135,000 for the Water & Power Department. If it is determined that it would be more efficient to hire one or more employees to service those departments, the personnel costs would be \$123,879 for each Assistant City Attorney.

•Services & Supplies

The costs for services and supplies for Option 2 would be approximately \$406,200, based on expected needs for the Department and including an estimate of \$275,000 for the City Attorney contract and additional services provided by lawyers with specific expertise at RW&G.

•Outside Legal

In view of the pending outside counsel matters and anticipated legal fees on those matters, it is expected that the costs for outside legal services from the City Attorney's budget would be approximately \$1,100,000. This takes into account that some matters will of necessity be referred to other law firms, however, some cost savings should be realized by using RW&G on some outside legal matters in view of the contract terms and discounts reflected in RW&G's bills to the City.

•Summary of Annual Costs Under Option 2

--City Attorney Department		Costs to Other Departments	
Personnel Costs	\$1,155,484		
Services & Supplies	406,200	+	\$263,000 (approx)
Outside Legal	<u>1,100,000</u>		
Total	\$2,661,684		

**Option 3 - In-House City Attorney with Reduced Staff**

This option involves hiring a City Attorney who is a City employee with a small staff of city employees, and contracting out a vast majority of the City's legal services. Some pros and cons of this option are discussed in Exhibit A, pages 12-13.

**Costs**

•Personnel Costs

Personnel costs for this option include the City Attorney, whose budgeted salary (\$131,435) and benefits (\$27,101) total approximately \$158,536 annually. Personnel costs would also likely include support staff of an administrative legal secretary, at a minimum, which, for salary and other City expenses, would total approximately \$63,215. Depending on the goals of the City Attorney, it could also include an assistant or deputy city attorney, the personnel costs for which would total approximately \$108,000 to \$123,879. Accordingly, the personnel costs for Option 3 would likely be in the \$345,000 range. The City should also consider the possibility of making severance payments to existing employees.

•Services & Supplies

The costs for services and supplies would probably be reduced when compared to Options 1 or 2, at least initially, in areas such as professional dues, education, mileage, etc., due to the reduced number of employees. However, the costs for reference and other materials and supplies probably would not be decreased significantly, if at all and would be approximately \$50,000. Also, the City's internal service charge (i.e., for structural maintenance, housekeeping, etc.) Would be approximately \$88,000. Accordingly, it would be reasonable to assume that costs for services and supplies would be approximately \$138,000.

•Outside Legal

The costs for outside counsel would increase significantly. Given economies of scale, often the more business a law firm anticipates from a client, the lower the rates for provision of services. The outside counsel costs would depend on which and how many law firms are utilized. Further, in view of the small in-house staff, the City Attorney would likely need to refer to outside counsel more frequently than under Options 1,2, or 4.

Assuming the City Attorney handled mostly non-litigation matters and another attorney in the office handled a mixture of litigation and non-litigation, it would be reasonable to conclude that outside lawyers would bill in the range of 460 hours per month on litigation matters that have traditionally been handled in-house. Using an average rate of \$175 per hour, the amount would be \$80,500 per month, for a total of approximately \$966,000 per year. For non-litigation matters that were traditionally handled in-house, outside lawyers would probably bill in the range of 280 hours per month. Using an average of \$150 per hour, the amount would be \$42,000 per month, and \$504,000 per year. The costs for outside legal services traditionally referred outside, approximately \$1.3 million, would be added to that amount.

Also, the Development and Water & Power Departments would be charged approximately the combined amount of \$36,000 per month for 240 hours per month at \$150 per hour. This amounts to \$432,000 for the year for non-litigation matters of the type currently handled in-house.

•Summary of Annual Costs Under Option 3

--City Attorney Department Costs		Costs to Other Departments	
Personnel Costs	\$ 345,000		
Services & Supplies	138,000		
Outside (usu. in-house lit)	966,000		
Outside (usu. in-house non-lit)	504,000	+	\$ 432,000
Outside legal	<u>1,200,000</u>		
Total	\$3,153,000		

## **Option 4 Contract City Attorney and Staff**

This option involves replacing existing in-house staff with a law firm operating pursuant to contract where a partner level person is appointed as the City Attorney and the firm provides most of the back up. The likely scenario for this option is discussed in Exhibit A, at pages 13-14. During the discussion in December, I was asked to report back on this option utilizing costs based on amounts which would be proposed by RW&G.

### **Costs**

#### **•Personnel Costs**

There would be no personnel costs under this option, as the Department would not be staffed by City employees. However, the City should consider the possibility of making one time severance payments to 14 employees in the Department, many of whom have been City employees for many years.

#### **•Services & Supplies**

The costs for services and supplies would be reduced, although there would still be the need for some such costs, including postage, updating reference materials, etc., which would be approximately \$20,000. The City's internal service charge (i.e., for housekeeping, structural maintenance, etc.) would also be included at an estimated amount of \$88,000. The likely cost for services and supplies that would be charged to the Department would be approximately \$108,000.

#### **•Outside Legal**

The costs for outside legal services would increase. As discussed in Exhibit A the City Attorney and at least 2 other experienced lawyers would maintain office hours in city hall during the hours that city hall is open. Other lawyers would provide assistance on a regular basis and as needed, maintaining continuity as much as possible. The firm would provide all clerical and support staff and consistent in-house staffing during all hours that city hall is open.

The costs would include a monthly retainer of \$90,000 for all attorney services customarily provided by the in-house City Attorney's office to the City, excluding litigation. This is annualized at \$1,080,000. This amount would include services provided to all departments, including Water & Power, Development, and other enterprise funds. Interdepartmental transfers would be made to those departments. Accordingly, it is estimated that the City Attorney Department budget would be charged \$830,000 and a combined total of approximately \$250,000 would be charged to Water & Power and Development.

Litigation would be billed in addition to the retainer, at a flat rate of \$185 per hour for partners; \$145 per hour for associates; and \$95 per hour for paralegals. Estimating 460 hours per month billed for litigation services handled by in-house lawyers, assuming approximately one-half performed by



partners and one-half performed by associates, the monthly amount billed would be approximately \$75,900. This amount is annualized at \$910,800.

For litigation traditionally handled by outside counsel, an additional \$1.1 million should be added. This amount is slightly lower than the outside budget under other options, considering that much of the litigation would be handled by the firm using the flat billing rate. The exceptions would be matters handled by other firms in instances of conflicts, lack of expertise or personnel within RW&G.

**•Summary of Annual Costs Under Option 4**

<b>--City Attorney Department Costs</b>		<b>Costs to Other Departments</b>	
Personnel	\$ -0-		
Services & Supplies	108,000		
Retainer	830,000	+	\$ 250,000
Litigation (usu. in-house)	910,000		
Outside Legal	<u>1,100,000</u>		
Total	\$2,948,000		\$3,115,000

**FISCAL SUMMARY:**

**OPTION 1**

--City Attorney Department Costs		Costs to Other Departments
Personnel Costs	\$1,188,380	\$ 247,758 (approx)
Service & Supplies	155,779	
Outside Legal	<u>1,200,000</u>	
Total	\$2,544,159	<b>\$2,791,917</b>

**OPTION 2**

--City Attorney Department Costs		Costs to Other Departments
Personnel Costs	\$1,155,484	
Services & Supplies	406,200	\$ 263,000 (approx)
Outside Legal	<u>1,100,000</u>	
Total	\$2,661,684	<b>\$2,924,684</b>

**OPTION 3**

--City Attorney Department Costs		Costs to Other Departments
Personnel Costs	\$ 345,000	
Services & Supplies	138,000	
Outside (usu. In-house lit)	966,000	
Outside (usu. In-house non-lit)	504,000	\$ 432,000
Outside legal	<u>\$1,200,000</u>	
Total	\$3,153,000	<b>\$3,585,000</b>

**OPTION 4**

--City Attorney Department Costs		Costs to Other Departments
Personnel	\$ -0-	
Services & Supplies	108,000	
Retainer	830,000	\$ 250,000
Litigation (usu. In-house)	910,000	
Outside Legal	<u>1,100,000</u>	
Total	\$2,948,000	<b>\$3,198,000</b>

**CONCLUSION**

No recommendation is made regarding selection of options. However, it is suggested that the City Council consider giving direction regarding whether to extend the current contract for City Attorney services either with an unspecified expiration or with a specific expiration date.

Respectfully submitted,



Michele Beal Bagneris, City Attorney