

CITY OF OAKLAND



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April 11, 2013

HONORABLE MAYOR JEAN QUAN
Oakland, California

Subject: Supplemental Budget Proposal and Narrative

Dear Mayor Quan:

Thank you for meeting with us on Friday, April 5, 2013 regarding our budget proposal for FY2013-2015 which we submitted to the City Administrator on January 31, 2013. You asked that we provide a narrative highlighting (1) our rationale for seeking additional attorneys and support staff; (2) proposals to make City Attorney's and City government more efficient and save City dollars; and (3) phased plan to add attorneys and support staff.

Introduction

The City Attorney serves as legal counsel to the Mayor, City Council, City boards and commissions, and each and every department of the City except departments such as the Port Department for which the Charter identifies separate legal counsel. (City Charter section 401(6).)

The City Attorney does not have discretion to decline to perform duties mandated by the City Charter. The City Charter mandates that the City Attorney (1) advise City officers, boards, commissions and other agencies of the City on legal matters referred to her; (2) provide legal opinions; (3) draft ordinances, resolutions, contracts and other legal documents; (4) defend the City and its officers, boards and commissions in litigation; (5) initiate litigation on behalf of the City; (6) approve all contracts as to form and legality before they are executed. (City Charter section 401(6).)

Although the demand for the above-mandated legal services has increased over the years, over the last decade 33 employees, more than one-third of the Office, have

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been laid off due to budget cuts (19 attorneys and 14 support staff). Eleven attorneys and seven support staff were cut in the last four fiscal years alone. These are actual "bodies" that went out the door, not vacant positions or transfers of employees from the General Purpose Fund ("GPF") to other funds.¹ The City Attorney's Office therefore has been forced to contract out legal services and hire outside attorneys for work that would have been less expensive to do in-house. Outside counsel costs have gone up significantly because of the significant cuts to in-house staff as shown in Exhibit 1.

In FY2010-11 outside counsel costs reached an all-time high of \$6.38 million due to staff cuts and a number of high liability cases. During the current City Attorney's first year in Office (FY1011-12), the Office made major efforts to limit outside counsel costs whenever possible by increasing case loads, carefully managing every outside counsel contract, restructuring the office to use our in-house resources more strategically and establishing a Request for Qualifications protocol for outside counsel to make the hiring process more competitive and more transparent. Due to our efforts outside counsel costs fell sharply in FY2011-12. The one-year reversal in the upward trend is a positive outcome, but given the minimal staff resources in the Office, it will not be possible to sustain in the long run.

During the four-year period of FY2007-08 through FY 2010-11, staff cuts reduced the Office's budget by \$3 million. However, during that same period the cost of outside counsel skyrocketed from \$1.74 million to \$6.38 million – an increase of \$4.64 million. *The City spent much more on outside counsel than it saved by cutting in-house legal staff.*

As we have shown from a cost-benefit standpoint, cutting in-house staff does not save dollars which is the City's goal. Cuts increase the deficit instead of assisting the City in achieving its budget balancing goal. Put another way, adding in-house attorneys will reduce outside counsel expenses providing more money for City's critical programs and services.

¹ In addition to layoffs due to budget cuts, the Council's budgets have moved a number of employees in the City Attorney's Office and other departments out of the GPF and into special funds such as the Self Insurance Liability Fund, the Sewer Fund and the Development Fund.

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Benefits of In-House Staff v. Outside Counsel

Contracting out legal services makes it harder for the Office to build the in-house expertise and institutional knowledge that is essential for any law practice. Retaining and increasing the number of attorneys will help the City build expertise to handle significantly more cases and matters, more effectively and efficiently, and it will save dollars that can be used for other vital services and programs.

The City Attorney's clients benefit substantially when in-house attorneys perform legal work in terms of timing and precision. For these reasons, our Office has consistently requested restoration of staffing levels to maintain high quality legal services and necessary support staff and to garner savings for the City that can be utilized to provide vital services.

As cost trends over the last several years have shown, reducing in-house attorneys does not save money. Instead it increases the budget deficit by requiring greater reliance on more expensive outside counsel.

For example, the Office has been forced to solicit significant outside counsel resources to handle all employment litigation, some police use-of-force cases, and much of the labor and employment advice and arbitrations.

Examples of Savings by Adding Attorneys

The City Administrator requested a GPF cut for "all departments" of 5% for FY2013-14 and an additional 10% for FY2014-15, a total of 15% over the next two years. The Budget Director advised that these targets were provided to all elected offices and all other departments.

A five percent cut equals the cost of an attorney and 10% equals approximately two attorneys (DCAIV level).

For comparison, the annual salary and benefits of a Deputy City Attorney IV is about \$240K. One DCAIV could handle all of the following matters (plus others) that were sent to outside counsel due to layoffs:

1. Don Jeffries – Wrongful Termination
 - Opened 11/10/2010
 - Total outside counsel fees paid to date \$260,377.93
 - This case is set for hearing on motion for summary judgment

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- If the motion is not successful, there will be additional costs of approximately \$250,000 to handle the case through trial

2. Fred Mestas – Writ to rescind discipline

- Opened 4/13/2010
- Total outside counsel fees paid to date \$384,836.32

3. LaRae Brown – Wrongful Termination/Whistleblower

Wrongful Termination

- Opened 4/27/2007
- Closed 8/20/2008
- Total outside counsel fees paid - \$66,457.29
- City prevailed – Court dismissed the case

Whistleblower

- Opened 8/29/2008
- Closed 5/24/2012
- Total outside counsel fees - \$1,217,947.83
- City prevailed at trial

4. Underground Construction – Breach of Contract

- Opened 1/4/2008
- Total outside counsel fees paid to date \$916,289.16
- This case initially was handled by one of our in house attorneys who was laid off
- This case is under submission at the Court of Appeal. Oral arguments were held on March 26, 2013

5. Cheryl Thompson – Wrongful Termination

- Opened 8/18/2002
- Closed 12/1/2011
- Total outside counsel fees paid \$575,360
- Settled before trial

6. Deborah Edgerly – Wrongful Termination

- Opened 8/18/2008
- Total outside counsel fees paid to date \$549,938.16
- City prevailed at trial and on appeal

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7. Jeffrey Baker – Wrongful Termination/ Retaliation

- Opened 3/22/2012
- Total outside counsel fees paid to date \$75,327.59
- This case is proceeding to hearing on motion for summary judgment
- If the motion is not successful, there will be additional costs to handle the case through trial City's costs for outside counsel will exceed \$200,000

8. Joann Conwright - Sexual Harassment, Discrimination, Retaliation

- Opened 4/14/2010
- Total paid to date \$64,059.51
- City prevailed at trial

9. Nellie Jones/Frank Jones – Wrongful Death of Derrick Jones by OPD

- Opened 8/8/2011
- Total outside conflict counsel costs paid to date \$75,954.87 (City had to retain conflict counsel to represent the two officers)
- The City was represented by in-house counsel (Bill Simmons)
- City settled the case for \$225,000

10. La nell Monique Jones – Wrongful Death of Husband, Derrick Jones by OPD

- Opened 9/26/2011
- Total outside conflict counsel fees for trial estimated at \$200,000
- City was represented by in house counsel at trial
- City and officers prevailed at trial. Court dismissed Monell (pattern and practice action) against the City – jury returned a verdict in favor of the two officers

An additional DCAIV transactional/advice attorney could handle significant portion of the following cases below plus other work (e.g. advice and additional arbitrations):

Nossaman – Various Labor, Employment Advice, Arbitrations, PERB Complaints

- Total paid in current FY: \$765,641.04

Phased Budget Proposal

In our January 31, 2013 budget proposal, our Office requested funding for six additional attorneys and five support staff. The cost of these positions totals approximately \$1.97M. The Mayor asked that our Office prepare a phased budget

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proposal providing for the additional positions over time that adds three positions in the first fiscal year. Accordingly, we propose the following:

Proposed New Positions – FY2013-14

Classification	Number of Positions	Annual Salary & Benefits Cost (top step rounded up)	Purpose of Position
DCA IV	1	DCA IV \$242,865	Provide legal services on programs, cases & projects
Special Counsel	1	\$281,140	Provide legal services on the most complex civil municipal law issues the Litigation and Advisory Divisions handle
Legal Administrative Assistant	1	\$111,010	Provide legal secretarial support to current legal staff and additional attorneys
Total	3	\$635,015	

Proposed New Positions – FY2014-15

Classification	Number of Positions	Annual Salary & Benefits Cost (top step rounded up)	Purpose of Position
DCA IV	1	DCA IV \$242,865 each	Provide legal services on programs, cases & projects in the Advisory & Litigation Divisions
DCA III	2	DCA III \$220,290 each	Provide legal services on programs, cases & projects in the Advisory & Litigation Divisions
DCA III Code Enforcement	1	\$220,290 each	Position requested by the Department of Housing & Comm Dev to provide legal services related to Code Enforcement (<u>funding is available</u>)

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Classification	Number of Positions	Annual Salary & Benefits Cost (top step rounded up)	Purpose of Position
Paralegal*	2	\$116,806 each	Provide legal support in litigation, contract review, public records requests and special projects
Legal Administrative Assistant**	1	\$111,010 each	Provide legal secretarial support to current legal staff and additional attorneys
Administrative Assistant II	1	\$94,262 each	Provide administrative support in Operations
Total	8	\$1,342,619	

*Current ratio of Paralegals to attorneys is 6.6:1; additional staff will bring ratio closer to average of 4:1.

**Current ratio of Legal Admin Assistants is 4:1; additional staff will bring ratio closer to median average of 3:1.

GPF Expenditure Reduction

The 2013-15 Budget instructions call for 5% General Purpose Fund (GPF) reduction from the final baseline amount for FY 2013-14 and GPF 10% reduction (total including ongoing reductions from 2013-14) from final baseline amount for FY 2014-15.

The Office of the City Attorney is unique from other City departments as it is mandated by Charter to provide legal services and counsel to the City of Oakland, its employees, officers, agencies, boards and commissions. Its primary cost is staff. Any reduction in the GPF automatically impacts the ability to maintain staff and increases the need for outside counsel. Further, based on the nature of the services provided, it is impossible to determine what the workload will be.

In past budget discussions the City Attorney's Office has presented budget balancing proposals that would reduce outside counsel costs by adding back staff lost to budget reductions and layoffs. We still take that position and propose that the above staffing restoration/hiring plan be approved. The salaries represent top step for the classification plus fringe benefits as provided in AI 1303 (7/1/12). Given this information, the cost to fill these positions is approximately \$1.97M. The cost for at least one of the DCA III positions to provide legal services related to code enforcement with the Department of Housing and Community Development will be significantly covered by the department. The exact amount has not yet been determined.

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Savings to the GPF would be realized immediately based on reduction of costs for outside counsel and would increase over the years as the in-house attorneys are assigned additional matters at a fixed salary and develop institutional expertise that will make them better prepared to handle a wider range of work.

Although these savings would initially be in the liability fund (1100), the liability fund is a sub-fund of the GPF. The general fund payment required to fund the liability fund is reduced still resulting in savings.

Strategies to Provide Savings to City

You asked us to provide strategies to save City dollars that our Office can implement or assist the City in achieving as well as strategies that may need to be implemented by the City Administrator/Mayor. We provide these proposals below:

1. Restoring and Maintaining Sufficient In-House Staff

The Office of the City Attorney is committed to doing its part to implement long-term solutions to balance revenues and expenditures. This can be accomplished by restoring legal and support staff that have been lost due to budget cuts over the years. The restoration of in house staff will save dollars that this Office has been forced to spend on outside counsel, enhance the City's in-house team by building and maintaining expertise and institutional knowledge to provide more efficient and effective representation of clients; and importantly, restoring in house staff will increase the dollars available to the City for vital programs and services by reducing outside counsel costs.

2. Risk Management

This Office has urged and strongly advocated that the City hire a Risk Manager and establish a risk management team including the City Attorney, City Administrator, and key department heads and officials. The City's Risk Managers have been essentially insurance and workers compensation insurance managers. The City has not had an individual or a dedicated committee that focuses on how the City can reduce its risks and thereby begin to lower liability exposure.

3. In-House Training

Ongoing and targeted training of staff is essential to assure that staff knows the law, City policies, procedures and resources, and that this information is refreshed on a periodic basis. Our Office can provide some of the key training and already does provide such training on occasion. However, we need additional staff to formulate a

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regular, city-wide program. In addition, training on issues/matters/procedures/policies should be done on a regular basis by employees in the City Administrator's purview.

4. Protocols/Procedures to Preserve Key Documents and Institutional Memory

Establishment of protocols/procedures to assure continuity and retention of institutional knowledge as staff turns over. For years we have advocated for a requirement that a copy of final, executed contracts be provided to and housed in the City Clerk's Office. The City sometimes has to secure contracts or important letters or other documents from opposing counsel, developers or contractors. In addition, important laws/procedures/policies need to be transferred to new staff as staff retires. This Office also has proposed a records retention policy with respect to documents and emails, etc. These proposals did not get out of the Rules Committee.

5. Project Managers

This Office has advocated strongly for project managers for significant projects that the City undertakes. The City sometimes has no one serving in this capacity who has sufficient time, or appropriate expertise to guide, manage and make critical decisions. On occasion outside counsel or in house counsel have become de facto project managers. The establishment of project managers for major projects saves dollars.

6. Coordination and Collaboration with Other Public Entities

Coordination and collaboration with other cities, counties and public entities can save significant dollars and maximize limited resources. Our Office has an arrangement with the San Francisco City Attorney's Office under which we each handle the other jurisdiction's matters when there is a conflict of interest. This has saved substantial out of pocket resources. The current City Attorney hopes to expand these agreements with other jurisdictions and to explore other means to collaborate and save dollars. There is extraordinary expertise in the public sector that can produce savings.

Another arena of potential savings is setting up joint facilities for various public entities such as teen centers, senior centers, recreation facilities, libraries, etc. To save dollars city and county and perhaps other entities can share facilities and programs/services to avoid duplication and maximize resources. Our Office discussed this with the superintendent of the Oakland Unified School District in 2012 and the District expressed interest.

Above are a few strategies that we have identified and in some cases advocated for over the years. In the short time available to prepare this narrative, we have provided some input. We would be delighted to work with you and the City

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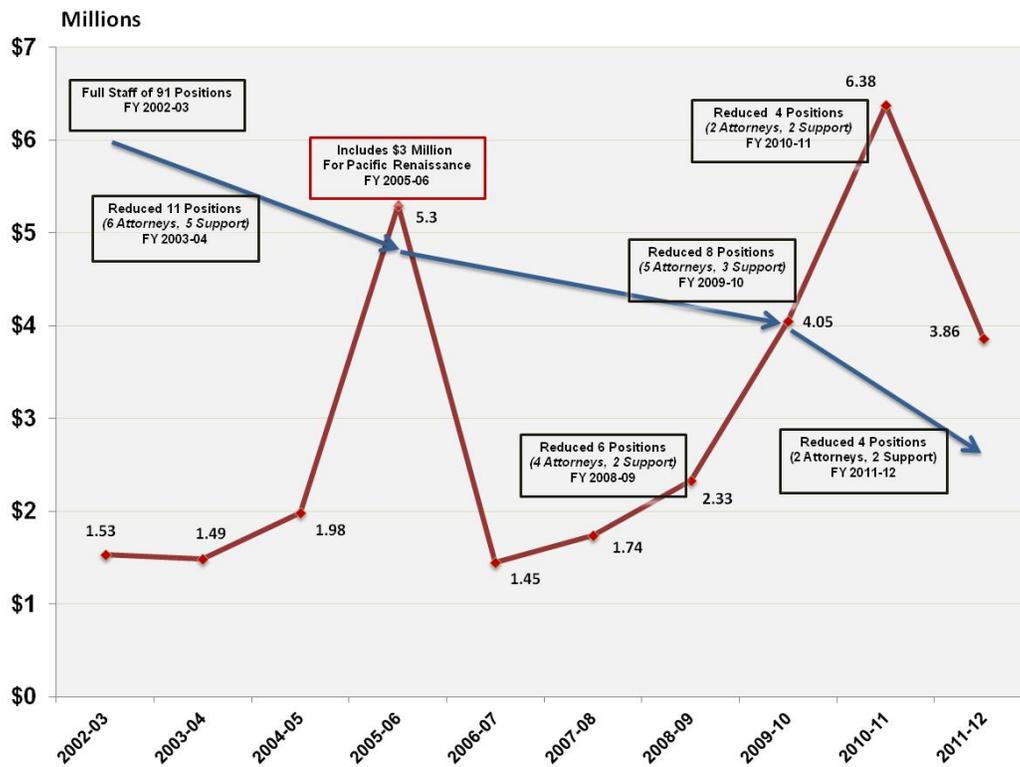
Administrator on these and other matters in the future. It is exciting and in the City's best interest to maximize every dollar and save dollars whenever possible.

Very truly yours,



BARBARA J. PARKER
City Attorney

Exhibit 1:



Impact of OCA Staffing Reductions on Outside Counsel Costs