Innovative Approaches to City Attorney-Client Relationships: Fees, Services and Communication

Wednesday, May 8, 2013 Pre-Conference Session; 10:30 – 11:45 a.m.

Molly S. Stump, City Attorney, Palo Alto
Eric S. Vail, City Attorney, Hemet and Temple City
Innovative Approaches to City Attorney – Client Relationships: Fees, Services & Communications

Presented at the League of California Cities 2013 City Attorneys Spring Conference Meritage Hotel, Napa, California May 8, 2013

Presenters:

Molly Stump
City Attorney, City of Palo Alto
250 Hamilton Ave,
Palo Alto, CA 94301
D: 650.329.2171
E: molly.stump@cityofpaloalto.org

Eric S. Vail
City Attorney, Cities of Hemet & Temple City
Chair of the Public Law Practice Group
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953
E: evail@bwslaw.com
INTRODUCTION

The past six years have proven to be extremely challenging for California cities. A poor economy has driven property values down and unemployment up, resulting in municipal tax and fee revenue shrinking precipitously. At the same time municipal labor, retirement, health insurance and operating costs have continued to rise. And the need for city services has never been greater.

Different cities find themselves in very different situations. In many cities, a proliferation of foreclosures and property related crimes have created a growing sense of unease and fear. Labor negotiations and political contests have become increasingly heated. Cities continue to scramble following the State’s dismantling of redevelopment. All of this has germinated a climate of political divisiveness, recrimination, mistrust and in the worst cases social upheaval. A handful of cities have even suffered either ethical or financial suicide, or both.

Other cities have largely escaped the worst of the downturn. Through a combination of good fortune and early action to reduce costs, these cities weathered the down years and budgets are now returning to more normal cycles. Employment is recovering, housing markets are rebounding and tax revenues are beginning to rise. In these cities, however, councils face high and rising citizen expectations for local government services. The public remains impatient with high labor costs. Forecasts of sharply rising retirement and health costs continue to cloud long-term budgets projections.

Throughout the state, at a time when cities find themselves most in need of quality legal counsel, they are struggling to pay for our services. Too often cities are having to prioritize services they can fund. No city attorney ever wants their budget weighed relative to the need for police officers or fire fighters, and all too often the public views it in just those zero sum terms. Such is the environment in which city attorneys of today must operate.

The purpose of this paper is to explore situations in which city attorneys have employed innovation, efficiency, communication, and flexibility to navigate these challenges. Two case studies are presented, one featuring an in-house City Attorney’s office, and the other a contract City Attorney’s office. In both instances, the attorneys were required to employ different means of adapting to changing circumstances while continuing to provide quality legal services.

The first case study “Redemption Song (Hemet 2007-2012)” explores one contract city attorney’s journey of trial and error and redemption in the face of financial and political upheaval.
The second case study “The Leading Edge of the New Economy (Palo Alto 2008-2012)” explores an in-house City Attorney’s attempts to use multiple tools to meet high and increasing demands for legal services without adding resources.

1.0 Case Study: Redemption Song (Hemet 2007 – 2012)

1.1 Background

Situated in a picturesque valley within southwest Riverside County, the City of Hemet has been home to agriculture, business, and families since 1910. Beginning in the late 1960’s and continuing through today, Hemet has also attracted a flourishing senior community. By early 2007, the City of Hemet was growing rapidly but still offered good schools, low crime and opportunity. It became a favored destination for “drive till you qualify” commuters looking to stretch their earnings into home ownership. The City provided full services, including police, fire, water, and refuse and had its own new library and abundant parks. At the height of residential development, the City’s population had reached just over 80,000 people, the City employed 420 fulltime employees with a General Fund Budget of $42 million and a total Budget of $82.4 million.

Unfortunately, underlying this seemingly tranquil exterior lay structural concerns that would be laid bare in the years of the Great Recession. The City over relied upon enterprise funds to support its general fund. It had been unsuccessful in obtaining voter approval for increasing assessments to match actual costs in its numerous Pre-Prop 218 districts. Instead, it was subsidizing them out of its general fund. These misallocation issues also hindered the City from completing a comprehensive user fee study to ensure it was covering its actual costs with its fees. Hemet also had brewing labor issues. As a full service City, it had eight different recognized bargaining groups and one “informal” employee group. Although Hemet had traditionally paid lower employee salaries, it had offered generous employee benefit packages as a trade-off. This served the City well when the cost of health insurance, retirement packages, and leave accrual were relatively low, but the City had never begun to transition itself toward a more “salary-centric” model even when confronted with tremendous cost increases. The bargaining units were, understandably, protective of their benefits.

The trouble started FY 07/08 and continued unabated thereafter. New management was required to tackle the Prop 218 allocation issues at the same time that tax and fee revenues were declining precipitously. The City went from year on year surpluses to serial deficits. Reorganization, elimination of vacant positions, and early retirements were not sufficient to keep pace with declining revenues causing the City to go through several rounds of lay-offs (including police officers and fire fighters), salary and benefit cuts, and service reductions. The financial decline happened with such rapidity and was so prolonged that the City could not get ahead of it and was forced to make deeper cuts and reductions year after year just to play catch up. This in turn lead to deterioration of morale, confusion, and mistrust among City officers and employees and the community. Labor negotiations became unusually contentious causing the City to come to the brink of impasse with several of its unions and actually imposing deals in
a few instances. Continuity of management was also a critical problem with Hemet having six (6) different City Managers, three of whom were interims, and three different iterations of its City Council, between 2006 and 2012. By the end of FY 10/11, the City had been crippled mentally and financially. At the low point in 2011, City hall was only operating four days a week and the Library only three. Over the course of four years the City had reduced its full time employees by more than half -- 222 positions. The General Fund Budget had shrunk by nearly $10,000,000 over five fiscal years and the City was left with a General Fund reserve of only $165,000.

It was within this context that costs for legal services became first a fiscal concern, and then a political concern. The firm of Burke, Williams & Sorensen, LLP has served as the contract city attorney for Hemet since the summer of 1998. In 2005, Eric Vail transitioned into the position of City Attorney which was formerly held by his partner Julie H. Biggs. The firm and both City Attorneys enjoyed the support of the Council and a strong relationship with City management. During the development boom years, costs for all legal services (general, development services, litigation, personnel, labor, etc.) averaged about $1.35M per year, but reached $1.6M by fiscal year 06/07, due largely to the volume of development and litigation work. These costs, however, were not viewed as a critical concern even though cost consciousness was always stressed.

As the City’s financial condition deteriorated into 2008, legal services became a critical and politically charged issue. In the November 2008 election, the platform of two candidates included going out for RFP to replace the City Attorney. This was fueled by a spike in attorney’s costs of $600,000 over the previous year’s budget and the City Manager’s separation from the City, which the community wrongly viewed as the result of some skullduggery. The spike in costs related to the then City Manager’s effort, backed by the Council, to effect a complete reorganization of the City, complete new personnel rules and policies, an FLSA audit of each department, an early retirement program, realignment of enterprise funds, and litigation challenging the rights of retirees to certain medical benefits. The firm played a central role in each of those projects, as well as the resulting discussions with the bargaining units.

The fundamental problem was that the City’s poor financial condition required it to cut “essential services” to save money to address its structural deficit, yet at the same time it was spending demonstrably more money for City Attorney services. Residents felt their services going down, but saw that the City Attorney bills were going up. Frankly, it probably did not matter to community members that the six new City Managers relied heavily upon the City Attorney’s Office for historical knowledge, to fill the experience and manpower gaps caused by lay-offs, and to handle increasingly complex organizational, labor, and litigation matters. The 2008 comments of one public speaker summed up the mood elegantly: “I would rather you close down the City Attorney’s Office than lay-off police officers.”

---

1 Total fulltime employees in FY 2006-2007 where 420. By 2011, fulltime employees were down to 198.
Given this widely held view, the new Council seated in late 2008 could not help but pick up the chant and in early 2009 they voted to issue an RFP for City Attorney services. Mr. Vail and Burke, Williams & Sorensen, LLP were ultimately successful in retaining the City Attorney contract and successfully rebuilt a relationship of trust with the Council. However, the path to success did not begin with the RFP process; rather it commenced even before the fiscal crisis started to unfold. The evolving situation gave rise to several critical problems that we determined had to be confronted directly, but non-confrontationally. We employed a multi-faceted approach to address problems and because most problems were interrelated, our efforts had to be part of an integrated strategy, not just ad hoc responses. However, as the situation changed, we also had to reprioritize, shift direction, and modify our approach. We made mistakes along the way and on occasion we resorted to trial and error to determine the path that would work. What we clearly did right was refuse to throw in the towel.

For purposes of this paper, we have selected elements of the strategy we pursued for ease of illustration. Below we present the problem we identified and our response and any adaptation to changing circumstances.

1.2 Problem & Responses

1.2.1. Real Client Feedback & Trust

   a. Issue: Client Discomfort with Critical Feedback.

   In order to function optimally, City Attorney/Client relationships require open communication and trust. At the first signs of fiscal deterioration, we decided to test whether we were getting real feedback from the client. Having enjoyed a long and amicable relationship with the City, we were concerned that some Councilmembers might be uncomfortable telling us they had concerns or that there were significant problems.


   In early 2007, we set the stage by casually, but intentionally, cultivating an environment friendly to constructive criticism. In conversations with Council and management, we mentioned that as service providers critical feedback was not only welcome but was an essential element of our business. It was pointed out that our business model embraced change and new ideas. We stressed that we had “thick skin” and that we did not take offense at critical feedback. At every appropriate opportunity, we softly repeated this theme in individual conversations and group meetings. After about three months, we began to actively elicit critical feedback about our service how we could improve it.

   Another key decision we made was to “own” the increase in fees by not seeking to blame the increase on external circumstances. This is not to say that we refused to explain the increase by reference to external circumstances – we did – but
we also decided to acknowledge that fees were “too high” and that we would take responsibility for methods to bring fees back in line with budget reality. This was an absolutely critical feature in establishing communication and trust because it put us into the role as a team member who was acknowledging the problem and trying to solve it, rather than simply feeding off of the problem.

In late 2007, the Council decided to evaluate the City Manager using a third party facilitator. We recommended that the Council evaluate the City Attorney concurrently. The facilitator interviewed the City Attorney and worked with us to define areas that we and the facilitator agreed we needed feedback. The Council was given an evaluation form integrating questions to elicit quality feedback both positive and negative. We made sure to elicit “need to improve” or “would like more of this done" comments as well as what we were doing right. Finally, the facilitator presided over a guided closed session evaluation with Council and the City Attorney where comments and ideas were discussed. We kept a positive and open attitude throughout the evaluation. While verifying the strong support and appreciation for our work we learned that legal costs were a much larger issue than had previously been conveyed, and that the Council had several misconceptions about where our work came from and what factors contributed to higher legal expenses. The lesson was that routine business communications and even our effort to express a willingness to accept criticism and work on issues, had not been effective enough. We took the comments and turned them into an improvement plan highlighting three areas: (i) Budget involvement and tracking; (ii) reduction of staff reliance on the City Attorney’s Office; and (iii) minimize “optional” projects. Our responses to these issues are described in more detail in the sections below.

c. Problem: Client Trust Issues.

The election of November 2008 brought three new Councilmembers who criticized the City Attorney’s Office for overly high fees and “mishandling” the previous City Manager’s separation from the City. At one point, we were accused of cutting the City Manager a “sweet deal” as quid pro quo for continued high legal fees, which of course was not true. This lack of trust and confidence was a radical departure from what we enjoyed with prior Councils. Reestablishing trust was imperative or we would not survive an RFP process.

---

3 In years following, we developed a more detailed City Attorney evaluation form intended to focus on issues unique to the City Attorney -- Client relationship. Often consultants will default to using a standard staff or City Manager evaluation form which is not adequate for or relevant to the City Attorney relationship. The form we prepared was based on review of over twenty-five different city attorney and attorney evaluation forms as well as our own insights. We offer it for you review and use. See attached.
d. \textit{Response: Establishing a New Trust Relationship.}

Demonstrative expressions of our personal ethics and integrity, both of which had been impugned, were the first priority. Fortunately, this mistrust was borne of misconceptions and not based on real legal missteps. We were presented with several opportunities to prove ourselves. Two examples illustrate this point.

A new Councilmember was offered a “consulting contract” by one of the City departments, without consultation with our office. The Councilmember was keen to take the contract and had “called the FPPC helpline” and was allegedly told “there was no conflict of interest.” The City Attorney stepped in to avoid any violation of Gov’t Code Gov’t Code § 53227(a).\footnote{4} Here the “consulting contract” would not have protected the Councilmember from being deemed an employee or from the prohibitions of Gov’t Code § 53227(a). We had several tense meetings with the Councilmember in which we counseled against the contract stressing the resulting consequences and perception problems. Ultimately, we persuaded the Councilmember of our view. Although not happy with the result, the Councilmember did appreciate the fact that we were willing to protect the City against even a Council request, even at the cost of alienating the Councilmember.

In perhaps the biggest test of our personal integrity, the City Attorney was directly accused in closed session by a Councilmember of quid pro quo conduct (described above). On the spot, the City Attorney offered to resign effective immediately if the Council truly held that view, as we could not operate without the respect and trust of the Council. Fortunately, the Council did not hold this view and we learned we had more support amongst the Council than we had thought. Whew!

Revamping our concept to encourage Council to express critical feedback, we began engaging in one-on-one meetings with the Councilmembers in which we encouraged a no-holds barred dialogue. We encouraged them to pose any question and we would respond directly, provide data to support our position, or acknowledge the point and come up with a plan to improve or change. As a service professional being a whole person in the eyes of your Client can also help, so the City Attorney also engaged in social or casual conversations whenever possible, in the hopes of rounding out the Council’s perception of him so that he was not simply seen as a contract attorney, but as a real feeling, caring person. The phrase “it’s just business” is cliché, but it is also dangerous to the service professional whose persona is inseparable from the service they provide. You cannot just be your business persona.

\footnote{4 Government Code section 53227(a) provides: “An employee of a local agency may not be sworn into office as an elected or appointed member of the legislative body of that local agency unless he or she resigns as an employee. If the employee does not resign, the employment shall automatically terminate upon his or her being sworn into office.”}
Ultimately, we realized that most of the Council felt they had no control over legal services or the cost and, based on this, characterized those costs as being “out of control.” We set about finding a mechanism to provide the desired feel of control. The solution was actually provided by one of the new Councilmembers who suggested the creation of a two-member Council Ad-Hoc committee. We jumped on this and suggested that the committee meet regularly with the City Attorney, City Manager and Finance Director to discuss pending and anticipated work, progress in implementing cost control measures, and meeting budget milestones.

We embraced the meetings as a real opportunity to work constructively with members of the Council. The process became invaluable in expanding the Councilmembers’ knowledge of our work and the costs inherent in legal services, but also gave them the needed element of control. Over time, the members became convinced that we were earnestly trying to manage costs, that decisions the Council made influenced how much work we needed to perform, and that some items, like the filing of lawsuits, were beyond our control. The committee also spent a lot of time discussing what information the Council needed to see on a regular basis and revising the City Attorney Budget to Actual Report, which is discussed below.

1.2.2. Informational Misconceptions

a. Problem: Council and Community Misconceptions.

Throughout our experience in Hemet, we experienced misconceptions about the nature and necessity of the work performed by the City Attorney. The major misconceptions appeared to be:

- No one at the City reviewed our bills, and that consequently no City Officer managed – restrained – the work of the City Attorney’s Office.
- The City Attorney’s Office self-initiated or self-generated its own work.
- Junior City staff members had a direct line to the City Attorney and were making decisions to assign lengthy, and unnecessary, projects.
- Work that could be done by City staff was instead being referred to the City Attorney’s Office because staff was “too busy.”
- The City was paying more for legal services than neighboring and “comparable” cities were paying.

The first four misconceptions may sound ridiculous, but they had a real impact on how Council and the community at large viewed the total cost of legal services. To most, the reason legal costs were so high was due to “mismanagement” of
the contract by the City. Unfortunately, this blinded them to the real reasons for the mounting costs, which included numerous litigation matters, the personnel work occasioned by a full service city, the cost of dealing with nine separate bargaining groups, as well as legal issues related to multiple reorganizations and complex development issues, not to mention start-stop-start again projects.

b. Response: Clarity, Communication & Engagement.

In order to dispel the negative myths about the nature of our work and its relative cost, we took the following measures. First, we gathered data about our services to Hemet, including total costs, the allocation of those costs and corresponding attorney hours by department or by issue. Since 2006, we had been improving our data collection and sorting abilities. We created billing numbers corresponding with City budget codes and used searchable identifiers (e.g. [Personnel Grievance] or [SEIU Negotiations]) in our billing entries to be able to sort data in different ways. For example, we could track the cost of all labor negotiations per bargaining group per year, as well as all legal services provided to the City Council or individual development projects.

The data was used to provide periodic reports to the Council and management staff. We varied the content and frequency of the reports over time in reaction to Council interest, input from the Council Ad-Hoc and management staff, and depending on the circumstances. The basic reports we provided were:

- **Litigation Status Report.** This report included a brief description of all pending litigation by type, the current status, as well as costs and fees incurred to date. The report was provided monthly. We began providing this report in 2005, as a quick reference for Council. The report does not take the place of periodic in-depth case reporting by the responsible litigator. A copy is attached.

- **Annual City Attorney Report.** We began providing this report in 2006 to highlight performance during the year, major projects undertaken, total legal service costs, and costs allocated by type (i.e. police, development services, etc.)

- **Budget to Actual Report.** In early 2008, we began providing a monthly report comparing fees billed for each month to the total legal services budget pro rated for each month with the corresponding overage or underage. The report also offered hours billed for each month by category, and a projection on what total fees would be by year end. This report became the focus of the City Attorney Ad-Hoc Committee, and its content was changed numerous times to try and depict graphically what the Council wanted to see. Eventually, the Annual City Attorney Report was incorporated into this report, and instead of monthly, it was provided quarterly. A copy is attached.
To augment the reports, we tried to schedule meetings with Councilmembers to review the reports and answer questions. This worked through perhaps the second round of reports, at which point interest waned on the Council.

In January of 2009, we prepared a major presentation for the City Council delivered in open session at a regular Council meeting. The presentation combined a PowerPoint with a written report. We used the opportunity to demythologize our practice and put the aggregate costs into context, and also to present the human side of our office. Information we provided included:

- Table of Organization of the 15 core attorneys providing services. Biographical statements of each were included in the written report.
- Major accomplishments achieved for the City, and any revenue or costs savings yielded for the City.
- Activities undertaken on behalf of and services provided to the City.
- Systems in place for the City to review legal bills and types of adjustments and corrections made.
- Systems in place to receive work, and the cross checks we used to confirm work with the Council and City Manager.
- Bar chart showing total legal service costs covering six fiscal years. We used this information to explain the trends and the reason for peaks and valleys by tying them to specific large projects, labor negotiations, or high development activity. Importantly, we showed that per capita costs were between $12.25 and $26.25 per resident per year.
- Provided information on cost cutting and efficiency measures undertaken since 07/08.
- We showed a definite downward trend in total costs beginning in 08/09 and projected to continue for 09/10. Included were actions taken and recommended to help reduce legal costs.
- We also broke down total costs and attorney hours per year into “cost centers” (e.g. development services, labor, personnel, general, etc.), using colored pie charts so the Council could see where the cost centers were and to distinguish routine recurring costs from the costs of major projects, periodic labor issues, and litigation.
• We provided a history of litigation cases and costs demonstrating the heavy litigation load carried by the City (between 15 and 25 active cases annually) but that our average cost per case was only $25,500.

Finally, in the Spring of 2010, we decided to speak to key members of the community, both in the legal profession and business community, and also key management personnel at the City, all of whom we knew provided advice and shared opinions with Councilmembers. The point was not to advocate any position with these individuals, rather our intent was to elicit feedback on how the City Attorney’s Office was perceived by this group. We discovered that there were several misconceptions and rumors prevalent in the community that were shaping our Councilmembers understanding of how our office functioned and why costs were what they were. These are discussed in the following section.

1.2.3. Faulty Budgeting Process.

a. Problem: No-Involvement In Budget Process.

In 2005, we inquired about becoming more involved in the process to establish the budget for legal services. The message we received was “you worry about the service and we will worry about the budget.” So we concentrated on service. This was a huge error. We should have engaged on the budget more insistently. We found out that the legal services budget was being created by simply taking the prior years budget and adding 1% to 3% depending on the amount of the overall budget, regardless of anticipated projects, existing case loads, labor negotiations and so on. Unfortunately for us, since the City Attorney budgets were not based on real data, that tended to exaggerate cost overruns.

b. Response: Engagement.

The introduction of a new Finance Director and City Manager in late 2007 presented an opportunity for us to be involved in the budget and we jumped at the chance. We had been tracking data for two years and were able to make better projections on estimated legal needs. See Monitoring, Reporting & Managing City Attorney Costs in Challenging Times, Eric S. Vail (2011 League of California Cities, City Attorneys’ Department Spring Conference).

http://www.cacities.org/UploadedFiles/LeagueInternet/e4/e4c90f27-e6ed-4a9e-96e2-5cda5a302c4f.pdf. In general terms, we implemented the following:

- Changed billing codes to match City’s General Fund and Special Fund codes to ease allocation by City and tracking by us.

- Reviewed data from past years to determine average per case and per project costs, determined average negotiation costs per collective bargaining unit and personnel matter, and average number of hours spent on general projects.
- Projected number of cases, projects, negotiations, personnel matters, and anticipated workload.

- Adjusted the number based on decreased development activity, increased litigiousness, and increased tension with bargaining groups.

The 2007/2008 budget was the first year we had significant input. Unfortunately, the new City Manager – to his credit – decided several months into the fiscal year that the City needed to tackle a whole slough of issues: completely revise the City’s personnel rules and policies; perform a FLSA audit of each of the City’s eleven (11) departments; and do a comprehensive study of retiree medical benefit programs at the City and the policies to implement them (which were believed to be providing benefits beyond program requirements). Our firm was selected to complete all of this work, with Council approval. This caused the 2007/2008 budget to spike and to overshoot the budget by nearly 50%. As the work was completed, the City Manager and City parted way under tense circumstances. This focused extreme scrutiny on the City Attorney budget, such that it became an election issue in late 2008.

However, the effort was not wasted. In subsequent years, we were able to keep legal expenses to within the budgeted amounts, except for additional projects specifically approved by Council. It also allowed us to work with City management to identify critical services and optional services and to reduce the legal services budget significantly over the next few years. Completion of large projects and implementation of efforts resulted in reduction of the budget from $2.1M in 07/08 to $1.2M in 08/09 ($800K less than the previous FY, and $300K less than the last development year). By 09/10, it was reduced to $1,080,000. Subsequent budgets have remained at $1.1M.

2.2.4. Self Help.


One of the “misconceptions” that actually had a significant basis in reality was the overutilization or mis-utilization of the City Attorney’s Office. As a contract provider paid by the hour, it is often deceptively easy to “over serve” your client. The client asks, you provide, and provide it quickly and superbly. The cycle repeats itself. However, City Attorneys need to ask whether their office “should” do all such tasks or whether there is a more economical means of completing the task. In our case, there was a lot of work that City staff was capable of doing, that was being sent to our office to do. Drafting of basic resolutions, drafting of staff reports, negotiating and drafting simple routine contracts, being involved in numerous policy oriented meetings.


One of the primary budget reduction measures we pursued was what we called “focused utilization.” We performed what we described as “critical functions” (litigation, major transactions, general counsel advice, etc.), “valuable functions” (not
critical but beneficial), and “supplemental functions” (work that could be performed by City staff, but was not). In 2007/2008, we highlighted the over utilization problem with the Council and City Manager, without pointing a finger at City staff. We had developed a large reservoir of department head and staff support and we benefited greatly from their willingness to work with us on this. We approached the issue as “right-sizing” the level of service to the City’s budget. We agreed to focus on critical functions, to present valuable functions as options that could be selected by Council and staff, but to reduce and finally cease supplemental functions.

We gradually educated department heads and managers on what these supplemental functions were, and then trained their staff (at no cost) on how to handle the matters. For example, how to correctly complete our form professional services agreement. We reduced our time billed on each such agreement from 1 to 1.5 hours (depending on the scope of work and changes) to between twelve (12) and twenty-four (24) minutes. This also had the effect of hyper-sensitizing staff to the cost of legal work.

Also, we worked closely with City management, making sure the valuable functions we provided were what the City really needed. A simple example of this was office hours. We had been providing office hours three days per week on average during the peak times. These days were not fully utilized. Also, the more we had a physical presence on site, the more work ended up coming our way. City management worked to consolidate meetings on our office hour days and we worked to be more efficient during our office hours. This all created a natural selection process for work that would have come to the City Attorney’s Office. Over time, supplemental work was weeded out, critical work was prioritized, and department heads made better decisions about what valuable functions they would utilize.

2.2.5 It’s Impossible To Escape the Rate.


All of the efforts discussed above were successful in reducing the total cost of legal services to the City. These were, however, savings yielded by either service reductions or achieving greater efficiency in those services. Unfortunately, given the City’s need for a substantial amount of legal services and the seemingly never-ending downward spiral in revenues, service reductions and higher service efficiencies were not going to create enough savings. The conclusion was inescapable. Rates were going to need to be reduced.

In 2007, our fee structure offered a fixed hourly rate for all services of the City Attorney at $X, the Assistant City Attorney as $X-15; and general services at $X-20. Special services where provided at hourly rates $X-5 for partners and $X-15 for associates. Our contract provided for an automatic CPI increased upon notice to the City Manager. In 2006/2007 fiscal year, the City required 7,000 hours of attorney services. The following year the City utilized 9,000 hours of attorney services. Even after implementing budget projections and focused utilization, we anticipated the City
would continue to need 6,000 hours of attorney services. It became obvious that service reductions and greater efficiency were not going to provide the City with the necessary amount of services at the needed cost.

b. **Response: Proactive Right Pricing.**

Beginning in 2006/2007 we deferred all CPI increases. Although a solid cost containment measure, the City’s subsequent precipitous decline in revenue completely overwhelmed its efficiency. By early 2007, we were internally exploring options to reduce rates or restructure our fees.

In June of 2008, we voluntarily implemented a voluntary rate reduction. We proposed to retain the same fee structure, hoping that the measures above would be adequate to fix the revenue shortfall if given time to take effect. We offered the City Attorney at $X-10, the Assistant City Attorney as $X-25; and general services at $X-25. Special services where provided at hourly rates $X-10 for partners and $X-25 for associates. On average, this was a $10 per hour or 12.5% reduction in all rates, which was more than any bargaining group took in cuts at the time. This put rates back to where they had been in 2001, eliminating 7.5 years of CPI and negotiated increases. Assuming the City's average annual consumption of legal services (approximately 7,000 hours) remained constant, and that the average hourly rate reduction was $15 per hour, this would yield an annual savings of $105,000. Unfortunately, even this significant reduction turned out to be too little under the circumstances.

Concurrent with our voluntary rate reduction, City Attorney rates were becoming a political issue. Ultimately, the political climate and public perception mandated that the City issue a Request for Proposals for legal services. We had three Councilmembers leaning this direction after the election of November 2008. No service provider enjoys an RFP process when you are the one servicing the client. Initially we thought that establishing a relationship with the new Council and educating them about measures we had already taken to reduce costs would address their concerns. Instead, the lack of trust issues we experienced in early 2009 lead us to conclude that to survive as City Attorney we needed to embrace the RFP and demonstrate an eagerness to compete. So the message communicated was that we welcomed the opportunity to prove to the Council that we were the best value.

Throughout the process we were very open with the Council about the revised fee structure we would present in response to the RFP to demonstrate our willingness to assist our long-time client. Our proposal was simple. We knew the City was going to need a tremendous amount of continued legal services, so we assessed our cost structure and offered the client an hourly rate structure at a little over cost. We created an expansive list of general services that we would provide at the discounted flat hourly rate of $X-50. Specialty services would be provided at the discounted flat hourly rate of $X-35. Our categorization of general and special services is attached. This rate structure would remain in place for two fiscal years. Any increase would be tied to a rate comparison study. We also agreed that we would not exceed the approved budget by 10%, without express permission of the Council, and when it
appeared to the City Manager and Ad-Hoc Committee that it was likely the budget would be exceeded, we would prepare and present a budget management and reduction plan.

We were successful in the RFP process, and were unanimously reappointed by the new Council. In the years to come, our initial critics on the Council would become our greatest advocates and two would even express the thought that the RFP process had been a mistake and the same results could have been achieved by working together. However, given the lack of trust and the deteriorating financial condition, we remain convinced that it was the right course for the City. It yielded a better rate structure and ultimately a much more stable relationship.

In the following years, we stayed tight on the budget and declined allowable rate increases for two years. We also began working on various alternative rate structures and service provision models to address continuously changing circumstances. Four years after the RFP, we worked out a new fee structure with the City that included a substantial fixed cost retainer for all general services regardless of the hours required. The new structure was based on the realization that the City was going to continue to require extensive legal services for the years to come. An hourly rate for non-reimbursable legal services that would stair step down as the litigation matter or project increased in fees (e.g. $Y/hr to $75,000; $Y-10/hr to $125,000; and $Y-20 over $175,000). In exchange we would be able to charge a higher rate for special services that were reimbursable to the City (e.g. reimbursement from development fees paid to the City, or reimbursement from grant funds) or where legal costs were absorbed by an enterprise fund (e.g. water or refuse).

The fixed retainer provided the City with cost stability for general services, while centering the risk of loss and opportunity for reward with us. This creates a wonderful incentive to closely manage work and to work very efficiently. The stair stepped rate provided us with a reasonable return on our service, but insured that as a matter became more protracted, the rate would reduce, reducing the relative financial burden of the matter. After a year under this new structure, it appears the structure is working for both parties.

2.0 Case Study: The Leading Edge of the New Economy (Palo Alto)

2.1 Background

Palo Alto is a leading center of commercial innovation that is also a traditional residential suburban community. The city has 65,000 residents and swells to over 120,000 during the day as workers, academics and visitors flood into the city to take advantage of its prime Silicon Valley location. The city boasts a premier research university, a major medical center, and a thriving environment for tech start-ups. The University Avenue Caltrain station is the busiest in the system outside of the San Francisco terminus and downtown commercial rental rates are among the highest in the nation. With no major undeveloped land areas available for commercial or residential development, demand is soaring for increasingly dense infill development. At the same
time, Palo Alto is known for a high-quality of residential living. Citizens enjoy high-quality public schools, safe streets, pedestrian and bike-friendly neighborhoods, and numerous recreational and enrichment activities. Under these circumstances, Palo Alto’s neighborhoods are under growing stress from commercial and infill development.

Palo Alto residents are among the most highly educated in the nation. They are famously engaged in civic and community activities. Interest in government and citizen expectations are extremely high. Four daily newspapers cover the City.

With approximately 1,000 employees, the City of Palo Alto is a full-service city, providing police and fire services, five libraries, extensive parks, open space, science and arts programs and a full suite of public utilities, including water, wastewater, gas, electric, refuse and a dark fiber-optic backbone. The annual general fund budget is $153 million and enterprise budgets are $300 million.

In 2008, Palo Alto, like other jurisdictions, experienced significant declines in most revenue sources. The Council moved swiftly to make structural changes to contain costs. These included eliminating vacant positions, seeking total compensation concessions from employees, adopting lower pension tiers and seeking cost sharing on health benefits. In 2009, the City’s largest employee group launched a brief strike. Relations with public safety unions were also strained as the City moved to repeal binding interest arbitration from the Charter.

By 2012, the situation was somewhat stabilized. The City’ workforce had shrunk from 1123 FTE in 2003 to 1016 FTE in 2012, and real compensation was down slightly. The City continued to balance its annual budgets with ongoing revenues and maintain appropriate reserves. Revenues began to rise modestly. On the negative side, savings achieved through employee concessions were outstripped by rising pension and health care costs. At the same time, citizen demands for increased services were growing. Long-deferred infrastructure projects generated heated calls for the City to respond. Palo Altans loudly rejected attempts to consolidate or reduce traditional public services to cut costs.

This year, the recovery is in full swing. Silicon Valley leads the state and the nation in job growth. City revenues are showing healthy increases. At the same time, demand for City services has soared. Development applications are increasing at a rapid rate and generating acute needs to address parking, traffic mitigations and service demands from residents. Palo Alto’s electric utility will achieve 100% carbon neutrality this year, and ambitious new sustainability goals are on the horizon. Palo Alto is moving towards restoring city operation of the local general aviation airport, building numerous major public works and becoming a leading digital city. With the need to hold labor costs down and retirement and health care costs continuing to rise rapidly, new services and programs will have to be achieved with no new staffing.
2.2 Issues and Responses

2.2.1 Excellent Service for the Council, City Manager and Department Heads

The Palo Alto City Attorney’s Office has 10 in house employees: 6 attorneys, a legal administrator, claims investigator and two secretaries. The Office has an in-house budget of $2.5 million and an outside counsel budget of $.5 million (both exclusive of enterprise, cost-recovered and bond-funded services). The Office has gone through several rounds of downsizing. Both the budget and size of the office are smaller now than ten years ago, though the quantity and pace of the work continues to accelerate.

2.2.2 Issue – Meet Exploding Demand for In-House Services with No Additional Resources

The number of large and complex projects requiring legal services has expanded significantly. In addition, in the modern communication world, our clients expect near-instantaneous round-the-clock responses to their questions and concerns. We are called on to respond to these challenges with high-quality, responsive, customer-service oriented legal services, all without added resources at this time.

2.2.3 Response – Improve Processes, Prioritize, and Leverage Resources

In Palo Alto, we are using a variety of approaches to maximize our effectiveness without adding resources.

a. Design Process Improvements to Streamline Recurring Work

Where possible, we are creating and improving processes to handle routine or recurring work. Like many jurisdictions, we use templates for recurring legal documents that can be filled in or customized to fit particular needs. These include:

- Contract documents, such as RFP’s, short and long Professional Services Contracts, Construction Contract Documents, Purchasing documents, Leases, Loans, etc.
- Resolutions and Ordinances
- CEQA and land use documents
- Public Records responses
- Rate setting notices
- Common personnel documents, such as Skelly notices and investigative reports
We also maintain an area in our data management software for agenda items that recur annually or periodically, such as Mayoral scripts for recurring hearings.

Where possible, we make these templates available to our client departments for their use in preparing draft documents. Some documents are “locked,” with selected areas open for the client to insert their work. We update the templates frequently and hold periodic trainings – from formal training to brown-bag discussions – to refresh the staff and teach new employees how to use the templates.

b. **Turn Non-Legal Tasks Back to Staff**

From time to time, our clients look to the City Attorney’s Office to help them with non-legal tasks, such as drafting staff reports, contract scopes of work, and personnel investigations, or interfacing with the public on standard service issues. Like us, department managers are being asked to do more with a smaller staff, and may have other challenges such as retirements of experienced senior staff. The city attorney’s office may house some of the jurisdiction’s most effective and facile writers, and we tend to be service oriented and reluctant to say “no.” To stay focused on legal work where we can add the most value, we are politely returning non-legal work to the departments with a request that they do an initial draft for our review.

c. **Engage Clients in Prioritizing Their Work**

City departments may have a variety of items they would like to use legal resources on. To manage deadlines and balance competing needs, we try to engage the client in prioritizing their work. This involves frequent short conversations at all levels of the organization, from managers in the operating departments, to the City Manager and the Council.

d. **Use Technology for Flexibility and Planning**

We are upgrading our data management software to reduce paper and the staff time required to manage it. We are investing in mobile device technology so lawyers can work efficiently from any location.

We also are moving towards accounting for time. While there is no reason for an in-house legal department to use the tortuous tenth-of-the-hour reporting standard that forms the basis of private firm hourly billing, it is very useful to track time on a half or quarter hour basis, pegged to department and project, with short general descriptions. The data generated by a time reporting system allows the City Attorney to have intelligent conversations with the Council, the Manager and department heads.
about where legal resources are being expended, where they should be going, and whether needs or usage are increasing or decreasing in various areas.

e. **Keep Focused on Significant Risks, Complex Problems and Big Opportunities**

One of the hazards of the in-house legal department is the possibility of expending most or all of your resources on minor and day-to-day tasks that do not reduce significant financial or policy risks, contribute to solving complex or large-dollar problems, or take advantage of big opportunities that advance the public interest. If you allow it, day-to-day tasks, last minute emergencies, and generalized policy meetings will consume all available resources. We remind ourselves that the City’s lawyers are a high-priced professional resource. The City’s managers are not always incentivized to shape our work appropriately because they are not paying by the hour for our services. It is up to us to focus on the important things that lawyers are uniquely capable of doing for the City, while still providing excellent customer service to our client departments.

I find it helpful to keep a bullet list of my top 5 to 10 worries about my jurisdiction, and a smaller list of 3 to 5 affirmative opportunities that I could initiate to significantly advance the City’s policy goals. I keep these lists at the top of my daily and weekly task list. There are days, and even weeks, when I spend zero time on any of these items. But at least a couple of times a week I review this list to remind me what I should be focusing on.

f. **Leverage Resources**

We take advantage of numerous opportunities to leverage our paid staff with additional resources at little or no cost.

Like many city attorney offices, we run a law student extern program for one or two law students each term. We recently expanded the law student program to include volunteer post-graduate attorneys. Law schools often fund new graduates to work in the public interest until bar results are published, or longer. We also have had good experiences working with volunteer lawyers who have become disillusioned with big-firm private practice and are looking to gain experience in the more rewarding field of municipal law, and with lawyers who are returning to practice after periods of hiatus to raise families or attend to other personal needs.

On the staff side, we have hosted externs from paralegal certification programs who have added value on targeted projects.
Finally, we have engaged in cooperative exchanges with other public law offices. No-fee exchanges with other public law offices can provide skilled representation in the event of conflicts, or where there is a need for specialized expertise not currently available in house.

2.2.4 Outside Counsel – Improving Results, Containing Costs

2.2.4.1 Issue – Achieve More Through Outside Council while Managing Costs

In Palo Alto, the Council holds the City Attorney accountable for all legal work, whether performed in-house or by outside counsel. While budgets are not increasing, expectations of successful outcomes continue to rise.

2.2.4.2 Response – Evolving When and How We Use Outside Counsel

By thinking strategically about when and how to use outside counsel, and by closely managing our engagements, we hope to improve our results while keeping costs down.

a. When – and How – to Use Outside Counsel

Many city attorneys have little discretion whether or when to use outside counsel. Some have little or no budget for outside help and must complete all work with in-house staff. Others have little or no internal capacity in key areas, such as litigation.

In Palo Alto, where we have both an in-house staff and a budget for outside counsel, we are fortunate to be able to think strategically about when and how to use outside counsel for maximum impact. We think of our outside counsel engagements as fitting into several distinct models:

FULL-SERVICE REFERRAL. This is the traditional model of outside service, where outside counsel performs all aspects of a given engagement, subject to oversight by the city attorney. In litigation, outside counsel recommends a strategy, gathers the facts, propounds and responds to discovery, drafts and argues motions, and takes the matter to trial. On advice matters, such as negotiating and drafting complex and specialized financial documents or contracts, outside counsel performs the work subject to strategic guidance from the city attorney. Because hours can be high, rates may be an important factor. At the same time, experienced counsel may work efficiently, helping to keep overall costs down.
CO-COUNSEL. In this model, we are partnering with outside counsel on a matter. In litigation, we may divide briefs or claims, or do initial drafts of briefs that are edited and refined by outside counsel. When we retain outside counsel to conduct an arbitration or other hearing, we may ask our outside counsel to work with one of our in-house lawyers instead of an associate from the private firm. This model keeps our costs down and involves a significant secondary benefit for a small office – training our in-house lawyers. Both rate and expertise are important in selecting appropriate outside counsel for this model of work.

OUTSIDE COUNSEL AS CONSULTANTS. In this model, in house staff is primary. Outside counsel is used as behind-the-scenes consultants on a limited basis. In a litigation matter, for example, in house attorneys will design a strategy and then check in with outside counsel for areas we may have missed. We may prepare a summary judgment outline or fully-drafted brief to outside counsel for consultation and comment. We may ask outside counsel to research and draft a narrow issue. On an advice matter, we will work up the issue and then confer with seasoned experts for suggestions on strategy, timing, etc. In this model, as with the prior one, in house staff benefit from exposure to outside experts. Because the hours are fewer, hourly rate (while always important) may be less critical than specialized expertise and experience.

Assuming you have some choice in the matter, when should you use outside counsel versus handling a matter in house, and which model is most appropriate? There are several considerations.

COST. Legal services are one area where fully-benefited in-house lawyers may provide services at a cost that is lower than outsourcing, though this is not true in all areas. I found it useful to obtain from my finance director the fully-loaded hourly rate of in-house staff, as a guide for making cost comparisons with outside counsel. It is important, however, to consider both hourly rate and efficiency. An in-house lawyer is going to spend many more hours on their first misdemeanor prosecution than an outside lawyer who specializes in that work.

EXPERTISE. In most small and mid-sized cities, in-house staff are legal generalists, or at most specialists in several areas at once. Outside counsel may have a career’s worth of experience in a single complex area. At the same time, in-house staff often have deep knowledge of the city’s business, culture, personnel and goals. Consider what the engagement requires.
CAPACITY. In-house staff may have substantial constraints in capacity. In particular, it can be difficult for in-house staff, who often have daily responsibilities for reviewing contracts, approving staff reports, and responding to other day-to-day client needs, to devote the concentrated time needed for complex projects, including brief-writing or evidentiary hearings.

OTHER GOALS. These may include everything from staff development and training, to the desire for an “outside” opinion, to concerns that the city attorney speak directly on behalf of the city on matters of significant local concern.

In addition, I find it helpful to ask two questions about a legal task: Will the legal task pose a high risk if performed poorly? And will performance of the legal task contribute to the city meeting important policy goals? The following is a chart that attempts to organize these factors in a systematic way as an aid to decision making on when to send projects out and how to structure them.5

<table>
<thead>
<tr>
<th>Higher risk</th>
<th>Less tied to important city goals</th>
<th>Closely tied to important city goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work closely with outside counsel</td>
<td>• High-dollar one-off litigation (police civil rights, HR litigation involving leadership)</td>
<td>Handle internally, or use outside counsel as consultants or co-counsel if highly specialized expertise needed</td>
</tr>
<tr>
<td>• Ethics</td>
<td>• Challenges to city ordinances</td>
<td>• Writs &amp; appeals</td>
</tr>
<tr>
<td>• Regulatory compliance</td>
<td>• Land use litigation</td>
<td>• Elections matters</td>
</tr>
<tr>
<td></td>
<td>• Labor negotiations</td>
<td>• Major real estate and development agreements</td>
</tr>
</tbody>
</table>

---

Lower risk

<table>
<thead>
<tr>
<th>Outsource</th>
<th>Manage through templates, self-service and quick reviews</th>
</tr>
</thead>
<tbody>
<tr>
<td>Torts</td>
<td>Routine transactions</td>
</tr>
<tr>
<td>Most HR cases</td>
<td>Staff reports</td>
</tr>
<tr>
<td>Muni code prosecutions</td>
<td>Correspondence</td>
</tr>
<tr>
<td>Grievances</td>
<td>Policies</td>
</tr>
<tr>
<td>Most code enforcement</td>
<td>Public records</td>
</tr>
<tr>
<td></td>
<td>Personnel advice</td>
</tr>
</tbody>
</table>

b. **Actively Manage the Engagement**

Once we’ve made the decision to send a matter out and have defined the scope of outside counsel’s work, managing the engagement appropriately improves the quality of the work and allows oversight of work product and costs.

First, we’ve found it is important to set clear expectations at the beginning of an engagement:

- Clarify who outside counsel reports to. It should almost always be the city attorney, not the manager, the council or a department head. Most councils will hold the city attorney accountable for all legal work, whether performed in house or by outside counsel. You should feel comfortable with the advice before it is given. It is also up to you to decide who delivers the message – the city attorney or outside counsel directly.
- Clarify whether you want to take an active role in strategic decision making, such as removal, whether/when to file narrowing or dispositive motions, the discovery plan, retention of experts, use of investigators, and trial strategy.
- Explain how involved you want to be in the progress of the matter – do you want to see periodic status updates or only be contacted when there is a major development, problem or decision to be made. If you want to receive copies of all filings, get on the service list. Clarify whether you want to receive other documents, such as discovery. Make it clear if you want to review drafts of key filings and how much time you expect to have to do that.
- Let outside counsel know whether you expect them to contact city officials directly for needed information, or do you want to be copied or included. If outside counsel is working with a staff attorney, clarify roles and communication between outside counsel, the supervising attorney and the city attorney. Give outside counsel a
contact in your office if they are not receiving needed documents, information or support from city staff.

- Some outside counsel will be reluctant to tell you about the city’s errors or weaknesses in the city’s position unless you make it clear that you expect and want to receive this information. Tell outside counsel that you want their frank assessment of the work of city employees and your staff, including things that went wrong and how to improve processes for the future. Similarly, some outside counsel will feel constrained to stick to the specific question asked, unless you tell them you want their proactive advice. If the city can make changes that will mitigate risk in the future, tell outside counsel you want to know.

- Emphasize the importance of submitting monthly billings so that you can monitor costs and work product. Between billing cycles, outside counsel should be aware of and give you advance warning if the work performed is approaching contract/budgeted amounts.

- Ask them what they need from you to be successful.

During the engagement, respond to outside counsel’s questions, monitor their billings and provide frequent feedback, both negative and positive. If outside counsel isn’t getting needed information from city staff, jump in and solve the problem.

Stay on top of reviewing monthly billings. Pay promptly. If you have questions or concerns about the bills, raise them right away. But don’t just read invoices to monitor costs. A well-drafted invoice is a treasure trove of information about the engagement: what is the status of the matter, how far has the work progressed, are there unexpected or unusual challenges that are requiring lots of hours, who is actually doing the work on your matter.

Don’t be afraid to make a change if you need to. Sometimes the fit is not right for the assignment, key relationships sour or time demands shift. If you make a change at the right time, you may be able to work productively with that counsel on other assignments in the future. If you hang in there and end up dissatisfied, the relationship is likely broken for good.

After the engagement, recognize and thank the entire team, including junior lawyers and staff. If there were issues with the work product or the process, most outside lawyers appreciate hearing a frank assessment of that from you. You might also ask them for their perspective on the engagement. What worked well and what didn’t. What lessons learned emerged from the project. How can the city and the city attorney’s office be a better partner in the future?
2.2.5 Working with the Council – Communication, Accountability, Responsiveness

2.2.5.1 Issue – Increase Communication and Responsiveness to Elected Officials

Councilmembers are under increasing scrutiny from their constituents, especially over their leadership on containing costs and achieving tangible results. An in-house legal department is a significant investment and a powerful tool. The council needs to understand what the office does, have confidence in the quality and responsiveness of the work, and feel that their priorities are being served.

2.2.5.2 Response – Use a Range of Communication Tools, from Informal Conversations to Formal Evaluations to Elicit and Respond to Elected Officials’ Concerns

In Palo Alto, we prioritize responsiveness and communication with the Council. We use a variety of tools to enhance accountability and alignment with the Council’s goals.

a. Lots of Communication, Careful Attention to Protocols

It is critical to have open and frequent communication with Councilmembers. It is important that each knows: (a) that they have access to you to air their legal questions and concerns; (b) that none of their colleagues has special access; (c) that you will not take sides on policy issues; (d) that you will call legal issues straight and give the same legal advice to all Councilmembers on the same issue; and (e) that, while you are the City’s lawyer and do not serve them personally, you will never embarrass them and you will treat their communications with you with discretion and tact.

Palo Alto has nine Councilmembers. I communicate with them regularly in a number of ways:

- Pre-Meeting Advice. If there is a legal risk issue related to an item of business on the Council’s agenda, I give confidential advice to the Council before the meeting by formal written memo, email or phone. I encourage Councilmembers to contact me before the meeting if they have any legal questions or concerns about an item of business. If I get a question that I believe others may also have, or where the answer would benefit others, I usually provide the answer to the whole Council without identifying the original source, such as by email beginning: “A Council Member has asked whether . . . .” Where there is no particular legal issue but the agenda includes a challenging item, I sometimes telephone
Councilmembers the day before or day of the meeting to check in. These calls can surface and resolve legal issues that would otherwise be raised in public at a meeting.

- **Regular reports.** My office provides twice-yearly litigation and claims reports that summarize the City’s open and resolved matters.

- **Ad hoc updates.** We try to be very prompt in informing our Council of any item that their constituents may raise with them. This includes major developments in litigation or significant transactional matters, as well as statutory, regulatory or judicial developments that may impact our city, even where we are not a party. We also alert Council to all media contacts.

- **Brief Individual Consultations.** In Palo Alto, the Council has imposed on itself a “one-hour rule” that allows any Councilmember to use one hour of staff resources to explore a policy initiative that they may want to pursue. This allows an initial consultation that can shape ideas in productive directions while putting reasonable limits on work not authorized by the Council as a whole. While no individual Councilmember has a privileged relationship with the City Attorney, we treat these consultations as confidential under a rule of comity.

- **Breaking Bread.** I try to meet informally with each Councilmember at least quarterly, usually over lunch or coffee. These meetings are an opportunity to check in about broader or longer-term concerns that may not be connected to any particular item of business. I keep a short running list of items to raise in this forum. I find that Councilmembers look forward to these opportunities and come prepared with their own list of nagging concerns, areas of confusion, constructive feedback and thanks.

b. **Formal Performance Evaluations**

Done right, formal evaluations are an invaluable tool for the Council and the City Attorney. Palo Alto has a long-standing tradition of annual formal performance evaluations for all officers appointed by the Council (City Manager, City Attorney, City Auditor, Clerk). During negotiations over my contract, I asked the Council to increase the frequency of those evaluations. The Council appreciated that I was eager to hear and respond to their concerns, and agreed to add an informal mid-year check-in in addition to the formal annual evaluation process.

I’ve found that there are several elements that are important for a successful process:
First, evaluations must be regularly-scheduled, not ad hoc. If there is no regular schedule for evaluations, they will only occur when the Council or key Councilmembers are unhappy enough to tear themselves away from other pressing business and overcome the natural disinclination to engage in performance feedback. In other words, you will only be evaluated during or after a crisis. At that point, it may be too late to identify and respond to Councilmembers’ needs and educate them about your perspective. Frequent regularly-scheduled evaluations make feedback and improvement a routine part of the relationship. Concerns surface and are resolved easily, without becoming major obstacles.

Second, evaluations should be structured. Use agreed-upon forms and tools to shape feedback. Ideally, if there is a budget for it, encourage your council to use a consultant to facilitate the process and keep comments and feedback on track and constructive. In Palo Alto, the City Attorney begins the process with a self-evaluation on a pre-agreed form. A consultant then gathers from each Councilmember comments and numerical ratings about the prior year and proposed goals for the coming year. The Consultant meets with the Council in closed session to amalgamate the comments into a single set of feedback and direction, and then the City Attorney joins the meeting to receive the feedback.

Third, the City Attorney should be a pro-active part of the process. I use the twice-yearly performance evaluations to educate the Council about the work of the office (some parts of which they have little to no direct knowledge of), what my protocols are and why, and what I need to be more effective. The closed sessions are a rare opportunity to have a frank and broad conversation with the Council about the City’s legal program – where are the big and increasing risks? What progress has the legal office and the staff made in the prior year and where do we need to go this year? What should the Council be mindful of? Finally, I take an especially active role in setting goals for the City Attorney. I suggest projects that I think are the right areas to spend discretionary legal resources on. For example, I have suggested goals such as updating the City’s construction contract templates, building an enhanced website to educate and assist the public, designing and delivering regular Brown Act training to city boards and commissions, etc.

Fourth, it is important to communicate an attitude of openness to criticism. Acknowledge areas where improvements can be made. After the evaluation, work to

---

6 Prior to the evaluation, which is a confidential personnel matter, the Council should adopt these forms by resolution in open session. In addition, if you use a consultant, the consultant’s contract and work plan are open session items.

7 Palo Alto also uses a modified 360 degree evaluation tool. Our consultant asks everyone in the office to fill out a short form answering a handful of questions about my leadership and management. The consultant follows up with short phone interviews to flesh out and clarify comments. The feedback is anonymous. The consultant compiles it for the Council, as part of their evaluation of me. The consultant also provides a summary to me. I have found this process extremely valuable. No matter how open your door is, most employees will not be frank with their supervisor. The 360 review is an opportunity to discover and reflect on things your employees will not tell you directly. It also provides a valuable insight into who they are and what motives them.
resolve any issues that were raised. If Councilmembers displayed misconceptions about the office or the city’s legal work, gather and communicate the facts.

Finally, to the extent possible, consider sharing the non-personal aspects of the evaluation with the team. After all, the Council is evaluating not only the City Attorney but also the performance of the office. When things go well, team members deserve to share the credit. When adjustments are needed, everyone must be on board.
EVALUATION OF CITY ATTORNEY

The Office of the City Attorney is responsible for providing legal advice to the City, reviewing and preparing resolutions, ordinances and legal opinions and in certain instances undertaking or managing litigation on behalf of the City. The City currently contracts with the law firm of Burke, Williams & Sorensen, LLP ("Burke") for City Attorney and other legal services and service at the pleasure of the City Council. The appointed City Attorney, Eric S. Vail, serves as the City's chief legal advisor and reports directly to the City Council, while working closely with the City Manager and City staff. Mr. Vail supervises and is responsible for all legal services provided under the City Attorney services contract with Burke, Williams & Sorensen, LLP.

This evaluation is intended to address:

(1) the performance of **Eric S. Vail**, as the appointed City Attorney; and,

(2) the legal services provided by **Burke**, as a whole, under their contract with the City, recognizing that the City Attorney is ultimately responsible for all such services.

This Evaluation Form is intended to be used by individual Councilmembers in conjunction with a dialogue between the full City Council and the City Attorney. The purpose of this exercise is to give the City Attorney critical feedback concerning his performance and the performance of his firm overall, as well as directives regarding conduct the Councilmembers would like to further encourage because the conduct is at or above the level of City Council expectations, or regarding conduct that needs correction because it falls below the level of City Council expectations.

A three (3) point rating system is used for each of the X categories. Space is provided for additional written comments under each category. Councilmembers should feel free to add any comments to the evaluation form.

**RATINGS**

1. **Below Expectation:** Performance generally falls below the level of City Council expectations, is erratic or inconsistent, and needs significant improvement.

2. **Meets Expectations:** Performance generally meets City Council expectations, is consistent and of dependable qualify. Minor improvement areas may be noted.

3. **Exceeds Expectations:** Performance exceeds City Council expectations, is superior in terms of service and quality and is an exemplar of professional legal services.
### FACTORS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>FACTORS</th>
<th>RATING</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td><strong>Confidence in your City Attorney</strong></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>1. What is your level of confidence that the City Attorney</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>understands the City Council, as a whole, is the client?</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2. To what extent do you have confidence in the advice and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>guidance provided to the City Council by the City Attorney?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. To what extent do you have confidence in the legal abilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>of your City Attorney?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. How would you rate your level of confidence in your City</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Attorney's ability to resolve problems in the best interests of</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>the City?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. To what extent do you have confidence that the City Attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>implements policy decisions of the City Council within the law?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6. To what extent is the City Attorney able to maintain the City</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Council's confidence while informing them of the different legal</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>risks that proposed actions might generate?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>7. Does the City Attorney exercise good judgment?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>8. How do you rate your overall confidence in Eric S. Vail as</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>your City Attorney?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>9. How do you rate your overall confidence in legal services</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>provided to the City by Burke?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>COMMENTS:</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th></th>
<th></th>
<th>FACTORS</th>
<th>RATING</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td><strong>Understanding and Carrying Out City Council Directive/Policy.</strong></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>1. Does the City Attorney understand and accurately interpret</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>City Council direction?</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2. How effective is the City Attorney in carrying out the</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>directives of the whole City Council?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. Even if the City Attorney has privately criticized a</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>proposed City Council decision, once the City Council has</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>made that decision, does the City Attorney publicly advocate</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>and support the City Council's decision?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4. To what extent does the City Attorney help the City Council reach difficult decisions by providing constructive legal advice, risk assessment, and practical alternatives?

5. Do you view the City Attorney as a trusted advisor, assisting the City Council in making tough decisions (score a 3 or 2) or as a constant hindrance to making decisions (score a 1)?

6. To what extent does the City Attorney respect and facilitate the City Council’s decision making process?

7. Do you feel that the City Attorney knows the boundary between giving legal advice and giving advice regarding matters of policy?

8. Does the City Attorney make a positive contribution to the development of the overall policy, laws and philosophy of the City of Temple City?

COMMENTS:

C. **Legal Advice, Knowledge & Skill**

<table>
<thead>
<tr>
<th></th>
<th>3</th>
<th>2</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Does the City Attorney provide competent, correct and consistent legal advice?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Does the city attorney provide legal advice in decisive, understandable language with clear recommendations or alternatives?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>To what extent is the City Attorney’s legal advice practical, recognizing City Council policy objectives, political issues and resource constraints.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>To what extent do you find the legal advice of the City Attorney useful in making decisions or in explaining issues?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Does the City Attorney have adequate knowledge of the laws and legal issues affecting Cities?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Does the City Attorney’s advice reflect an understanding of practical government operations?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>How would you rate the strength and quality of the City Attorney’s legal analysis?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>How would you rate the City Attorney’s handling of complex and controversial issues?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>To what extent do you view the City Attorney as a skilled legal practitioner?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Does the City Attorney demonstrate effective negotiating skills in bargaining between the City and other public/private organizations?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**COMMENTS:**

**D. Communication & Availability**

<table>
<thead>
<tr>
<th></th>
<th>3</th>
<th>2</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Is the City Attorney easy to talk to?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Is the City Attorney a good listener?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Does the City Attorney keep the City Council informed of the City's legal affairs, including present and potential litigation?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Does the City Attorney keep the City Council apprised of recent court rulings and legislation affecting the City?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>To what extent does the City Attorney maintain effective communications with the City Council?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Does the City Attorney keep you informed, in a timely manner, of the things you want to know about?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Are the reports provided to you by the City Attorney easy to read and provide the information you want?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Does the City Attorney make oral presentations clearly and concisely?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>To what extent does the City Attorney maintain appropriate availability to City Council?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Does the City Attorney respond promptly and thoroughly to City Council inquiries?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Does the City Attorney and other attorneys of Burke, respond timely to requests for legal services?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Is the City Attorney accessible to, and work effectively with, the City Manager and Department heads?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### E. Problem Solving & Innovation

<table>
<thead>
<tr>
<th></th>
<th>3</th>
<th>2</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>To what extent is your City Attorney a problem solver (score 3 or 2) or a problem maker (score 1)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Does your City Attorney assist in resolving problems administratively to avoid unnecessary litigation?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>To what extent does the City Attorney emphasize preventative legal services as opposed to after the fact corrective services?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Does the City Attorney have a proactive approach that helps guide the City Council and staff with alternatives and innovative legal solutions?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>How do you rate your City Attorney’s ability to be a forward or proactive thinker?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Does the City Attorney plan ahead, anticipate needs and recognize potential problems?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Does the City Attorney develop and implement creative and innovative strategies?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Does the City Attorney demonstrate insight, flexibility and creativity in strategic planning sessions?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Is the City Attorney receptive to constructive criticism and advice; and accept responsibility to keep changing and evolving as required?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### COMMENTS:

### F. Ethics and Professionalism

<table>
<thead>
<tr>
<th></th>
<th>3</th>
<th>2</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>To what extent do you view the City Attorney as honest and ethical?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Does the City Attorney perform all services for the City in a manner consistent with the highest standards of professional conduct?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>To what extent does the City Attorney act in a professional manner with the City Council, City staff, and the general public?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>To what extent does the City Attorney avoid bias and conflicts of interest in dealing with City issues?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Does the City Attorney demonstrate drive, enthusiasm and initiative in providing legal services and ensuring high quality?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Does the City Attorney protect confidentiality of issues?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Does the City Attorney demonstrate leadership and command respect from staff, peers/colleagues?</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>COMMENTS:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>G. Management of Legal Services.</strong></td>
<td>3 2 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Does the City Attorney effectively work with City Council and City Management to prepare a realistic legal services budget?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Does the City Attorney provide periodic budget reports that are effective or useful in tracking and managing legal service costs?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Does the City Attorney effectively manage the operations of the City Attorney Office to provide quality, cost effective, services?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>To what extent does the City Attorney apprise the City Council of work that is outside of the anticipated budget for legal services, and work to minimize those additional costs?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Does the City Attorney identify cost-cutting strategies?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>To what extent are you comfortable with the City Attorney's approach to budget preparation and management?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Does the City Attorney have the ability to select responsible outside legal and other consultants, and is he able to monitor the work and costs?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Does the City Attorney assure that his staff covering other City legal matters are skilled, timely, and professional?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Does the City Attorney consider himself part of a team in City Hall and extend full cooperation to other departments?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Question</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------------------------------------</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Does the City Attorney respond to new demands and, where necessary, modify established priorities?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Are legal tasks performed with appropriate authorization according to established procedures and contract requirements?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>How would you rate the overall legal services provided by Burke?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>H.</td>
<td><strong>Other Comments.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>List two things that the City Attorney does very well that you would like him to continue.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>List two things that the City Attorney does, but that you would like to see improved upon or more emphasis given to.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>List two things that the City Attorney does not do that you would like him to begin doing.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
May __, 2013

City Manager
City Council
City of ________________
_____________________

Re: Litigation Status Report – May 2013

Dear City Manager and City Council Members:

Please accept this letter as the May 2013 update on the status of pending litigation involving the City. There are currently 11 pending matters. This letter addresses all current litigation to which the City is a party, including litigation being handled by counsel other than Burke, Williams & Sorensen, LLP. The cases being handled by outside counsel are presented in a separate section at the end of this report. This litigation status report is intended as a brief update on the progress of pending matters listed and not as an exhaustive review of the merits or strategy of any particular case.

Be advised that this litigation status report contains attorney-client and attorney work product information that is confidential and privileged from disclosure to the public. You are advised not to disclose this letter or its contents without prior consultation with the City Attorney. Please do not file or store this letter with publicly accessible records.
CASES BEING HANDLED BY BURKE, WILLIAMS & SORENSEN

GENERAL LITIGATION

Gordon Gadfly v. City
Case No.__________; (File No. ____________)

Plaintiff: Gordon Gadfly
Defendants: City, et al.
Resp. Attys: Attorney A, Attorney B
Description: Plaintiff filed an action alleging civil rights violations, based on an alleged pattern of code enforcement harassment against him. He contends that the City illegally took code oaths against him in retaliation for his criticism of the City and the City Council over the years.

Status: Motion for Summary Judgment Granted. At the City’s direction, we vigorously defended this case, including preparing and filing a summary judgment motion, which was heard on April 1, 2010. The court has granted that motion in full and has entered judgment in the City’s favor, dismissing Plaintiff’s lawsuit. We filed a costs bill seeking cost recovery from Plaintiff.

Fees & Costs: Incurred to date: Legal fees: $125,763.60; Costs: $15,294.12

PUBLIC WORKS LITIGATION

John Q Property Owner v. City
Case No.______________; (File No. ____________)

Plaintiff: John Q. Property Owner
Defendants: City
Resp. Attys: Attorney C
Description: This is an action for inverse condemnation, dangerous condition of public property, and nuisance. Plaintiff alleges
that a City water leak caused soil subsidence and damage to its insured’s building.

**Status:**  
*Discovery Underway.* We inspected the property on February 15, 2010, and March 1, 2010, have propounded written discovery and taken two depositions. In connection with this analysis, we are working with expert witnesses on evaluating Plaintiff’s claims and possible defenses. A trial setting conference is scheduled for June 13, 2013.

**Fees & Costs:** Incurred to date: Legal Fees: $45,778.50; Costs: $7,274.30

---

**PERSONNEL**

**Johnny B. Gone v. City, et al.**  
Case No. ________________; (File No. ________________)

**Plaintiffs:** Johnny B. Gone

**Defendants:** City, City Police Department, HR Director

**Resp. Attys:** Attorney E

**Description:** Plaintiff has brought a petition for writ of mandamus seeking to overturn an arbitration decision in favor of the City upholding former employee’s discharge.

**Status:** Oral argument on the Writ was held on March 15, 2013. After the argument, the judge held in favor of the City and denied Plaintiff’s petition in all respects. Former employee’s time to appeal will expire on April 1, 2013.

**Fees & Costs:** Incurred to date: Legal fees: $24,156.00; Costs: $1,093.48
TORT LIABILITY LITIGATION

Tommy Tortfeaser v. Defendant, City, et al.
Case No. ___________; (File No. ________________)

Plaintiffs: Tommy Tortfeaser

Defendants: Plaintiff, City, Defendant A, Defendant B, County

Resp. Attys: Attorney A, Attorney B

Description: Plaintiff was a passenger in a car accident that occurred when Defendant A struck Defendant B’s vehicle, which was parked outside of Defendant B’s home on Main Street. Plaintiff is suing the City for negligently maintaining the portion of East Stetson where the accident occurred.

Status: Trial Setting Conference Set. A trial setting conference will be held on May 20, 2013. We have given Plaintiff until May 1, 2013 to dismiss the City from this case or else we will file a Motion for Summary Judgment.

Fees & Costs: Incurred to date: Legal fees $5,917.50; Costs: $540.99

POLICE MISCONDUCT/CIVIL RIGHTS CASES

Smokey Dubage v. City
Court Case No. ___________; (File No. ________________)

Plaintiffs: Smokey Dubage

Defendants: City, Officer A

Resp. Attys: Attorney A, Attorney B

Description: Complaint for Damages was removed to federal court. Plaintiff alleges that a Police Department Officer unlawfully arrested him for possession of marijuana. He alleges he was an authorized user of medical marijuana, obtained a medical marijuana ID card from his doctor and showed the card to the arresting officer.
Litigation Status Report  
May __, 2013  
Page 5  

**Status:**  
*Discovery Continuing and Trial Date Set.* The Court issued a scheduling order on February 16, 2013. Amongst other things, the Court’s order set a number of dates and deadlines, including trial on October 31, 2013. We plan to file a motion for summary judgment before the motion cutoff date.

**Fees & Costs:** Incurred to date: Legal fees: $49,579.00; Costs: $2,246.26

We hope that this Report provides you with a brief overview of the pending litigation that our firm is handling. If you would like to receive additional information, please contact me.

Respectfully submitted,

BURKE, WILLIAMS & SORENSEN, LLP

Eric S. Vail

ESV:meh
City of Ethics

City Attorney Fees / Actual to Budget

Fiscal Year 2010-2011

(July – April)

A. Summary

Original Annual Budget: $1,200,000.00

Fees Billed to February 28, 2011: $973,511.00 (does not include costs disbursed)\(^1\)

Cumulative Variance to date: $<52,237> (under budget)

B. Budget Table

<table>
<thead>
<tr>
<th>Month</th>
<th>Actual (fees)(^2)</th>
<th>Budget</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>$90,937</td>
<td>$100,000</td>
<td>$&lt;9,063&gt;</td>
</tr>
<tr>
<td>Aug</td>
<td>$121,441</td>
<td>$100,000</td>
<td>$21,441</td>
</tr>
<tr>
<td>Sept</td>
<td>$101,028</td>
<td>$100,000</td>
<td>$1,028</td>
</tr>
<tr>
<td>Oct</td>
<td>$99,850</td>
<td>$100,000</td>
<td>$&lt;150&gt;</td>
</tr>
<tr>
<td>Nov</td>
<td>$71,809</td>
<td>$100,000</td>
<td>$&lt;28,191&gt;</td>
</tr>
<tr>
<td>Dec</td>
<td>$65,927</td>
<td>$100,000</td>
<td>$&lt;34,073&gt;</td>
</tr>
<tr>
<td>Jan</td>
<td>$121,483</td>
<td>$100,000</td>
<td>$21,483</td>
</tr>
<tr>
<td>Feb</td>
<td>$106,758</td>
<td>$100,000</td>
<td>$6,758</td>
</tr>
<tr>
<td>Mar</td>
<td>$98,051</td>
<td>$100,000</td>
<td>$&lt;1,949&gt;</td>
</tr>
<tr>
<td>April</td>
<td>$101,527</td>
<td>$100,000</td>
<td>$1,527</td>
</tr>
</tbody>
</table>

\(^1\) Costs advanced by Burke on behalf of City and reimbursable costs to date are $28,128.20 (e.g. court costs, filing fees, expert witness fees, mileage, & copying costs).

\(^2\) Id.
<table>
<thead>
<tr>
<th></th>
<th>May</th>
<th>$ 100,000</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>June</td>
<td>$</td>
<td>$ 100,000</td>
<td>$</td>
</tr>
</tbody>
</table>

Cumulative Variance $<52,237>
Cum. Total $973,511 $1,200,000 <$226,489>

C. **Budget Projections**

**Fees for Fiscal Year to Date Annualized:**

Ave. Per Month $97,351 ($973,511/10 months)
Annualized $1,168,212 ($97,351 x 12 months)

**Fees for Last Six (6) Calendar Months (November through April) Annualized:**

Ave. Per Month $94,250 ($565,555/6 months)
Annualized $1,131,120 ($94,250 x 12 months)
D. **Hours Tracker**

<table>
<thead>
<tr>
<th>Month</th>
<th>Number of Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>404.2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Council &amp; Manager</td>
<td>25.2</td>
</tr>
<tr>
<td>Development Services</td>
<td>35.0</td>
</tr>
<tr>
<td>HR / Labor</td>
<td>98.0</td>
</tr>
<tr>
<td>General Research &amp; Advice</td>
<td>13</td>
</tr>
<tr>
<td>Personnel Matters</td>
<td>40</td>
</tr>
<tr>
<td>Labor Negotiations</td>
<td>45</td>
</tr>
<tr>
<td>Police Officers Assoc.</td>
<td>25</td>
</tr>
<tr>
<td>SEIU</td>
<td>20</td>
</tr>
<tr>
<td><strong>Litigation (0001 / 0038)</strong>*</td>
<td>236.0</td>
</tr>
<tr>
<td>Tommy Tortfeasuer v. City of Ethics (P)</td>
<td>70</td>
</tr>
<tr>
<td>John Gadfly v. City of Ethics (City Council)(CC)</td>
<td>70</td>
</tr>
<tr>
<td>Johnny B. Gone v. City of Ethics (P)</td>
<td>25</td>
</tr>
<tr>
<td>Smokey Dubage v. City of Ethics (P)</td>
<td>25</td>
</tr>
<tr>
<td>J.Q. Property Owner v. City of Ethics (PW)</td>
<td>20</td>
</tr>
<tr>
<td>Tracy Tripster v. City of Ethics (PW)</td>
<td>20</td>
</tr>
<tr>
<td>Danny Developer</td>
<td>6</td>
</tr>
<tr>
<td><strong>Other</strong>3</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>404.2</td>
</tr>
</tbody>
</table>

*CC = City Counsel  
CD = Code Enforcement  
PW = Public Works  
P = Police  
DS = Development Services

---

3 The Category “Other” includes time billed to the following budget fund numbers: City Clerk, Finance, Housing (RDA LOW/MOD), Risk Management/Claims, Police, Fire, Building, PW Administration, RDA Administration, Water Public Utility
Exhibit A

General Services

Attend regular and special Council and commission meetings.
Attend Executive Team and other similar meetings, as requested.
Office hours, at least one day per week.
Agenda review and follow-up.
Standard contract review and revision.
Standard ordinance/resolution review and revision.
Standard conflict issues.
Brown Act issues.
Public Record Act request issues.
General legal advice and counsel on matters pertaining to the City, not involving more than three (3) hours of research.
Research and opinions on issues of General Municipal Law, not involving more than three (3) hours of research.
Risk management services - preparation of Litigation Status Report.
Risk management services - consultation with City's third-party claims adjustor and department heads.
Risk management services - review of claims.
Risk management services - response to City and insurer audits.
Routine personnel and labor questions, which can be responded to orally, not involving more than one (1) hour of research.
Code Enforcement issues - City Code interpretation.
Code Enforcement issues - consultation with staff and city prosecutor.
Code Enforcement issues - preparation and review of notices, demands, and orders.
Personnel services - revision or drafting at-will personnel contracts.
Transactions - purchase and sale agreements.
Transactions - options.
Transactions - leases.
Transactions - statutory development agreements.
Transactions - specialized fee credit or reimbursement agreements.
Redevelopment services - OPAs, DDAs, and similar Redevelopment agreements.
Redevelopment services - research regarding RDA issues.
Public safety practices and procedures.
Public works - bid disputes.
Public works - drafting construction and similar contracts and conditions.
Public works - prevailing wage issues.
Public works - special conditions of approval.
Public works - right-of-way acquisition.
Public works - relocation issues.
Development services - CEQA issues and document review.
Development services - non-routine Subdivision Map Act issues.
Development services - zoning and land use issues.
Development services - review of General and Specific Plan amendments and documents.
Development services - review of special conditions of approval.
Ordinance and resolutions - drafting or compilation of non-routine ordinances and resolutions; review and analysis of non-routine ordinances and resolutions drafted by City staff or other jurisdictions.
Appearances before other public entities or governmental agencies on behalf of the City.
Review of Pending legislation
Review of JPA Agreements and Amendments
CDBG, Home Loan and other State and Federal Programs
Exhibit B

List of Special Services

Burke defines “special” services to include those legal services that require more than a general municipal practitioner to adequately perform. In short, they require a specialist in the discipline or area of law. Special services will include all services indicated as not included within the retainer on the “Cost Proposal Submittal Worksheet,” including the following:

- Litigation & Appellate work
- Eminent Domain
- Complex Personnel work
- Labor Negotiations
- Structuring and Documenting Complex Financial Transactions
- Complex Redevelopment Matters
- Affordable Housing Transactions
- Wage and Hour Determinations by the DIR
- Assessment District and Community Facilities District issues
- Complex Environmental Matters
- Regulatory hearings and procedures
- Water rights issues

1 We include initial consultations and the fielding of routine personnel questions under “general” services. Complex Personnel Work includes personnel investigations, grievances, arbitrations, retirement and medical benefit issues, drafting and implementing personnel rules and regulations, FLSA, FMLA, ADA & HIPAA issues, and Police Office and Fire Fighter Bill of Rights issues.
2 We include the drafting and negotiation of standard purchase and sale agreements, options, leases, and licenses within “general” services.
3 We include the drafting and negotiation of standard redevelopment transactions such as façade agreements, owner participation agreements, and basic disposition and development agreements within “general” services. “Special” Services would include redevelopment plan amendments or mergers, issues related to tax increment financing, pass through agreements, disputes with affected taxing entities, and transactions involving multiple funding sources or multiple parties.
4 Complex Environmental Matters include MSHCP implementation issues, Endangered Species issues, environmental permitting and regulatory issues, Clean Water Act compliance issues, NPDES compliance, and representation in front of federal regulatory agencies.
5 We are happy to include representation of the City in front of other public bodies and agencies for standard or routine appearances. If the City becomes involved in a regulatory, permitting, or dispute proceeding these would be special services.
- First Amendment Land Use issues\(^6\)
- Complex Code Enforcement remedies\(^7\)
- Franchising
- Telecommunications\(^8\)

\(^6\) These would include representation of the City regarding group homes, mobile homes, parolee and sex offender housing, adult businesses, massage establishments, signs and billboard and other land uses or businesses involving the First Amendment, ADA, FHA, and RIULPA.

\(^7\) This category includes trial preparation, trial, appointment of receivers, levy and attachment of assets and other complex remedies.

\(^8\) We include routine review of cell tower permit applications within “general” services. “Special” services would include negotiation with telecommunication and cable providers and compliance with state and federal telecommunications laws and regulations.