



AGENDA NO: 9.b

MEETING DATE: April 8, 2025

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 31, 2025

FROM: Robert W. Schultz, Interim City Attorney

SUBJECT: Analysis of Alternatives for City Attorney Services

RECOMMENDED ACTION

Provide direction to Staff on whether to prepare a job description, salary range, and recruitment schedule for an in-house City Attorney or to prepare a Request for Proposals for Contract City Attorney Legal Services.

BACKGROUND

The City Attorney serves as the legal advisor and legal representative to the City Council, City Officials, Departments, Boards, and Commissions in conducting city business. The City Attorney provides a wide range of services to the city, including representing the city in litigation, preparing ordinances and resolutions, reviewing and drafting contracts, providing ethical advice, providing effective legal representation, and other legal services to help the City achieve its goals without undue risk.

From its incorporation in 1964 until 2002, the City of Morro Bay contracted (outsourced) its city attorney services. From 2002 until 2013, the City had an in-house city attorney. From 2013 to the present, the City contracted again for its city attorney services. In 2013, when the City had an in-house City Attorney, there were two full-time equivalent employees (FTEs), the City Attorney and a Legal Assistant.

As the City is aware, there are a number of approaches to providing legal services. They include contracting the service as the City did from 1964 to 2002 and from 2013 to the present. The City is also familiar with hiring an in-house attorney (employee) or a hybrid where a single full-time city attorney is hired to provide general legal services, oversee legal functions, and outsource specialized expertise on an as-needed basis. These different approaches have significantly different financial impacts. The decision often takes into account a community's size, financial position, history, and the complexity of the issues it faces on a daily basis. Cost is a constant concern, and cities must make the best cost-effective decision for the city, not necessarily the cheapest. This analysis should be an ongoing process with periodic reviews to determine whether an in-house, outsourced, or hybrid system will be best suited for the city, as there is no standard or one-size-fits-all approach. All configurations have merits and drawbacks. The City must decide on the options best suited for them.

DISCUSSION

Opinions vary regarding the advantages and disadvantages of contracting City Attorney services versus maintaining an in-house City Attorney. Some that have been cited include:

Contract City Attorney Advantages:

- Law firms have a larger pool of attorneys and access to specialized legal expertise.

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- Law firms may have access to more specialized training than in-house attorneys.
- If a designated City Attorney is not available, a law firm may be able to substitute with another qualified attorney.
- Law firms can change personnel upon request by the City.
- The City has no responsibility for human resource and payroll functions.
- Law firms have immediate access to additional staff resources in the event of a crisis.
- No additional PERS costs.
- Ease of terminating levels of service without severance payment obligations or layoffs.
- No management of office space, utilities, technical support for electronic devices.

Contract City Attorney Disadvantages:

- City Attorney is not located in city facilities and, therefore, less accessible.
- City Attorney is not always available in person or onsite.
- City Attorney is not as familiar with the intricacies of the City's day-to-day operations.
- City Attorney is not readily available to participate in early “drop-in” discussions regarding a matter that may later become a legal matter.
- City Attorney is not proactive as they are not present in meetings.
- The direct cost per hour will be higher than that of in-house attorneys.
- Law firm determines attorneys assigned to assist the designated City Attorney.
- The City Attorney is accountable to the law firm and the City.

In-House City Attorney Advantages:

- City Attorney is available to attend meetings and provide prompt responses to issues as they arise.
- City Attorney has office space and is on-site.
- The City Attorney is available to participate in early “drop-in” discussions regarding matters that may later become legal issues.
- City Attorney can be an active member of the executive team.
- City Attorney will have more significant ties to the community.
- City Attorney has a greater likelihood of preserving institutional knowledge even if there are staffing changes.
- City Attorney can perform risk management functions.
- City Attorney costs are controlled by budgeted staff levels.
- City Attorney can manage and control special counsel.
- City Attorney is accountable to the City/ City Council only.

In-House City Attorney Disadvantages:

- Expertise may be limited.
- Personnel costs, including vacations and leaves, are incurred regardless of workload.
- Attorney training may be limited by the availability of City resources.
- Limitations on the volume of work that can be handled at any one time.
- The City must address in-house City Attorney Office personnel matters.
- Increase in PERS costs from having an additional employee(s).
- The City must provide adequate office space.

Monetary Analysis – In House

If the City were to return to an in-house City Attorney and Legal Assistant model, it would incur an

annual cost of approximately \$400,000 to \$420,000 in salary and benefits. One full-time in-house attorney would presumably receive a salary in the range equivalent to that of the City Manager, which is \$201,946 to \$222,911. As a rule of thumb, the fully loaded benefits, including PERS, life insurance, medical, and unemployment, are approximately 50% of the salary cost (i.e., \$100,973- \$111,455). The salary range for the Legal Assistant position is likely to be the same as that of the Executive Assistant, which is \$71,427 to \$86,819. With fully loaded benefits, this would cost the City approximately \$100,000 to \$120,000 per year.

Non-personnel costs for a City Attorney's Office include mandatory State Bar dues, professional memberships, mandatory continuing legal education, office supplies, subscriptions, conference, and travel expenses, automated legal research (such as Westlaw or Lexis), computers, and other similar expenses for a legal office. This non-personnel cost is approximately \$15,000 to \$25,000 per year. In addition, transitioning to in-house City Attorney services would also involve certain startup costs, such as recruitment, the one-time purchase of equipment and furniture, as well as other initial expenses. Another key consideration in this matter is whether the City can physically provide adequate office space, as a full-time city attorney would require a permanent office. Although the exact amount is unknown, the City should consider a one-time cost of \$25,000 to \$50,000.

A budget for an in-house City Attorney Office would also include contract costs for specialized outside counsel. The need for and cost of outside counsel would depend upon the expertise of the in-house City Attorney and the nature of any specialized legal issues that may arise. The data from other cities is not very revealing or relevant to determining the average amount of outside counsel costs among cities. Although all cities use some outside counsel, the budgeted costs for outside counsel are typically combined with budgets for third-party administrators, claims costs, and other departmental costs, and these amounts vary widely from City to City. Depending on the type and nature of specialized services, outside legal counsel's hourly rates for public agency services can range from \$225 to \$400 per hour. Based on the experience of the Interim City Attorney, an estimated annual budget of \$100,000 to \$150,000 would be required.

Based on the analysis, an estimated budget for an in-house City Attorney would be approximately \$550,000 to \$700,000.

Monetary Analysis- Contract Attorney

An outsourced city attorney or firm is an independent contractor, which means that the attorney or firm and the city enter into a professional services agreement. This agreement generally provides that the City Attorney will provide services, as defined in the agreement, for a specified retainer and hourly rate.

The following table depicts information obtained in response to a Request for Information. The purpose of benchmarking comparable jurisdictions is to provide information on whether the amount the City has been paying is reasonable in relation to other jurisdictions.

City	FY 22/23	FY 23/24
Morro Bay	\$794,195	\$995,470
Pismo Beach	\$643,335	\$1,819,440
Atascadero	\$279,029	\$216,106
Solvang	\$431,925	\$827,758
Grover Beach	\$437,642	\$388,081
Arroyo Grande	\$166,002	\$539,177
Paso Robles	\$1,049,357	\$945,456
Goleta	\$662,565	\$925,853

Carmel	\$365,326	\$388,646
Pacific Grove	\$476,134	\$755,784
Capitola	\$372,190	\$506,544
Marina	\$476,898	\$299,062
Carpinteria	\$971,802	\$901,083
Hueneme	\$264,740	\$229,705
Half Moon Bay	\$992,776	\$1,272,325

It is the Interim City Attorney's opinion, based on a review of the previous attorney's invoices for the past two years and the amounts paid by other jurisdictions, that the previous attorneys failed to provide efficient legal services and representation. A significant factor contributing to the overly high fees is the use of multiple attorneys for meetings and legal matters. The previous attorney firm averaged 360 hours per month, with as many as nine attorneys billing for legal services on a single personnel matter. The Interim City Attorney considered the time commitment required for legal services and determined that 40 hours a week would be sufficient to provide a full range of legal services. This is based on the experience of the last few months, during which the average amount of time required from the Interim City Attorney has been approximately 130 hours per month.

A significant factor contributing to the overly high fees 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". The City asks, and the attorney provides, and provides it quickly. 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 them. There was a lot of billing that City staff was capable of doing, that was being sent to the contract attorneys.

If the Council decides to continue outsourcing city attorney services, the City should develop policies and procedures to manage legal expenses. One solution would be the creation of a two-member Council Ad-Hoc committee that would 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. Another solution for budget reduction measures would be to use "focused utilization." This would require legal expenses to be classified as "critical functions" (litigation, significant transactions, and general counsel advice), "valuable functions" (critical but beneficial), and "supplemental functions" (work that could be performed by City staff but was not).

CONCLUSION

Both in-house and outsourced contract city attorneys offer distinct benefits and drawbacks. The choice between them should be guided by the city's specific needs, budgetary constraints, and the complexity of its legal matters. An optimal approach might involve a hybrid model that combines the strengths of both in-house and outside legal counsel to provide comprehensive and cost-effective legal support.

Should the City Council direct to proceed with hiring an in-house city attorney, staff will bring forward a job description and pay scale to reinstate the City Attorney position and seek authorization to proceed with recruitment at the next meeting. The recruitment process typically takes 6-12 weeks. Staff will begin to identify office spaces and begin to implement necessary changes once an employment contract is entered. Due to time constraints, staff will prepare the FY 25-26 Budget based on the current contract model and will adjust budget details and set up accounting details once the recruitment is complete.

Should City Council direct to continue the contract model, an RFP should be issued. The selection process takes 5 - 8 weeks.

ATTACHMENT(S)

None