

**CITY OF COSTA MESA
CITY ATTORNEY'S OFFICE
INTEROFFICE MEMORANDUM**

To: Marc Puckett, Chair of Contract Review Committee

From: Tom Wood, Acting City Attorney
Marianne Milligan, Sr. Deputy City Attorney
Linda Nguyen, Deputy City Attorney
Marilyn Robinson, Paralegal/Secretary

Date: August 12, 2004

Subject: Proposal for Retaining the In-House City Attorneys Office

I. INTRODUCTION and BACKGROUND

Last year the City Council (the "Council") commissioned Management Partners, Inc. to do a study of the City Attorney's Office ("CAO") operations and to compare contract legal services. After receiving the study, "Organizational Review - Office of the City Attorney", dated December 2003, (the "MPI Review"), the City Council directed staff to request proposals from private law firms to provide contract city attorney services. The Review Committee has received and reviewed proposals from ten law firms and will submit its evaluation to the City Council. As part of the process required by Council Policy 100-6, Contracting City Services, the CAO is submitting its own proposal for providing the same services being considered for out-sourcing.

The purpose of having both an in-house proposal and a contract proposal is to enable the Council to make an informed decision. If the Council only compares the existing configuration and budget of the CAO with the contract proposals from outside law firms, the Council would not have all of the information needed to make an informed decision. The MPI Review concluded that the existing CAO budget and staffing are not the most efficient or optimal operation for the CAO. While ultimately recommending the retention of the CAO, the MPI Review also suggested changes that would increase the efficiency of the CAO and decrease the City's total legal costs. Unfortunately, because of the current state of flux in the CAO, most of the suggested changes have not been implemented. The Council would make a more worthwhile comparison if it considered a modified CAO that incorporates the major structural modifications recommended by the MPI Review. Accordingly, the CAO takes this opportunity to present in this proposal the recommended changes so the Council has the ability to compare an improved in-house CAO operation versus a contract city attorney operation.

The CAO staff feels it is important to provide the City Council and the Committee with our own input regarding retention of the CAO versus contracting out for legal services. Two members of the CAO, Tom Wood and Marianne Milligan, were previously employed with contract city attorney law firms before working in-house for the City. They have a unique perspective from which to compare an in-house city attorney's office with

a contract city attorney. They both strongly concur with the MPI Review's recommendation that an in-house CAO would be in the best interest of Costa Mesa. Furthermore, there are other independent reviews and sources referred to in Tom Wood's June 23, 2003 report that also recommend using an in-house CAO for their cities.

II. BENEFITS OF RETAINING THE IN-HOUSE CITY ATTORNEYS OFFICE

It is important to distinguish between two major, separate issues involved in deciding whether to contract out for legal services or to retain the in-house CAO staff. The first deals with a monetary issue of whether there are cost savings for the City if it were to contract out. The second issue concerns level of service and the feasibility and desirability of having an in-house city attorney. These are two entirely different issues that should be considered separately and are discussed herein below.

A. Monetary Savings By Retaining The In-House CAO

We believe the costs for an in-house CAO, as described in the three variations discussed in Section III, is far below what the City would have to pay **for the same level of service** for a contract city attorney.

To support this position, it would be helpful to examine the final two proposals that the Review Committee rated best for contract city attorney services. The attorney billing rates in these proposals charge a blended rate of \$160.00 and \$170.00 per hour with paralegals billed at \$75.00. In comparison, the blended rate for the current configuration (without a full-time City Attorney) of the CAO is \$77.10/hour and still only \$86.73 per hour with a full-time City Attorney. The CAO paralegal's hourly rate is \$35.77, half of the contract paralegal rate. The City currently pays \$9,252.00 per week or \$481,104 annually for the 3 attorneys in the CAO. Using the lowest contract blended rate of \$160.00 per hour, the city would pay \$19,200.00 per week or \$998,400.00 annually for the equivalent of 3 contract city attorneys. To look at this from a different perspective, the City would only get 1.45 contract city attorney per week for the same amount it is currently spending for the 3 attorneys in the CAO (\$9,252.00 / 6400 hours/week (\$160 x 40) or 1.45 attorneys working a 40 hour week at \$160.00 per hour.).

It is clear that, just based on a comparison of the hourly rates of in-house versus contract attorneys, the City would have to pay substantially more if it contracted out for the same level of service. The only way to save legal expenses by contracting out would be to decrease the amount of legal services. There is a diminished level of service that is inherent in a contract city attorney system, which is discussed in more detail below.

Moreover, Marilyn Robinson, the CAO paralegal/secretary handles many routine matters for the office such as public records requests, subpoena questions and responses, drafting misdemeanor complaints and monitors litigation matters, just to name a few. All of these tasks would be handled by an attorney if contracted out, which would add significantly to the total contract amount paid by the City.

B. Higher Level of Service

One of the most important benefits of retaining the CAO is the high level of customer service provided by the CAO and the accessibility that staff has to the attorneys in the CAO. Having an accessible CAO is not only convenient for the Council, Commissions and staff, but it allows the client to have the CAO's undivided attention. The level of service that staff has received and come to expect would certainly not be the same if the City were to contract out for legal services.

In contract city attorney cities, it is typical that only staff at our Division Manager and/or Department Head level can give the contract city attorney an assignment or even contact via phone or e-mail. This is entirely contrary to how our staff and the CAO interact. This Office has always had an open door policy in which any Council Member, Commission or Committee member or staff member can contact any member of the CAO at any time with a question or issue. This would not be the case if the City were to contract out for city attorney services. The accessibility of the attorneys in the CAO impacts the entire dynamics of the City.

As in-house city attorneys, a member of the CAO is often an active participant in initial project stages or committees where they are able to identify legal issues at an early stage and provide proactive and creative solutions to both legal and non-legal issues. There are currently many staff level committees of which someone from the CAO is a member (i.e., Code Enforcement Task Force, Special Events, 17th Street Widening, Seismic Retrofit and Skate park, just to name a few). Because an attorney from the CAO is a member of these committees, the City is able to be proactive in identifying legal issues before they become a problem. If the City were to contract out for legal services, the cost of having a contract attorney attending all the meetings of all these committees would be prohibitively expensive. Consequently, many legal issues engendered by the actions of these committees would not be addressed and would subsequently become legal problems for the City.

The CAO also spends a substantial amount of time attending Planning Commission meetings and working on planning and land use issues that are very important to the City. Most of the cost comparisons with contract city attorney cities do not include the cost for an attorney to attend planning commission meetings as confirmed in the MPI Review. Therefore, the City would incur a substantial added cost with a contract attorney system if it wanted to continue attorney support to the Planning Commission and Planning Department at the current level. The CAO also provides training regarding the Brown Act, Code Enforcement and Public Records Act to staff, Commissions and Committees as needed. Such training would be a substantial additional cost with contracted city attorney services.

Another example of the level of service to which staff has become accustomed, is staff's ability to call or drop by the office and speak immediately and directly with an attorney. This happens on a daily basis with staff having numerous and varied questions. However, if staff did not have immediate and direct access to an attorney, which is the likely situation if the City were to contract out, staff may resort to making an educated "guess" at the correct legal answer to questions that are fairly routine for the CAO. It is

when staff is incorrect that the contract city attorney would be consulted, at which time the issue has become much more serious because an attorney was not initially available to nip the problem in the bud.

Also to be considered is the speed and efficiency with which the current CAO staff handles assignments. Although there may be occasions when an assignment is delayed, the majority of the time, assignments and requests to the CAO are done on a very timely basis. As indicated in the MPI Review, one of the downsides of contracting out is that outside attorneys are not always available and work product is not delivered as quickly. There are many times when staff comes to the office seeking an immediate response to an urgent question or situation. If the City contracts out, staff will not have immediate accessibility to legal counsel.

C. Response to MPI Review's Suggested Benefits of Contract Services

The MPI Review set forth several pros of contracting out for legal services such as:

1. Ready access to range of legal specialties
2. Access to legal answers already reached at other cities
3. Access to library of documents and ordinances developed by other cities

Although it would appear that these "Pros" may be significant and probably were a few years ago, they are not truly a "Pro" today because of current technology. Every attorney in the CAO has access to the League of California City's - "City Attorney Chat Group". This chat group gives each attorney instant access to literally thousands of attorneys throughout California who have a wide range of legal specialties, legal answers already addressed by other cities and various other documents developed by other cities. In addition, almost every city in California has its municipal code on the Internet to which the CAO has access. Because of current technology and the ability to access this information for free, the CAO is placed on the same playing field as any of the firms that have submitted proposals except that a contract city attorney would probably charge the city for accessing this same information.

In addition Marianne Milligan has maintained relationships with the attorneys and staff from her previous employment that included 3 Orange County cities and 1 Los Angeles County city. This gives her direct contact and access to information from these cities as well as from attorneys she worked with at her previous employer. Furthermore, all of the attorneys in the CAO maintain contact with other Orange County Cities through the Orange County City Attorneys Association, which meets on a monthly basis. Again, through this Association, valuable information on issues faced by other Orange County cities is obtained and distributed to other members of the CAO. Lastly, there is a certain reciprocity amongst in-house city attorney's offices, which is not typically experienced with contract city attorneys, that allows the CAO to obtain advice, documents, ordinances and other relevant material that certainly assist us in performing our duties with no additional cost.

D. Value of Current CAO Staff’s Historical Knowledge of City

Lastly, one cannot put a price on the current staff’s familiarity with the City, its issues, past projects and history. Marilyn has been with the office for 16 years, Tom for a combined total of approximately 16 years, Marianne for 4 years and Linda for 2 years. The disputed budgetary benefits of hiring a contract city attorney cannot replace this collective familiarity with the City’s history, organization and staff. In addition, a contract city attorney would potentially have to bill more hours on a project because of their lack of familiarity with the City and therefore, add to the total costs for a contract city attorney.

The only thing that is undisputed when discussing contracting out versus retaining in-house CAO, is that the level of service that staff has received and to which it has become accustomed will drastically be reduced if the City contracts out for city attorney services. By hiring a contract city attorney, the City’s attorneys would go from practicing proactive law to reactive law, which is not beneficial to the City in the long or short term.

III. PROPOSALS FOR A MODIFIED CAO

Based upon the recommendations contained in the MPI Review, the following are three separate proposals for improving the operation and budget of the CAO. They all involve a version of filling the City Attorney position, hiring a full-time litigator, and filling the vacant Legal Secretary position. Each of the three variations presents a different plan for retaining a modified in-house CAO that can be compared to using a contract city attorney. The following chart summarizes the three variations that are then explained in the text that follows.

VARIATIONS:	ONE	TWO	THREE
City Attorney:	1. Appoint part-time contract City Atty. 2. Recruit for City Atty. when next attorney vacancy.	Conduct open recruitment for City Atty.	Appoint acting City Atty. to position.
Litigator:	Hire after full-time City Attorney position is filled.	Hire when next atty. vacancy.	Begin recruitment in 6 months, if warranted.
Legal Secretary:	Leave open until litigator hired. Hire temporary or part-time clerk until legal secy. is hired.	Leave open until litigator hired. Hire temporary or part-time clerk until legal secy. is hired.	Leave open until litigator hired. Hire temporary or part-time clerk until legal secy. is hired.

A. Variation One:

1. City Attorney Position: Hire a part-time contract city attorney until such time as there is an opening to hire a litigator. The contract city attorney would handle all

personnel and administrative matters in the CAO, such as performance evaluations, work assignments, oversight of outside counsel, as well as attend City Council meetings and other meetings for which the City Attorney's presence is required. The maximum number of hours could be limited to 20 hours per week. Although the City would incur the hourly rate for the part-time contract city attorney, it would still be a drastic reduction in the CAO budget and would temporarily eliminate the current budget for the City Attorney's salary, benefits, etc. A full-time City Attorney would not be hired until such time as there is an opening to hire a litigator. At that time, the City could recruit for a full-time City Attorney who would then hire a litigator and reorganize the CAO if needed.

2. Litigator: Hire a litigator as recommended in the MPI Review. Although hiring a litigator cannot be immediately implemented due to the current staffing levels in the CAO, when an attorney position opens, either through attrition or retirement of current employees, that position should be replaced with an experienced litigator. Based on a thumbnail survey, an experienced litigator would be paid in the range of \$80,000.00 - \$140,000.00 per year. By hiring a litigator, the CAO can drastically reduce costs associated with outside counsel. During the 2002-2003 fiscal budget year, the City expended approximately \$485,818 for outside litigation, which far exceeds what the City would pay for an in-house litigator. In addition, with 3 other attorneys in the CAO and a paralegal, the litigator can also start handling police and personnel issues (as is done in most other cities with in-house litigation). The other attorneys in the CAO can be trained and supervised by the litigator as back up for the litigator, which would further reduce the need to send cases to outside counsel.

3. Legal secretary: This position would remain vacant until a litigator is hired. To meet current clerical needs of the CAO, part-time clerical assistance could be hired. Until a litigator is hired, delete the budget for a legal secretary, and hire a temporary or part-time file clerk/receptionist. It is not recommended that the Legal Secretary position be eliminated, as a legal secretary will be required when a litigator is hired. Again, this will immediately and substantially reduce the current CAO budget.

B. Variation Two:

1. City Attorney Position: The City could begin an immediate recruitment for candidates for this position. If an outside attorney is hired it would bring a new personality and ideas into the CAO. If an attorney from the current CAO staff is selected to fill the City Attorney position, there would be an immediate opening available for hiring an experienced litigator as discussed below.

2. Litigator: This position would be filled when there is an attorney vacancy in the attorney staff. How soon this position could be filled would depend on how quickly the recruitment process finds a qualified litigation attorney for the position.

3. Legal Secretary: See discussion regarding a legal secretary in Variation One. In addition, the possibility of administrative merging of the CAO with the City Manager's office could be further examined for feasibility.

C. Variation Three:

1. City Attorney Position: The City Council could appoint the acting City Attorney to fill this position. If this step is taken by the City Council, it is recommended that the City Attorney and the Council develop a list of expectations that the Council has for the City Attorney and the CAO, including actions to implement the recommendations in the MPI Review.

2. Litigator: The decision when to recruit for this position would be made in 6 months when the City Attorney reviews the CAO workload and capacity at that time. If hiring a fourth attorney is warranted in 6 months, the recruitment would begin. If not then warranted, recruitment could be postponed and begun when separately warranted or when an attorney vacancy occurs in the CAO.

3. Legal Secretary: See discussion regarding a legal secretary in Variation One and Variation Two.

IV. CONCLUSION

We believe the above discussion shows that retaining the CAO, modified as recommended by the MPI Review, is the preferable option for the City. Retaining the CAO would continue to provide the City Council, Commissions and staff with a higher level of professional, prompt, and accessible legal service at a lower over-all cost than the City would receive if the City contracted out for legal services.

cc: Allan Roeder
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