



CITY COUNCIL AGENDA REPORT

MEETING DATE: February 2, 2004

ITEM NUMBER:

SUBJECT: ORGANIZATION REVIEW/COST BENEFIT ANALYSIS OF THE CITY ATTORNEY'S OFFICE

DATE: JANUARY 14, 2004

FROM: ADMINISTRATIVE SERVICES DEPARTMENT

PRESENTATION BY: HOWARD PERKINS, PERSONNEL MANAGER

FOR FURTHER INFORMATION CONTACT: HOWARD PERKINS AT 754-5169

RECOMMENDED ACTION:

1. Receive and file the Organizational Review of the Office of the City Attorney report prepared by the consulting firm of Management Partners, Inc.
2. Appoint two Council Members to work with staff determined by the City Manager to provide a proposed implementation plan based upon the preferred alternative.

BACKGROUND:

The consulting firm of Management Partners, Inc. was retained in September 2003 to conduct an organizational review and cost/benefit analysis of the City Attorney's Office, and to provide recommendations on how legal services for Costa Mesa could best be effectively and efficiently provided for the City Council and operating departments.

At the December 8th City Council Study Session, the results of the study and the research findings were presented to the City Council.

ANALYSIS:

The commissioned organization assessment called for:

- A review of the functions, responsibilities, staffing levels and programs currently assigned to the City Attorney's Office and the services provided to the City Council and operating departments;
- A review of workload and a determination as to whether the current complement of attorneys is too high, too low or appropriate;
- And an examination of the advantages and disadvantages of retaining in-house legal services versus contracting with an outside law firm.

Management Partners conducted interviews with 18 City officials to gather general information on the current status of the City Attorney's Office operations, identify service levels and perceived problem areas, and gain insight into organizational dynamics. Management Partners also identified 17 other California communities with populations or geographic locations that made them comparable to Costa Mesa and then surveyed those cities for relevant fiscal and staffing data in an effort to make responsible and relevant comparisons and recommendations.

Management Partners provided its analysis in a December 2003 report and enumerated 16 recommendations for improvement in the following areas:

- The current organizational structure, staffing level and work assignments;
- The use of external counsel;
- Cost of legal service;
- Management issues; and
- Best approach for the City.

The City Council is requested to appoint two Council Members to work with staff determined by the City Manager to provide a proposed implementation plan if changes with the City Attorney's Office is desired. A proposed implementation plan will then be presented to the full City Council for authorization of how the future provision of legal services for the City will be handled.

ALTERNATIVES CONSIDERED:

The alternatives that Council could consider for an implementation plan include:

- Contracting out for all legal services;
- Contracting out for select legal services and reorganizing some aspects of the City Attorney's Office;
- Maintaining the current operations and organization of the City Attorney's Office; and/or,
- Taking action on the list of recommendations presented within the Management Partners organizational review report.

FISCAL REVIEW:

There is no fiscal impact on this item.

LEGAL REVIEW:

There is no legal review required for this item.

CONCLUSION:

**CITY OF COSTA MESA
ORGANIZATIONAL REVIEW
OFFICE OF THE CITY ATTORNEY**

December 2003





MANAGEMENT PARTNERS
INCORPORATED

December 8, 2003

Hon Mayor and Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628-1200

Dear Mr. Mayor and Members of Council:

Management Partners was retained by the City of Costa Mesa to conduct a review and cost benefit analysis of the Office of the City Attorney.

In accordance with the request for proposals and scope of work prepared by the City, we have completed a thorough review of the Office. The analysis and recommendations are provided in this report.

Once the report has been accepted by the City Council, Management Partners will assist city staff in preparing a final action plan that can serve to guide the implementation of the recommendations of the report.

Throughout our work we received willing and helpful support from you and from each member of city staff with whom we consulted. That cooperation has eased our work significantly, and we are grateful for it. Special thanks go to City Manager Allan Roeder and to Acting City Attorney Tom Woods for their help. We are pleased to have had this opportunity to serve the City of Costa Mesa.

Sincerely,

Gerald E. Newfarmer
President

803 Midvale Lane
San Jose, CA 95136

www.managementpartners.com

Telephone/Fax
408 978 2991

**CITY OF COSTA MESA
ORGANIZATIONAL REVIEW
OFFICE OF THE CITY ATTORNEY**

December 2003

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- Attachment A – Summary of Recommendations
- Attachment B – List of Individuals Interviewed
- Attachment C – List of Benchmark Survey Cities
- Attachment D – Job Duties Comparison
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- Attachment F – Comparison Survey – Total Cost of Legal Service
- Attachment G – Comparison Survey – Cost of Attorney’s Office
- Attachment H – Suggested Performance Measures

I. BACKGROUND

In September 2003 the City of Costa Mesa retained Management Partners to provide an organizational review and cost/benefit analysis of the City Attorney's Office and provide recommendations on how legal services could best be effectively and efficiently provided for the City Council and operating departments.

Specifically, this study called for:

- A review of the functions, responsibilities, staffing levels and programs currently assigned to the City Attorney's Office and the services provided to the City Council and operating departments;
- A review of workload and a determination as to whether the current compliment of attorneys is too high, too low or appropriate; and
- An examination of the advantages and disadvantages of retaining in-house legal services versus contracting with an outside law firm.

The City Attorney is appointed by the City Council. In recent years, the Council has become concerned about the operations of the City Attorney's Office, particularly with regard to the performance, cost, and management of the Office. This study was requested by the Council as a means of developing the facts and of obtaining a neutral, independent perspective on the key issues.

The remainder of this report will review the methodology used by Management Partners in performing this study, the specific conclusions drawn from the analysis and 16 specific recommendations for improvement, which are summarized in Attachment A.

II. STUDY APPROACH

In October 2003 Management Partners began this project by undertaking personal interviews with 18 individuals, including the Mayor and members of the City Council, all employees within the City Attorney's Office, and the City Manager and all department directors, plus the city's Personnel Manager and Risk Manager (see Attachment B). These interviews provided the opportunity to gather general information on the status of City Attorney's Office operations, identify service levels and perceived problem areas, and gain insight into organizational dynamics.

During the course of this review, Management Partners collected numerous documents from city staff that relate to City Attorney's Office operations, including budget information, annual reports, organizational charts, and more. These items were reviewed and, when appropriate, analyzed to provide further insight.

Having thoroughly examined the operations of the City Attorney's Office, the next major task of this study was to compare (or benchmark) the Costa Mesa City Attorney's Office with legal services in other cities, as a basis of analysis and learning. With the agreement of the City Manager, Management Partners identified 17 other California communities with populations or geographic locations that made them comparable to Costa Mesa. Management Partners then surveyed these cities for relevant fiscal and staffing data in an effort to make comparisons. A list of the benchmark cities can be found as Attachment C.

Each step of the methodology served as a means of validating and cross checking the information developed in other phases of the work to ultimately provide the city with insight regarding current operations, recommendations for improving service, and efficient use of employee resources.

III. ANALYSIS

The City of Costa Mesa is an active, full-service general law city. Incorporated in 1953, the city now has a population of 103,823. The city requires active and aggressive legal support to provide responses to claims and lawsuits against the city, manage litigation of personnel matters involving the city's 605 employees, and provide day-to-day advice and assistance in preparation of contracts, resolutions/ordinances, legal opinions and other legal documents.

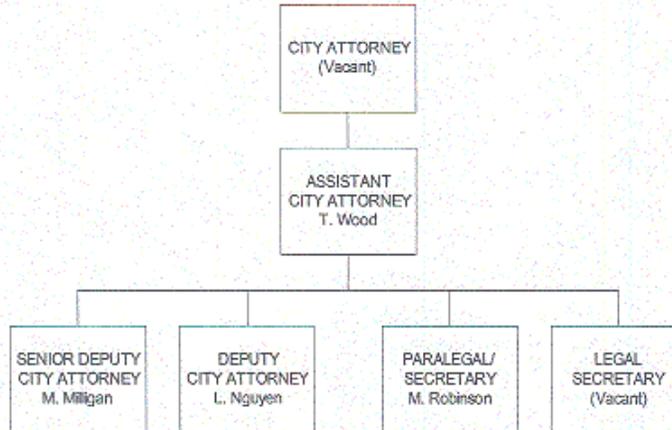
It should be said here that the very nature of a study of organization and process is to constantly look for ways of improving the services. All of the good practices and procedures are the beginning point from which further improvement is sought. As the findings and recommendations for the City Attorney's Office are reviewed, it is important to note that a management study attempts to focus on suggestions for improvement, not those matters that are already adequately addressed.

Human organizations are dynamic and constantly changing. They are always adapting to the environment within which their employees work and are affected by the continuing flow of internal changes. Where there are relevant or significant changes affecting matters under review, an attempt has been made to point them out so that the reader will appreciate the context of the analysis.

The analysis of current operations with recommendations for improvement has been organized into five sections: current organizational structure, staffing level, and work assignments; use of external counsel; cost of legal service; management issues; and best approach for Costa Mesa.

A. Current Organizational Structure, Staffing Level, and Work Assignments

Currently, the Costa Mesa City Attorney's Office has authorized staffing of six full-time equivalent employees (FTEs). The Office includes four attorney positions and two support staff. The City Attorney has been on leave since October 2002 and the Assistant City Attorney has been serving as Acting City Attorney in the interim. In addition, the Legal Secretary position has also been vacant since August 2002. The organizational structure of the Office can be illustrated as follows:



The Costa Mesa City Attorney's Office is responsible for typical "transactional" work (opinions, resolutions, contracts, and other services to city departments) and handles some minor litigation work such as prosecution of code enforcement cases and Pitchess motions¹. The office does not, however, handle other litigation work such as tort defense² or arbitrations³.

The Administrative Services Department has responsibility for initially handling general liability (including tort claims) and personnel/employment claims against the City. Liability claims are handled by the Risk Manager, while personnel claims are handled by the Personnel Manager. The City Attorney takes responsibility for any such matters that are not resolved prior to litigation. In doing so, it has been the practice of the office to use outside counsel to do the legal work.

¹ Pitchess Motion – A "Pitchess" motion is a request made by a defendant in a criminal action for access to information in the personnel file of an arresting police officer.

² Tort Defense = Defense of the city against a claim of liability or negligence (i.e. a trip and fall on a sidewalk). A tort is subject to civil action and subsequent judgment for damages payable to the wronged party.

³ Arbitration = A process in which a disagreement between two or more parties is resolved by impartial individuals, called arbitrators, in order to avoid costly and lengthy litigation; often the last step in an employee grievance process.

Upon initial review of the City Attorney’s duties in Costa Mesa, what is most striking is that very little litigation work is performed in-house, and that almost all such work is assigned to outside counsel. In general, the majority of in-house City Attorneys do some significant litigation work in-house. While the Senior Deputy Attorney does handle prosecution of Code Enforcement violations and litigates Pitchess motions, the Costa Mesa City Attorney relies almost entirely on outside counsel for litigation work. This issue will be discussed in greater detail in the “External Counsel” section of this report below.

According to an Office Procedures memorandum distributed by the City Attorney on April 19, 2002, the Assistant City Attorney was designated as supervisor of the City Attorney’s Office. The memo states, “Tom, as the Assistant City Attorney, is the supervisor for the office. I want any work, office and personnel, related matters and issues to be directed to Tom for consideration and resolution.” Similarly, the memo goes on to say that, “Tom will handle the legal review of Staff/Agenda Reports and review Ordinances/Resolutions for approval, as to form, in addition to his current assignments and special projects.” It is for these reasons that the position of Assistant City Attorney is shown in a supervisory role above the other four positions in the above chart.

As shown in Table 1 below, the current staffing level for the Costa Mesa City Attorney’s Office is comparable to that in benchmark cities. The average overall staffing level in benchmark cities (excluding Costa Mesa itself and Huntington Beach, which is significantly larger in population) is 6.7 total staff per office among benchmark cities with in-house legal departments, and this is consistent with Costa Mesa’s 6 total staff. Benchmark cities had an average of 3.8 attorneys, and Costa Mesa is just over that with 4 attorney positions. In reality, however, the City Attorney has been on leave since October 2002, resulting in an effective attorney staffing level of 3 as compared with 3.8 in the benchmarks. These figures must be analyzed in conjunction with the amount of supplemental external counsel being hired before any conclusions can be drawn.

Table 1: Staffing Levels for In-House Departments

<i>Staffing Levels: In-House Departments</i>				
	Total Staff	Attorneys	Support	Ratio: Attorneys to Support Staff
COSTA MESA	6.0	4.0	2.0	2.0
Newport Beach	6.0	3.5	2.5	1.4
Simi Valley	7.0	4.0	3.0	1.3
Orange	7.0	4.0	3.0	1.3
Huntington Beach	13.0	7.0	6.0	1.2
Average w/o CM & HB	6.7	3.8	2.8	1.4
CM vs. Average	-0.7	+0.2	-0.8	+0.6

When reviewing the ratio of attorneys to support staff, Costa Mesa's authorized staffing complement compares unfavorably with the benchmark average. As shown, the benchmark average is 1.4 attorneys per support staff member is significantly below the level of 2.0 attorneys per staff member in Costa Mesa. In reality, the current ratio is even higher as one of Costa Mesa's two support positions (that of Legal Secretary) has been vacant since August 2002, resulting in a current ratio of 3 attorneys to 1 support staff member.

During interviews for this project, City Attorney's Office staff were asked to describe their job duties and assignments. Attachment D compares and contrasts staff members' descriptions of their job assignments with those outlined in the city's formal job descriptions for their positions and any duties specified in the April 2002 office procedures memorandum. While it is understood that individuals will be informal in talking in an interview and items will be missed, overlooked, etc., the results of this comparison are of some value.

Of note is the fact that the City Attorney's Office workload is unbalanced between attorneys. First, the duties of the City Attorney position are unclear, particularly since the City Attorney delegated all office supervision to the Assistant City Attorney. Based upon the 2002 memorandum and interviews, it seems apparent that the Assistant City Attorney, while apparently handling some special projects and drafting development agreements and ordinances, also handled a majority of the administrative work of the office.

Second, a look at work assignments clearly shows that the Senior Deputy City Attorney position is handling the vast majority of time-sensitive transactional work; she is responsible for both the Police Department and the Development Services Department work, the City Attorney's two largest internal customers. The Deputy City Attorney (new to the office in February 2002) is responsible for less time-sensitive tasks such as the review of contracts and ordinances, Conflict of Interest and Public Records Act work, and work for other city departments such as Finance and Public Services as well as any special projects assigned to her. In interviews with staff there was almost unanimous agreement that some workload imbalance exists, with the Senior Deputy being assigned a larger workload than the other staff attorney in the office. One should not, however, necessarily infer that this means the Senior Deputy's workload exceeds the capacity of her position (i.e. she is overworked).

Recommendation 1: Balance the attorney workload. The City Attorney should better balance the workload, with the Deputy City Attorney to be assigned some of the time-intensive transactional work from the Senior Deputy. Code Enforcement cases are considered to be fairly routine and would be a good assignment for the Deputy, freeing up the Senior Deputy to pursue more complex matters including litigation (see Recommendation 12 below) to reduce external counsel costs.

Unfortunately there does not exist comprehensive and accurate workload data for the City Attorney's Office, so it is difficult to make conclusive findings in regards to workload and assignments. While the Senior Deputy and Deputy City Attorneys do track most major work assignments in a "Tasklog" on the computer, this is not comprehensive and is missing many minor items, and there is no similar log for the City Attorney or Assistant City Attorney positions.

Our review of available documentation on workload, including City Attorney's Office annual reports for 2000 and 2001, shows that the number of legal opinions has ranged from one to six per year from 1999 to the present and that the number of legal reports (more in-depth memoranda on legal issues) has also ranged from one to six per year. Similarly the number of tort litigation cases (handled almost entirely by external counsel) has remained stable over the past three years, ranging from 23 to 28 per year. According to the city's Risk Manager, tort claims have remained stable at around 80 per year for the past several years. City Attorney's Office staff members did note an increase in both code enforcement, Pitchess Motion, and Public Services contractor dispute work in recent years; the Director of Development Services confirmed that the City Council has increased the number of code enforcement inspectors and that the associated workload has also increased for the City Attorney's Office.

Despite having two full-time vacancies in an office of six (i.e. 1/3 total staff), there are no apparent crises involving significant delays due to the ability to process the workload; in fact, to the contrary: several department directors express general satisfaction with the quality and timeliness of services provided by the Office. While workload amongst attorneys is unbalanced, the City Attorney's Office overall does not appear to be overworked.

Of particular note is the lack of any substantial litigation work being done by the in-house legal staff. As noted above, most in-house departments perform a larger amount of litigation work – including some of the simpler tort case defense and personnel arbitrations – in-house. According to staff we interviewed, the City Attorney's recommendation that the City Council add a fourth attorney position in 2000 was based on a plan to bring more litigation work in-house, more than off-setting the additional cost of the fourth attorney position.

As part of this verbal and undocumented agreement (efforts to find written documentation were unavailing), 60% of the fourth attorney position is charged to the city's Self-Insurance Fund from which tort liability claims are administered, with the remaining 40% being funded from the general fund as part of the regular Office budget. Although the Senior Deputy Attorney does do litigation in conjunction with prosecution of code enforcement cases and defense of Pitchess Motions, the plan to bring additional litigation work in-house has not been executed. Personnel arbitrations are paid for and handled by the Personnel Division of the Administrative Services Department. The newest attorney (the Deputy City Attorney) does no litigation work.

The office does not have staff with any significant personnel or labor background and does not handle any personnel-related work until an item reaches the litigation phase (at which point the case is handed off from the Personnel Division of Administrative Services). The Personnel Division handles all personnel issues, except those for the Police Department, up until litigation, including grievances, arbitration, and labor negotiations, and has its own budget to pay for legal assistance in these matters (roughly \$50,000 per year). Due to a legal opinion that the Police Department cannot provide personnel information to the city's Personnel Division, the Police Department handles its own personnel issues.

The Personnel Division of the Administrative Services Department is responsible for the citywide employee training program, but it should also be noted that the City Attorney's Office does not provide significant training to city departments to train staff in the ways to avoid legal problems in their work. This type of activity is undertaken fairly commonly by in-house legal departments and is potentially one of the advantages of having an in-house department. Department heads report that they sometimes provide their own sexual harassment and other training programs, and City Attorney's Office staff and other city employees do not report the Office's involvement in such activities.

At about the same time as the fourth attorney position was added, the Executive Secretary position in the City Attorney's Office was discontinued and replaced by a Legal Secretary position, under the assumption that such expertise would be required to support the fourth attorney if more litigation were to occur in-house. The position has been filled twice, with the incumbents lasting five months and nine months respectively. Other employees in the City Attorney's Office believe these individuals were bored and not provided enough challenging work to remain busy. This assertion likely bears some basis in fact given that the position has been vacant since August 2002 and all support staff duties have been handled by the Paralegal/Secretary employee. A review of her Tasklog and interviews with colleagues suggest that she is handling a fairly high volume of work, and a comparison with other benchmark cities shows that the ratio of attorneys to support staff is higher in Costa Mesa than in other cities (presumably resulting in a higher workload for each support staff member). Employees in the City Attorney's Office state that the office does not need two full-time support positions as it is presently configured, and certainly not a Legal Secretary given current work assignments, but that the Paralegal/Secretary plus another part-time position, such as receptionist or file clerk, would suffice.

The question of the appropriate title and type of support staff required in the office is of necessity unanswerable without a determination as to the type and level of workload to be undertaken by the attorney staff. This will be discussed in more detail below.

B. Use of External Counsel

In recent years there has been the perception by some that the Costa Mesa City Attorney's Office has relied too heavily on external counsel. To establish total external counsel costs we first added the actual expenditures in the "Legal" line item for the City Attorney's Office General Fund (office) budget plus those in the "Legal" line item of the portion of the Self-Insurance Fund that is under City Attorney's Office control.

Looking at the history of the cost of external counsel as shown in the General Fund and Self-Insurance budgets in the City Attorney's Office, we find the following:

Table 2: History of External Counsel Expenditures

	FY98/99	FY99/00	FY00/01	FY01/02	FY02/03
General Fund	\$245,114	\$158,600	\$207,515	\$191,730	\$199,882
Self-Insurance Fund	\$459,359	\$1,163,001	\$443,802	\$0	\$1,325
TOTAL E.C.	\$704,473	\$1,321,601	\$651,317	\$191,730	\$201,207

As can be seen, expenditures in the City Attorney's Office General Fund legal services line item have remained fairly stable, decreasing from \$245,114 in FY98/99 to \$199,882 in FY02/03. However, expenditures in the Self-Insurance Fund legal services line item have fluctuated wildly, from a high of \$1.2 million in FY99/00 to a low of zero in FY01/02. The extremely low expenditures in FY01/02 and FY02/03 are inexplicable given that total tort claims have remained stable and given that we know all tort claims have been sent out to external counsel; the question thus remains, "Where have external counsel costs been charged in recent years?" as such costs are not included in the figures above.

In researching this question it developed that at least two years ago city staff realized that the city was inadvertently double budgeting for the costs of tort external counsel costs; while expenses were not charged twice, the amounts were budgeted for twice in the city budget. Both the City Attorney's Self-Insurance line item (second line in the table above) and the Risk Manager's Self-Insurance program included these line items. The resulting discussion led to the City Attorney's Office deleting its line item in its portion of the Self-Insurance fund and charging external counsel costs to the Risk Manager's Self-Insurance fund, thereby eliminating the double budgeting.

In reviewing the Risk Manager's line items to determine where the costs of legal services allocable to the Self-Insurance Fund were charged, it appears as if the City Attorney's Office is charging tort external counsel costs to the "General Liability" line item within the Self-Insurance fund, rather than to the "Legal" line item there. Since this line item also contains all plaintiff costs, including settlements, it is not possible to segregate out the actual cost of external counsel. Thus, without a detailed review of city invoices and billings (which is extraordinarily time intensive and not within the scope of this project), we are unable to determine with any certainty what was being spent on tort external counsel costs in the past two years.

Recommendation 2: Charge external counsel costs related to tort litigation to the "Legal" line item in the City Attorney portion of the Self-Insurance fund rather than to the "General Liability" line item in the Risk Manager's Self-Insurance fund. The only way to truly establish the cost of external counsel is to have a separate line item for such charges. At present, these costs are being lumped into a pot with other costs and this does not allow for quick analysis and assessment of how the City Attorney's Office is managing these costs. Also, the Office is charging these costs to a fund under control of another department, without any oversight or approval process. In order to maintain clear budgetary control, the City Attorney's Office should only charge to the City Attorney

Administration portion of the Self-Insurance fund and the city's Risk Manager should not budget for legal costs in her portion of the Self-Insurance fund to ensure there is no double-budgeting.

In order to provide some comparison of external counsel costs, however, we will add up the figures we do have in order to make some assessment:

Table 3: Total Estimated External Counsel Expenditures in Costa Mesa

	FY00/01	FY01/02	FY02/03
General Fund	\$207,515	\$191,730	\$199,882
Self-Insurance Fund	\$443,802	\$0	\$1,325
Risk Mgmt – General Liability	\$176,984	\$2,110,367	\$662,931
TOTAL:	\$828,301	\$2,302,097	\$864,138
% City Operating Expenditures	1.03%	2.73%	0.94%

As a reminder, the Risk Management – General Liability line item will include items other than external counsel costs such as settlements and claimant costs and thus, the third line above is likely inflated above actual costs. However, given that the majority of costs related to tort claims are legal costs, this comparison is not without value and is a rough approximation to total external counsel costs in Costa Mesa. The above table shows that, adding up these line items, total external counsel costs in Costa Mesa are approximately 1-3% of total city operating expenditures.

Because the third line above for Risk Management – General Liability is an estimate; one must view benchmark comparisons with great caution, as there will be no apples-to-apples comparison. Bearing this in mind and just to garner some perspective, a comparison of these numbers with other benchmark cities from our survey and with the results of a similar survey done for Huntington Beach (and utilizing cities of comparable size and, thus, larger than Costa Mesa) results in the following, with more details found in Attachment E:

Table 4: Comparison of External Counsel Averages

	FY00/01	FY01/02	FY02/03
Costa Mesa Estimated External Counsel Costs as % of City Operating Expenditures:	1.03%	2.73%	0.94%
Benchmark Cities with In-House Legal Departments External Counsel Costs as % of Operating Expenditures:	0.46%	0.35%	0.30%
2000 Huntington Beach Survey External Counsel Costs as % of Operating Expenditures:	.35%	.40%	0.38%

Again, because Costa Mesa's costs are estimated and over-stated, this is necessarily an unfair comparison. Nonetheless, even if we were to assume that one-half of Costa Mesa's costs were inappropriately included in this comparison, the result points to external counsel costs that are on the high end, if not significantly higher, than other cities.

External counsel costs will fluctuate based upon the number and type of tort cases each year; since the number of cases in Costa Mesa has remained fairly stable over the past three years, ranging from 23-28 cases per year, one might assume any significant fluctuations are due to the type and result of cases (i.e. one case of particularly large settlement payout would substantially skew the numbers).

Interviews with City Attorney's Office staff confirm that management and oversight of the use of external counsel has been solely the purview of the City Attorney and Assistant City Attorney. According to interviews, external counsel has been used in recent years for virtually all trial litigation (other than code enforcement and Pitchess motions), for land use expertise, to provide legal opinions and legal research, and to act as a reviewer of opinions and work already prepared by the Senior Deputy or Deputy positions. City Attorney's Office staff agree that costs for the use of external counsel have likely decreased in the last eighteen months.

The perception by some city officials, department heads and City Attorney's Office staff interviewed is, and the Assistant City Attorney confirms, that many items were sent out to external counsel based upon a lack of in-house expertise; however, efficient financial management would dictate that such expertise be gained in-house either through the hiring of experienced attorneys or through the growth and development of existing staff. Some City Attorney's Office attorneys agreed that some of this work should and could be transitioned to in-house staff.

In general, given the size of the in-house attorney staff and our experience and knowledge of other municipal legal departments, it appears that Costa Mesa has contracted out for a larger proportion of the workload than do other jurisdictions. Many in-house legal departments handle the majority of litigation matters and virtually all legal opinions. While costs for external counsel have been reduced, there remains room for improving the use and management of external counsel.

Recommendation 3: Provide information in an appropriate manner on a regular basis to the City Council regarding the use of outside counsel. The nature and means of providing this information should be developed by the City Attorney in conjunction with the City Manager, taking in account respect for the attorney-client privilege and the need for confidentiality regarding pending litigation.

C. Total Legal Service Costs

To understand the total cost of legal services managed by the City Attorney’s Office in Costa Mesa, it is necessary to add the costs of running the City Attorney’s Office (as provided within the city’s General Fund budget) with the City Attorney’s Office administrative costs charged to the Self-Insurance Fund in Risk Management with the General Liability line item in the Self-Insurance fund (where, in the past two years, tort external counsel costs are being charged). In doing so, we achieve the following result:

Table 5: Total Estimated Legal Costs

	FY00/01	FY01/02	FY02/03
General Fund	\$773,445	\$828,346	\$858,145
Self-Insurance Fund	\$846,009	\$36,321	\$65,189
Risk Mgmt – General Liability	\$176,984	\$2,110,367	\$662,931
ESTIMATED TOTAL:	\$1,796,438	\$2,975,034	\$1,586,265

Again, because the third line above for Risk Management – General Liability also includes settlements and other expenses and not just external counsel, these costs are the best available estimate of legal costs under the City Attorney’s Office control but are over-stated to some unknown degree. The following table shows the estimated total cost of legal services as a percent of total city operating expenditures and the average percentage among benchmark communities (see Attachment F for more details):

Table 6: Comparison of Total Legal Costs

	FY00/01	FY01/02	FY02/03
Estimated Total Cost of Legal Services	\$1,796,438	\$2,975,034	\$1,586,265
As Percent of City Operating Expenditures:	2.24%	3.53%	1.72%
Benchmark Average:	1.20%	1.06%	1.01%

As one can see, the total cost of legal service in Costa Mesa varies from 1.7-3.5% of total city operating expenditures each year. While quite high in FY01/02, total costs are significantly above the average each year. Performance in individual benchmark communities varies from a low of 0.66% of operating expenditures in Newport Beach in FY01/02, to a high of 1.66% in Simi Valley in FY00/01. Unfortunately, without knowing the segregated cost of external counsel, it is impossible to make a conclusive judgment but, on the surface, total legal services costs appear high in Costa Mesa.

Looking just at the costs of running an in-house City Attorney’s Office (i.e. just the General Fund portion of the budget in Costa Mesa and excluding the other two line items) and comparing it to similar costs in benchmark communities yields the following results. (More details can be found in Attachment G.)

Table 7: Comparison of In-House City Attorney's Office Costs

	FY00/01	FY01/02	FY02/03
In-House City Attorney's Office Costs:	\$773,445	\$828,346	\$858,145
Percent of City Operating Expenditures:	0.96%	0.98%	0.93%
Benchmark Average:	0.73%	0.72%	0.71%

Findings as to the cost of running an in-house City Attorney's Office were quite interesting, with an extremely tight set of results. Looking at four cities with in-house legal departments (and excluding Huntington Beach which is significantly larger), annual costs ranged between \$682,000 and \$868,000 over a three-year period; it would appear safe to conclude that the costs of running an in-house City Attorney's Office average about \$700,000-\$800,000 per year for a city of roughly this size. Similarly, as can be seen in Table 7 above, the benchmark average is between .71 and .73% of total city operating costs. Costa Mesa is slightly higher than this at roughly .93-98% of total city operating costs, even though its raw dollar costs are just higher than those of benchmark cities. Adding in 60% of the salary costs of the Deputy City Attorney that is charged to self-insurance would raise these figures even higher. The results of this comparison show that costs of operating the in-house legal departments are slightly higher in Costa Mesa than in the benchmark cities.

D. Management Issues

1. Employee Turnover

An unusual amount of staff turnover was noted in the Office of the City Attorney in recent years. Table 8 below provides the relevant information.

Table 8: Employee Turnover in the City Attorney's Office

Deputy City Attorney		
NAME	DATES OF EMPLOYMENT	DURATION
L. Nguyen	2/24/02 – Present	Current
H. Ikers	10/8/00 – 9/28/01	12 months
M. Milligan	6/4/00 – Present	Current
D. Bigi	7/26/99 – 1/29/00	6 months
J. Raymond	7/5/99 – 8/1/00	13 months
J. Haynes	12/15/97 – 5/14/99	1 year, 6 months
C. Brock	8/14/95 – 1/8/97	1 year, 5 months
Support Staff		
J. Olch (Legal Secretary)	11/18/01 – 8/19/02	10 months
S. Freed (Legal Secretary)	11/5/00 – 4/20/01	5.5 months
M. Robinson (Paralegal)	3/28/88 – Present	Current
P. Brown (Exec. Secretary)	2/11/80 – 9/3/00	20 years, 7 months

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While turnover is not unknown in municipal legal departments, the number of employees who have come and gone in Costa Mesa, as well as the short durations of their employment, is noteworthy. Turnover can be the result of many things: employee dissatisfaction with a supervisor or work environment, lack of growth opportunity or career development, changes in the employee's personal situation or employment status, or poor performance (i.e. termination or dismissal by management).

Even if it were true that all the individuals noted above were terminated or dismissed at management's behest (and that is not the case here), turnover of this level would signal poor hiring practices on the front end (i.e. management hired individuals who weren't qualified or a good "fit") or that management did not coach and provide necessary support for employees along the way. The City Attorney's Office has been the subject of several employee grievances and lawsuits in recent years that may be related to employee turnover. More details on individual management issues can be found below.

2. Office Culture and Communication

Based upon interviews and a review of written documents, the culture of the City Attorney's Office in recent years has been quite formal. Employees and supervisors do not regularly talk on an informal basis; most face-to-face discussion appears to be restricted to occasional staff meetings or formal performance evaluations. While the Acting City Attorney has implemented regular bi-weekly staff meetings with all employees, the apparent sole purpose and discussion point is to go over each employee's Tasklog that lists pending work assignments and their status. Employees had mixed reviews on the value of staff meetings, with some believing it important to regularly check work status and others expressing frustration that the meetings are a rote review of the Tasklog and include no two-way dialog or open discussion of other office issues.

Communication between management and subordinates appears to be limited, even regarding handling of a work assignment or case. Junior attorneys stated that they did not know at times when a case of theirs was sent out to external counsel. City Council members related occurrences when a junior attorney in the office would be handling a matter and it was obvious that there was a disconnect with the City Attorney. The result is an apparent disjointed handling of items and, occasionally, mistakes and oversights.

Recommendation 4: Change the structure and function of regular staff meetings to include two-way dialog with staff and the discussion and status of annual office work goals, policies, and procedures. To improve coordination of work product, the culture of the City Attorney's Office needs to be changed to encourage more dialog between management and staff members to create a "team" environment that allows employees to participate in, and learn from, the handling of work assignments through to completion. Managers would benefit from hearing alternative employee viewpoints and perspectives and employees would grow professionally. Employees should be given the opportunity to add items to the meeting agenda so that all policies, procedures, and items of potential conflict can be openly discussed. Obviously the City Attorney is responsible and

should be ultimately accountable for the results of his stewardship of the legal services function, and must accordingly have discretion to establish reasonable operating parameters.

3. Customer Feedback and Work Quality

Interviewees were split with regard to City Attorney's Office work quality and customer relations. Many department heads were generally pleased with the timeliness and quality of City Attorney's Office work, as were a few City Council members. Other City Council members and department heads were critical.

In general, most customers expressed satisfaction with the quality of work done by external counsel, which is supervised by the City Attorney's Office, on their behalf and felt the City's interests were well-represented. The city's independent audit of liability claims did note: "Correspondence reviewed in the claim files confirms that assigned outside defense counsel is providing competent public entity legal service to the City.

The Office has not had a system in place for regularly soliciting feedback from its clients (the City Council, City Manager and city departments) regarding the quality or timeliness of legal services. The absence of such feedback in part means that there can be no continuous improvement program for legal services. It also has the effect of clients not having current information about the status of matters of interest to them.

Based upon interviews and documents, it appears that the quality of work is largely based upon the City Attorney's Office staff member to which it was assigned. Transactional items appear to be handled with some dispatch and City Attorney's Office staff members were universally regarded as being easily accessible. It is readily apparent, however, that the City Attorney's Office would benefit from better and more frequent communication with the City Council. Similarly, as a service department, the City Attorney's Office should reach out to its customers by providing regular updates and feedback on work requests.

Recommendation 5: Institute a regular system of communicating with the Council and management staff. Customers of the City Attorney's Office should not have to wonder about the status of their work requests. This system could be regular phone calls, written memorandums updating a department on all work requests, or even a computer file with case status that can be accessed by departments.

Recommendation 6: Annually survey customers, both City Council and operating departments, to determine customer satisfaction with the resulting feedback used as the basis to set future continuous improvement goals. In order to continuously improve, the City Attorney's Office should regularly survey its customers to ask how it is doing and where it can improve. The results of this survey can be used as part of the City Attorney's performance evaluation and can identify annual office improvement goals.

4. Liability and Personnel Case Management and Coordination

As mentioned above, the Risk Management Division of the Administrative Services Department is responsible for handling of tort claims up until they are litigated, at which point the case file is turned over to the City Attorney's Office for handling. In virtually all cases, this work is then sent out to external counsel for litigation. Similarly, all personnel-related matters other than Police are handled solely by the Personnel Division of Administrative Services up until the time they are litigated, at which point they are handed off to the City Attorney's Office; again, they are then sent out to external counsel for litigation. The city does hold monthly meetings of the City's Insurance Committee at which the City Attorney, City Manager, Finance Director, and the Risk Manager discuss cases for the purpose of approving or rejecting settlement offers. However, in many other cities, the City Attorney's Office will be involved earlier in the process and/or provide litigation services in-house so that communication is more frequent with the initiating department. In the city's most recent liability claims audit, prepared by Farley Consulting Services on July 18, 2003, it was noted that there is need for better coordination and communication between the City Attorney's Office and its third party claims handling firm (Carl Warren). The audit states:

Several of the files exhibit requests from Carl Warren to the City Attorney and/or defense counsel requesting more detailed status reports to include copies of important pleadings.

We encourage the City to involve Carl Warren in the litigation management process more extensively. Compliance with Carl Warren's request to receive more detailed status reports is sufficient to fulfill our recommendation . . .

We also encourage the City to provide all legal bills to Carl Warren. The combined submission of all relevant legal correspondence and all legal bills will ensure that Carl Warren's established legal/cxense case reserve accurately anticipates the likely fiscal impact to the City. Consistently accurate case reserves, in turn, ensure the accurate anticipation of likely **future** expenditures on similar claims.

Based upon interviews and these findings, the bifurcation of duties in Costa Mesa can result in a lack of coordination on claims handling and personnel cases from initiation through to completion.

Recommendation 7: Implement a system to ensure full coordination and collaboration between the City's legal staff and the Risk Manager and Personnel Manager. To improve coordination of work product, both sides – the initiator and the litigator – would benefit from coordination with the other throughout the process. For example, the City's Risk Manager should be working in conjunction with the City Attorney on initial case handling to ensure that her actions are appropriate in the case of future litigation of the case; similarly, the City Attorney should keep the Risk Manager involved on the backend regarding case litigation and closure. There should be one philosophy, known and agreed to

by both parties, to ensure that case handling is consistent and united to achieve best outcomes for the city. The implementation of this system should be the responsibility of the City Manager.

5. Work Plan/Goals

There are no specific internal goals or plans for organizational development and improvement within the City Attorney's Office; the annual reports of the City Attorney did have some objectives but they tended to be general in nature (e.g., "To apply efficiently the resources of the CAO [City Attorney's Office] to assist other City staff members and Departments in performing their responsibilities"). While it is true that the scope of legal work pursued in a given year is dictated by claimants outside the city government, or by city policy needs, and is largely beyond the control of the City Attorney, efforts to make process and performance improvements within the City Attorney's Office can, and must be, managed internally. Without specific and measurable goals and plans, continuous improvement will not happen. Such goals can be set annually and then linked with employee performance evaluations in order to methodically address and improve office processes and to reflect changing trends in law office management.

Recommendation 8: Annually prepare an action plan of continuous improvements to be undertaken in the subsequent year. During individual performance reviews and/or in conjunction with preparation of the city's budget, the City Attorney should work with staff to create a plan of goals or improvements to be undertaken in the following year. Such a plan would indicate who is to be responsible for each item, and how and when it is planned for implementation. Preparation and use of this work plan would draw attention to positive momentum and supervision on the part of the City Attorney, tie into performance evaluations for individual staff members, and ensure the City Attorney's Office reflects changing trends in law office management. Such an effort would have the added benefit of involving the whole staff in a team effort.

6. Attorney Time Tracking

Currently, the City Attorney's Office has no mechanism to account for an individual attorney's time. Specific knowledge about the use of attorney time would be invaluable as a source of information for the improvement of the office, since staff time is its largest expense. Accurate information about the usage of time is essential to gauge individual employee workloads and to know for what purposes (and, therefore, funding mechanism) time is being spent.

Recommendation 9: Implement a simple system of timekeeping for the attorneys. The City Attorney should institute a *simple* system of timekeeping for the attorneys in the office; this does not need to be to a level of detail as for "billable hours" in a private law office but should record the time spent on specific cases and projects. One system could be a simple spreadsheet to be completed on the computer and would consist purely of the attorney allotting each day's hours among his/her important projects or types of work. A weekly report of hours could be forwarded to the Paralegal/Secretary and/or designee for totaling and transmittal to the Assistant City Attorney for review.

7. Performance Evaluations

Performance evaluations do not occur regularly for all employees in the City Attorney's Office and employee descriptions of the process vary widely. Some employees felt the process was fair and appropriate, while others were dissatisfied.

Recommendation 10: Conduct performance evaluations for each employee at least annually including a verbal discussion with the employee. Annual performance review is good management practice. It is the one time each year when the supervisor sits with the employee to discuss the progress of work over the preceding year. It is also the one occasion when the employee can expect to have an opportunity to sit with a city official to talk about his/her employment relationship.

Good supervision requires open discussion and regular coaching with employees regarding performance. It is important that the supervisor and the employee sit down for an extended and focused discussion of the employee's performance, goals for improvement, special projects, and training needs, and that such discussion is put into writing for both to review. Without a formal performance evaluation, such discussions often slip to the bottom of the priority list and are overlooked.

8. Evaluation and Management of the City Attorney's Office

In his/her performance evaluation, the City Attorney should rightly be held responsible for the operations of the City Attorney's Office. At present the City Attorney is appointed by, and reports to, the City Council. Council members and city staff state that there is at present no formal and clearly outlined method for evaluating City Attorney performance. Likewise, many City Council members expressed frustration at the lack of communication from the City Attorney's Office with regard to workload and performance. Some of these concerns could be addressed through the creation of a set of performance measures which the City Attorney would be responsible for measuring and reporting on a regular basis. These measures would provide basic information that could be used in assessing the performance of the City Attorney's Office operation and, hence, could factor into the City Attorney's performance review. To assist the City of Costa Mesa, a list of potential performance measures for the City Attorney's Office is outlined in Attachment H.

E. Best Approach for Costa Mesa

In the context of the above analysis, we will briefly examine options of organizational structure for the provision of legal services in Costa Mesa. A variety of options exists. While data can be of some use in this analysis, there are also subjective considerations to be weighed in coming to a conclusion.

Given the apparent turmoil of recent years, some city officials and employees have advocated that the city disband its in-house City Attorney's Office altogether and move toward contracting for all legal services. In this model, the city would establish a contract with a private law firm to serve the City Attorney's duties including drafting and approval of ordinances and resolutions, staffing to public meetings, contract review, and other duties. In

many cases, the firm will be available onsite at the city during specified “office hours” and available by telephone otherwise. Such contracts can be negotiated for a set, flat fee and/or can be billed on an hourly basis. Often, these contracts are supplemented by additional costs for external counsel provided by either the same firm or other firms. Some cities of comparable size have contracted City Attorney services including Fullerton, Garden Grove, Irvine, Lake Forest, and Mission Viejo. This option has the following pros and cons, most of which were outlined in the report dated June 27, 2003, done by Acting City Attorney Wood:

Table 9: Pros and Cons of Contracting Out All Legal Services

PROS	CONS
<ul style="list-style-type: none"> • Ready access to a range of legal specialties • Access to legal answers already reached at other cities • Access to library of documents and ordinances developed by other cities • Relieves city of personnel issues related to having in-house employees • Provides for easier resolution of dissatisfactory performance issues, i.e. termination of the contract 	<ul style="list-style-type: none"> • Attorneys not always immediately available • Work products not delivered as quickly • Attorneys less well-known by staff • Less able to catch problems early on and/or provide proactive programs to reduce city liability • May utilize less experienced specialists from own firm • Less familiarity with long-term City affairs

In interviews with department heads, a great deal of concern was expressed regarding the ability to maintain accessibility by staff under such an arrangement and noted instances when immediate response is important (e.g., contractor disputes in the field which can shut down a costly capital project). Several department heads with previous experience in contract City Attorney cities believed that the in-house method was preferable in terms of access to attorneys and faster response.

Anecdotal conversations with city staff and review of workload reveals some growing complexity in the legal area for Costa Mesa, in terms of personnel-related issues, development agreements and land deals, as well as the previously cited increase in code enforcement and Pitchess Motion workload.

A review of the benchmark survey data, though unscientific and limited in the number of cities who responded, can provide some limited insight. Table 10 below compares the legal costs of in-house and contract departments; more detailed results can be seen in Attachment F. (It should be noted that the benchmark average of contracted departments was adjusted downward as the City of Elk Grove had exceptionally higher results than all others and has been excluded.)

This review shows that, for the benchmark cities responding to our survey, total legal costs (in-house plus external counsel) as a percent of total city operating expenditures for contracted departments is slightly lower than for in-house departments:

Table 10: Comparison of Total Legal Costs for In-House and Contracted Cities As Percent of Total City Operating Costs

	FY00/01	FY01/02	FY02/03
Benchmark Average – In-House Departments	1.20%	1.06%	1.01%
Benchmark Average – Contracted Departments	0.79%	0.84%	0.69%

These results can in no way be universally applied because they are based upon limited data. Absent any numerical data on workload or specific knowledge of the work being done in these cities, it is impossible to explain this result to any degree.

Another option in terms of organizational structure is a model that has a small in-house City Attorney’s Office staff and a larger proportion of contracted service. One example would be to have only a single attorney position and one support staff member in-house, with all other work contracted out. The single attorney could either be the City Attorney or a staff attorney who would serve to facilitate the providing of legal services by the contractor. Pros and cons of this arrangement would include:

Table 11: Pros and Cons of a Mixed Structure Model (Some In-House Staff and Some Contracted)

PROS	CONS
<ul style="list-style-type: none"> • Quality expertise is obtained contractually • Ready access to at least one in-house attorney • In-house attorney knows city and can provide knowledgeable oversight of external counsel. • Relieves city of some personnel issues related to having in-house employees • Need for less office space and expense 	<ul style="list-style-type: none"> • Attorneys not always immediately available • Work products not delivered as quickly • Attorneys doing work offsite and not as well known by staff

Finally, the city could maintain its current in-house legal department. Pros and Cons of this arrangement include:

Table 12: Pros and Cons of Maintaining and In-House Legal Department

PROS	CONS
<ul style="list-style-type: none">• Ready access to legal staff• Timely turnaround of work• Staff knowledge of, and dedication to, city• Potential to provide proactive legal support and head off problems before they start	<ul style="list-style-type: none">• Personnel issues related to having regular city staff• Requires oversight to ensure proper management; more difficult to terminate due to performance

It is apparent based upon interviews, documents, and the extended vacancy of the City Attorney position that the city's legal staff is not working to full capacity and that the City Attorney's Office does not require four attorneys given current assignments. This is particularly true in the context that the current scope of work in the office does not include substantial tort litigation, personnel work prior to litigation, or proactive legal training to departments, all of which are quite common in in-house legal departments. If the city were to retain its in-house legal department, the fourth attorney position would not be required unless a significant share of litigation work currently assigned to outside counsel is brought in-house.

Recommendation 11: Implement the plan to bring litigation legal services in-house, in an appropriate manner. Since litigation work makes up the bulk of external counsel costs, it makes sense to develop this competency with the in-house staff. The City Attorney should bring the less complex cases in-house and assign them to an attorney who could be closely supervised to ensure positive outcomes. As this attorney's competence grows, more work can be brought in-house over time.

Recommendation 12: Fill the fourth attorney position when Recommendation 11 has been implemented. If the city retains its in-house legal department, it is recommended that this position remain budgeted but vacant; in this way the city will retain flexibility to fill the position in the future as workload and/or assignments change. In the short-term, however, three attorneys should be sufficient to accomplish existing legal tasks.

Recommendation 13: Eliminate the Legal Secretary position and create a part-time Secretary position. The Legal Secretary position is unnecessary for the City Attorney's Office at this time and has been vacant for over a year. There is consistent agreement across City Attorney's Office staff that there is no need for two full-time support positions. This position should be reduced to a regular half-time secretary position to provide general reception, typing, and records management support to the Paralegal/Secretary.

Given that the fourth attorney position and one-half of a support position would not be necessary under a revised in-house City Attorney’s Office, office costs could be reduced significantly. The effect of such on costs is estimated below. For purposes of this table, we have subtracted one-half of the Legal Secretary’s salary and one salary at the Assistant City Attorney rate (as a City Attorney would need to be hired); this is conservative as there would be accompanying reductions in office supplies, etc. which are not reflected here.

Table 13: In-House Department Costs Less 1.5 Staff Positions

	FY02/03
Current FY02/03 Costs	\$858,145
Salary Savings	\$146,380
Projected Costs:	\$677,765

Adding this projected City Attorney’s Office cost to FY02/03 costs in the Self-Insurance fund and General Liability line item will result in a revised total legal cost for Costa Mesa that is estimated as follows:

Table 14: Total Estimated Legal Costs

	FY02/03
City Attorney’s Office Costs:	\$677,765
FY02/03 Self-Insurance Costs:	\$65,189
FY02/03 General Liability:	\$662,931
Total Estimated Legal Costs:	\$1,405,885

As a point of comparison, total legal costs in the six benchmark cities with contracted departments ranged from roughly \$500,000 to almost \$1 million. Segregating the actual external counsel costs from other liability costs in the third row above would further reduce this total, as would bringing more litigation work in-house. In summary, by reducing staffing 1.5 positions and improving office management, Costa Mesa’s estimated total legal costs could be noticeably reduced.

As noted above, the majority of department heads interviewed expressed a desire for ready access to legal staff and are currently satisfied with the general quality of services. If the above cost reductions were put into place, the cost differential between operating an in-house department and contracting out all services would be reduced as well. While costs of contracting out legal services would likely remain less overall than having an in-house department, service quality (particularly in terms of accessibility for city staff) would also be reduced.

Given the type and quantity of workload in Costa Mesa, as well as the level of legal complexity, it is our recommendation that the city retain an in-house legal services office.

Recommendation 14: Retain an in-house legal department but reduce staff in accordance with above recommendations. Workload is sufficient to justify an in-house legal staff and the city benefits from readily accessible and dedicated legal professionals. If staffing reductions are enacted as proposed above, the city would enjoy enhanced legal service levels at a reasonable cost.

The remaining item to be addressed, therefore, is one of supervision of the legal services activity. The City Attorney position is currently appointed by the City Council, members of which express frustration and a lack of technical knowledge to properly oversee the department. They rely in large part upon the City Manager to alert them to management issues in the City Attorney's Office, but this responsibility has historically not been assigned to the City Manager. Appropriately, the City Manager is respectful of his limited role in this regard and does not feel comfortable engaging such issues with Council when it has not been assigned within his formal purview. In interviews, Council Members expressed a strong desire to create an approach to provide more effective supervision of the operations of the City Attorney's Office.

Recommendation 15: Assign management oversight of the City Attorney's Office to the City Manager. As pointed out by City Council members themselves, it is difficult for the Council to oversee the City Attorney's Office to any real degree and it is appropriate for the Council to engage the City Manager to assist in this endeavor. For this reason, it makes sense to assign responsibility for management oversight of the City Attorney's Office to the City Manager. There is no more rationale for having the City Attorney report directly to the City Council than there would be for the City Finance Director, for example. Indeed, the City Council similarly assigned the City Manager the responsibility to supervise the work of the City Clerk's Office, with positive results for the City.

With such an assignment of responsibility, the City Manager would be expected to ensure that the City Attorney's Office is operating smoothly and fulfilling Council expectations. Implementation of the recommendations of this report would be supervised by the City Manager, ensuring good implementation.

Recommendation 16: Consolidate the support staff of the City Attorney's Office and the City Manager's Office. This idea has been discussed by the City Manager and the Acting City Attorney, and offers the opportunity to realize economies of scale in a mutually supportive environment. There is some potential that the additional support staff workload discussed above could be absorbed, at least in part, by existing City Manager's Office staff. Some analysis will be required to ensure that such a consolidation is correctly executed, in a way that will realize the benefits of consolidation without disrupting work currently being performed.

IV. CONCLUSION

The City Attorney's Office in the City of Costa Mesa is tasked with providing legal services in an ever-changing municipal setting. The City Attorney's Office handles numerous requests for legal service each year while balancing the sometimes conflicting needs of the Costa Mesa public, city officials, and city departments and employees.

To its credit, the City Attorney's Office has continued to provide quality service to city departments despite a period of unusual stress and organizational change. Some improvement has occurred in recent years, including implementation of regular staff meetings. However, it is clear that there are opportunities for improvement that must be addressed if it is to be said that the City's legal services are being accomplished at the same level of quality performance as are the remainder of city services.

It was stated at the outset of this report that, because the many positive aspects of the organization are not detailed here, the conclusions and recommendations could easily be construed as a negative assessment of operations in the City Attorney's Office. The recommendations contained in this report are designed to identify improvements, building upon improvements already instituted to serve as a first step in what should be a continuing process of improvement. They represent a means of utilizing the obvious talents and competencies of staff and will match with the need of an organization and its employees to provide quality legal services to its customers within the parameters of the rules it is required to administer. Careful, thoughtful and reasoned implementation of the recommendations in this report will have a significant impact and benefit for the city, the City Attorney's employees, and clients.

Management Partners wishes to thank the Costa Mesa City Council, Acting City Attorney, City Manager, Personnel Manager, and all city employees who assisted with the work of this review. Everyone we worked with has been fully cooperative of our assignment, and is, we believe, in support of resolving issues and in improving the quality of service that the city provides ultimately to its citizens.

**ATTACHMENT A:
SUMMARY OF RECOMMENDATIONS**

Recommendation 1: Balance the attorney workload .

Recommendation 2: Charge external counsel costs related to tort litigation to the "Legal" line item in the City Attorney portion of the Self-Insurance fund rather than to the "General Liability" line item in the Risk Manager's Self-Insurance fund.

Recommendation 3: Provide information in an appropriate manner on a regular basis to the City Council regarding the use of outside counsel.

Recommendation 4: Change the structure and function of regular staff meetings to include two-way dialog with staff and the discussion and status of annual office work goals, policies, and procedures.

Recommendation 5: Institute a regular system of communicating with the Council and management staff.

Recommendation 6: Annually survey customers, both City Council and operating departments, to determine customer satisfaction with the resulting feedback used as the basis to set future continuous improvement goals.

Recommendation 7: Implement a system to ensure full coordination and collaboration between the City's legal staff and the Risk Manager and Personnel Manager.

Recommendation 8: Annually prepare an action plan of continuous improvements to be undertaken in the subsequent year.

Recommendation 9: Implement a simple system of timekeeping for the attorneys.

Recommendation 10: Conduct performance evaluations for each employee at least annually including a verbal discussion with the employee.

Recommendation 11: Implement the plan to bring litigation legal services in-house, in an appropriate manner.

Recommendation 12: Fill the fourth attorney position when recommendation #11 is implemented.

Recommendation 13: Eliminate the Legal Secretary position and create a part-time Secretary position.

Recommendation 14: Retain an in-house legal department but reduce staff in accordance with above recommendations.

Recommendation 15: Assign management oversight of the City Attorney's Office to the City Manager.

Recommendation 16: Consolidate the support staff of the City Attorney's Office and the City Manager's Office.

**ATTACHMENT B:
LIST OF INTERVIEWEES**

(Alphabetical by Last Name)

<u>Interviewee</u>	<u>Title</u>
Karen Adams	Risk Manager
Libby Cowan	City Council Member
Jim Ellis	Fire Chief
Steve Hayman	Director of Administrative Services
John Hensley	Police Chief
Don Lamm	Director of Development Services
Allan Mansoor	City Council Member
Marianne Milligan	Senior Deputy City Attorney
Gary Monahan	Mayor
Bill Morris	Director of Public Services
Linda Nguyen	Deputy City Attorney
Howard Perkins	Personnel Manager
Marc Puckett	Finance Director
Marilyn Robinson	Paralegal/Secretary – City Attorney's Office
Allen Rocder	City Manager
Chris Steel	City Council Member
Mike Schaefer	City Council Member
Tom Wood	Acting City Attorney

**ATTACHMENT C:
LIST OF BENCHMARK CITIES SURVEYED**

Participating Cities:

<u>City</u>	<u>Population</u>	<u>Type of City Attorney</u>
Fountain Valley	56,268	Contract
West Covina	110,515	Contract
Elk Grove	111,717	Contract
Fullerton	131,474	Contract
Irvine	164,923	Contract
Garden Grove	169,911	Contract
Newport Beach	70,032	In-House
Simi Valley	117,671	In-House
Orange	134,523	In-House
Huntington Beach	196,954	In-House

Surveyed But Did Not Participate:

<u>City</u>	<u>Population</u>	<u>Type of City Attorney</u>
Fairfield	102,496	Contract
Downey	111,687	Contract
Westminster	90,643	In-House
Daly City	105,427	In-House
Inglewood	116,977	In-House
Thousand Oaks	123,986	In-House
Palmdale	127,225	In-House

ATTACHMENT D:

JOB DUTIES COMPARISON

ASSIGNMENTS PER INTERVIEWS AND OFFICE PROCEDURES MEMO:	ASSIGNMENTS IN JOB DESCRIPTION:
<p>City Attorney:</p> <ul style="list-style-type: none"> ▪ Manages external counsel use and budget, reviewed billings. ▪ Deals with City Council and department heads ▪ Assigns work to subordinates. ▪ Receives and deals with all labor/personnel matters. 	<p>City Attorney:</p> <ul style="list-style-type: none"> ▪ Performs legal research, prepares opinions on various legal problems for the City Council, departments, advisory boards and officials. ▪ Confers with and assists department heads in establishing departmental policies by developing and applying legal points and procedures. Recommends changes in departmental policies and procedures in order to meet legal requirements. ▪ Prepares and draft ordinances, resolutions, contracts, deeds, etc. ▪ Prepares cases and tries cases in court ▪ Investigates claims and complaints by or against the City; recommends action to be taken; represents municipality in such hearings as required. ▪ Represents the City at various boards and meetings. ▪ Supervises and assists subordinate legal staff members in the preparation and presentation of their legal work and may supervise clerical personnel.
<p>Assistant City Attorney:</p> <ul style="list-style-type: none"> ▪ Performs legal review of Staff/Agenda Reports and reviews Ordinances/Resolutions as to form. ▪ Approves and co-signs all CAO numbered opinions and reports. ▪ Reviews all written legal memoranda. ▪ Assigns work to subordinates. ▪ Supervises deputy attorneys, reviews any work prepared for department heads or Council ▪ Does some land use work, prepares development agreements. ▪ Prepares memos on legal topics, usually to City Council. ▪ Handles some cases, hot issues. ▪ Wrote Shopping Cart Ordinance 	<p>Assistant City Attorney:</p> <ul style="list-style-type: none"> ▪ Performs legal research, prepares opinions on various legal problems for the City Council, departments, advisory boards and officials. ▪ Confers with and assists department heads in establishing departmental policies by developing and applying legal points and procedures. Recommends changes in departmental policies and procedures in order to meet legal requirements. ▪ Prepares and draft ordinances, resolutions, contracts, deeds, etc. ▪ Prepares cases and tries cases in court. ▪ Investigates claims and complaints by or against the City; recommends action to be taken; represents municipality in such hearings as required. ▪ Represents the City and City Attorney at various boards and meetings. ▪ Supervises and assists subordinate legal staff members in the preparation and presentation of their legal work and may supervise clerical personnel. ▪ Acts as the City Attorney in his/her absence.

JOB ASSIGNMENTS PER INTERVIEWS AND OFFICE PROCEDURES MEMO:	ASSIGNMENTS IN JOB DESCRIPTION:
<p>Senior Deputy City Attorney:</p> <ul style="list-style-type: none"> ▪ Handles all Police Department work except personnel but including: <ul style="list-style-type: none"> ○ Pitchess Motions ○ Weapons destruction matters ○ Subpoenas ○ General legal advice and opinions ▪ Handles all Building and Safety/Code Enforcement division work including prosecutions/civil process. ▪ Prosecutes/defends civil and criminal actions as assigned by City Attorney. ▪ Handles Planning Department work including: <ul style="list-style-type: none"> ○ Staff to Planning Commission ○ Handles Planning issues, ordinances, research, opinions ○ Staff to Special Events Committee ○ Staff to Code Enforcement Task Force ○ Staff to "Keep Costa Mesa Beautiful" 	<p>Senior Deputy City Attorney:</p> <ul style="list-style-type: none"> ▪ Advises officials and employees on legal questions requiring in-depth analysis. ▪ Makes decisions concerning advisability to prosecute, compromise or dismiss civil citations or criminal violations. May be responsible for litigation, trials, damage or other civil suits in state and federal courts, including representation of the Costa Mesa Police Department and its officers in Pitchess motions. ▪ Interviews witnesses, prepares formal complaints and prosecutes misdemeanor violations of the Costa Mesa Municipal Code; prepares pleadings and other documents. ▪ Performs wide variety of legal research and prepares briefs, opinions, and memos. ▪ Drafts ordinances, resolutions, leases, contracts, etc. ▪ Interprets and applies statutes, ordinances, court decisions, and legal opinions. ▪ Answers legal questions of citizens concerning City business. ▪ Attends various meetings to render legal counsel. ▪ Provides functional supervision to the Deputy City Attorney, Paralegal/Secretary and clerical staff. ▪ Acts as the Assistant General Counsel for the RDA and Planning Commission; acts as back up prosecutor for misdemeanor violations of the Costa Mesa Municipal Code.
<p>Deputy City Attorney:</p> <ul style="list-style-type: none"> ▪ Reviews contractual services agreements (roughly 50% of job) ▪ Completes Public Services Department requests for service ▪ Completes Finance Department requests for service. ▪ Handles Conflict of Interest issues. ▪ Handles Public Records requests. ▪ Deals with Brown Act issues. ▪ Does special projects, i.e. Shopping Cart Ordinance implementation. ▪ Performs legal analysis, opinion writing, and provides general advice. 	<p>Deputy City Attorney:</p> <ul style="list-style-type: none"> ▪ Performs necessary legal research for trial preparation of civil and criminal cases. ▪ Advises City and RDA officials. ▪ Advises police officers relative to legal aspects of pitchess motions, violations of ordinances, Penal Code sections, etc. ▪ May supervise code enforcement staff. ▪ Prepares code enforcement cases by studying evidence, interviewing witnesses, and presenting cases in court. ▪ Performs legal work involved in purchase and sale of real property by the City. ▪ Drafts ordinances, resolutions, leases, contracts, and other documents. ▪ Interprets and furnishes information and opinions regarding ordinances, Charter provisions and state codes. ▪ Checks specifications, contracts, and special assessment proceedings. ▪ Represents City at various meetings including serving as legal counsel to the City RDA.

JOB ASSIGNMENTS PER INTERVIEWS AND OFFICE PROCEDURES MEMO:	ASSIGNMENTS IN JOB DESCRIPTION:
<p>Legal Secretary:</p> <ul style="list-style-type: none"> ▪ Processes bills for payment. ▪ Performs word processing. ▪ Prepares minutes. ▪ Reports budget. ▪ Handles filing – pleading indexes, litigation documents ▪ Prepares Personnel Action Forms. ▪ Processes expense reimbursements. ▪ Handles library procurement. ▪ Checks Attorney out boxes. ▪ Distributes documents. ▪ Makes photocopies. ▪ Serves as backup to Paralegal/Secretary on phones, calendar and mail. 	<p>Legal Secretary:</p> <ul style="list-style-type: none"> ▪ Types and sets up legal documentation in proper format. ▪ Compares and verifies legal references with books to ensure citation accuracy. ▪ Maintains court and appointment calendar, receives visitors, reviews correspondence. ▪ Coordinates arrangements for court reporters, hearing officers, room reservations ▪ Establishes, maintains, updates and closes files, and researches files to obtain information. ▪ Handles routine administrative tasks. ▪ Performs a variety of clerical tasks including typing, editing, and proofreading. ▪ Sorts, files, prepares and processes variety of documents and records including timesheets, personnel and purchasing forms, checks, court fees, etc. ▪ Participates in budget preparation, assists in monitoring expenses and revenues.
<p>Paralegal/Secretary:</p> <ul style="list-style-type: none"> ▪ Logs work assignments for deputies into task log. ▪ Maintains office calendar. ▪ Provides office reception. ▪ Prepares boilerplate professional services agreements for DCA review. ▪ Does paperwork for civil citation appeals. ▪ Reviews and responds to subpoenas for Police Officer records. ▪ Does paperwork associated with Pitchess Motions – draft, court process, service. ▪ Does paperwork associated with sending litigated claims to external counsel. ▪ Handles paperwork for Code Enforcement prosecutions, pleadings, etc. ▪ Handles filing and records management. ▪ Handles purchasing, billing, all other secretarial that should be done by Legal Secretary position. ▪ Performs some legal research though attorneys do much of their own. ▪ Serves as computer liaison. 	<p>Paralegal/Secretary:</p> <ul style="list-style-type: none"> ▪ Drafts routine complaints, motions, and documents. ▪ Researches necessary information and handles service of summonses and court filings. ▪ Drafts routine resolutions and ordinances. ▪ Maintains accurate office calendar for court appearances and deadlines. ▪ Assists attorneys with legal research and trial preparation. ▪ Monitors pending bills in State legislature and new laws enacted. ▪ Oversees compliance with City's insurance, bonding, and CC&R requirements. ▪ Assists attorneys in handling claims against city. ▪ Performs a variety of secretarial services including typing, dictation, filing, phones, etc.

**ATTACHMENT E:
COMPARISON SURVEY - EXTERNAL COUNSEL COSTS**

External Counsel Costs: In-House Departments

	FY00001	FY01002	FY02003
COSTA MESA	\$651,317	\$181,730	\$201,207
Newport Beach*	\$175,438	\$100,073	\$202,781
Simi Valley	\$671,114	\$548,683	\$389,009
Orange	\$456,474	\$411,106	\$373,618
Huntington Beach	\$1,584,282	\$2,271,441	N/A
Average	\$721,327	\$632,826	\$321,803
Average w/o HB	\$433,875	\$353,287	\$321,803

* Newport Beach excluded legal costs related to the "airport issue" in their figures.

External Counsel Costs: Contracted Departments

	FY00001	FY01002	FY02003
Elk Grove	\$19,668	\$657,330	\$1,105,592
West Covina	\$118,510	\$76,350	\$121,507
Fountain Valley*	\$18,241	\$10,878	N/A
Irvine	\$0	\$0	\$0
Garden Grove	N/A	N/A	\$300,000
Fullerton	\$385,060	\$696,749	\$712,891
Average	\$136,370	\$380,327	\$559,988

*Tort defense costs are not included here as they are provided by the city's liability insurer.

Percent of city operating expenditures:

	FY00001	FY01002	FY02003
COSTA MESA	0.81%	0.23%	0.22%
Newport Beach	0.16%	0.08%	0.15%
Simi Valley	0.81%	0.61%	0.40%
Orange	0.42%	0.37%	0.33%
Huntington Beach	6.63%	9.54%	N/A
Average	1.51%	0.43%	0.30%
Average w/o HB	0.46%	0.35%	0.30%

Percent of city operating expenditures:

	FY00001	FY01002	FY02003
Elk Grove	0.16%	3.08%	3.25%
West Covina	0.25%	0.16%	0.20%
Fountain Valley	0.08%	0.05%	N/A
Irvine	0.00%	0.00%	0.00%
Garden Grove	N/A	N/A	0.20%
Fullerton	0.38%	0.63%	0.60%
Average	0.22%	0.38%	1.06%

ATTACHMENT F:
COMPARISON SURVEY - TOTAL COST OF LEGAL SERVICES

Total Cost of In-House Department plus External Counsel Costs:

	FY00001	FY01002	FY02003
COSTA MESA	\$1,706,436	\$2,975,034	\$1,566,265
Newport Beach	\$930,482	\$782,431	\$1,022,853
Simi Valley	\$1,369,901	\$1,268,178	\$1,153,025
Orange	\$1,227,028	\$1,279,313	\$1,204,169
Huntington Beach	\$2,917,047	\$3,640,742	N/A
Average w/o CM	\$1,811,114	\$1,742,665	\$1,120,615

Percent of city operating expenditures:

	FY00001	FY01002	FY02003
COSTA MESA	2.24%	3.53%	1.72%
Newport Beach	0.84%	0.66%	0.76%
Simi Valley	1.68%	1.41%	1.22%
Orange	1.74%	1.14%	1.05%
Huntington Beach	1.16%	1.03%	N/A
Average w/o CM	1.20%	1.03%	1.01%

Total Cost of Attorney Contract plus External Counsel Costs:

	FY00001	FY01002	FY02003
Elk Grove	\$474,400	\$1,081,141	\$1,625,148
West Covina	\$377,005	\$275,362	\$359,778
Fountain Valley	\$250,730	\$258,927	N/A
Irvine	\$634,294	\$756,134	\$756,534
Garden Grove	N/A	N/A	\$805,000
Fullerton	\$604,286	\$858,120	\$974,407
Average	\$458,157	\$687,841	\$904,573
Average w/o EG	\$426,587	\$664,641	\$724,430

Percent of city operating expenditures:

	FY00001	FY01002	FY02003
Elk Grove	3.79%	5.06%	4.76%
West Covina	0.80%	0.56%	0.60%
Fountain Valley	1.08%	1.14%	N/A
Irvine	0.89%	0.81%	0.79%
Garden Grove	N/A	N/A	0.59%
Fullerton	0.60%	0.57%	0.82%
Average	1.39%	1.66%	1.51%
Average w/o EG	0.79%	0.84%	0.69%

**ATTACHMENT G:
COMPARISON SURVEY - COST OF IN-HOUSE OFFICE**

City Attorney Office Costs - In-House Departments

	FY00/01	FY01/02	FY02/03
COSTA MESA	\$773,445	\$828,346	\$858,145
Newport Beach	\$755,044	\$682,358	\$819,872
Simi Valley	\$688,787	\$719,495	\$764,016
Orange	\$722,522	\$668,207	\$830,551
Huntington Beach	\$1,332,765	\$1,268,301	N/A
Average	\$877,280	\$809,840	\$804,813
Average w/o HB	\$725,451	\$756,687	\$804,813

Percent of city operating expenditures:

	FY00/01	FY01/02	FY02/03
COSTA MESA	0.96%	0.98%	0.93%
Newport Beach	0.68%	0.58%	0.62%
Simi Valley	0.85%	0.80%	0.78%
Orange	0.67%	0.77%	0.73%
Huntington Beach	0.53%	0.39%	N/A
Average	0.88%	0.63%	0.71%
Average w/o HB	0.73%	0.72%	0.71%

ATTACHMENT H:
SUGGESTED PERFORMANCE MEASURES
FOR USE IN THE CITY ATTORNEY'S OFFICE

Workload Measures

- Number of claims filed against the City
- Number of lawsuits filed against the City
- Number of lawsuits and administrative actions filed or initiated by the City
- Number of total department requests for service
- Number of code enforcement cases
- Number of formal opinions issued
- Number of Conflict of Interest reviews
- Number of resolutions prepared
- Number of ordinances prepared
- Number of development agreements prepared
- Number of contracts prepared
- Number of training courses held for city employees in the areas of personnel/labor law, planning law, and subpoenas

Efficiency Measures

- Cost of total city legal services as a percentage of total legal costs (General Fund CAO budget plus Self-Insurance CAO budget)
- Cost of external counsel (CAO "Legal" line item plus Self-Insurance "Legal" line item) as a percentage of total legal costs (General Fund CAO budget plus Self-Insurance CAO budget)

Effectiveness/Outcome Measures

- Percent of claims settled prior to litigation
- Percent of new cases resolved
- Percent of claims resolved resulting in no monetary payout
- Percent of lawsuits resolved resulting in no monetary payout
- Percent of claims resolved within established reserve levels
- Percent of customer survey respondents rating quality of legal service as good or excellent
- Percent of customer survey respondents rating timeliness of legal service as good or excellent
- Percent of written opinions provided within 30 days of request
- Percent of city employees rating City Attorney training courses as good or excellent
- Percent of time Council Member conflict of interest requests are responded to within 10 working days