

MEMORANDUM

CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED

To: Mayor Gary Monahan, and Members of the Costa Mesa City Council

From: Kimberly Hall Barlow, Jones & Mayer

Date: October 5, 2004

Subject: City of Costa Mesa City Attorney Transition/Implementation Plan

We have crafted a transition plan to implement the City Council's decision to contract out for City Attorney services with our firm, and present it to you for discussion at your October 11, 2004 City Council Study Session. Marty Mayer, Harold Potter and I will attend that meeting to respond to any questions you may have about the implementation plan or the firm generally.

1. Proposed Assignments. I would serve as primary counsel to the City, attend City Council meetings, department head meetings, oversee and assign work to other staff, supervise outside counsel, and attend such other meetings as may be directed by Council or the City Manager. Mr. Potter will serve as my primary back up for these meetings, and additionally will be the primary contact for litigation matters being handled by our firm. Mr. Potter will also work with the City's assigned paralegal to review and assist the City Clerk's office in responding to public records requests. Gregory Palmer will handle Pitchess motions. Tom Duarte will attend Planning Commission meetings. Dan Peelman will be the primary City Prosecutor.

2. Office Hours. We have proposed a minimum of four hours per week of office hours in City Hall. This would be time that I would be personally present in the City Attorney's Office to meet with you, management staff and department heads to discuss cases, opinions, or other matters of City business. This time is in addition to City Council meetings and department head meetings, and is subject to scheduling at the pleasure of the City Council. We recommend that at least one hour of the allotted time be prior to the scheduled Council meetings to give individual Council Members an opportunity to discuss any legal matters relating to the upcoming agenda. The remaining hours would be distributed throughout the week to best accommodate the needs of Council and staff. We are always accessible by phone and e-mail, and can be available for additional on-site meetings as needed.

3. Existing City Attorney staff. We understand that under City policy, each member of existing City Attorney staff will be given six months' notice. We envision stepping in upon execution of the Agreement to provide City Attorney services, including oversight and management

of the existing in-house staff, commencing on our proposed start date of November 1, 2004. We are, however, prepared to begin immediately upon approval of our contract if Council prefers. Whatever the commencement date, we will immediately evaluate work assignments, consider reassignment of some work if appropriate, and work to provide a fully productive City Attorney's office during the transition.

It is certainly possible that some of the current staff members will locate alternative employment during the notice period, and we are prepared for that eventuality. I intend to immediately familiarize myself with the matters being handled by current staff to eliminate any loss of continuity in the event any staff member elects to depart earlier than anticipated. We will work closely with existing staff to facilitate the transition from an in-house staff to contract City Attorney, and expect a smooth transition with no sudden, unexpected impact on other departments.

As soon as Council has approved our contract, we would suggest an immediate meeting with existing City Attorney staff, in order to learn about issues and litigation facing the City so that we can immediately undertake representation of the City's interests on the scheduled commencement date. I intend to meet initially with Acting City Attorney Tom Wood and then with the remaining staff in the group. I will be requesting that each attorney, as well as Ms. Robinson, prepare a list of ongoing issues, projects, committee work, prosecutions and ordinances on which each is working. In addition, I will also obtain a separate list of pending litigation matters on which each staff member is working, as well as those which are assigned to outside firms, with a brief summary of the facts and current status of each matter.

4. Outside Counsel. We have asked for a list of firms currently being used by the City to provide outside legal services, the City's primary contact person at each firm, the type of matters referred to each firm, and their current contract terms with the City relating to these matters. We intend to meet with the primary contact at each firm to discuss the pending matters, as well as potential for future assignment of specialized work at the direction of City Council or City Manager. We would defer these discussions until receiving additional direction from Council with regard to retention of outside counsel for City matters in the future. Our goal and expectation would be to minimize such retention in order to reduce costs.

In addition to outside counsel handling tort and writ matters, we would like to meet with outside counsel the City uses for such matters as worker's compensation, Redevelopment Agency work, and other matters which will continue to be handled by such counsel. I believe it is important to develop a collegial and cooperative relationship with all other counsel who will be providing services to the City. While we are available to provide Redevelopment Agency counsel services if the Agency Board at any time requests us to do so, we understand the Board's preference is to continue to work with existing Redevelopment Agency counsel. We are happy to coordinate our efforts with existing Agency counsel to provide the best service to the City and Agency.

5. Department Heads. I will meet with the department heads as a group next week, in order to give them an opportunity to meet me and ask questions about the transition. I will also meet individually with each department head to learn more about each department's functions, procedures and staff members, as well as to get input from each department head about what they like about their current work with existing City Attorney staff, and what things they would like changed as we begin to provide services to them. We also will learn their preferences as to which

department employees have the authority to make direct requests for research, opinions, or contract preparation which would involve more than a pre-established amount of time, as well as how they prefer to interact with me and the other firm lawyers. This will help smooth the transition and control costs.

6. Senior Staff. Following Council's approval of our contract and confirmation of our commencement date, we will hold an introductory meeting for department and division heads, with whom many of our firm members will be working directly. This will give them a chance to be introduced to me and the other attorneys from our firm, and to learn about our individual background and areas of expertise.

7. Litigation Management. We want to implement a system of litigation management that has worked very well with our existing clients. A litigation/liability committee consisting of me, the City Manager or his designee, the Risk Manager and Mr. Potter would meet monthly to review new liability claims and suits, discuss the status of pending matters, and any significant developments which may affect the City's liability position. We are meeting this week with the Finance Director, the Risk Manager, and the Acting Administrative Services Director who currently perform the initial handling of claims in their respective spheres to discuss their approach to claims assessment, establishing reserves, and resolution of claims, as well as their ongoing involvement in status reporting of cases that cannot be resolved without litigation. Our discussions will include how they handle budgeting and evaluation of liability exposure both initially and as the cases evolve. We would address the most expeditious way of keeping me informed of claims which may prove problematic.

8. Code Enforcement. We would also suggest a code enforcement team be formed, consisting of Mr. Peelman of our office, who will be primarily responsible for the City's code enforcement work, the City's code enforcement supervisor and the Development Services Director or his designee. Initially, we would have a full code enforcement team meeting to include all those persons who are involved in the code enforcement effort, such as the building official, police department representatives, fire officials, public works and planning department members. A bi-weekly or monthly meeting would then follow to ensure that staff members and our office work in a coordinated effort to gain maximum code compliance at the least cost to the City.

9. Billing. We can set up our billing system for Costa Mesa any way that is preferred by the Council, Manager, Department Heads and Finance Director. We believe that you will see the greatest cost reductions over time if our billing is prepared by reference to the Department which assigns the work to our office for review by the City Manager. Cost savings result from many factors in this type of transition. Staff members and their Department Heads often are not aware of the amount of time which the attorney staff spends on requests that may prove to be optional. Nor are they always aware of the sometimes unnecessary dependence of staff on attorneys when in fact staff is capable of performing some of the work currently being directed to the attorneys. Billing by department allows you to track the true cost of department functions, focus training and education efforts on those areas where cost savings can be achieved, empower your staff and allow the department heads to enhance the efficiency of their departments for the overall benefit of the City. We would also recommend that the Finance Department separately track the existing in-house

staffing costs until they cease separately from our firm ' s costs so that you will be better able to evaluate and compare costs of contracting with us versus the current in-house plus outside litigation counsel costs. Settlements and judgments should be tracked separately from attorney ' s fees.

10. Commission and Committee Meetings. We understand that we will not be expected to attend any commission or committee meetings, with the exception of the Planning Commission. We will familiarize ourselves with the organization and goals of all Costa Mesa committees and commissions in order to provide the best advice concerning issues in which they may have a role.

We of course look forward to working with you to discuss our recommended plan, and to implement the choices of the City Council. Let me know if you have any questions.

cc: Allan Roeder, City Manager
Steve Hayman, Assistant City Manager