

City of San Leandro Legal Services Analysis and Report

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Project Overview and Purpose

MRG was retained by the City Manager to conduct the legal services analysis.

Scope of Work:

- Review the existing legal services arrangement and provide recommendations to modify terms of the agreement.
- Review existing procedures and protocols for requesting legal services and propose methods to manage City requests for legal services.
- Survey similar cities to assess how legal services are provided, staffing levels and cost of legal services.
- Compare the cost of contract legal services to in-house legal services.
- Identify advantages and disadvantages of contract legal services and in-house legal services.
- Identify options for provision of future legal services.

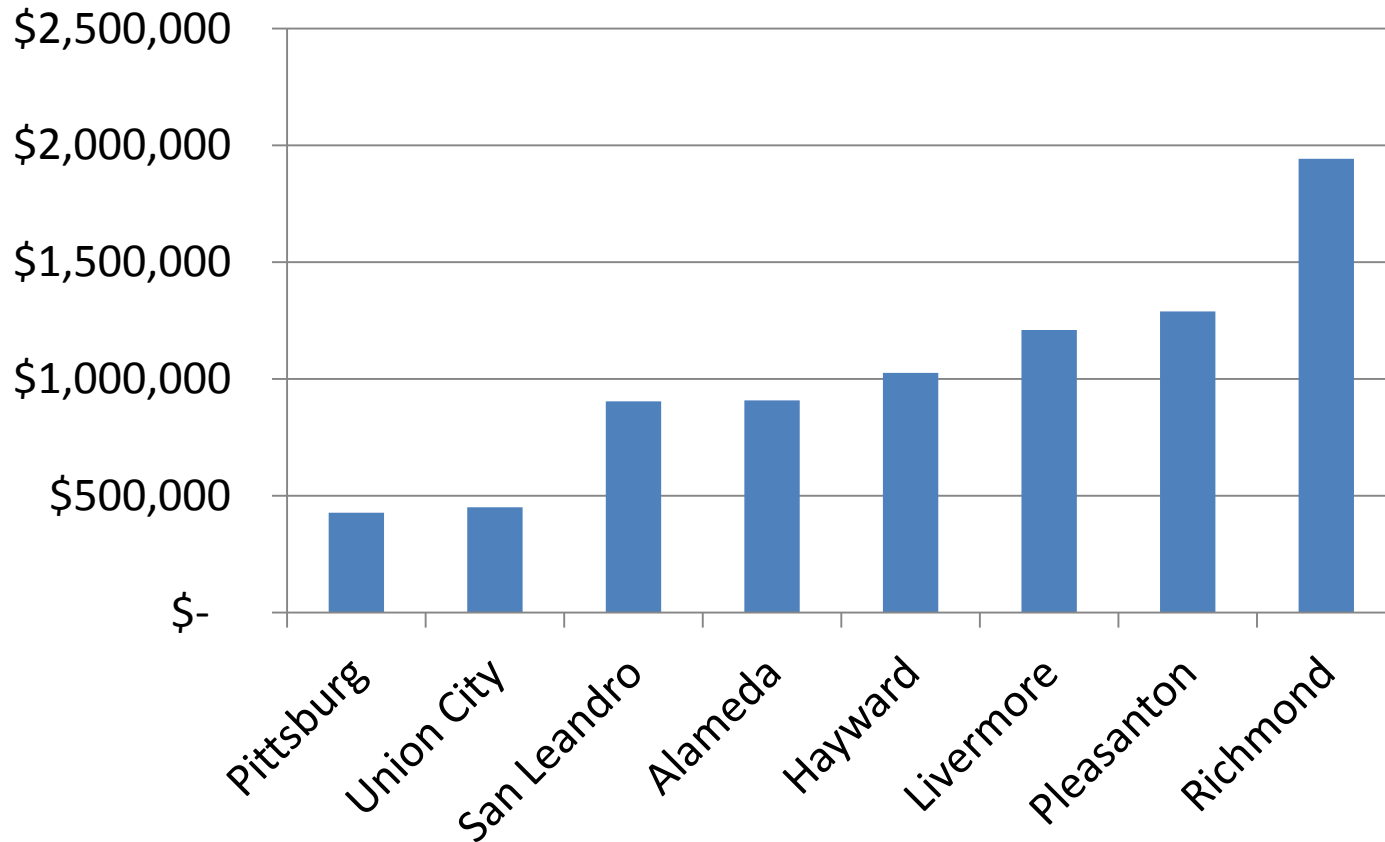
Overview of the Existing Legal Services Agreement

- City has contracted with Meyers Nave for legal services since 1986; it is the “institutional memory” for legal services.
- Annual monthly retainer for “Basic” services - \$28,765 as of July 2011
- Hourly rates charged for “Additional” services, litigation and cost-recovery services.
- Total legal costs, not including litigation are estimated at \$903,600 for FY 2012/13. Litigation cost are estimated at \$450,000.
- Definitions of Basic and Additional legal services are vague, requiring staff/attorney discussion and determination on many matters referred to the City Attorney.
- City staff turnover has led to a perception that Meyers Nave is relied upon for historical perspective and non-legal services and purposes.
- City does not have a written procedure describing how, when and under what circumstances legal services are accessed.
- While attorneys are routinely available, there is some concern that the attorneys are not always “down the hall” for early drop-in discussions.

Benchmark Survey

- Seven City labor comparable cities plus two additional cities were included in the survey.
- The survey evaluated factors leading to demand for legal services, including population, operating budgets, array of City services, FTE staff, City Attorney Office responsibilities and other factors.
- San Leandro is just below the average statistical data for benchmarked cities (population, budget, FTE) and in the middle of services provided (public safety, utilities, community services, etc.).
- Survey evaluated general services/successor agency legal budgets, cost per capita and City Attorney Office staff levels.

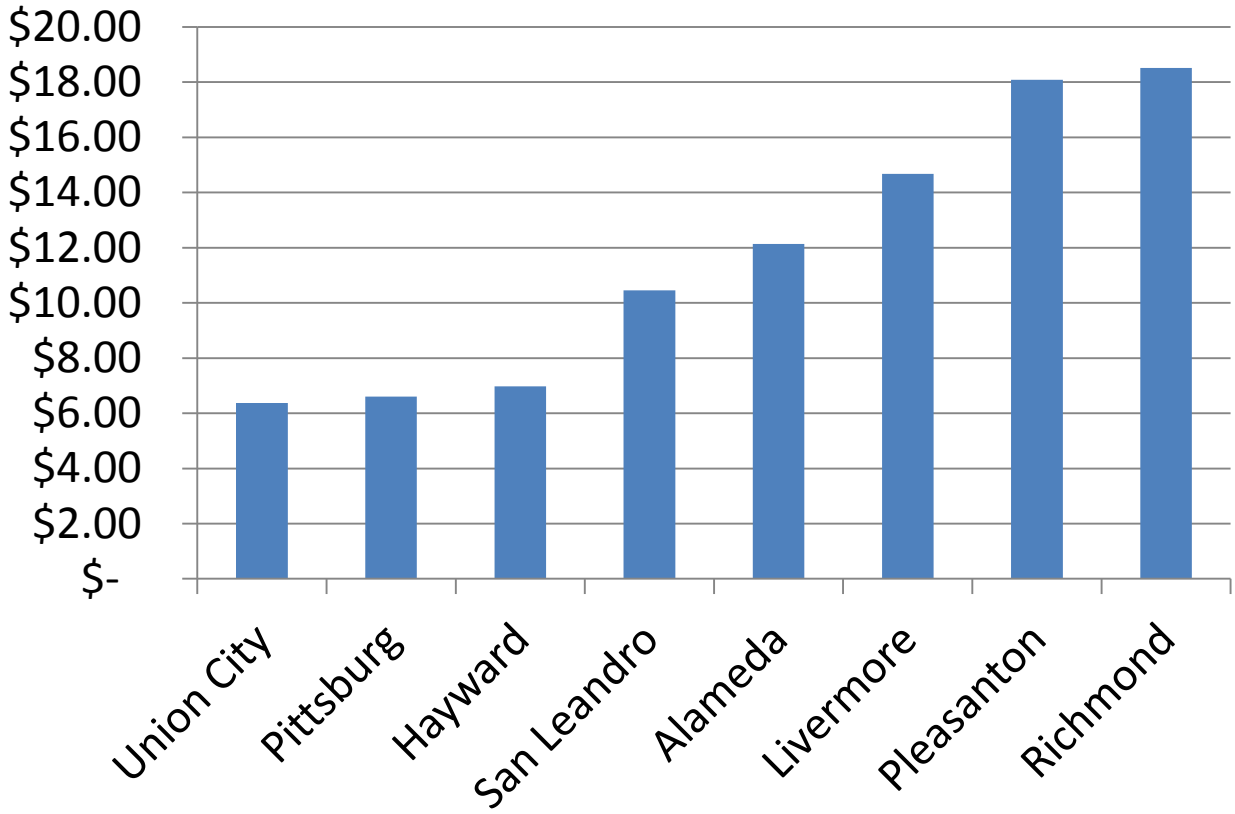
General Legal Services/Successor Agency Budgets



Source: City Budgets; San Leandro is an estimate for FY 2012/13. Litigation and cost recovery services are not included. Berkeley and Fremont budgets are not comparable.



General Legal Services/Successor Agency Cost per Capita



Source: City Budgets; San Leandro is an estimate for FY 2012/13. Litigation and cost recovery services not included. Berkeley and Fremont budgets are not comparable.



City Attorney Office FTE Staffing Levels

City	Attorney Staff for General Services/Successor Agency	Support Staff
Alameda	2.7 attorneys + outside counsel	1.0 paralegal 1.7 administrative
Fremont	4.9 attorneys + outside counsel	.75 paralegal 1.0 administrative
Hayward	4.0 attorneys	1.0 administrative
Livermore	4.5 attorneys	1.2 administrative
Pleasanton	3.0 attorneys + outside counsel	1.0 administrative
Range	2.7 FTE to 4.9 FTE + outside counsel	1.0 FTE to 1.75 FTE
Average	3.8 FTE attorneys + outside counsel	1.2 FTE

Source: City Budgets; Berkeley and Richmond not comparable; Union City and Pittsburg contract for City Attorney services.



In-House City Attorney Office Analysis

- In 1986, San Leandro in-house staff included two full-time attorneys, one part time attorney and two administrative staff.
- Data from benchmark cities indicates a minimum of three full-time attorneys, one clerical staff and .5 paralegal required for San Leandro.
- Current Meyers Nave billed hours also indicate the equivalent of three full-time attorneys, plus support staff.
- Attorney and employee staff salary and benefit costs are based on comparable San Leandro staff.
- Non-personnel costs are included in the analysis.
- Some outside counsel costs should be assumed.

In-House City Attorney Office Analysis

Personnel Costs	
City Attorney and two staff attorneys	
1.5 FTE support staff	\$1,016,000
Non-personnel costs	\$ 39,000
Outside counsel	\$50,000 to \$150,000
Total In-House City Attorney Office	\$1,105,000 to \$1,205,000

One-time start-up costs are not included.

Legacy costs such as Other Post Employment Benefits, such as retirement costs, are not included.

Litigation costs by outside counsel are not included.

Historical and Estimated City Attorney Costs

FISCAL YEAR	BASIC	ADDITIONAL	RDA/SA	LITIGATION	TOTAL
2002-03	\$302,184	\$29,700	\$63,696	\$482,175	\$877,755
2003-04	\$307,176	\$51,885	\$84,678	\$277,151	\$720,890
2004-05	\$308,328	\$41,019	\$131,060	\$344,719	\$825,126
2005-06	\$313,224	\$71,256	\$182,183	\$329,424	\$896,087
2006-07	\$314,268	\$53,922	\$143,869	\$377,007	\$889,066
2007-08	\$322,128	\$70,597	\$161,296	\$619,463	\$1,173,484
2008-09	\$332,760	\$149,667	\$169,535	\$424,421	\$1,076,383
2009-10	\$300,084	\$161,425	\$87,440	\$830,927	\$1,379,876
2010-11	\$304,548	\$193,769	\$77,776	\$821,556	\$1,397,649
2011-12	\$345,183	\$293,262	\$167,170	\$225,227	\$1,030,841
2012-13 estimate	\$355,538	\$298,062	\$250,000	\$450,000	\$1,353,600
In-House Estimate	\$1,105,000 to \$1,205,000			\$450,000	\$1,555,000 to \$1,655,000



Advantages and Disadvantages

Contract City Attorney – Advantages:

- Large pool of attorneys and specialized expertise.
- Costs are based on services requested.
- Personnel changes are generally available upon request.
- No City responsibility for support departments (IT, HR, Finance).
- No City legacy costs such as OPEB.
- Ease of terminating services without severance obligations.
- Overall costs may be \$200,000 to \$300,000 less than in-house City Attorney office.

Disadvantages:

- Attorneys not always available on site for early drop-in discussions.
- Direct hourly cost may be higher.
- Law firm determines attorneys assigned to assist City Attorney.
- City Attorney is accountable to the law firm and the City.

Advantages and Disadvantages

In-House City Attorney – Advantages

- City Attorney Office and staff are on-site and available for early drop-in discussions.
- City Attorney can be an active member of the executive team.
- City selects all attorneys and support staff.
- May be able to coordinate daily with risk management, if this function is assigned to the City Attorney Office.
- Costs are controllable by budgeted staff levels, plus outside counsel.
- City Attorney is accountable to the City/City Council only.

Advantages and Disadvantages

In-House City Attorney – Disadvantages:

- Experience is limited to the candidate pool and experience of staff.
- Personnel costs are incurred regardless of workload.
- Training limited by City resources and attorney availability.
- Reduced access to attorneys during vacations or other absences from work.
- In-house support services are required (HR, IT, Finance).
- Annual costs may exceed existing legal services costs.
- City will incur legacy costs, such as OPEB.
- City must provide office space, file storage and conference room access.
- City must handle in-house City Attorney Office personnel matters

Options for Legal Services

Option 1 - Continue to contract with Meyers Nave:

- Estimated cost is likely to be less than in-house City Attorney.
- City will not incur additional one-time start-up costs and legacy costs.
- City will not experience transition impacts, nor lose the legal services institutional knowledge.
- City should renegotiate the Agreement – eliminate Basic/Retainer and Additional services and replace with a market-based fee for service.
- Segregate legal costs from pass-through costs (court reporters, experts, etc.) to get an accurate assessment of City Attorney costs.

Options for Legal Services

Option 1: Continue to contract with Meyers Nave (continued)

- Create a pool of qualified law firms for tort litigation defense work.
- Use Meyers Nave for specialized legal matters.
- Authorize the City Manager to utilize additional outside counsel, in consultation with the City Attorney and within administrative and budget authority.
- Prepare a City procedure with guidelines for when, how and under what circumstances legal services may be requested.
- Provide training to staff on drafting resolutions, ordinances, term sheets and other documents.

Options for Legal Services

Option 2: Implement an In-House City Attorney Office

- City may select all of the attorneys and support staff.
- City Attorney Office would be integrated into the City's daily operations.
- May be able to merge risk management into the City Attorney's Office.
- Annual costs may exceed existing costs by \$200,000 to \$300,000.
- Additional costs would be incurred – start-up costs, support costs and legacy costs.
- City will experience some transition impacts and loss of institutional knowledge.
- Skill sets defined by the experience of the selected attorneys.
- Outside counsel assistance will still likely be required.

Options for Legal Services

Option 3: Issue a Request for Proposals for City Attorney Services

- Costs will be incurred in preparing and issuing RFP, and in evaluating proposals.
- City may experience some transition impacts and loss of institutional knowledge.
- City Attorney contract costs will be unknown until a new contract is executed.

Questions