



CITY OF POMONA COUNCIL REPORT

August 7, 2017

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Arnold Alvarez-Glasman, City Attorney

Subject: **Adoption of a Resolution Amending the FY 2016-17 City Attorney Department Operating Budget by Appropriating \$39,696 from General Fund Reserves for Supplemental City Attorney Services**

OVERVIEW

Recommendations – That the City Council adopt the attached resolution amending the FY 2016/2017 City Attorney Department Operating Budget by appropriating \$39,696 from General Fund Reserves to Supplemental City Attorney Services, Account Number 101-0601-52325-00000.

Fiscal Impact – The requested funding will be appropriated to Supplemental City Attorney Services, Account Number 101-0601-52325-00000.

Adopted FY 2016-17 Supplemental Legal Budget	\$ 281,414.00
Departmental Budget Adjustment	\$ 58,928.08
Adjusted Supplemental Legal Budget	\$ 340,342.08
Actual Supplemental Legal Services Provided	\$ 380,038.23
Requested Appropriation	<39,696.15>
Amended Supplemental Legal Services Budget	\$ 380,038.23

EXECUTIVE SUMMARY

The Supplemental Legal Services line item in the City Attorney Department's budget is used to pay for legal services provided to the City above the 260 monthly retainer hours. The requested appropriation will allow payment of remaining invoices for supplemental legal services provided during fiscal year 2016/17 by contracted City Attorney staff.

DISCUSSION

The contract for City Attorney services with Alvarez-Glasman & Colvin provides for 260 retainer service hours each month. Services provided that exceed the number of retainer hours are accounted for in the Supplemental Legal Services line item in the annual budget. Because the need for legal services can vary significantly from year-to-year, the General Fund budget for Supplemental Legal Services is set using a baseline number of hours per month to estimate the expected cost for Supplemental Legal Services. The baseline number of monthly hours used to estimate the annual cost was 88 hours per month, or 1,056 for the fiscal year. The number of hours, including retainer and supplemental, would average 348 per month. The actual number of hours of legal services provided during FY 2016/17 averaged 422 per month.

The monthly retainer and baseline supplemental hours are normally adequate for providing routine legal services, such as preparing for and attending Council meetings and Planning Commission meetings, preparing and reviewing resolutions and ordinances, advising and responding to inquiries from the Council and City Departments, preparing and reviewing contracts and other legal documents, and providing legal opinions and recommendations, when requested, as well as special assignments and projects. However, this year there have been numerous additional matters requiring legal services, which are outside the control of the City's departments or the City Attorney's Office, but which impact the City's legal services cost. Such matters include City-initiated legal actions and outside incidents, circumstances and litigation (non-self-insured) that require legal services. The City's contracted law firm, Alvarez-Glasman & Colvin, provides legal services requested by all City departments with only occasional exceptions, such as special counsel for tax guidance, oversight in protecting the City's water rights, and certain types of employment matters. And, because AGC handles most legal matters in-house, the City has no need to utilize outside counsel who normally provide services at a higher hourly rate.

The table below reflects specific single categories that have required a significant number of attorney hours and contributed to the increase in legal costs for the year.

Description	Total Annual Hours	Total Annual Cost	Type
Homeless Litigation & Related Issues	331.9	56,513.26	Uncontrollable
Marijuana Litigation, Enforcement, Legislation	362	63,517.79	Uncontrollable
Subpoenas & Pitchess Motions	388	65,932.81	Uncontrollable
Receiverships	461.1	61,531.29	City Initiated
Public Record Act (PRA) Requests	693	117,897.00	Uncontrollable

The above matters were identified for the purpose of tracking the use of the City's legal resources, but are not inclusive of all subject categories. These matters are briefly discussed below:

Homeless Issues – The homeless issues being addressed began escalating to the current level of mitigation around mid-year of 2015 and includes the City's defense of the lawsuit filed by Public Counsel of behalf of numerous homeless individuals and striving towards meeting the Emergency Shelter facilities requirement. This is an uncontrollable legal expense, and work will continue until all issues are addressed.

Marijuana Issues – The City has had one attorney primarily assigned the task of closing down the numerous Medical Marijuana Dispensaries that kept popping up in the City. Work has been underway to draft amendments to the City Code and Zoning Code to address the newest legislation that allows adult recreational use of marijuana. Any regulation of the recreational use of marijuana the City wishes to adopt must be in place by the end of this calendar year. This is an uncontrollable legal expense that will continue as enforcement issues develop.

Subpoenas & Pitchess Motions - The City routinely receives subpoenas for records and for personal appearances by City staff to testify in civil litigation matters not involving the City. Subpoenas for records are generally processed by City Attorney staff with minimal legal cost. However, if a City employee's testimony is required at deposition or at trial, a Deputy City Attorney will meet in advance with the employee who will be testifying to determine whether there is potential liability to the City. If there could be potential for liability, the Deputy City Attorney will be present during testimony.

Pitchess Motions require most of the hours attributed to this category. Pitchess Motions are used in criminal prosecution proceedings to obtain information regarding the arresting Police Department and the conduct and activities of officers involved in the arrest. A Pitchess Motion filed by a defense attorney will seek review of one or more of the arresting police officers' personnel files in an attempt to challenge a police officer's conduct or the arrest. The City Attorney files an opposition to the review of the personnel file(s) being sought and must appear in court to argue for the motion. The more criminal case filings and arrests made by the Police Department, the greater the number of Pitchess Motions that will be served in criminal prosecution proceedings. Though the number of filings and the number of attorney hours required will vary depending on many factors, legal representation on Pitchess Motions is essential in successfully prosecuting criminal cases and is considered an uncontrollable legal expense.

Receiverships – The active receiverships are the Auto Lodge and the Old Firehouse Inn. When the receivership is completed, the City will be able to recover costs incurred in carrying out enforcement efforts. The amount of funds available for reimbursement to the City depends on a number of factors, including property value, encumbrances against the property, sale price, if applicable, and other costs that must be paid from the Receivership Account. At the conclusion of a Receivership, costs recovered go back into the appropriate Fund that paid for staff time, Police Officers, Code Inspectors and legal costs. Legal costs and Police Officer costs would be credited back to the General Fund. The other funds may vary depending on whether relocation services are required and if other departments are required to assist. For the Mt. View Receivership, the City was reimbursed \$55,000 in the form of a check issued by the Receivership Account. An additional \$12,000 was ordered paid as a personal debt, which brings the total reimbursement ordered to \$67,000. This amount was the total payment requested and submitted

to the Court. Recovery of costs for legal services provided by the City Attorney, as well as costs for police services would have been deposited into the General Fund. Special Funds would have received the amount expended by these respective funds.

Public Record Act (PRA) Requests - The number of PRA requests and the complexity of the requests made to the City continues to increase. Many requests are litigious in nature and are filed pre-litigation. Obtaining records through a PRA request is significantly less expensive than obtaining records by subpoena. If records obtained through a PRA request prove useful, they can be subpoenaed at a later date. This has been the case where there have been disputes concerning development, sale, maintenance and other issues related to commercial properties where the City is not a party. Also, records needed for tenant-landlord disputes, neighbor v. neighbor disputes, property appraisals, marketing firms requesting data, developers needing site history and other disputes have increased the number of PRA requests requiring legal review. This will be an ongoing, uncontrollable expense, if the City is to stay in compliance with public record disclosure laws.

In addition to the above categories for which the hours were tracked, there are a couple of other issues that have required a substantial amount of attorney time. One of those matters involves all of the various meetings and prep work required to move forward with the ADA improvements to the Lincoln Park area in response to the Tessier lawsuit and issues related to approval of the Major Certificate of Appropriateness, including attendance at Parks & Recreation Commission meetings and Historic Preservation Commission meetings. Another area that has required significant hours of legal service has been enforcement efforts to gain compliance from the Bare n Legal strip club and the downtown entertainment venues to obtain their Entertainment Business Permits. Settlement of litigated matters and compliance enforcement of required permits are both considered uncontrollable legal costs.

CONCLUSION / RECOMMENDATION

In order to pay pending invoices for Supplement Legal Services provided during Fiscal Year 2016/17, it is requested that the City Council adopt the attached resolution approving an appropriation from General Fund Reserves in the amount of \$39,696 to the City Attorney Department' Supplemental City Attorney Services line item for the FY 2016/17 budget.

Attachment: Resolution