

Committee of the Proposed City Charter

By: Sunny Soltani, City Attorney

Lum Fobi, Deputy City Attorney

Date: June 18, 2018

CITY ATTORNEY INFORMATION

The Committee has requested information regarding the City Attorney arrangement in the City of Carson. The legal representation arrangement for an in-house or contracted outside City Attorney is a municipal affair that the proposed city charter may expressly control.

All city attorneys, whether appointed or elected, in-house or contract, share certain basic responsibilities imposed by state law or by city charters. City attorneys advise city officials and staff on all types of legal matters pertaining to city business, including but not limited to, drafting ordinances and resolutions, preparing contracts, serving as municipal prosecutors, and performing other services as required by the city. However, the specific responsibilities, roles, and relationships within the cities depends on the structure of a city's government.

City attorney arrangements come in different forms. Some city attorneys are city employees ("in-house"); some are members of private law firms ("contract"); some are elected; some are appointed by the city manager; some serve for a specified term; some serve at the pleasure of the appointing authority; but, most are appointed by the city council. In addition, attorneys appointed by the city manager or elected by the voters may have a different relationship with the city council than those appointed by the city council, while those appointed by the city council may create a more traditional employer-employee relationship. Regardless of how a city attorney takes office or what their specific form may take, they remain the chief legal officer of the city. In brief summary, the city attorney's job is to provide legal advice to minimize the city's liability and promote compliance with the law.

I. Status of City Attorney

California Government Code Section 36505 authorizes general law cities to appoint a city attorney as they deem necessary. State law does not dictate the specific representation format between a city and its city attorney, but rather by the legal needs of a city. Thus, a city attorney may provide legal services on a contractual basis, or have one or more full-time attorneys and staff who are in-house employees of the city that work exclusively on the city's legal matters. City's with in-house services will often contract with outside law firms for specialty legal work, such as complex litigation or complex land developments where a certain expertise is needed, since keeping such expertise on the payroll for the limited times it is needed may be cost prohibitive.

II. In-House Versus Contracted City Attorney

In-house city attorneys have more opportunities to serve as city team members, i.e., a staff person. Contract attorneys work out of city hall and only attend meetings as needed. In-house city attorney costs are not limited to salary, but generally include the costs of a legal library and software; conference expenses; professional liability insurance; professional fees and memberships; and other staffing costs like employee benefits. In other words, the compensation for one in-house city attorney may at first blush appear to be less than that for a contracted city attorney; however, all the costs of an in-house city attorney's office need to be taken into consideration for an apples-to-apples comparison.

The average in-house city attorney salary is about \$250,000-\$300,000, with 1/4 having higher salaries than that. Also, typically, in-house city attorneys will require a legal secretary at approximately \$65,000 annually. This is just salary, not all the costs mentioned above. In a city of Carson's size you will need at least 3 in-house attorneys. We are not aware of a single California city with Carson's budget and population with in-house attorneys which does not contract matters to outside legal counsel. Moreover, when a city is contracting out only limited work to outside legal counsel, the law firms will charge significantly higher rates.

Generally, well-staffed in-house city attorney offices are divided into fields such as civil liability, criminal prosecution, code enforcement, and municipal law, which encompasses the drafting of local laws and advisory and transactional services involving planning and land use, housing, environmental issues and contract and business matters. However, as everyone knows, the field of municipal law is increasingly becoming an area composed of a great many specialties, and the idea of a general law practitioner that could advise a city on all issues is no longer feasible. Cities are limited by the number of attorneys they can afford on staff, which translates to limited legal expertise, limited legal staff, and a need to contract special outside counsel at significantly higher rates to handle city-related litigation and other legal matters. For example, prior to contracting with an outside firm for its city attorney services, the City of Palm Springs had an in-house city attorney's office employing five people and was contracting with 32 outside law firms for special legal services. Even the City of Los Angeles and City of Long Beach, with larger in-house attorney staff, contract out legal services with dozens of law firms.

A&W has provided the City with deeply discounted rates for years given the volume of work and the fact that we provide full legal services for the city. The actual legal expenses to the City of Carson for FY 16-17 was \$2,615,365. By comparison, the City of Compton, which has a similar population to Carson, was at an actual cost \$7,174,220 for FY 14-15 and an adopted budget of \$8,385,354 for FY 16-17 for in-house services. The City of Santa Monica, also with a similar population, was at \$13,270,352 for FY 16-17 for in-house city attorney services. These high amounts were due to contracting on specialty work as discussed in the above paragraphs, which is the norm for cities facing multiple complex legal matters(see Exhibit A).

On the other hand, contracting with an independent law firm to provide city attorney services may result in efficiencies for how legal services are provided based on the attorney's firm being able to provide legal expertise in a number of practice areas critical to cities without regularly contracting for these expensive special legal services. Additionally, most of the costs for contracted city attorney services are built into their rates.

Based on a 2016 survey of the 247 cities in southern California (southern cities up to Kern County), 49 have an in-house operation vs 198 which are contract. The average population size of those cities with in-house operations is 230,879. Most likely, a large part of the reason that mainly larger cities have in-house operations is that size allows them to develop a more sophisticated legal team than one, two or three attorneys can manage.

A comparison of some cities and their arrangements are provided in Exhibit A as a point of reference.

III. A&W as City Attorney for the City of Carson

A&W provides legal services for the City of Carson, with Sunny Soltani serving as the City Attorney. The City is currently involved in numerous active litigation cases and has over \$500 million in ongoing economic development.

We'd like to take this opportunity to share with the community an important analysis of our fees, which we have previously shared with the City Council.

A&W took over in Carson from a major downtown law firm in 2003. Over the first three years the City's attorneys costs declined by 30% when compared to the previous law firm, and are still today \$1 million per year less than the annual costs of the former City Attorney firm.

In 2014, as the City was exploring changing legal counsel, we voluntarily compared our cost of legal services over the previous 10-years we served as legal counsel and compared those costs with the firm we replaced. Even with the passage of more than ten years, our legal services costs to the City of Carson were still 32% below that of the firm we replaced ten years earlier. As a result of these savings, in 2015 the City Council asked us to also take over the code enforcement work being done by another law firm that focused almost exclusively on code enforcement. Our first end-of-year analysis showed that we saved the City approximately \$70,000 annually in code enforcement when compared to the previous firm. These cost savings, however, do not take into account the revenues we also independently generated for the City of Carson – See Exhibit B for an analysis of revenues generated for the City with the help of A&W for fiscal years 15-16 and 16-17.

In short we bring a quality of lawyers which can go toe-to-toe with the state's largest firms at rates public agencies can afford. A recent example of this in Carson is the landmark victory we secured for the City (saving the City approximately \$8 million) in the suit by Colony Cove against the City, which was adjudicated by the 9th Circuit Federal Court of Appeals earlier this year. (*District Colony Cove Properties, LLC v. City of Carson*, 888 F.3d 445 (9th Cir. 2018).) In that case, involving a decade of litigation where the park owner had two of the nation's largest law firms (one being the international law firm of O'Melveny & Meyers), our fees charged to the City were at \$225 per hour, where the park owner paid over \$650 per hour for his attorneys. The park owner spent over \$3,500,000 in attorneys fees (documented in court papers), while our office only charged the City \$856,600 and we won, resulting in a published opinion benefiting the City not just with respect to its rent control but its general police powers.

Exhibit B

**REVENUES GENERATED AND LITIGATION AVOIDANCE SAVINGS
FOR CITY OF CARSON FYs 15/16 and 16/17**

Based on settlements and negotiations revenue accomplishments

Matter	Value
Tesoro LARIC Project Negotiations	\$45 million
Community Development Center property – deeded to City through litigation	\$2.5 million
157 acres – worked on unprecedented issuance of \$50M of additional bonds to finalize 157 acre project through successful litigation against Department of Finance	\$50 million
NFL – Successfully negotiated deal where Chargers paid \$7M to CRA for maintenance of 157 acre site, \$1.5M to City to relieve it from any further obligations, and deeded the 157 acre site to the City at \$1 – property value estimated at over \$36M	\$8.5 million in cash \$36 million property value
Macerich – negotiated deal that will generate over \$3M annually in sales tax. Macerich also paid \$75M towards development of the 157 acre site, \$3M of nonrefundable deposit to the City’s general fund and has a guarantee of \$12M penalty to the City if they don’t complete the project	\$75 million contribution towards remediation of the 157 acres site \$3 million nonrefundable deposit with the City \$12 million penalty to be imposed if project not completed by a certain date \$3 million (minimum) annually in perpetuity
Becker Boards – negotiated unprecedented annual payment of \$100,000. Development Agreement term is 30 years	\$3,857,805
New Outfront Billboard Development Agreement for \$100,000 per year for 20 years. (Under current agreement Outfront pays \$0)	\$2,554,466
Cal ReUse Grant – Negotiated settlement for the CRA saving the return \$6M grant to state. (After item agendized by Cal ReUse with staff recommendation demanding City return \$6 million.	\$6 million
Spanos Property -- \$7 million negotiated in development mitigation measures for 11 acre residential development Del Amo parcel	\$7 million value to city
TOTAL	\$254,412,271¹

¹ Since one of the negotiations resulted in sales tax generation, where annual revenues will be generated in perpetuity. Looking at 50 years projection of that and discounting the present value of \$3M annually has an additional \$60,000,000 to the City.

Established Developer Impact Fees (DIF) & Community Facilities Districts (CFDs)

Matter	Value
Alpert & Alpert	\$840,000 DIF; CFD approx. \$35,000/year
Alere	\$294,000 DIF
Panattoni	\$241,000 DIF
Sywest	\$410,000 DIF/\$450,000 Bond
CalPak	\$205,862 DIF
HLC	\$75,000 DIF
Union South Bay	\$250,000 DIF
TOTAL	\$2,315,862 DIF and \$35,000 annually

The passage of Measure C – estimated at approximately \$7-10 million annually in revenue to City.

Favorable judgment in Colony Cove Litigation at 9th Circuit Court of Appeals (*District Colony Cove Properties, LLC v. City of Carson*, 888 F.3d 445 (9th Cir. 2018)) – City absolved of potential nearly \$8 million liability.