

Analysis By: Daniel Trubman

OFFICE OF THE CITY ATTORNEY

All Funds Budget Summary	Adopted FY 2014-15	Request Base FY 2015-16	Decision Pkgs FY 2015-16	Request Total FY 2015-16	Percent Change
Resources					
Charges for Services	\$6,000	\$6,000	\$0	\$6,000	0.0%
Interagency Revenue	5,227,877	5,600,475	97,000	5,697,475	9.0%
General Fund Discretionary	2,481,266	2,688,781	(122,920)	2,565,861	3.4%
General Fund Overhead	2,892,929	3,107,935	(142,080)	2,965,855	2.5%
Total Resources	\$10,608,072	\$11,403,191	(\$168,000)	\$11,235,191	5.9%
Expenditures					
Personnel Services	\$9,000,252	\$9,719,757	\$77,940	\$9,797,697	8.9%
External Materials and Services	734,651	735,859	(251,940)	483,919	-34.1%
Internal Materials and Services	873,169	947,575	6,000	953,575	9.2%
Total Requirements	\$10,608,072	\$11,403,191	(\$168,000)	\$11,235,191	5.9%
Total Bureau FTE	61.35	62.05	1.00	63.05	2.8%

Percent Change is the change from FY 2014-15 Adopted Budget to FY 2015-16 Total Requested Budget.

Key Issues

Key Performance Measures

In preparation for the FY 2015-16 budget process, the City Attorney's Office worked with the City Budget Office to identify and develop Key Performance Measures (KPM) to provide Council with more useful information for decision making. The bureau identified two existing Performance Measures as KPMs, and additionally developed a new measure.

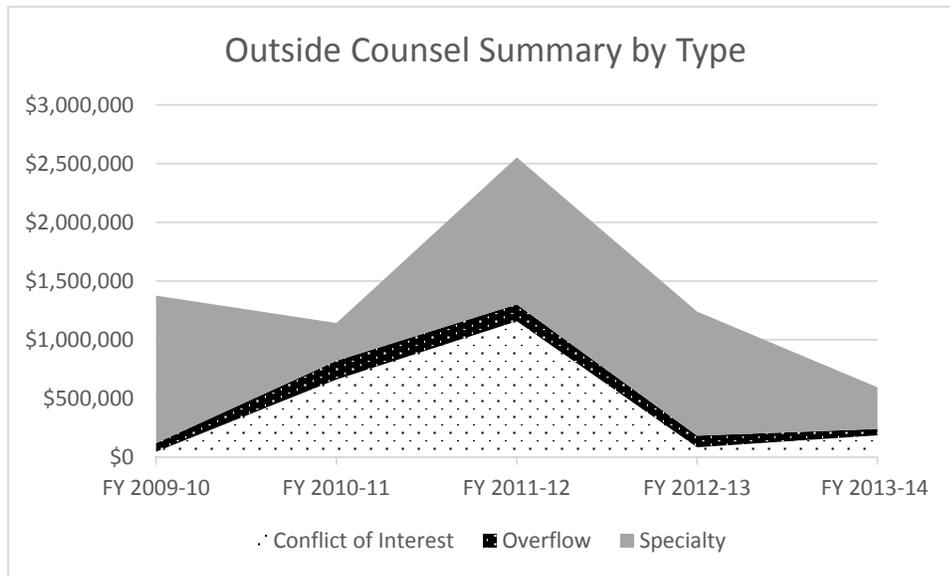
Number of training hours provided by City Attorney staff to other City Staff

Providing training to City staff is an important tool to ensure that the official actions of the City, its elected officials, and employees comply with the law. While the number of training hours provided serves partially as a proxy for the relative emphasis on training CBO recommends that the bureau should continue to explore measures that assess the effectiveness of the bureau's trainings. Survey results of City employees' comprehension of appropriate Citywide and bureau policies may better measure the outcome of the bureau's legal trainings.

Outside Counsel Costs

The City obtains outside counsel for three reasons: 1) conflict of interest 2) legal specialization 3) work overflow. When the City obtains outside counsel, the relevant bureau is directly billed. While the bureau cannot affect the need for outside counsel necessitated by conflicts of interest, the bureau has the ability to affect the need for outside counsel generally by varying the number and specialization of the office's attorneys. As the cost of outside counsel is generally significantly above the cost of in-house counsel on an hourly basis, this new KPM is useful in analyzing the full fiscal impact of increasing or decreasing the

number of attorneys, and the allocation of attorneys by subject matter. As depicted below, Citywide outside counsel costs have dropped considerably since FY 2011-12, as a result of declining conflict of interest related costs. The reduction in the cost of specialty outside counsel has largely been driven by reduced spending related to the Portland Harbor Superfund site and Veterans Memorial Coliseum. The bureau anticipates additional legal work related to the Superfund site in the future, at which point the City Attorney and the Bureau of Environmental Services may agree to dedicate additional resources to hire an attorney to focus on those issues internally. The City's overflow total primarily consists of work related to civil/police forfeitures. In FY 2014-15, the Police bureau increased their interagency agreement with the City Attorney by \$75,000 for a Deputy City Attorney to work on civil/police forfeitures, which has eliminated the need for related outside counsel costs.



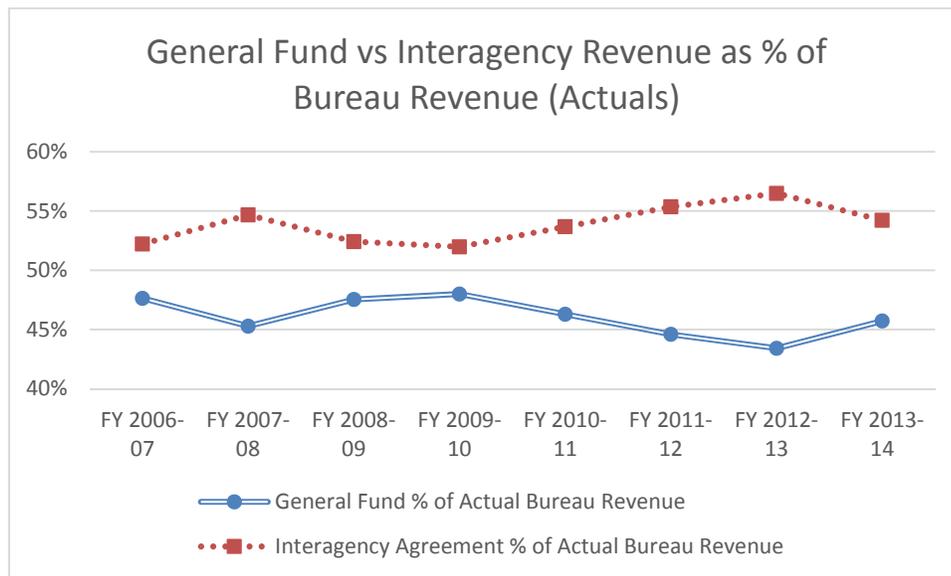
Attorney Hourly Rate

This measure allows the City to compare the cost of the City's in-house counsel to the alternative of hiring outside counsel. It may be helpful for the bureau to state the City attorneys' hourly rate as a ratio of a benchmark such as the average hourly rate of attorneys in Portland, to give more context. It should also be noted that the City utilizes outside counsel for a wide range of legal services with varying hourly costs, which may inhibit direct comparisons.

Base Line Service vs Interagency Agreement

The City Attorney's Office is funded through a combination of General Fund revenues and interagency revenue from customer bureaus. This has led to some confusion, as it is not always clear what level, or number of hours, of legal services each bureau is entitled to as part of the General Fund Overhead model, and at what point the bureau is responsible for additional cost through the creation/expansion of an Interagency Agreement (IA), or through directly paying for outside counsel costs. Correspondingly, when a bureau reduces its IA with the City Attorney's Office, it is not clear which legal services are no longer provided by the office. The reduction in recent years by the Police Bureau and the Revenue Bureau of their IAs with the City Attorney's Office did not lead to a corresponding increase in outside counsel work for each bureau respectively, as the Attorney's office was able to absorb the additional work. The City should formally clarify the level and type (e.g. legal advice, litigation) of legal services each bureau is

entitled to as part of the General Fund Overhead model. Interagency Agreements between the office and customer bureaus should also include service level agreements that specify which services will be provided by the office above and beyond the base level of service.



Note: Charges for Services negligible and excluded.

Decision Package Analysis & Recommendations

Equity and Civil Rights Enforcement, AT_01, \$180,000, 1.00 FTE

This package funds a Deputy City Attorney to affirmatively enforce City-created civil rights regulations through an administrative process or by prosecuting cases. Secondly, the position will assist in the development and implementation of legislation and policies to achieve the City’s equity goals. Currently the bureau is using bureau savings from the delayed implementation of the Compliance Officer/Community Liaison contract to fund a limited term position working on “Banning the box”. Additionally, in FY 2015-16 the requested position will focus on livable wages, protected sick leave, housing equity, the DOJ settlement, and ADA/Title VI training and enforcement.

The bureau believes this package will slightly reduce the hourly rate (\$140 to \$139), and increase training hours provided by the City Attorney’s Office to other City employees, by 25. In recent years, the Office’s trainings related to HRAR 2.02 (the City’s internal workplace harassment, discrimination and retaliation policy) and ADA/Title VI have ranged from 5-10% of all training hours. The number of cases handled may marginally increase with this position as well. In the short term, this package is unlikely to decrease outside counsel costs, as the City is not currently incurring outside counsel work for civil rights. This position could result in reductions in the size of the contract with the Bureau of Labor and Industries (\$27,000 in CY 2015) required for that agency’s enforcement of the City’s Protected Sick Time.

Previously when the City’s civil rights policies were more expansive than federal and state regulations, the City contracted for the enforcement of the City’s Civil Rights Ordinance for approximately \$20,000 annually. As federal and state civil rights protections “caught up” with the City’s, the previous need for affirmative enforcement by the City dissipated as enforcement became possible through BOLI and court

actions by other actors. The bureau believes that further expansion and implementation of civil rights legislation and policies, which would require future Council approval, would dramatically increase the cost of enforcement (done in-house or with outside counsel).

As part of the Mayor's guidance on this year's stabilization budget, he asked bureaus to submit ongoing add requests only for their highest priority programs. The bureau has not prioritized civil rights enforcement, generally allowing better positioned federal and state agencies to focus on those issues, while the City Attorney's Office dedicated resources to providing excellent, objective, timely and cost-effective legal services. This package would largely constitute the creation of a new City program. If future Council decisions considerably increase the amount of legal services required for civil rights enforcement, the bureau should ask for additional resources at that time. The bureau notes that, "it is unknown what future rights (with attendant enforcement obligations) may be created by Council, or what future enforcement actions Council might direct". CBO believes it is premature at this time to fund an additional position in this area.

CBO Recommendation: \$0, 0.00 FTE

GF Reduction Package, AT_04, -\$180,000, -1.00 FTE

This reduction package reduces General Fund Discretionary and Overhead revenues and 1.00 FTE (Deputy City Attorney), and was the bureau's required offset for its Equity and Civil Rights Enforcement package (AT_01). It is highly likely that potential savings from this package will largely be offset by increased outside counsel cost (a bureau KPM). The reduction of this position will also result in the reduction of the number of training hours offered by the bureau to City employees (another bureau KPM). The bureau was not able to identify which specific trainings would be curtailed or eliminated as a result of this reduction package. This package will save General Fund Discretionary resources, but is unlikely to actually save the City close to \$180,000, as customer bureaus are required to directly pay for additional outside counsel cost. Furthermore the reduction would unnecessarily reduce institutional memory, and potentially exacerbate future succession planning for the bureau. The bureau anticipates that the reduction of a Deputy City Attorney would increase the hourly rate by 1.4% to \$142 due to a decline in the number of Attorney hours. CBO does not recommend this offset.

CBO Recommendation: \$0, 0.00 FTE

Litigation Hold Program, AT_02, \$97,000, 1.00 FTE

This package would support 1.0 FTE Assistant Program Specialist, funded through an interagency agreement with Risk Management, to administer the City's Litigation Hold program. In the FY 2014-15 Adopted Budget, Council authorized one Deputy City Attorney funded by General Fund ongoing resources to focus on Citywide legal records management issues. A corresponding legal records paralegal position request (total cost of \$110,104, AT_02) was not approved. This Assistant Program Specialist will largely be responsible for tasks originally requested to be performed by the paralegal, including initiating litigation holds, managing the City's litigation hold software, and educating and assisting bureaus, at a notable discount from the previously proposed paralegal position. This position is expected to provide at least 25 hours annually of training of records management and litigation holds, but does not positively (or

negatively) change the bureau's other performance measures. Risk Management's willingness to support this program is a strong endorsement that improving the implementation of the City's litigation holds policies will better protect the City from the possibility of relevant evidence being inadvertently lost or intentionally destroyed and avoiding costly sanctions, or be unprepared to pursue legal action due to lack of preserved evidence.

CBO Recommendation: \$97,000, 1.00 FTE

DOJ COCL Realignment, AT_03, (\$265,000), 0.00 FTE

This package, along with a corresponding package in the Mayor's Office (MY_02) realigns General Fund resources from the City Attorney's Office to the Mayor's Office for management of the Compliance Officer and Community Liaison (COCL) program. CBO believes The DOJ COCL contract is not a Citywide service, and should be funded within the Mayor's Office with General Fund Discretionary, not General Fund Overhead, resources.

CBO Recommendation: (\$265,000), 0.00 FTE

City of Portland
Decision Package Recommendations
(Includes Contingency and Ending Balance)

	Bureau Priority	Bureau Requested					CBO Analyst Recommendations				
		FTE	Gen Fund Ongoing	Gen Fund 1-Time	Other Revenues	Total Expenses	FTE	Gen Fund Ongoing	Gen Fund 1-Time	Other Revenues	Total Expenses
Office of the City Attorney											
<u>Adds</u>											
AT_01 - Equity and Civil Rights Enforcement	01	1.00	83,493	0	96,507	180,000	0.00	0	0	0	0
AT_02 - Litigation Hold Program	02	1.00	0	0	97,000	97,000	1.00	0	0	97,000	97,000
<i>Total Adds</i>		<i>2.00</i>	<i>83,493</i>	<i>0</i>	<i>193,507</i>	<i>277,000</i>	<i>1.00</i>	<i>0</i>	<i>0</i>	<i>97,000</i>	<i>97,000</i>
<u>Reductions</u>											
AT_04 - GF Reduction Package	01	(1.00)	(83,493)	0	(96,507)	(180,000)	0.00	0	0	0	0
<i>Total Reductions</i>		<i>(1.00)</i>	<i>(83,493)</i>	<i>0</i>	<i>(96,507)</i>	<i>(180,000)</i>	<i>0.00</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<u>Realignments</u>											
AT_03 - DOJ COCL Realignment	01	0.00	(122,920)	0	(142,080)	(265,000)	0.00	(122,920)	0	(142,080)	(265,000)
<i>Total Realignments</i>		<i>0.00</i>	<i>(122,920)</i>	<i>0</i>	<i>(142,080)</i>	<i>(265,000)</i>	<i>0.00</i>	<i>(122,920)</i>	<i>0</i>	<i>(142,080)</i>	<i>(265,000)</i>
Total Office of the City Attorney		1.00	(122,920)	0	(45,080)	(168,000)	1.00	(122,920)	0	(45,080)	(168,000)