



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

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September 6, 2019

INTEROFFICE MEMORANDUM

TO: City Budget Office

FROM: Tracy Reeve *TR*
City Attorney

SUBJECT: FY2019-20 Fall Budget Monitoring Process

Attached is the City Attorney's Office's Fall Budget Monitoring Report for FY2019-20. In summary, the office's prior year expenditures were 6% under budget. There are no significant issues to report for the prior year.

Fall BMP requests include the following:

- Portland Harbor Superfund Staffing increases funded with interagency resources;
- Water Main Break Claims – Transfer of funds from Policy Set Aside account to the City Attorney's Office for settlement of claims resulting from the March 16, 2019 Water Main Break (Ordinance No. 189572);
- Encumbrance Carryover to complete work with Delaris LLC for development of business and technology requirements for practice management software.

TPR/ccj
Encls.

AT - Office of the City Attorney

DP Type

New Revenue

Request Name: 9213 -Portland Harbor Superfund Staffing

Package Description

This request adds one ongoing Deputy City Attorney position funded with interagency resources from the Bureau of Environmental Services (BES). This attorney position will focus on the City's defense in the Portland Harbor Superfund settlement process. The US Environmental Protection Agency (EPA) notified approximately 150 parties, including the City, that they are potentially liable for the costs of environmental cleanup at Portland Harbor. Most of these parties are engaged in a massive, non-judicial settlement process. This process will allocate liability for more than 400 facilities with over 150 years of operations. Because of the scale of operations to be assessed and the magnitude of anticipated costs to be allocated among the parties (over \$2 billion), the settlement process is formal, detailed and labor intensive.

After nearly 10 years of discovery, advocacy is about to begin. To complete advocacy in a timely manner, the multitude of facilities and issues are grouped in a series of overlapping briefing timelines. The City is a party in each briefing series. The overlap results in major litigation briefs being due approximately every two weeks over the course of several years. This briefing is in addition to the ongoing Portland Harbor legal work required to ensure compliance with existing US EPA Settlement Agreements and pursuing recovery of City funds through bankruptcy proceedings, insurance claims and associated environmental cost recovery claims.

The City Attorney's Office and BES have anticipated that an additional attorney would be needed for the allocation, but it has not been clear when the advocacy phase would begin. Recently, EPA clarified its schedule expectations and backed it up with a threat of enforcement. The allocation advocacy process is now scheduled to begin in mid-2020. The City Attorney's Office does not have the capacity to adequately defend the City and pursue affirmative claims in all of these simultaneous briefing schedules. Litigation attorneys are working at or beyond capacity and Superfund is a highly specialized area of practice. To mount a vigorous defense, the City must prepare most of its briefs and secure expert testimony before the first proceedings begin. The City's strategic objective is to ensure that the City pays only its fair share of the cleanup costs and defend against industrial and other private operators foisting their liabilities on the City. The City's ultimate liability will increase if the City cannot adequately defend itself in the allocation. BES agrees this work is critical and has funding for this attorney position in its existing budget.

Service Impacts

If this position is not added, the City Attorney's Office will not be able to adequately defend the City in the Portland Harbor Superfund matter. The City Attorney's Office's existing resources are already stretched thin. Therefore, the office cannot fill the need by reassigning work internally. With this additional position, the City will be able to appropriately limit its liability to the City's fair share of costs, while also better ensuring that the damage to the Willamette River is remedied.

Equity Impacts

Remediating the environmental damage to the Willamette River will benefit all Portlanders, particularly those communities that rely on fishing for subsistence or cultural practices. Those affected communities may include recent immigrants and members of tribal nations.

CBO Analysis

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL Recom Total
External Materials and Services	602	0	0
Personnel	202,398	0	0

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL Recom Total
Interagency Revenue	203,000	0	0

Position Detail						
Job Class - Name	FTE	Salary	Supplemental	Statutory	Benefit	Total
30003020 - City Attorney, Deputy	1.00	143,000	0	10,313	49,085	202,398

F4 - BMP Amendment Request Report (Fall)

Run Date: 9/4/19

CBO Discussion & Recommendations

Run Time: 3:49:41 PM

Position Detail						
Job Class - Name	FTE	Salary	Supplemental	Statutory	Benefit	Total
Total	1.00	143,000	0		49,085	202,398

AT - Office of the City Attorney

DP Type

Other Adjustments

Request Name: 9254 -Water Main Break Claims

Package Description

On March 16, 2019, a large water main burst in Northeast Portland near Northeast 23rd Avenue and Skidmore Street. At its peak, the burst water main released 40,000 gallons of water per minute into the neighborhood. This type of large water main failure is exceedingly rare, and the failure was unforeseeable. Several residents and others suffered property damage as a result of the water main break and have asserted claims against the City. While the City denies legal responsibility for any damages, the City acknowledges that it would incur costs to defend claims and the results of any litigation can be uncertain. Accordingly, given the scope of the impacts, disputed claims related to the water main break should be resolved for the benefit of the City according to the process established in Ordinance No 189572.

The Commissioner-in-Charge of the Water Bureau introduced an ordinance that established a process to submit documented claims to the City Attorney's Office and authorized the City Attorney's Office to attempt to resolve the claims. The ordinance set aside a total of \$250,000 to settle all claims, and the ordinance specifies the types of damages and costs the City Attorney's Office is authorized to pay in settlement of a claim. The ordinance requires claimants to execute a full release and an assignment of claims as part of any settlement. Claims must be submitted by July 1, 2019, and the City Attorney's Office must complete processing of the claims by September 30, 2019.

The ordinance directed the City Budget Office to allocate \$250,000 in unrestricted General Fund contingency resources to a Policy Set Aside account via the FY 2018-19 Over Expenditure Ordinance. These funds were carried over to the FY 2019-20 budget for this purpose and are available for appropriation to the City Attorney's Office in the FY 2019-20 Fall Budget Monitoring Process. The City Attorney's Office may only draw funds from the Policy Set Aside account necessary to settle claims, and any excess money in the account shall remain available as unrestricted General Fund contingency. To date, the office has settled claims in the amount of \$133,534.

Service Impacts

The large water main break was an unforeseeable and exceedingly rare event that had a wide scope of impacts. Several residents and others suffered property damage as a result of the water main break and have asserted claims against the City. Given the scope of the impacts, disputed claims related to the water main break should be resolved for the benefit of the City according to the process established by the ordinance. The goal of the ordinance is to resolve legitimate claims as soon as possible for the benefit of the City and affected claimants, which will allow the City to use its limited resources to efficiently handle other disputed claims, if necessary.

Equity Impacts

The goal of this ordinance is to resolve legitimate claims as soon as possible for the benefit of the City and affected claimants. An efficient claims resolution process should benefit all those impacted and may reduce the costs and burdens on those making claims.

CBO Analysis

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL Recom Total
External Materials and Services	133,534	0	0

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL Recom Total
General Fund Discretionary	133,534	0	0

AT - Office of the City Attorney

DP Type

Encumbrance Carryover

Request Name: 9299 -Encumbrance Carryover

Package Description

The office requests a \$29,000 encumbrance carryover for a contract with Delaris LLC for development of business and technical requirements for software upgrades. (DPO #22231267).

Service Impacts

This work is necessary to prepare an RFP for new software. The office intends to issue the RFP and select new software in FY19-20.

Equity Impacts

Technology improvements are expected to create efficiencies in the office allowing City Attorney staff to focus on legal work, including equity work.

CBO Analysis

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL Recom Total
External Materials and Services	29,000	0	0

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL Recom Total
General Fund Discretionary	29,000	0	0

Prior Year Fund Reconciliation Report

Office of the City Attorney

100 - General Fund

EXPENDITURES	2018-19 Revised Budget	2018-19 Actuals	Percent of Actuals to Revised
Personnel	11,648,835	10,924,452	93.78%
External Materials and Services	416,038	413,395	99.36%
Internal Materials and Services	1,148,190	1,133,036	98.68%
TOTAL EXPENDITURES	13,213,063	12,470,884	94.38%

REVENUES	2018-19 Revised Budget	2018-19 Actuals	Percent of Actuals to Revised
Charges for Services	100,000	43,556	43.56%
Miscellaneous	0	33	
General Fund Discretionary	2,805,068	0	0%
Interagency Revenue	6,560,569	6,560,569	100%
General Fund Overhead	3,747,426	0	0%
TOTAL REVENUES	13,213,063	6,604,158	49.98%

Expenditure Discussion

Personnel Services were about 6% underspent due to retirements and employee turnover. Internal and External Materials and Services expenses were very close to budget.

Revenue Discussion

Revenue was as expected. The Charges for Services category, which includes legal fees for civil forfeiture work, public records fees, and other miscellaneous revenue, was less than budgeted. These revenues are inconsistent and difficult to predict but are also immaterial as they are less than 1% of the office's overall revenue.

Bureau Performance Narrative

Over the past year, the City Attorney's Office achieved many significant results while also navigating through challenges. The office continues to provide exceptional legal services to the City, as demonstrated by the 96% success rate in litigation, the over 10,000 contracts reviewed, and the over 400 trainings provided to City staff. The office performed these exceptional services – and more – while also keeping outside counsel expenses low and maintaining a comparably inexpensive cost of service per attorney hour in our office. The office has handled successful litigation against the Trump administration, ably defended the decisions of City employees in court, collected over \$1.8 million in unpaid City taxes, and provided legal advice on the City's top policy priorities, including housing, demonstrations, fossil fuels, and other high-profile matters.

The office continues to face challenges from both internal and external factors. Internal factors include retirements and regular turnover, which necessitates hiring, training and the reassignment of work. These challenges can impact the continuity of legal services in some areas. External factors include the increasing number of tort claims filed against the City, both for the City's response to demonstrations and other non-police torts. In addition, office attorneys are called upon more and more to provide sound and creative legal advice to help policy-makers confront the challenges of a changing and growing City. These demands can put a strain on existing office resources. The office's main response to these challenges is to try to continue to hire and retain the best attorneys and staff available, and the recent Class/Comp and Pay Equity work by the Bureau of Human Resources has greatly assisted this effort.

The office continues to make a commitment to equity, and advancing equity remains one of the four main office goals. The office has maintained the Honors Attorney program, which is intended to help develop attorneys from under-represented communities who are interested in public service. In addition, the office continues to look for ways to retain, develop, and advance employees of color in the office, all of which is consistent with the office's Racial Equity Plan.

	Key Performance Measures	Measure Type Name	FY 2016-17 Actuals	FY 2017-18 Actuals	FY 2018-19 Target	FY 2018-19 Actuals	FY 2019-20 Target	Strategic Target	Details
AT_0006	Number of training hours provided by City Attorney staff to other City staff	WORKLOAD	468	394	400	421	400	450	Training hours were higher than target.
AT_0007	Annual costs of outside counsel	EFFICIENCY	\$508,718	\$490,695	\$575,000	\$341,568	\$500,000	\$500,000	Outside counsel costs were lower than estimated.
AT_0008	Cost of service per attorney hour	EFFICIENCY	\$138	\$141	\$150	\$150	\$164	\$164	Cost of service per attorney hour remains low compared to outside counsel.
AT_0010	Percentage of cases favorably resolved	EFFECTIVE	90%	97%	85%	96%	90%	90%	The office has excellent litigation results overall.

	Other Performance Measures	Measure Type Name	FY 2016-17 Actuals	FY 2017-18 Actuals	FY 2018-19 Target	FY 2018-19 Actuals	FY 2019-20 Target	Strategic Target	Details
AT_0001	Number of litigation cases	WORKLOAD	1,580	1,481	1,600	1,324	1,300	1,300	Number of litigation cases remains steady.
AT_0004	Number of contracts reviewed and approved	WORKLOAD	9,938	11,432	10,500	10,290	11,000	10,000	Number of contract reviews is very high.