



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

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INTEROFFICE MEMORANDUM

TO: City Budget Office

FROM: Tracy Reeve
City Attorney

SUBJECT: FY2020-21 Budget Monitoring Process

Attached is the City Attorney's Office's Fall Budget Monitoring Report for FY2020-21. In summary, the Office's prior year expenditures were 2.6% under budget. There are no significant issues to report for the prior year.

The City Attorney's Office is requesting approval of the following decision packages:

- FY2019-20 General Fund furlough savings and true-up;
- OMF Facilities blended rate reduction;
- Reimbursement from the Policy Set Aside account authorized by Council to allow continued, specialized outside counsel support for bargaining;
- A limited term litigation position to help address an unforeseen and significant increase in the number of new litigation cases being filed against the City. This increase in litigation has the potential to overwhelm office resources. A limited term attorney will cost significantly less than the alternative of hiring outside counsel; and
- Increase Interagency Agreement with Revenue Division to provide legal services for collection of new taxes under an IGA with Metro.

With the approval of these decision packages, the City Attorney's Office believes it will have sufficient resources in the current fiscal year's budget given the current projected revenues and expenditures. With the Office taking the required furloughs and offering further budget reductions to achieve cost savings, the Office's budget appears sound through the end of the fiscal year. Notably, however, the next fiscal year may present challenges, as the Office is experiencing steep increases in caseloads during a time when the anticipated revenue will likely decrease. This causes the Office significant concern that will need to be addressed during the FY 2021-22 budget development process.

Thank you for your consideration of these budget adjustments, and we are happy to discuss them and answer any questions.

AT - Office of the City Attorney

DP Type

New GF Request

Request Name: 10880 -Outside Counsel Set Aside

Package Description

In the FY19-20 Fall BMP, Counsel put \$250,000 into a Policy Set Aside account to pay for outside counsel for PPA Bargaining. The City contracted with Peck Rubanoff for these services. Total costs incurred to date are \$29,016. The Office requests that these funds continue to remain available to pay the cost for outside counsel since negotiations with PPA are still ongoing.

Service Impacts

If this funding is not available, the City will not be able to use outside counsel for this work. Outside counsel was chosen for this work because of their specialized expertise, and the benefit of that expertise would no longer be available to the City. Specialized outside counsel will help the City achieve its bargaining objectives focused on racial equity and justice.

Equity Impacts

Specialized outside counsel will help better ensure that the City's interests are well-represented in negotiations, and that includes the City's interest in advancing issues of racial equity and justice.

2020-21 FALL Requested Adj		
Expense	External Materials and Services	29,016
Expense	Sum:	29,016

2020-21 FALL Requested Adj		
Revenue	General Fund Discretionary	29,016
Revenue	Sum:	29,016

AT - Office of the City Attorney

DP Type

New GF Request

Request Name: 10907 -Litigation Support

Package Description

The City Attorney's Office is in critical and urgent need of an additional litigation attorney. Since May 29th, the City has experienced an unprecedented level of demonstrations each night. The Police Bureau's response to the demonstrations has resulted in significant increased litigation for the Office in a very short period of time. These lawsuits include three class action cases and numerous individual lawsuits alleging excessive force and constitutional violations. Over just the past few months, the City Attorney's Office has been required to defend three different temporary restraining order motions in federal court, requiring extensive factual and legal work. We expect more protest-related cases to be filed, and the legal work defending these cases will last years. This large influx of protest-related litigation comes on top of the Litigation Section's already high workload. Adding a limited term litigation attorney to the Office for one year will also be more cost-effective than hiring outside counsel to defend these cases, which due to their sensitive nature are best handled within the City Attorney's Office. Accordingly, due to the nature of litigation, and the particular demands of these protest-related cases, the City Attorney's Office is in critical and urgent need of an additional litigation attorney. Potential funding sources for this unforeseen need are General Fund resources or Insurance and Claims Liability Fund contingency resources via interagency agreement with Risk Management.

Service Impacts

If the position is not funded, the City Attorney's Office will need to hire outside counsel to handle a number of litigation cases. This is not cost effective, since the City Attorney's Office can provide legal services at \$166 per attorney hour compared to an average rate of \$400 per attorney hour for outside counsel. In addition, the City Attorney's Office is often best situated to handle litigation on behalf of the City because of the City's institutional understanding of the City's operations, documents, and key personnel. Having outside counsel handle litigation cases often takes more time and may result in poorer service outcomes because outside counsel lacks the institutional understanding of the City possessed by the City Attorney's Office.

Equity Impacts

The racial justice movement continues to catalyze and intensify the City's urgent need to address systemic and institutional racism in all of the City's policies, programs and services. The City Attorney's Office is critical to the City's work to advance racial equity through the Office's legal advice in policy development, program change, and service delivery. At the same time, the Office is becoming increasingly overwhelmed by the number of new protest-related cases filed against the City. Without adequate litigation support the Office's overall ability to effectively serve the legal needs of the City will be compromised, which will include an adverse impact on the Office's ability to effectively perform its critical legal work to advance the City's racial equity goals.

2020-21 FALL Requested Adj		
Expense	External Materials and Services	10,000
	Personnel	200,000
Expense	Sum:	210,000

2020-21 FALL Requested Adj		
Revenue	General Fund Discretionary	210,000
Revenue	Sum:	210,000

AT - Office of the City Attorney

DP Type

Encumbrance Carryover

Request Name: 10980 -FY 2019-20 GF Furlough Savings and True-Up

Package Description

This request is a technical adjustment to true-up the furloughs taken in the prior budget year with the estimate for furloughs in the current budget year.

Service Impacts

Equity Impacts

2020-21 FALL Requested Adj		
Expense	Personnel	69,567
Expense	Sum:	69,567

2020-21 FALL Requested Adj		
Revenue	General Fund Discretionary	69,567
Revenue	Sum:	69,567

AT - Office of the City Attorney

DP Type

Mid-Year Reduction

Request Name: 11063 -OMF-Facilities Blended Rate Reduction

Package Description

OMF Facilities blended rate reduction

Service Impacts

Equity Impacts

2020-21 FALL Requested Adj		
Expense	External Materials and Services	6,113
	Internal Materials and Services	-12,226
Expense	Sum:	-6,113

2020-21 FALL Requested Adj		
Revenue	General Fund Discretionary	-6,113
Revenue	Sum:	-6,113

AT - Office of the City Attorney

DP Type

New Revenue

Request Name: 11104 -Legal Services to Revenue for Metro IGA

Package Description

Pending Council authorization, the Revenue Division will sign an IGA to administer two new taxes on behalf of Metro. The City Attorney's Office will provide additional Legal Services to assist with collection of these taxes. Please see Request No. 11047 "BRFS - Revenue Metro Implementation."

This request increases the Interagency Agreement between the Revenue Division and the City Attorney's Office by \$25,000 for this additional work. If the Revenue Division's request is approved, this request will balance the additional Legal Services costs. If the Revenue Division's request is not approved, this request will not be needed.

Service Impacts

With budget authority, the Revenue Division will move forward with collection of Metro taxes under the IGA. The City Attorney's Office expects to incorporate this additional legal work into it's current collections process. This additional funding is expected to cover the costs for this year.

Equity Impacts

Metro has stated it intends to use these tax revenues to fund efforts to reduce housing inequities, among other goals. The City Attorney's Office and Revenue Division will work together to support Metro's goals by helping to generate the maximum amount of revenue allowed by law and the provisions of the IGA.

2020-21 FALL Requested Adj		
Expense	Personnel	25,000
Expense	Sum:	25,000

2020-21 FALL Requested Adj		
Revenue	Interagency Revenue	25,000
Revenue	Sum:	25,000

Prior Year Fund Reconciliation Report

Office of the City Attorney

100 - General Fund

EXPENDITURES	2019-20 Revised Budget	2019-20 Actuals	Percent of Actuals to Revised
Personnel	12,813,962	12,487,482	97.45%
External Materials and Services	611,011	598,645	97.98%
Internal Materials and Services	1,200,095	1,158,512	96.54%
TOTAL EXPENDITURES	14,625,068	14,244,640	97.40%

REVENUES	2019-20 Revised Budget	2019-20 Actuals	Percent of Actuals to Revised
Charges for Services	30,000	90,867	302.89%
General Fund Discretionary	3,504,404	0	0%
Interagency Revenue	7,093,940	7,093,940	100%
General Fund Overhead	3,996,724	0	0%
TOTAL REVENUES	14,625,068	7,184,807	49.13%

Expenditure Discussion

Overall expenditures were 97.4% of budget. All major category expenses were just under budget with no significant variances. The office was on track to spend 100% of it's EMS budget but halted all non-essential spending during the last quarter per the Mayor's direction.

Revenue Discussion

Charges for Services category, which includes legal services for public records fees, civil forfeiture legal work, and miscellaneous litigation awards, was higher than budgeted. These revenues are inconsistent and difficult to predict but are also only a very small fraction of the office's overall revenue. All other revenues were received as expected.

Bureau Performance Narrative

CONTRACTS REVIEWED: The number of contract reviews for approval as to form has more than doubled in the last ten years and continues to remain high. The total number of contracts reviewed for FY2019-20 is lower than target because the office transferred review of certain routine contracts to Procurement Division staff. This process improvement has freed up attorney time for more complex legal reviews. In addition, average turnaround time was increasing in prior years due to insufficient staffing and increasing numbers of reviews needed. With additional staffing and process improvements, turnaround time is decreasing.

TRAINING HOURS PROVIDED: The number of training hours provided to City staff was below target primarily due to COVID19 issues. In-person trainings were cancelled, and other critical legal work reduced the time available for training. The office continues to make legal training a priority which lowers risk and cost to the City. Legal training for City employees on topics such as ADA compliance, the discipline process, HRAR 2.02, election laws, civil forfeitures and legal records management, for example, are important to reaching all four of the office's primary goals; providing excellent customer service and legal advice, providing effective advocacy, achieving equity, and ensuring good stewardship of public resources.

OUTSIDE COUNSEL COSTS: Outside counsel costs were higher than expected this year for two main reasons. First, the City significantly increased its use of outside bond counsel because the City engaged in additional and more complex bond issuances and bank credit facilities this year. In addition, OMF expanded the scope of work with bond counsel to perform additional specialized services as disclosure counsel for the City related to bond issuances. Second, the City is engaged in a number of large, multi-million dollar projects, including the sewage treatment project and water filtration project, that require specialized expertise given the size and unique nature of the projects. In addition, specialized outside counsel costs were required to assist the City's efforts to promote affordable housing through the Low Income Housing Tax Credit and bond program delivery.

COST OF SERVICE PER ATTORNEY HOUR: The cost of service per attorney hour was slightly higher than target but remains less than half the average rate of outside counsel. This is a clear indicator that the City Attorney's Office minimizes the City's overall legal costs. Providing cost-effective legal services relates directly to all four of the office's primary goals and, in particular, demonstrates that the office continues to be an effective steward of public resources by providing excellent, easily accessible legal services to the City, at a very affordable rate.

PERCENT OF CASES FAVORABLY RESOLVED: The office handles cases in state and federal courts and in other proceedings to protect the City's interests. Cases can be resolved in many ways including early alternative dispute resolution, the strategic use of offers of judgment to minimize the risk of adverse outcomes in cases taken to trial, and the vigorous defense or prosecution of cases through pretrial motions, trial and on appeal. This effectiveness metric measures the results, either favorable or unfavorable, of litigation cases. The office set a very high target of 95% of cases resolved in favor of the City. The office has exceeded this target. Not only are these excellent results, but they were achieved at a low cost to the City by using in-house counsel rather than more-expensive outside counsel. The office will continue to strive for excellent results when advocating for the City's interests.

LITIGATION CASES HANDLED: The number of litigation cases handled decreased for several reasons, including fewer bankruptcy matters and the completion of a backlog of collection matters. Also, due to COVID19, the City extended tax deadlines and the office is not initiating new collections cases during the emergency. However, the office also saw an increase in tort litigation, grievance and other defensive litigation matters. In particular, at the end of FY2019-20, the office was called upon to handle numerous complex litigation cases arising out of the City's response to recent demonstrations, and this continues to constitute a significant increase in the litigation workload.

Key Performance Measures	Measure Type Name	FY 2017-18 Actuals	FY 2018-19 Actuals	FY 2019-20 Target	FY 2019-20 Actuals	FY 2020-21 Target	Strategic Target	Details
AT_0004	Number of contracts reviewed and approved	11,432	10,290	11,000	9,016	10,200	10,000	Lower than target due to a process improvement - routine review work was transferred to Procurement staff allowing attorneys to focus on more complex reviews.
AT_0006	Number of training hours provided by City Attorney staff to other City staff	394	421	400	205	300	400	Lower than target because: 1) In-person training cancelled due to COVID19, and 2) video training hours not captured in metric.

Office of the City Attorney
 Prior Year Performance Reporting

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AT_0007	Annual costs of outside counsel	EFFICIENCY	\$490,695	\$341,568	\$500,000	\$838,595	\$500,000	\$500,000	Higher outside counsel due to more complex bond issuances, a number of multi-million dollar sewer and water projects, Low Income Housing Tax Credit and bond program delivery.
AT_0008	Cost of service per attorney hour	EFFICIENCY	\$141	\$150	\$164	\$168	\$166	\$166	Cost of service was very close to target and less than half the average rate of outside counsel.
AT_0010	Percentage of cases favorably resolved	OUTCOME	97%	96%	90%	96%	95%	95%	A very high percentage of cases are resolved favorably for the City.

Other Performance Measures	Measure Type Name	FY 2017-18 Actuals	FY 2018-19 Actuals	FY 2019-20 Target	FY 2019-20 Actuals	FY 2020-21 Target	Strategic Target	Details
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AT_0001	Number of litigation cases	WORKLOAD	1,481	1,324	1,300	1,055	1,250	1,300	Tort cases increased and Bankruptcy and Collection cases decreased.
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