



Office of the City Attorney

Analysis by Katie Shifley

SUMMARY

Key Decisions for Council

1. Allocate \$210,000 in new General Fund resources to support a limited term attorney to address a spike in workload related to Police litigation.
 - The City has seen a spike in litigation work related to the police response to nightly demonstrations and protests in the wake of George Floyd's murder. Over the last three months, the Attorney's Office has been required to defend four temporary restraining order motions and expects that additional protest-related cases will be filed. This increase in workload was not anticipated at the time of FY 2020-21 budget development. The Attorney's Office has some ability to reallocate existing resources to cover temporary staffing needs, but the strong correlation between risk mitigation and reduced claims payouts make the Insurance & Claims Operating Fund an appropriate resource to fund a limited term position.
 - CBO recommends that Council authorize 1.0 additional limited term litigation attorney, but that the position be funded by a one-time draw on contingency from the Insurance & Claims Operating Fund. This approach is supported by the Office of Management & Finance, which oversees the Insurance & Claims Operating Fund.
2. Allocate \$29,016 from a policy set aside for outside legal counsel to the Attorney's Office.
 - Council set aside \$250,000 in one-time General Fund resources during the FY 2019-20 Fall Budget Monitoring Process to pay for outside legal counsel to support the Portland Police Association (PPA) labor negotiations. The Attorney's Office is requesting the allocation of resources to fund the balance of costs incurred to-date on the contract with Peck Rubanoff & Hatfield.
 - CBO recommends that Council allocate \$29,016 from the outside counsel set aside to the Attorney's Office. CBO also recommends that the Attorney's Office closely monitor spending against that contract and advise both Council and the City Budget Office if costs for outside counsel in PPA negotiations are anticipated to exceed \$250,000.

Budget & Fiscal Monitoring: No Major Issues Anticipated in the Current Year

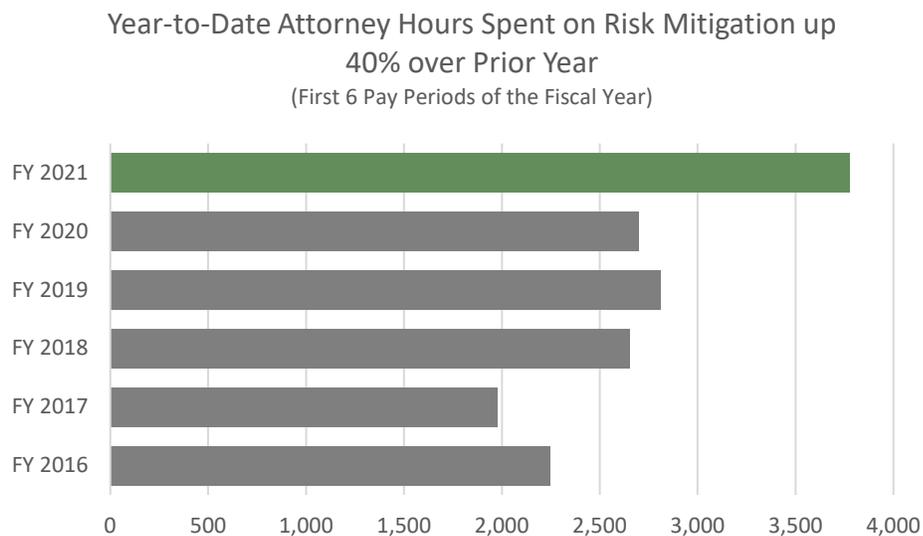
- The Office of the City Attorney's total FY 2019-20 appropriation was \$14.6 million. Of that total, \$7.5 million is funded via General Fund Overhead resources and \$7.1 million via Interagency Agreements (IAs) with customer bureaus for additional or specific legal services provided.

- Excluding furlough savings trued-up in the Fall BMP, the Attorney’s Office underspent its General Fund allocation by \$372,000 (5%), the majority of which was realized through personal services underspending. Some level of personnel services underspending will likely be realized in the current year as well.
- The largest IA payer is the Office of Management & Finance, which pays \$3.2 million, primarily from the Insurance & Claims Operating Fund for risk management services (\$2.7 million). Other large IA payers are Environmental Services, Police, Water, Transportation, and Housing.
- Declining revenues in FY 2021-22, either the result of lower forecasted General Fund revenues or cost pressure on bureau-specific IAs, will likely force trade-off conversations within the Attorney’s Office on how to manage workload – which is rising in some areas – with fewer resources.

ADDITIONAL ANALYSIS

Increased Litigation Work Related to Policing and Protests

- The Attorney’s Office is requesting new General Fund resources to hire a limited term attorney in Litigation in order to support the significant increase in workload related to Policing. The City has seen a spike in litigation work related to the police response to nightly demonstrations and protests in the wake of George Floyd’s murder. Over the last three months the Attorney’s Office has received four temporary restraining order motions and expects additional protest-related cases will be filed. Overall, hours logged by attorneys for risk management work are up 40% year-to-date over the prior fiscal year.



- This increase in workload was not foreseen at the time of FY 2020-21 budget development. In general, it is more cost-effective for the Attorney’s Office to hire limited term or temporary support than to shift workload to outside counsel.
- The Police Bureau, Council, and the community all have roles to play in determining any appropriate operational and policy changes within the Police Bureau as they relate to protest and

demonstration coverage. The Attorney’s Office also has a role to play in an advisory capacity, but in the near term they are obligated to defend the City against claims and legal action to mitigate financial and legal risk.

- The Attorney’s Office has some limited flexibility to program vacancy savings in the current year to support temporary hire, but conversations with the City’s Risk Management team have confirmed that the increased risk mitigation work in the Attorney’s Office can appropriately be funded by a one-time, drawn on the rate stabilization reserve in the Insurance & Claims Operating Fund.
- Each year, the Insurance & Claims Operating Fund pays an Interagency Agreement to the Attorney’s Office for risk mitigation and claim support; in FY 2019-20, this totaled \$2.7 million. The Insurance & Claims Operating Fund is based on a cost-recovery model that is informed by an actuarial study each year. City bureaus pay into the fund each year based on a rolling five-year average of total claims and total claims costs incurred. The cost recovery model is designed specifically to smooth the City’s Risk Management costs – which include legal work performed by the Attorney’s Office – over time. Drawing on contingency in the current year to fund additional litigation support in the Attorney’s Office will slightly increase rates paid by customer bureaus over a five-year horizon (all else equal). The Police Bureau, as the largest payer into the Insurance & Claims Operating fund based on prior number of claims and claims costs incurred, will be the most affected by the rate increase but these costs will be smoothed over time.
- CBO recommends that Council approve 1.0 Limited Term Attorney position funded by a \$210,000 draw on contingency in the Insurance & Claims Operating Fund in order to support the near-term spike in police-related claims and legal work.

SUPPLEMENTAL BUDGET CHANGES TO ALL FUNDS

The Fall BMP changes in the Attorney’s Office are all in the General Fund. CBO has recommended all requests, but changed the funding source for a limited term attorney (\$210,000) to reflect Interagency Revenue rather than General Fund resources.

	Current Revised Budget	Bureau Requested Changes	CBO Recommended Changes	Total Recommended Revised Budget
Resources				
Charges for Services	\$ 25,000	\$ -	\$ -	\$ 25,000
Interagency Revenue	\$ 7,390,465	\$ 25,000	\$ 210,000	\$ 7,625,465
General Fund Discretionary	\$ 3,523,918	\$ 302,470	\$ (210,000)	\$ 3,616,388
General Fund Overhead	\$ 4,229,429	\$ -	\$ -	\$ 4,229,429
Total Resources	\$ 15,168,812	\$ 327,470	\$ -	\$ 15,496,282
Requirements				
Personnel	\$ 12,849,570	\$ 294,567	\$ -	\$ 13,144,137
External Materials and Services	\$ 847,154	\$ 45,129	\$ -	\$ 892,283
Internal Materials and Services	\$ 1,472,088	\$ (12,226)	\$ -	\$ 1,459,862
Total Requirements	\$ 15,168,812	\$ 327,470	\$ -	\$ 15,496,282