

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

To: Honorable Mayor and City Council Members      From: Allan Roeder  
Dept:      Dept: City Manager's Office  
Subject: LEGAL OPTIONS REVIEW      Date: October 13, 2015

**OBJECTIVE**

1. To provide the City Council and the public an overview of options for the provision of municipal legal services.
2. To offer suggestions on the management/oversight of legal services.

**BACKGROUND**

At its May 25, 2015 regular meeting, the City Council approved a request by Mayor Nguyen to direct the Interim City Manager to prepare a review of options/alternatives for the provision of legal services. During discussion of the request, the Interim City Manager explained that the scope of the report would be a high level overview substantially based on information in the public domain.

At the July 14, 2015 regular City Council meeting, the Interim City Manager provided an update on the status of the report along with some preliminary data based on a survey undertaken on the City's behalf (Attachment A). As noted in the status report, there is relatively little in the way of available research on this topic generally. Resources such as the League of California Cities, the Institute for Local Government, the Association of California Cities - Orange County and various management consulting firms were researched for available information. As a consequence, this report represents a compilation of information from a variety of sources in an effort to present the City Council and the public with a broad overview on this subject along with some general recommendations. It is not intended to represent a detailed performance and/or cost-benefit analysis of legal services.

**DISCUSSION**

There are essentially two options available to municipalities in California for the provision of legal services - In-House legal counsel or Contract legal counsel. In-House legal counsel involves staffing of the City Attorney's Office with City employees with the requisite legal background and training to provide general and specialized legal counsel. Contract legal counsel utilizes private law firms for the provision of legal services. It is commonplace, however, to have a mix of both in-house legal counsel and contract legal services. Typically, this involves the provision of general legal counsel through In-House attorneys or through Contract Legal Counsel while contracting with private firms for more specialized legal services (such as Labor Law specialists, Bond Counsel, RDA & Housing specialists, Worker's Compensation counsel, etc.). Using Orange County's 34 cities as a basis of comparison, the Contract legal service option is the predominant method by which legal services are provided. Generally speaking, Contract legal services have

become the "norm" largely due to the flexibility in responding to the need for a broad range of legal expertise, cost and management control. The City of Garden Grove selected the Contract option in 1992 over maintaining an in-house legal staff.

There are pros and cons to both the In-House Legal counsel option as well as with the Contract Legal counsel option. Based on a study conducted by Management Partners, Inc. in 2003 for the City of Costa Mesa which compared retention of In-House Legal counsel with the Contract Legal counsel option, the following were identified as "Pros and Cons of Contracting Out All Legal Services."

#### PROS

- Ready access to a range of legal specialties;
- Access to legal answers already reached at other cities;
- Access to library of documents and ordinances developed by other cities;
- Relieves City of personnel issues related to having in-house employees;
- Provides for easier resolution of dissatisfactory performance issues (i.e., termination of employment).

#### CONS

- Attorneys not always immediately available;
- Work products not delivered as quickly;
- Attorneys less well known to staff;
- Less able to catch problems early on and/or provide proactive programs to reduce City liability;
- May utilize less experienced specialists from own firm;
- Less familiarity with long-term City affairs.

In reality, the Pros and Cons noted in the Management Partners Study could be applied to either In-House Legal counsel or Contract Legal counsel depending on the quality of the attorneys and the manner in which the provision of legal services are managed.

In an effort to focus on the cost of legal services and the method by which legal services are obtained, the Association of California Cities – Orange County (ACC-OC) was contacted for assistance. The ACC-OC conducted a survey on the City's behalf utilizing a Survey Monkey and focusing on the following questions:

- "Which best describes the legal services that your City uses?"
- "If your City contracts out for legal services, are those services obtained through a Request For Proposals (RFP) or some other method?"
- "Does your City require (either by municipal code or Council Policy) that the provision of legal services be subject to market competition on a scheduled basis?"
- "If your City contracts for legal services, when was the current contract awarded?"
- "What is the annual cost of your City's general legal counsel?"

The results of the survey conducted by the ACC-OC are included in Attachment B.

In addition, the law firm of GdB Ferguson (which is a member of the ACC-OC) offered to provide information on contract legal services based on research it has conducted over the past year. For purposes of disclosure, GdB Ferguson is an advocate of what it terms a "hub and spoke" arrangement for the provision of Contract Legal services. This arrangement is a variation on the Contract Legal services model whereby basic public law functions are provided by one contracting law firm while all other legal services are provided by outside law firms on a case-by-case basis. In many respects, this model is similar to that presently utilized by the City of Garden Grove. The notable exception in the "hub and spoke" model is that it precludes the private firm providing basic public law services from providing any other legal services whereas Garden Grove's contract places this discretion with its contracting law firm Woodruff, Spradlin and Smart.

The results of the data provided by GdB Ferguson is included in Attachment C.

As a word of caution in reviewing both the ACC-OC survey results and the data provided by GdB Ferguson, the figures cited are not audited financial statements. As stated by GdB Ferguson of its survey data "These figures reflect, from what we have been able to ascertain, only the reported "public law" rates. As you know, the total legal fees for each City go well beyond these fees but are seldom reported as a single line item in the General Fund budget."

It should be noted that for FY2015-2016, the City of Garden Grove budgeted \$811,741 (\$201.00/hr – partner) for legal services.

Additionally, the management of legal services was reviewed to identify "best practices" or tools in use by other cities in the oversight of legal services. This includes not only legal services provided by the City Attorney's Office but other legal services (Worker's Compensation, Labor Law specialists, RDA and Housing counsel, etc.) as well. While there was no one identified source of information for oversight of legal services, a number of suggested practices did arise during the course of this study. It is important to keep in mind that except for the rare situation where the City Attorney is directly elected, oversight of legal services is the responsibility of the City Council. Whether legal services are provided In-House or on a Contract basis, the City Council is the appointing body and therefor maintains direct authority over the provision of legal services. While the City Attorney works closely with the City Manager, the City Attorney's Office is not supervised by the City Manager but reports to the City Council. For this reason, the following suggestions for improvement in the management/oversight of legal services are directed to the City Council.

1. Consolidate financial reporting for all legal expenses in the Annual Budget.
2. Assign responsibility for review of all legal costs including third party legal costs. (Note: The Deputy City Manager is currently assigned responsibility for review of legal expenses as submitted by the City Attorney's Office.)

3. Establish by City Council action a Sub-Committee of the City Council to meet with the City Attorney on a quarterly basis to review the status of litigation, provision of legal services and expenses.
4. Conduct an annual performance review with the City Attorney.
5. Consider periodic meetings with the managing partners (currently Woodruff, Spradlin and Smart) to discuss overall performance and expectations.
6. Review staff usage of the City Attorney's Office to ensure the appropriateness of requests for legal services.

In summary, this report was originally intended to be limited to a high-level review of the options for the provision of legal services, it became necessary to explore elements involved in the provision of legal services to provide an adequate analysis. This report is not at the level that would be prepared by way of a consultant with very specific objectives as set for in a Request for Proposals. Likewise, it was not intended to provide a recommendation on the subject of whether or not the City should revisit the marketplace and consider proposals from competing firms.

Finally, the City Council is aware of feedback provided by City Department Directors earlier this year, which showed confidence with the current provider of legal services. At the same time, there were also some areas identified for improvement.

#### RECOMMENDATION

It is recommended that the City Council:

- Receive and File this report
- Provide further direction as deemed appropriate

  
ALLAN ROEDER  
City Manager's Office

Attachment A: July 14, 2015 Staff Report - Status of Legal Options/Appointment of City Attorney

Attachment B: Association of California Cities: Orange County – eHUB Request: City Use of Legal Services dated July 13, 2015

Attachment C: Summary of Legal Services Costs in Orange County Cities

Approved for Agenda listing



Scott C. Stiles  
City Manager

**ATTACHMENT A**





## DISCUSSION

Some preliminary data from a survey being administered by the ACC-OC on the City's behalf provides a glimpse at the limited information available. Although a small sample size at the writing of this report, of the 9 cities responding to the survey on this subject, 100% report that they contract out for legal services. Of these cities, 77% obtained legal services through an RFP process. None of the cities responding report any requirement – either by the municipal code or by Council Policy – that legal services be subject to market competition on any scheduled basis. The length of the terms of current legal service contracts varies widely from over 30 years to as recently as 2014. There does not appear to be any consistency (again, based on a limited response to date) as to the length of legal service contracts.

Based strictly on informal conversations with other Orange County Cities, the general opinion is that legal services are typically not put out for proposals unless at least one of two circumstances arise – (1) concern or dissatisfaction with the quality of services being provided or (2) concern over the cost of services provided. In sharing this, I want to be very clear that these are strictly "general opinions" and not based on market research. However, the preliminary results of the survey underway suggest that municipalities do not routinely put legal services out to bid unless there are motivating factors to do so. Whether the "motivating factors" are strictly limited to quality of service and cost of service is a subjective determination.

Staff is awaiting financial data on legal services from an associate member of the ACC-OC which has been collecting information from cities throughout Orange County over the better part of the past year. Typically, municipal contracts provide for a base, hourly rate for general legal advisement and separate hourly rates for more specific legal services. Consequently, it is generally not enough to simply look at budgeted/actual figures for legal services by city in an effort to determine cost effectiveness. Legal services by city vary widely making a simple "side-by-side" comparison extremely difficult. Beyond this, it is not uncommon for cities to use multiple law firms depending on the expertise required in various fields. This simply underscores some of the complexity in providing what one might term an "apples-to-apples" comparison.

With Mr. Nixon's pending retirement and the delay in completing the report on legal options, I am bringing forward to the City Council at this time the matter of appointing an individual to serve as City Attorney. Woodruff, Spradlin and Smart, Mr. Nixon's employer and contract provider of legal services to the City of Garden Grove, has submitted Mr. Omar Sandoval, Esq. for appointment as City Attorney (please see attached correspondence and resume). As the City Council is aware, Mr. Sandoval has extensive experience in serving the City for a number of years under its existing contract with Woodruff, Spradlin and Smart.

In light of the City Council's request for a review of options for the provision of legal services and the delay in providing that review prior to Mr. Nixon's retirement, the attached resolution has been prepared naming Mr. Sandoval as Acting City Attorney.

reflection on Mr. Sandoval's qualifications to serve as City Attorney attached resume indicates, Mr. Sandoval is a highly qualified individual with extensive experience in serving the City. It should also be kept in mind that unlike Department Directors, the position of City Attorney does not carry with it the same employment rights. Consequently, the naming of the City Attorney – whether Interim, Acting or in a Permanent capacity – does not alter either the responsibilities of the position nor the existing terms of the agreement with Woodruff, Spradley & Smart.

In closing, we will do our best to conclude the research requested by the City so this matter may be brought forward to you as soon as possible.

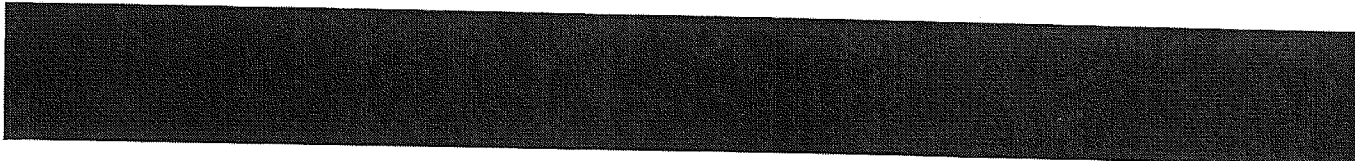
**RECOMMENDATION**

It is recommended that the City Council adopt the Resolution appointing Mr. Sandoval as Acting City Attorney.



ALLAN ROEDER  
Interim City Manager

Attachment 1: Letter regarding City Attorney Services Transition  
Attachment 2: Resolution





**ATTACHMENT B**



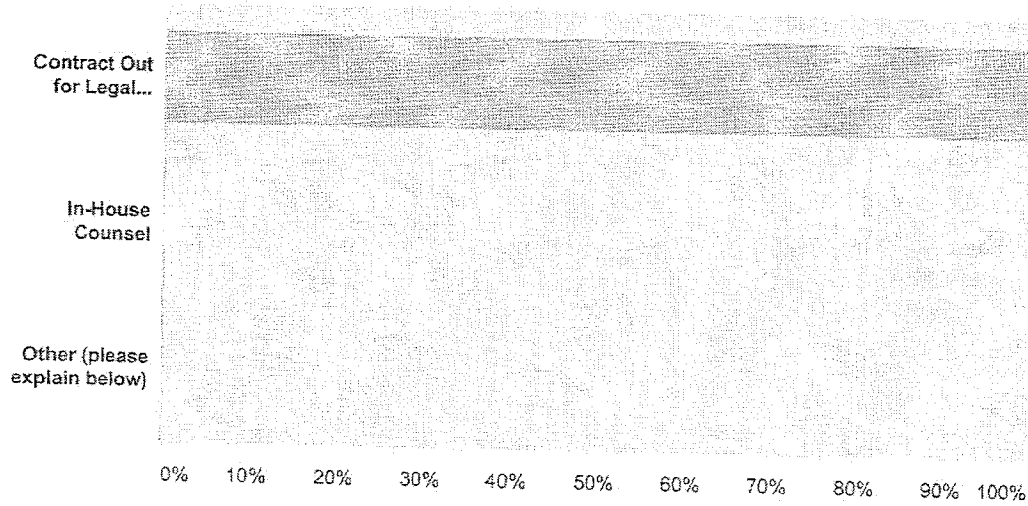
**eHUB Request: City Use of Legal Services**

**Date: 7/13/15**

**Requester: City of Garden Grove**

### Q2 Which best describes the legal services that your city uses?

Answered: 10 Skipped: 0

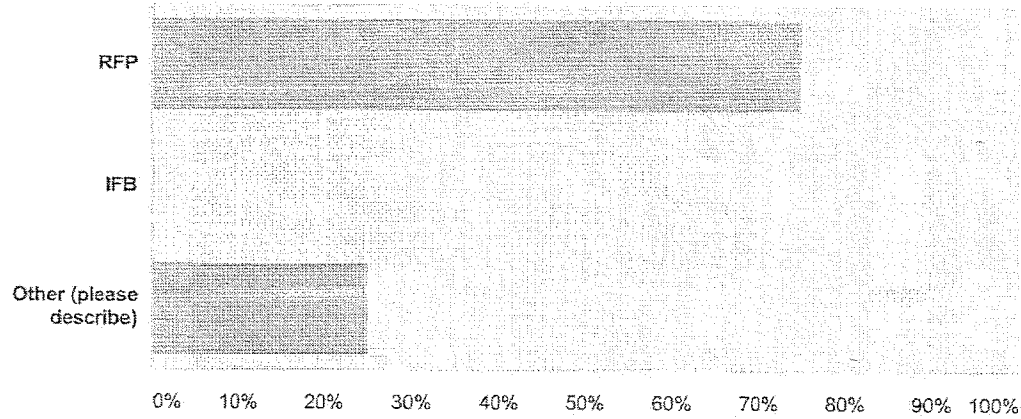


Answer Choices	Responses	
Contract Out for Legal Services	100.00%	10
In-House Counsel	0.00%	0
Other (please explain below)	0.00%	0
<b>Total</b>		<b>10</b>

#	Explain here	Date
	There are no responses.	

**Q3 If your City contracts out legal services, are those services obtained through... (select one of the following)**

Answered: 12 Skipped: 1

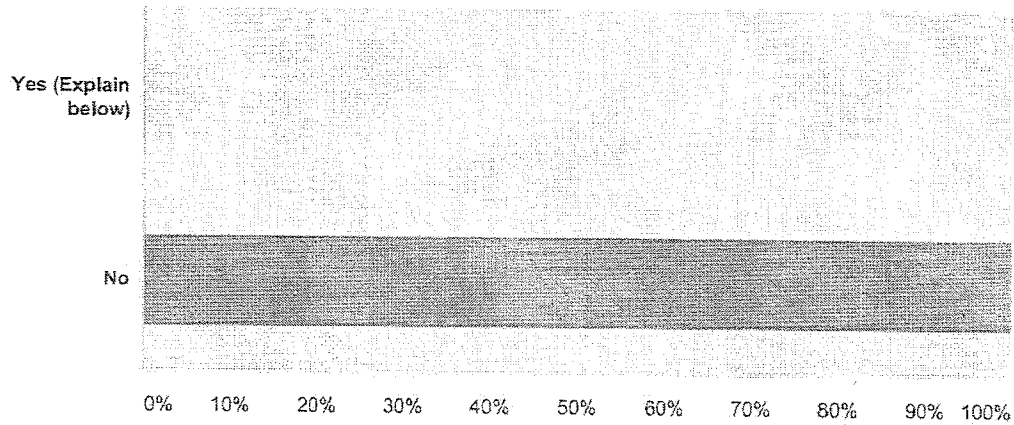


Answer Choices	Responses	
RFP	75.00%	9
IFB	0.00%	0
Other (please describe)	25.00%	3
<b>Total</b>		<b>12</b>

#	Other (please describe)	Date
1	RFQ selective process	7/8/2015 1:45 PM
2	This service has not been bid in many years however we will be doing an RFP next year.	7/7/2015 1:48 PM
3	The City Council appoints the City Attorney. Laguna Beach has had the same City Attorney and firm for over 30 years.	7/7/2015 10:47 AM

**Q4 Does your City require (either by municipal code or Council Policy) that provision of legal services be subject to market competition on a scheduled basis?**

Answered: 12 Skipped: 1



Answer Choices	Responses	
Yes (Explain below)	0.00%	0
No	100.00%	12
<b>Total</b>		<b>12</b>

#	Please explain the frequency with which the legal services are scheduled to be subject to market competition:	Date
	There are no responses.	

**Q5 If your City contracts for legal services, when was the current contract awarded?**

Answered: 12 Skipped: 1

#	Responses	Date
1	2015	7/8/2015 2:51 PM
2	2014	7/8/2015 1:45 PM
3	1991	7/8/2015 12:19 PM
4	August 2014	7/8/2015 8:37 AM
5	2009-10	7/7/2015 2:15 PM
6	Harper and Burns	7/7/2015 1:48 PM
7	2015	7/7/2015 11:09 AM
8	2002	7/7/2015 11:05 AM
9	Appointed City Attorney over 30 years ago.	7/7/2015 10:47 AM
10	15-20 years ago	7/7/2015 10:20 AM
11	2013	7/7/2015 10:11 AM
12	1998	7/6/2015 3:44 PM



**Q6 What is the annual cost of your city's  
"general legal counsel?"**

Answered: 12 Skipped: 1

#	Responses	Date
1	500,000	7/8/2015 2:51 PM
2	\$300,000	7/8/2015 1:45 PM
3	\$270,000	7/8/2015 12:20 PM
4	Varies greatly	7/8/2015 8:38 AM
5	\$750,000 - \$1M	7/7/2015 5:25 PM
6	approx \$250,000	7/7/2015 1:48 PM
7	0	7/7/2015 11:09 AM
8	depends on year	7/7/2015 11:05 AM
9	About \$96,000.	7/7/2015 10:49 AM
10	\$260,000	7/7/2015 10:21 AM
11	112,600	7/7/2015 10:13 AM
12	\$800,000	7/6/2015 3:44 PM

**ATTACHMENT C**

CITY	CONTRACT OR IN-HOUSE	HOURLY RATE	LEGAL BUDGET
Buena Park	Contract	\$200/hr- partners \$190/hr- senior associates \$180/hr- associates \$140/hr- paralegals \$100/hr- clerks	\$194,520
Costa Mesa	Contract	\$177/hr- blended rate for all attorneys	\$1,000,000
Cypress	In-house	\$160/hr- up to 45 hours each month \$180/hr- over 45 hours each month \$215/hr- litigation and special services \$105/hr- legal assistants \$55/hr- clerks (Blended rates for 07/01/09-06/30/10)	\$301,740
Fullerton	Contract	\$199.83/hr	Not listed in budget report
Huntington Beach	In-house	\$104/hr	\$2,450,613
Laguna Beach	Contract	\$235/hr- for general matters in excess of 60 hours each month and for specialized transactional matters	\$585,000
La Habra	Contract	\$218.47/hr	\$334,044
Mission Viejo	Contract	\$155/hr- for an excess of work over 20 hours each month	\$335,000
Orange	In-house & Contract	\$145/hr	\$1,467,965
Placentia	In-house	\$195/hr	\$ 555,000
Westminster	In-house	\$208.07/hr	\$93,813

CITY	CONTRACT OR IN-HOUSE	LEGAL BUDGET
Aliso Viejo	Contract	\$268,000- professional and technical services \$96,500- other services \$364,000- total
Anaheim	In-House	\$1,562,095- legal administration \$3,307,929- civil \$2,584,451- prosecution \$7,454,475- total
Brea	Contract	Not listed in budget report
Buena Park	Contract	\$194,520
Costa Mesa	Contract	\$1,000,000
Cypress	In-house	\$301,740
Dana Point	In-house & Contract	\$904,721- 2015 adopted budget \$703,500- 2016 budget
Fountain Valley	Contract	Lists \$21,000 for Legal Services
Fullerton	Contract	Not listed in budget report
Garden Grove	Contract	\$794,500
Huntington Beach	In-house	\$2,450,613
Irvine	Contract	\$350,000
La Habra	Contract	Listed as \$0?
La Palma	Contract	\$138,600
Laguna Beach	Contract	\$585,000
Laguna Hills	Contract	\$290,000
Laguna Niguel	In-house & Contract	\$333,000
Laguna Woods	Contract	\$175,500
Lake Forest	Contract	\$500,000
Los Alamitos	Contract	\$155,000
Mission Viejo	Contract	\$335,000
Newport Beach	In-house & Contract	\$1,287,413- salary & benefits \$715,000- outside counsel \$1,579,326- adopted expenditures

Orange	In-house & Contract	\$1,467,965
Placentia	In-house	\$ 555,000
Rancho Santa Margarita	In-house & Contract	\$375,000- estimated \$629,213- 2014 year-end actual
San Clemente	In-house & Contract	\$487,270 \$105,000- for retainer \$382,270- other (from general fund)
San Juan Capistrano	Contract	\$470,041
Santa Ana	Contract	\$2,180,985
Seal Beach	Contract	\$490,000 (City pays a monthly retainer of \$20,000 covering all general legal services. Services beyond that covered by the retainer are billed at appropriate contract rates.)
Stanton	Contract	\$180,200
Tustin	Contract	\$550,000
Villa Park	Contract	\$46,700
Westminster	In-house	\$93,813
Yorba Linda	Contract	\$650,000