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CITY OF OAKLAND



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ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
Barbara J. Parker  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-4779

April 9, 2013

**FINANCE AND MANAGEMENT COMMITTEE**  
Oakland, California

**Subject: Informational Report from the City Attorney on Powers, Protocols and Procedures for Retention of Outside Counsel**

Chairperson Schaaf and Members of the Finance Committee:

**I. PURPOSE OF THIS REPORT**

This is an informational report.

**II. SUMMARY**

The City Attorney's Office has continued to retain outside counsel following the same procedure that has been in place for as long as we have been able to secure information about the process. That period covers nearly forty years including the administrations of former City Attorneys David Self (1974-1979), Michael Lawson (1979-1981), Jeffrey Haney (1981-1982), Richard Winnie (1982-1987), Jayne Williams (1987-2000) and John Russo (September 2000-May 2011). Under that process the City Attorney selects outside counsel and outside counsel costs are paid (1) out of the City's self-insurance liability fund, (2) from project funds designated for attorney's fees or (3) by the department in question that is seeking services.

After the Council appointed the current City Attorney in July 2011, City Attorney Parker added three new procedures to the longstanding process:

- a Request for Qualifications ("RFQ") protocol to increase transparency, encourage competitive pricing by outside firms and open the hiring process to include a broader range of firms/attorneys.

- consideration of whether a firm is local and developing and maintaining a diverse universe of firms in selecting outside counsel
- reports to the City Council at significant intervals in cases/matters involving outside counsel.

The City Attorney established these new procedures to increase competition, transparency and openness, to save dollars by increasing competition and giving every firm/attorney the opportunity to seek outside counsel work. These factors are in accord with the City's policies to support and build local businesses and diverse universe of firms such as selecting a variety of firms, small, medium sized, large firms and local firms.

Every year since the turn of the century, the Office has provided an annual report to the City Council that details the work the Office does, outside counsel costs, payouts for claims, settlements and judgments and the costs of in-house legal counsel. The City Council approves the budget for outside counsel when it approves the bi-annual budget by allocating funds to the self-insurance liability fund and allocating funds to projects and to departments for projects. In addition, for litigation and claims, and other matters that are discussed in closed session, the Office apprises the Council of the outside counsel costs when we provide updates on these matters in closed session and the council approves all settlements exceeding \$5,000.

The City Attorney also has established a policy requiring updates on cases and matters at key junctures in the matters so that the Council is aware of the cost of upcoming work and services, risks and legal analyses.

### **III. BACKGROUND**

#### **A. The City Charter**

The current City Charter was adopted by the Oakland voters in 1968. With respect to retention of outside counsel, that 1968 Charter included the same language that is in the current City Charter. That language provides in pertinent part as follows:

**Section 401(6). Powers of the City Attorney.** The City Attorney shall serve as counsel to the Mayor, City Council, and each and every department of the City, except departments specifically enumerated by

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this Charter as an independent department of the City, in their official capacities pursuant to state law and the Charter, and as counsel, shall assert and maintain the attorney-client privilege pursuant to state law. He or she shall advise all officers, boards, commissions, and other agencies of the City on legal matters referred to him or her and shall render written legal opinions when the same are requested in writing by the Mayor or a member of the Council or the City Administrator or any other officer, board or commission of the City. He or she shall draft such ordinances, resolutions, contracts and other legal documents as directed by the Council or requested by the Mayor or City Administrator or any official board or commission of the City. He or she shall act as Counsel in behalf of the City or any of its officers, boards, commissions, or other agencies in litigation involving any of them in their official capacity. He or she may, whenever a cause of action exists in favor of the City, commence legal proceedings, subject to ratification by the City Council, when such action is within the knowledge of the City Attorney, or, he or she shall commence legal proceedings when directed by the City Council. He or she shall pass on the form and legality of all contracts of the City before the same are executed. He or she shall not settle or dismiss any litigation brought for the City nor settle any litigation brought against the City which may be under his control unless upon his written recommendation he or she is authorized to do so by the Council. He or she shall administer the office of City Attorney, and shall have the power to appoint, discipline and remove all officers and employees of his or her office subject to the provisions of Article IX of the Charter. The Council may empower the City Attorney, at his or her request and without regard to the provisions of Article IX, to employ special legal counsel, and he or she shall have the power to appoint appraisers, engineers and other technical and expert services necessary for the handling of any pending or proposed litigation, proceeding or other legal matter. Upon the City Attorneys recommendation and the approval of the Council, when he or she has a conflict of interest in litigation involving another office of the City in his official capacity, such other officer may retain special legal counsel at City expense.

The provisions of the Charter pertaining to the City Attorney have been amended several times since 1968, most notably in 1998, when the Charter was amended to

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provide for an elected city attorney. However, none of these amendments has changed the substance of the language that states the City Attorney's powers and duties with respect to retaining outside counsel and employing attorneys in the Office.

We have confirmed that prior City Attorneys John Russo, Jayne Williams, Richard Winnie, Jeffrey Haney, Michael Lawson and David Self followed the same process that City Attorney Parker continues to observe. These attorneys span decades, the period from 1974- to May 2011. Based on our research and conversations with members of those offices, we confirmed that they each exercised discretion in retaining outside counsel and that outside counsel was budgeted as part of the liability fund or other funds, project costs or by departments seeking legal services. In other words, the City Attorney has exercised the power to retain outside counsel for as long as we have been able to ascertain and therefore has been empowered to do so in accordance with the provisions of the Charter.

#### **IV. DISCUSSION**

##### **A. Inherited Practices and Empowerment of the City Attorney**

The authority the current City Attorney has exercised in selecting outside counsel is not a new thing. According to interviews of past City Attorneys and other attorneys who have worked in the Office, the City Attorney has exercised sole discretion over the selection of outside counsel for nearly four decades.

In fact, all of the City Attorneys whose procedures we have been able to confirm hired outside counsel. This has been the consistent practice under City Attorneys John Russo, Jayne Williams, David Self, Richard Winnie, Jeffrey Haney and Michael Lawson.

##### **B. Enhanced Competitive Selection Process**

Shortly after the City Council appointed City Attorney Parker to complete former City Attorney Russo's term, the City Attorney established and issued a Request for Qualifications ("RFQ") asking attorneys and firms to submit their qualifications to provide services in each of the practice areas in which we regularly require services (the policy is attached as Exhibit 1).

Examples of areas of expertise are: administrative law, appeals, affordable housing, banking, bankruptcy, citizens police review, 42 United States Code Section 1983 actions, ethics, elections, criminal law, eminent domain, employment, labor, engineering, construction, environmental, bonds, assessments, gang injunctions, civil

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litigation, insurance coverage, intellectual property, land use, California Environmental Quality Act ("CEQA,") maritime and tidelands, medical cannabis, fire fighter litigation, police litigation, procurement, professional sports stadiums, public nuisance, real property, redevelopment, rent control and tax.

After reviewing the RFQ responses, the Office identified and advised the qualified firms that they are on our list of pre-qualified firms.

The RFQ is ongoing so that additional firms can submit responses at any time.

Each time the Office needs to retain a firm/attorney for a new matter, the Office observes the following procedure:

1. Review the responses to the RFQ for the firms on the pre-qualified list that submitted qualifications for the particular practice area.
2. Pick not less than three firms/attorneys from the list based on their qualifications and consideration of whether the firms are local (Oakland-based) and maintaining a diverse universe of firms.
3. Contact the three firms and find out what rate they will charge for the work and who will work on the matter.
4. Make a recommendation to the appropriate Chief Assistant City Attorney.
5. Chief Assistant makes a recommendation to the City Attorney.
6. City Attorney approves.

The purpose of the RFQ is to have the opportunity to view the universe of attorneys that practices in an area, compare their skills, prices and expertise. The RFQ process also spreads work around the community and assures that we are retaining a variety of firms and assisting local firms in securing work from the City. The RFQ process also makes the process more competitive and open.

The City Attorney's Office's practice is consistent with the practices in other jurisdictions. Alameda County and the cities of Sacramento and San Francisco have a Request for Proposals ("RFP") process. Berkeley, Fremont, and Long Beach do not.

### C. Efforts to Hire Local and Diverse Universe of Firms

The key criteria in selecting outside counsel are expertise, quality of work and cost. Sixteen of the City's outside counsel firms are located in Oakland. Twenty-six (26) of the City's outside counsel firms are located in the East Bay. Forty-nine (49) firms are located in the San Francisco Bay Area. We also retain a diverse universe of firms, sole practitioners, small firms, large firms, local firms, and medium-sized firms.

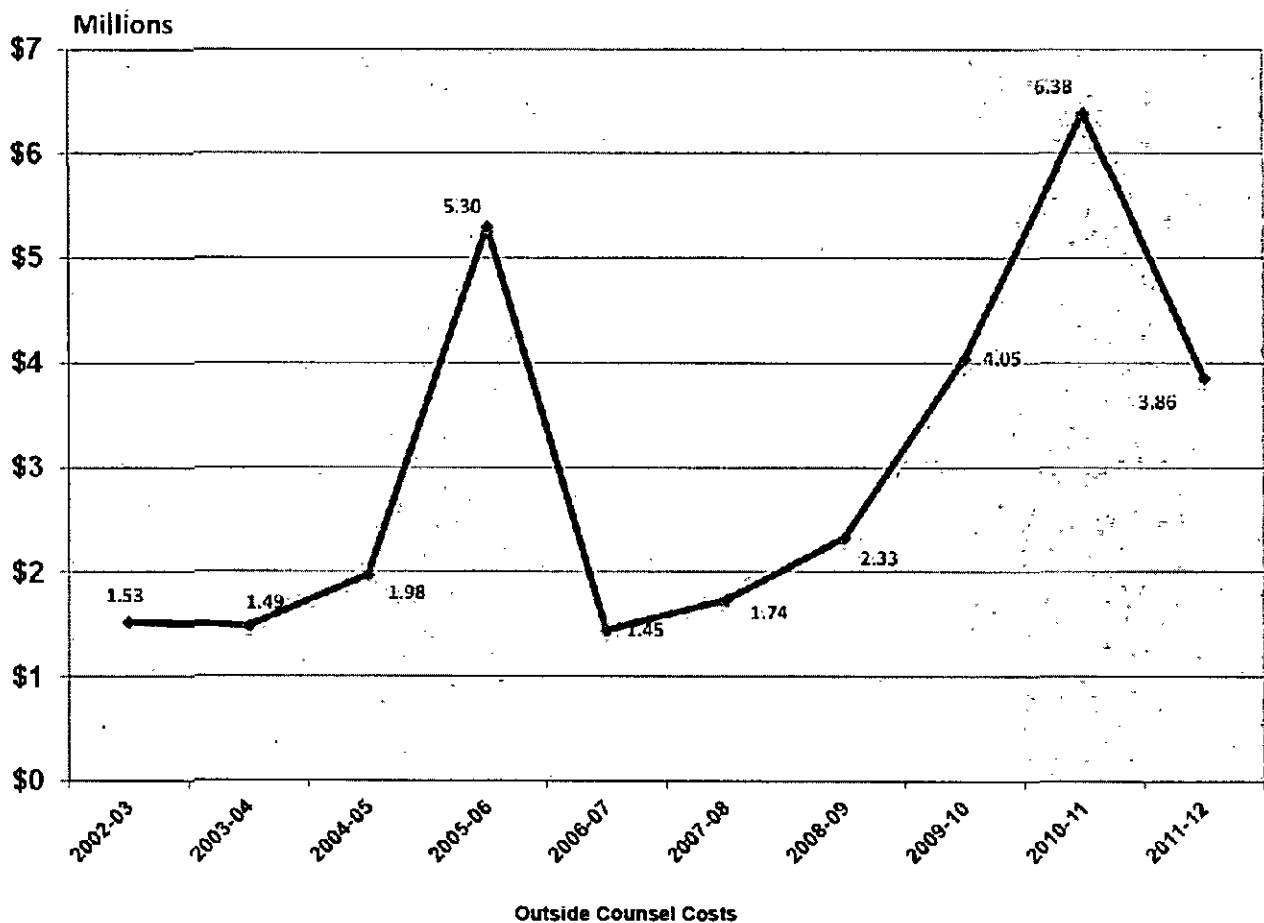
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**D. Transparency**

The City Attorney's Office regularly reports to the City Council and the public the Office's outside counsel costs. The Office reports outside counsel costs in its Annual Report. For example, the FY 2011-12 Annual Report showed a drastic drop (40%) in outside counsel costs. (See chart below.)



All outside counsel contracts and bills are public records. The Office regularly produces the documents in response to public records requests, subject to redacting

any information necessary to maintain attorney-client and attorney work product protections of the City.

**E. City Council Oversight**

**1. Self-Insurance Liability Fund**

The City Council sets the budget for the City's Self-Insurance Liability Fund. That account not only budgets for foreseeable liability payouts (judgments) and settlements, but also for foreseeable outside counsel costs and other costs such as experts, depositions, etc. The City Council reviews the proposed budget for the Liability Fund during the City Council's regular budget process. City Council has the power to increase or reduce the budgeted amount for the liability fund.

The City Attorney regularly informs the City Council of outside counsel costs. The City Attorney's Annual Report reports outside counsel costs. The City Attorney's Office regularly informs the City Council in closed session of outside counsel costs to date on matters and cases when they are discussed in closed session.

**2. Case-by Case-Oversight**

In scheduling items for closed session, the City Attorney's Office informs the City Council's Rules and Legislation Committee and the City Council of the expected appearance of outside counsel. Similarly, the full City Council knows that outside counsel is on a case/matter when the outside counsel meets with the City Council in closed session on settlement or status of a case or when in house counsel provide the report to the City Council.

The City Council approves all monetary settlements exceeding \$5,000. When the City Council is considering settling a case, the City Attorney's Office informs the City Council whether a case is being handled by outside counsel and the cost of the assigned counsel.

**F. City Council Recommendations or Agreement to Pay Cost of Hiring Specific Outside Counsel**

As we have discussed, for decades the City Attorney's Office has selected outside counsel. The only exception of which we are aware is the litigation involving Pacific Renaissance Plaza. In that case, the City Attorney retained a law firm<sup>1</sup> upon the insistence of the City Council to represent the City in *City of Oakland et al. v.*

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<sup>1</sup>Sonnenschein Nath & Rosenthal LLP

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*Pacific Renaissance Associates II, et al.*, At each strategic juncture of the case, the City Council decided whether the City would pay the outside counsel to implement a particular strategy. That firm charged and the City paid almost \$4 million in payments; each payment was preauthorized by the City Council.

In addition, in a few other instances, when the City was budgeting to retain outside counsel for a particular policy, program or matter, the City Attorney included outside counsel costs in the resolution or report authorizing work on the policy. Examples include retention of outside banking counsel to assist with advice on the City debit card and retention of outside counsel to represent City in federal government's Clean Water Act litigation alleging leaks from the City's sewer system. Most recently, the City Council gave an outside attorney selected by the City Attorney special authority to act as the City's representative on a matter before the state Board of Equalization. (Resolution No.84163 C.M.S. (2012).) On many occasions, the City Council's resolutions pertaining to bond sales include approval of the costs of bond counsel and/or disclosure counsel for the City bond issuances. (See, e.g. Resolution 82097 (2009).) In these cases, we submitted the information regarding outside counsel so that the Council would be aware of the full cost of implementing a City policy such as the City debit card or the costs of counsel to be paid out of sewer fund to address the government's Clean Water Act litigation. The City Council's role pursuant to the City Charter was to decide whether to fund the costs.

When the City is the plaintiff in litigation, the Charter requires authorization of or ratification of the initiation of the lawsuit. City Attorney's Office has come to the City Council to secure approval to bring the action and the cost of outside counsel, if one is to be used. (City Charter Section 401(6) ("He or she may, whenever a cause of action exists in favor of the City, commence legal proceedings, subject to ratification by the City Council, when such action is within the knowledge of the City Attorney, or, he or she shall commence legal proceedings when directed by the City Council.")) The most recent example was the Council's authorization to initiate litigation against the federal government to challenge its foreclosure action involving property on which Harborside Health Center operates a City-permitted dispensary. The Office sought approval to file the action and identified the outside counsel we had selected as well as their agreement to provide legal services free of charge ("pro bono").



### G. The City Attorney's Power to Retain Outside Counsel

The City Attorney's power to retain outside counsel arises exclusively from Charter section 401(6).

1. The City Attorney's Paramount Duty is to Defend the City, and the City Attorney Therefore Has the Inherent Power to Hire Outside Counsel to Do So When Necessary.

The City Attorney's paramount duty is to defend the City and its officers from litigation – whether through in house staff or other assets available to her. “He or she shall act as Counsel in behalf of the City or any of its officers, boards, commissions, or other agencies in litigation involving any of them in their official capacity.” (Charter section 401(6). A similar provision was in the prior City Charter.<sup>2</sup> The timing of the defense of the City is rarely the City Attorney's control.

The City Attorney has inherent power and discretion to hire outside counsel under this sentence of the Charter. In the face of the lawsuit against the City, the City Attorney, to fulfill her first duty to the City, has the power to retain outside counsel rather than leave the City defenseless.

2. The City Attorney Has Inherent Power to Bring Affirmative Litigation on Behalf of the City When Necessary and Therefore has Inherent Power to Hire Outside Counsel to Do So When Necessary

In contrast, when the City is the plaintiff, the City Attorney usually has more control over the timing of the filing of litigation. The Charter gives the City Council the power to authorize or ratify the filing of affirmative litigation and the cost of outside counsel selected by the City Attorney is a factor that the City Council may consider in deciding whether to authorize or ratify the filing of affirmative litigation. However, the Charter grants the City Attorney power to file affirmative litigation and then seek Council ratification when the filing is necessary to preserve or protect the City's rights/interests; this power includes the power to retain outside counsel to file the litigation.

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<sup>2</sup>“He shall prosecute and defend for the City all actions at law or equity and all special proceedings for or against the City, and shall represent the City in all other actions or proceedings in which the rights and interests of the City are concerned, and whenever any cause of action in law or in equity or by special proceeding exists in favor of the City, he shall commence the same when directed to do so by the City Manager or by the Council.” (City Charter section 30(2) (1961).)

### 3. The City Attorney Is Empowered to Employ Special Legal Counsel

The Charter states that, "The Council may empower the City Attorney, at his or her request and without regard to the provisions of Article IX, to employ special legal counsel, . . . necessary for the handling of any pending or proposed litigation, proceeding or other legal matter." (Charter section 401(6).)

It is well-established that a Charter provision that specifically grants a City Officer authority prevails over the City Council's general authority under Charter. (*City of San Jose v. Lynch*, 4 Cal.2d 760, 766 (1935); *Creighton v. City of Santa Monica*, 160 Cal.App.3d 1011, 1017 (1984).) Charter section 401(6) specifically grants the City Attorney authority to employ special legal counsel. In contrast, the City Council has general authority under Charter Section 808(a) to establish conditions and procedures for contracting.<sup>3</sup> The City's purchasing ordinance, Oakland Municipal Code Chapter 2.04, is based on this provision of the City Charter. Because the City Charter has a specific grant of authority for the employment of special counsel (Section 401(6)), that section prevails over Section 808(a) and any ordinances that arise out of Section 808(a), including the Purchasing Ordinance.

Charter Section 401(6) states that the Council may "empower" the City Attorney to "employ special legal counsel." "Empowerment" does not mean that the City Council must "approve" the City Attorney's selection of outside counsel. Where the Charter intends that a particular authority have the power to "approve" an action it uses the term "approve." For example,

Charter Section 706(4) relating to the powers of the Port of Oakland, "Provided, however, that *with the approval of the Council* the Board may relinquish to the Council control of portions of the said area, and likewise, upon request of the Board, the Council may, by ordinance, enlarge the Port Area."

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<sup>3</sup>Section 808(a) of the City Charter authorizes the City Council to adopt purchasing procedures and conditions by ordinance:

The Council shall establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, and may provide that all bids may be rejected. The ordinance may provide that under specified conditions, which the Council must find and determine exist in each applicable instance, advertising and bidding may be dispensed with.

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Charter Section 504(l) relating to the powers of the City Administrator: "When directed by the Council, to represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, *subject to Council approval.*"

Charter Section 401(6) relating to powers of the City Attorney: "Upon the City Attorneys recommendation and *the approval of the Council*, when he or she has a conflict of interest in litigation involving another office of the City in his official capacity, such other officer may retain special legal counsel at City expense."

Charter Section 1422, relating to the Police and Fire Retirement System: Notwithstanding any other provisions of this Charter to the contrary, the position of Matron and Substitute Matron provided for in this Charter shall be, from and *after the approval of this amendment by the State Legislature*, designated as Policewomen in the Police Department, and the Council shall have the power to fix the compensation thereof.

Charter Section 2601, relating the to the Police and Fire Retirement System: "The representative of a life insurance company, the representative of a bank, and the community representative shall be appointed by the City Council upon the recommendation of the Mayor. The Mayor, *with the approval of the City Council*, may designate a City officer or official to serve in his or her place and stead as a member of the Retirement Board for the term of his or her office."

In interpreting the meaning of "empower", we look to the common meaning of the word. (*Apple Inc. v. Superior Court*, 56 Cal.4th 128, \_\_\_, 292 P.3d 883, 884 (2013).) The Merriam-Webster Online Dictionary defines empower as "1. to give official authority or legal power to; 2. enable." The FreeDictionary.com defines it as "1. To invest with power, especially legal power or official authority; 2. To equip or supply with an ability, enable."

Moreover, to understand "empowerment" of Section 401(6), the term must be harmonized with Charter Section 218, which prohibits the City Council from coercing or influencing the City Attorney on contracting and employment decisions.

Neither the Council nor any Council member shall ... coerce or influence the City Administrator or such other officers [which includes the City Attorney and City Auditor, see Section 400,], in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in

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the appointment or removal of officers or employees in the administrative service of the City. (Id.)

In sum, the term “empower” in Section 401(6) must be read to provide only that the City Council may give the City Attorney the power to make decisions to employ outside counsel, without City Council approval of the selection of outside counsel decisions given the Charter’s explicit grant of power to “approve” an action when it intends that a particular authority have the power to “approve”, the common meaning of “empower” and Charter Section 218 which prohibits the City Council from coercing or influencing the City Attorney on contracting and employment decisions,.

Section 401(6) does not require the “empowerment” be done in writing.<sup>4</sup> Indeed, empowerment can be extrinsic or inherent. (*People v. Nickerson*, 128 Cal.App.4th 33, 40 (2010).) As we discussed above, the City Attorney has been empowered to employ outside counsel for decades. For example, with City Council knowledge, the City Attorney has hired bond counsel for decades. Indeed bond resolutions or ordinances advise the City Council of that occurrence.<sup>5</sup> Regarding litigation, at least as early as 1997, the City Attorney’s Office reported to City Council that outside counsel was trying cases on behalf of the City. At that time, the City Attorney’s Office informed the City Council of the work of Gregory Fox of Betrand, Fox and Elliott defending successfully the City in lawsuits arising out of the 1994 civil disturbances at the Festival at the Lake. The City Council approves or disapproves settlements and appeals in each of these cases handled by outside counsel. In addition to the foregoing, outside counsel regularly appear in closed session to advise Council on matters.

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<sup>4</sup> Section 401(6) also has the language “at the request of the City Attorney.” This Office has not been able to find a writing memorializing a request. As discussed earlier, the practice of hiring outside counsel has existed for decades. Records from before the 1989 earthquake are extremely difficult to find. Moreover, since any request would have likely occurred in the context of litigation in closed session or could have occurred by motion in open session, there would likely be no public record of the request. Also, as discussed earlier, the City Attorney’s Office’s hiring of outside counsel has been a matter of public and Council knowledge for decades. At minimum, the ongoing disclosure to the City Council of the City Attorney’s use of outside counsel and Council’s budget approvals evidence request and empowerment.

<sup>5</sup>See the City Residential Mortgage Revenue Bond Law, Oakland Municipal Code section 4.31.020.F. passed by the City Council in 1979. (“The city may employ such engineering, architectural, financial, accounting, legal or other services as may be necessary in the judgment of the city for the purposes of this chapter.”) Similar language is used in all other bond legislation.

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In light of the active knowledge and notice to the City Council of the City Attorney's use of specific outside counsel, the City Council has acted or chosen not to act. These decisions to act or not act have empowered the City Attorney to hire outside counsel. When the City Council has sought to limit the empowerment, it has done so, perhaps even crossing the line by requesting that a specific law firm be hired (e.g. Sonnenshein). Other times, the City Council has approved the cost of outside counsel that the City Attorney has selected. (The City Council has many times endorsed the City Attorney's selection of bond counsel and disclosure counsel. See, e.g. Resolution 82097 (2009).) At a minimum, the Council knows that a particular matter is being handled by outside counsel.

Through this history, the City Attorney has been empowered to hire special legal counsel.

4. The City Attorney Has the Power to Hire Expert Services That Are Necessary

The Charter provides that the City Attorney "shall have the power to appoint appraisers, engineers and other technical and expert services necessary for the handling of any pending or proposed litigation, proceeding or other legal matter." (Charter section 401(6).)

As has been the practice of the City Attorney's Office for decades, the City Attorney has hired technical and expert services necessary to handle any pending or proposed litigation, proceeding or other legal matter. Examples include expert witnesses and consultants.

V. CONCLUSION

The City Attorney has long been empowered to hire and select outside counsel. That process has been in place for decades and continues to this date. What has changed is that City Attorney Parker has added new procedures that increase competition and transparency, support local firms and maintain a diverse universe of firms. In addition, the Office provides periodic reporting to Council and updates on litigation and other matters.

What also has changed is the legal environment, the City's population, the size of the City's workforce, including the number of attorneys that are necessary to perform the myriad and complex tasks that the City of Oakland faces on a daily basis, and the number of cases and matters and the need for specialized legal services and expertise.

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This trend is consistent with the shift in American society toward more litigation, the passage of laws to protect civil rights and assure equal opportunity and remedies for violations of civil liberties, constitutional rights as well as the rising tide of the poor, working class and middle class, people of color, women, persons with disabilities, Gays and Lesbians and others asserting their right to pursue redress for deprivation of rights and damages and injuries. For example, the 1964 Civil Right Act, known as Title VII, has provided a framework to address discrimination by providing a cause of action and attorneys' fees to prevailing parties. Likewise, the Americans with Disabilities Act and the California's Fair Employment and Housing Act ("FEHA") have opened the door for individual and class action suits to combat discrimination. These milestones have made our society fairer and opened the door to opportunity and channels to create a level playing field for all.

In addition, America is simply a more litigious society and lawyers are a necessary part of most transactions; attorneys have responded by developing expertise in many specialized areas, whether to advise clients on real property purchases or development deals or tax or elections or finance or constitutional law. And law firms have grown accordingly.

The City Council of the City of Oakland is progressive and has a wealth of ideas and cutting edge policies, laws that it seeks to advance. This is a very positive environment, and it is one reason Oakland is an extraordinary place to live. It also means that attorneys are called upon to provide advice and counsel on a myriad of matters on a day-to-day basis, requiring top notch expertise and efficiency as well as outside counsel.

The City Attorney's retention and selection of outside counsel enables the City to timely respond to legal issues and provide advice without missing deadlines that could damage or disadvantage the City and it assures that the City Attorney who supervises and assists with handling the outside work has a good working relationship with the outside counsel. The City Council's oversight of the budget and transparency to assure that the public and the City Council know what the costs of outside counsel and other expert services are in place.

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**VI. ACTION REQUESTED**

Please accept and file this report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Barbara J. Parker', with a long horizontal flourish extending to the right.

**BARBARA J. PARKER**  
City Attorney

Attorney Assigned:  
Mark Morodomi

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ONE FRANK H. OGAWA PLAZA 6<sup>TH</sup> FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
Barbara Parker  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TDD: (510) 839-6451

## City Attorney's Office's Outside Counsel Selection Protocol

To: City Attorney Staff:

The Office has a list of attorneys and law firms that have responded to the Office's Request for Qualifications ("RFQ") that asked attorneys and firms to submit their qualifications to provide services in each of the practice areas in which we regularly require services. After reviewing the RFQ responses, the Office identified and advised the qualified firms that they are on our list of pre-qualified firms.

The purpose of the RFQ is to have the opportunity to view the universe of attorneys that practice in an area, compare their skills, prices, and expertise. The RFQ also spreads work around the community and assures that we are retaining a variety of and diverse universe of firms and assisting local firms in securing work from the City. The RFQ process also makes the process more competitive and open.

Practice areas include administrative law, appeals, affordable housing, banking, bankruptcy, citizens police review, 42 United States Code Section 1983 actions, ethics, elections, criminal law, eminent domain, employment, labor, engineering, construction, environmental, bonds, assessments, gang injunctions, civil litigation, insurance coverage, intellectual property, land use, CEQA, maritime and tidelands, medical cannabis, fire fighter litigation, police litigation, procurement, professional sports stadiums, public nuisance, real property, redevelopment, rent control and tax.

The RFQ is ongoing so that additional firms can submit responses at any time.

Each time the Office needs to retain a firm/attorney for a new matter, the assigned Deputy City Attorney shall follow the following procedure:

1. Review the responses to the RFQ for the firms on the pre-qualified list that submitted qualifications for the particular practice area.
2. Pick not less than three firms/attorneys from the list based on their qualifications and consideration of whether the firms are local (Oakland-based) and maintaining a diverse universe of firms.

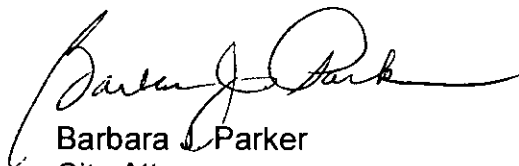


3. Contact the three firms and find out what rate they will charge for the work and who will work on the matter.
4. Make a recommendation to the appropriate Chief Assistant City Attorney.
5. Chief Assistant makes a recommendation to the City Attorney.
6. City Attorney approves.

The key criteria in selecting outside counsel are expertise, quality of work and cost.

In the scheduling of closed session discussion of a matter assigned to outside counsel, the assigned Deputy City Attorney shall inform the Assistant City Attorney (Advisory) that an outside counsel is assigned to a matter. Reports to City Council on a matter assigned to outside counsel shall inform the City Council that outside counsel is assigned. Reports concerning a strategic decision – e.g. appeal – that the City Council needs to decide shall include the cost of outside counsel on the matter.

Very truly yours,



Barbara J. Parker  
City Attorney