

**CITY OF DANA POINT**  
**FINANCIAL REVIEW COMMITTEE**  
**Agenda Report**

---

**DATE:** OCTOBER 27, 2017

**TO:** FINANCIAL REVIEW COMMITTEE

**FROM:** MIKE KILLEBREW, ASSISTANT CITY MANAGER

**SUBJECT:** CONSIDERATION OF IN-HOUSE VS. CONTRACT CITY ATTORNEY SERVICES MODEL

---

**RECOMMENDED ACTION:**

That the Financial Review Committee provide advice to the City Council regarding the financial implications of changing to an in-house City Attorney Services model as compared to the current contract model.

**BACKGROUND:**

The City Council requested that the Financial Review Committee engage in a financial evaluation of the costs associated with the City receiving City Attorney Services using an in-house model that would consist of one or more City employees, as compared to the current model by which such services are contracted out.

**DISCUSSION:**

Since incorporation, the City has contracted with private law firms to serve in the capacity of City Attorney; and, since 2002, that contract has been with the firm Rutan & Tucker ("Rutan"). The current Rutan contract, and Council agenda report for when it was authorized, are attached as **Supporting Document A**.

The City Attorney's office is established by Section 2.16 of the City of Dana Point Municipal Code, which reads as follows:

"Chapter 2.16 CITY ATTORNEY

*The office of the City Attorney is hereby established. It shall consist of the City Attorney and such assistants as may be authorized by the Council. The City Attorney shall administer the office and be responsible for the successful performance of its functions. The City Attorney shall serve under the direct supervision and control of the Council as its legal advisor.*

*The Council may retain or employ other attorneys, assistants, or special counsel as may be needed to take charge of any litigation or legal matters or to assist the City Attorney therein."*

*2.16.020 Compensation.*

*The City Attorney shall receive such compensation and expense allowance as the City Council shall from time to time determine, and such compensation shall be a proper charge against such funds of the City as the City Council shall designate.*

*2.16.030 Functions.*

*The functions of the office of the City Attorney shall be to:*

- (a) Advise the Council and all City officers in all matters of law pertaining to their offices;*
- (b) Furnish legal service at all meetings of the Council, except when excused or disabled, and give advice or opinion on the legality of all matters under consideration by the Council or by any of the boards and commissions or officers of the City;*
- (c) Prepare and/or approve all ordinances, resolutions, agreements, contracts, and other legal instruments as shall be required for the proper conduct of the business of the City and approve the form of all contracts, agreements, and bonds given to the City; and*
- (d) Perform such other legal duties as may be required by the Council or as may be necessary to complete the performance of the foregoing functions."*

*Other City Attorney Services*

The Municipal code refers to "other legal duties", some of which include, but are not limited to, reviewing City Council, Planning Commission and certain other City Committee meeting agenda materials; Brown Act inquiries; attending all City Council and Planning Commission meetings, and other City Committee and Task Force meetings as requested; reviewing development projects for both planning and public works issues; advise on election issues; representing the City in certain litigation cases in which the City is involved; participate with code enforcement as part of a team that includes both City and Sheriff personnel, including civil and criminal prosecution of code violations; providing assistance and advice for City-related litigation handled by the City's insurer (California Joint Powers Insurance Authority "CJPIA"); initiating legal action at City Council direction; reviewing/processing/defending claims against the City that are not covered by CJPIA; monitoring/advising the City on matters associated with evolving legislative actions and legal proceedings that may/will have an impact on the City; and, participating in discussions and responses to regional issues affecting the City and requiring legal consultation/action.

**Rutan & Tucker Contract History**

The attached 2002 City Council agenda report was provided by then Mayor Harkey in proposing the contract. As quoted in that agenda report: *"Prior to hiring Rutan, the City Attorney did not staff Planning Commission meetings or have regular office hours at City Hall. In essence, the City was paying for virtually no presence at City Hall and not achieving many victories in Court. Thus, we were paying our fees as well as the fees of the prevailing parties. In a number of the cases, Rutan & Tucker represented the prevailing party against the City."*

The current Rutan contract model used for Dana Point was based on rates and the level of service that the City of San Clemente had been using. The model provides for regular office hours and coverage of City Council and Planning Commission meetings. The stated goal by Mayor Harkey was that this contract model and the rates were intended to: *"keep the rates in Dana Point as low as possible for the taxpayers, but consistent and competitive with other contract cities requiring similar services."*

Per the contract, Rutan provides an attorney, on-site at City Hall, to staff regular office hours on days of regularly scheduled City Council and Planning Commission meetings. A monthly retainer is provided as compensation for the regular office hours and for staffing both City Council and Planning Commission meetings; total hours covered by the retainer range in any given month depending on the length of the City Council and Planning Commission meetings, but generally average between 40 and 50 hours per month. In the past year the hours have often been more than the high average, but for sake of analysis a 40 hour per month average will be used.

In 2007, Rutan's retainer was fixed at \$8,600/month, and using an average of 40 hours per month results in an estimated \$215/hour. The contract provides for annual CPI increases; the rate currently paid in fiscal year 2018 (FY18) is \$9,867/month, or using an average of 40 hours per month results in \$247/hour.

The rate for attorney hours billed outside of those covered by the retainer was also set in 2007 at \$220/hour. As with the Retainer, the contract also provides for annual adjustments to hourly rates, with the FY18 amount currently set at \$253/hour. Note that in FY11 and FY12, in light of the state of the economy, Rutan unilaterally offered, and the City accepted, waiving the annual CPI allowed under the contract. The average annual increase in hourly rates over the 11 year period was 1.36%.

### Recent Rutan Billings

The total payments made to Rutan & Tucker over the past three fiscal years, where the average number of billed hours was roughly 4,000/year, and as recorded in the City's accounts under the City Attorney Department (#71) and the Risk Management Department (#97), were as follows:

Table 1: Recent Rutan Billing History

Fiscal Year	Amount Paid To Rutan & Tucker for All Legal Services	Less: Work Due to, and Reimbursable by, 3 <sup>rd</sup> Parties*	Net: Billed Services Excluding Costs Paid by 3 <sup>rd</sup> Parties
FY17	\$ 1,236,000	\$ 197,000	\$ 961,000
FY16	1,266,000	476,000	780,000
FY15	965,000	262,000	703,000

*\* Some reimbursement for attorney and other City staff costs do occur in the form of fees the City charges for permits and services; those reimbursements are not shown here as they are aggregated for all services and the portion attributable to attorney work is not readily separable from the total fees/charges collected. The Reimbursable amounts shown in this chart are for separately identified matters on the Rutan bills, beyond routine work, and are reimbursed to the City at time work is performed from deposits received from relatively larger-scale development projects; in limited situations, particularly regarding the Headlands' gates litigation, full reimbursement was not attained given eventual settlement of lawsuits. In all cases, except past Headlands-related matters, deposits are secured from the developer and thus actual collection is certain.*

*\*\* Additional reimbursement also occurs for legal costs incurred in regards to some City initiated code enforcement litigation; such reimbursements are determined by the Courts in their final disposition of particular cases. Actual collections are not included in this table; had they been included, the net amount paid by the City would be and has been less than the amount shown. The City did not begin tracking such reimbursements separately until July 1, 2017 in order to provide a better net cost of attorney services in the future.*

Table 1 is provided in order to get to a baseline of what could be considered a typical cost to the City in any given year, but could be substantially more depending on litigation. It is also important in that it provides some level of assurance that the estimated number of annual legal hours, and the resultant computed costs shown in the next section of this report, and particularly in Table 2 below, are in fact reasonable.

### In-House City Attorney Scenario Modeling

#### Estimated Number of Hours of Legal Work

Based on the last five and one-half calendar years of billings, an estimate was produced of the annual attorney work hours needed to cover each category of the City's legal needs. This is obviously debatable, but assumptions have to be made in order to compute estimated costs.

For comparison purposes, the work is generally categorized in a manner consistent with how Rutan bills its attorney hours to the City. Retainer hours cover City Council and Planning Commission days where an attorney is on-site. There is also a considerable amount of work hours tracked as Non-Retainer that cover a wide array of attorney time spent on issues, inquiries, requests, consultations, meetings, etc. that

arise in the course of the City's business. Finally, more specific work is broken out as shown in the table below.

Table 2: Estimated Annual Legal Work Hours

Category of Work	Estimated Hours per Year
Retainer (40 hours/month)*	480
Non-Retainer / Other City Business	550
Nat'l Pollutant Discharge Elimination System Permits	90
Personnel Matters	25
City Prosecutor	400
City Prosecutor – protracted/complicated	100
Code Enforcement	600
Community Development (non-reimbursable)	300
Public Works (non-reimbursable)	70
City Clerk	70
Other (e.g. Solid Waste, Community Facilities District, Tourism Business Improvement District, etc.)	50
Manage Staff/Contracts	100
Estimated Annual Productive Attorney Hours to Cover**	<u>2,835</u>

*\*Retainer in the current contract covers full work days for the City Attorney on City Council meeting days, and the Assistant City Attorney on Planning Commission meeting days.*

*\*\*There are additional legal hours needed by the City in any given year for processing development entitlements that are assumed to be contracted out, and the City's costs would be fully reimbursed by the particular developer; therefore, those hours are not included in this table or in the costing scenarios shown below. Also excluded are hours that can and do occur in regards to extensive litigation beyond what is estimated for typical code enforcement/prosecution work; in fact, the City currently has five active litigation matters taking place that should not be considered typical.*

A full-time equivalent ("FTE") staff position equates to 2,080 paid hours; this is computed by taking a 40 hour work week over 52 weeks in a year. Productive hours available to perform work on legal matters is assumed for this exercise to be 1,700 hours; this is computed by taking the 2,080 hours and subtracting paid-time off for vacation and sick leave (240 hours/year) and for training/conferences/other (140 hours/year).

The FY18 Rutan rate charged for attorney hours billed is \$253/hour, so the computed annual cost for the estimated 2,835 hours shown above would be \$717,255. Note that the City's current budget for FY18 is \$857,000, and is more than the estimated, "normal" annual estimate shown above due to issues the City is currently addressing, particularly in regards to higher than normal development activity, along with work associated with code enforcement and prosecutions.

Rutan Attorneys/Staff Utilized on behalf of the City

Rutan's FY18 rate of \$253/hour not only covers the work hours billed for the designated City Attorney (Patrick Munoz) and Assistant City Attorney (Jennifer Farrell), but also

other Rutan attorneys regularly called upon for their subject area expertise and for covering peak workload demands. In any given year, upwards of six Rutan partners are called upon to perform specific work, in addition to at least two associate attorneys. The same partners used by the City at \$253/hour are billed out to other cities at rates that vary but range up to and over \$600/hour, depending on Rutan's agreement with those other entities. And, the associate's bill to the City at \$253/hour are billed to other cities at rates which range as high as \$370/hour.

Also included in Rutan's hourly rate is an overhead component that pays for other Rutan staff that support their attorneys, including but not limited to paralegals and legal secretaries, library costs, computer research costs, along with general overhead to cover them, and obviously the profit for the firm.

### **Considerations for Selecting an Attorney**

As the City's Risk Manager, I feel compelled to advise that when considering who to choose to provide legal advice, the City should view risk management as a critical factor in the decision. Risk management can easily get lost in the discussion, understandably because personalities and costs are easier to grasp as they are more visible and somewhat less complicated. Less than the most skilled advice can and does result in legal losses, large payouts or settlements, and can easily cost much more than any savings that might be gained by selecting a lower-cost legal advisor.

Large legal firms have some noteworthy advantages that should be considered in that they typically have more of the diverse stable of individuals with specialized legal experience that a city needs to draw upon.

Also, and again in my opinion, larger firms carry clout in the legal community. A pointed communication from a sizeable, respected, name law firm may be more effective in furthering one's legal position than one from an in-house counsel, a smaller firm or a lone practitioner. This is just my view, but again I feel compelled to share it.

### **Building a City Attorney Department**

As mentioned above, a full-time, in-house attorney would have approximately 1,700 hours available per year for work (2,080 full-time hours, less 240 hours paid time off and an estimated 140 hours for training/conferences/other). It is assumed for this analysis that this attorney would be mainly a municipal generalist, and would possess some but not all of the requisite specialized legal experience that the City must often draw upon. This should be a point to consider when debating how many hours get contracted-out to private law firms.

Many approaches could be used to provide legal resources to cover the work for the City, and for this discussion consideration starts with what could reasonably be handled by an appointed City Attorney, and then what would need to be contracted-out. The scenarios examined include:

1. Full In-House City Attorney Department;
2. Employ only appointed City Attorney, and Contract out all additional work;

3. Employ a three-quarter time Assistant or Deputy City Attorney, and contract out the remainder of the work, including specialty work;
4. Any number of other variations.

Regardless of the scenario above, and though it could be challenged, the assumption used is that an appointed City Attorney would require the need for a legal secretary.

The first three Scenarios listed above are more fully explored as follows:

**Scenario 1: Estimated Costs for In-House City Attorney Department (\$683,700)**

The total annual cost of personnel and other costs to support a fully-staffed, in-house City Attorney Department would be about \$660,000, with roughly \$607,300 of that being in personnel costs, \$41,400 in support costs and \$35,000 in contracts for outside specialist attorneys needed to advise on non-litigation matters.

This scenario assumes that the City Attorney is a municipal law generalist, and would generally cover City Council interactions and meetings, some litigation, ordinances/resolutions, contracts, claims, and other unique/complicated legal issues, in addition to managing staff and contracts with outside lawyers for specialized legal services and litigation.

This scenario includes employing a full-time Assistant City Attorney with enough municipal experience to on occasion be the acting City Attorney, but with core responsibility for covering land use issues; some review of contracts and compliance with public records act requests; building and code enforcement issues, up to and including civil and criminal prosecution; and other duties as assigned. It is important to note that time commitments to prepare for and attend court hearings are often extensive, and court scheduling obviously takes precedence over what might be considered other regularly scheduled legal work; Time away from City Hall to handle code enforcement and City prosecutor court appearances is a requirement that must be recognized as a staffing issue, since it conflicts with time available to assist on other matters (i.e. you must consider scheduling practicalities, not just total hours).

A reality that should be pointed out is that having staff attorneys available and accessible, every work day, will result in more day-to-day reliance on the attorneys by staff and others. This in turn will result in additional consumption of the in-house attorney's productive time above and beyond what is shown in Table 2. This is not mere speculation, and is based on my extensive past experience working with in-house attorneys. It is a fact you should consider and presents a challenge in projecting time available for the work hours shown in Table 2, and in comparing to an in-house model to a contract model for legal services. Bear in mind staff has not factored into the cost estimates a loss of productive hours, but you may want to consider doing so.

Details of personnel costs by position for this scenario are as follows:

**Table 3: Scenario 1 Personnel Costs**

Estimate for Fully Staffed In-House City Attorney Department - Personnel Costs

Position	Salary(1)	Pension(2)	Benefits(3)	Total
City Attorney	\$ 220,000	\$ 23,700	\$ 40,400	\$ 284,100
Assistant City Attorney	150,000	17,400	25,900	193,300
Legal Secretary	60,000	9,500	16,800	86,300
Legal Assistant – Part-time	40,000	3,000	600	43,600
<b>Estimated Personnel Costs</b>	<b>\$ 470,000</b>	<b>\$ 53,600</b>	<b>\$ 83,700</b>	<b>\$ 607,300</b>

- (1) Based on mid-salary range average salaries from both Orange County cities and other similarly sized coastal cities in California.
- (2) Assumes persons hired have previous municipal experience and thus would be considered a CalPERS Pension Classic member; Dana Point's pension rate for Classic members is 8.921% of salary; plus, \$4,100/employee towards City's unfunded pension liability based on FY19 CalPERS required contribution. Part-time positions are included in the ICMA deferred contribution pension plan that is 7.5% of salary.
- (3) Includes Cafeteria Allowance for health/dental/life/disability benefits (City Attorney \$1,718/mo.; Asst. City Attorney: \$1,525/mo.; Exempt \$1,325/mo.), and Medicare tax. Also includes a 4% of salary ICMA contribution for City Attorney; and, Auto Allowance for City Attorney (\$650/mo.) and Assistant City Attorney (\$450/mo.).

The City would likely need to contract out for some excess/specialized legal work for which the in-house attorneys are either not expert or have capacity constraints, the exact nature of which is not determinable at this time (e.g. labor relations, personnel, NPDES, Coastal Act, solid waste, etc.). Quantifying the "typical" number of hours in any given year is difficult at best, but for the sake of discussion 100 hours, or 3.5% of total annual attorney hours (admittedly, this is a guess). In addition, any litigation beyond code enforcement/prosecution is not included in the assumption of hours needed to cover in a typical year. For example, the City is currently pursuing three cases against what appear to be unlicensed sober living homes, with each case possibly consuming up to 300 hours of attorney time; in addition, there are two other litigation matters that could consume up to three times that many hours.

The actual hourly rate charged by law firms for ad-hoc work would vary widely based on the type and amount of work, among other factors, but could be anywhere from \$250 per hour up to \$600 per hour for associate attorneys on up to partners. The range is based on discussions with other cities, and our own experience in hiring outside counsel. For the sake of this discussion, a blended average of \$350/hour is used and assumes use at times of both associate-level attorneys and partners, resulting in \$35,000/year for non-litigation matters.

Bear in mind that litigation matters handled by contracted counsel will not be subject to the fixed rate the City pays per its agreement with Rutan; with Rutan's rate at \$253/hour, compared to contracting for these services separately at an assumed \$350/hour, for every 1,000 hours contracted, the cost is an additional \$97,000.

An obvious result of having two full-time, in-house attorneys with arguably the capacity to cover 3,400 hours of legal work (i.e. 1,700 hours/attorney), is there appears on the surface to be excess capacity when compared to hours needed and as shown in Table 2. Over the past 5-1/2 years the average annual number of legal hours billed has been 3,275/year; this is a net number that excludes what might be considered anomalous



legal matters that consumed a lot of legal resources (e.g. marijuana dispensaries; Headlands-related litigation matters; and contentious, large-scale developments) and that produced total billed hours as high as 4,285 in a year.

The amount of development and other activity since the end of the recession has, in part, driven up the number of non-litigation legal hours consumed during the past 5-1/2 years. Though the hours estimated and shown in Table 2 do not anticipate the higher level of activity at the post-recession level, there has been a spike in activity the past several years. There would be an opportunity for some of the spikes in workload that will occur to be covered by the excess capacity in this Scenario 1 model; however, there is an admitted risk of over-staffing in regards to the workload at any given time. The dilemma of course is that understaffing would result in more work being handled by contract counsel.

In addition to personnel costs, roughly \$41,400 of annual budget for “ancillary” costs would be needed to support the Department, and includes estimates for items such as computers, software and licenses (\$4,000); cell phone/data stipends (\$2,400); office supplies, books and subscriptions (\$6,000); memberships and dues (\$5,000); training/travel/conference fees (\$4,000); and other miscellaneous costs (\$20,000).

To summarize, adding estimated Personnel costs (\$607,300), contract attorney costs (\$35,000) and ancillary support costs (\$41,400), Scenario 1 results in a \$683,700 cost to fully staff a City Attorney Department, which results in a fully-loaded City Attorney rate of \$241/hour for the 2,835 hours assumed in the model.

**Scenario 2: Employ only appointed City Attorney, and Contract out all additional work (\$699,150):**

This scenario presents some immediate challenges, particularly with providing attorney coverage in the absence of the appointed City Attorney. In addition, this scenario would have a challenge in that the appointed City Attorney would be preparing for and covering both the City Council and Planning Commission meetings. One person covering both would require attendance at either a Monday or Tuesday evening meeting almost every week of the year; this obviously is not a show-stopper, but is something to consider, particularly as it might present challenges for recruiting.

However, compared to Scenario 1 that has an Assistant City Attorney on staff, this approach would have the added benefit of being able to have more flexibility to choose a contract attorney that specializes in a particular issue when needed.

A contract attorney, possibly on retainer, may be a desired addition to this Scenario to provide ready-access to an acting City Attorney should the appointed City Attorney not be available due to vacation, illness, other work commitments, training, etc. Given that so many hours would be contracted out in this scenario, it is assumed that matters needing the additional help of a legal assistant would be contracted out, so the legal assistant position assumed above in Scenario 1 would be eliminated, in addition to

eliminating the Assistant City Attorney position. This scenario would also consume more of the productive time of the appointed City Attorney, in that he/she would be spending more time than the 100 hours mentioned above in Table 2 for managing staff and contracts.

The in-house personnel costs for this scenario are as follows:

Table 4: Scenario 2 Personnel Costs

Estimate for One In-House Attorney - Personnel Costs				
Position	Salary(1)	Pension(2)	Benefits(3)	Total
City Attorney	\$ 220,000	\$ 23,700	\$ 40,400	\$ 284,100
Legal Secretary	60,000	9,500	16,800	86,300
Estimated Personnel Costs	\$ 280,000	\$ 33,200	\$ 57,200	\$ 370,400

- (1) Based on mid-salary range average salaries from both Orange County cities and other similarly sized coastal cities in California.
- (2) Assumes persons hired have previous municipal experience and thus would be considered a CalPERS Pension Classic member; Dana Point's pension rate for Classic members is 8.921% of salary; plus, average \$4,100/employee towards City's unfunded pension liability based on FY19 CalPERS required contribution for full-time employees. Part-time positions are included in the ICMA deferred contribution pension plan that is 7.5% of salary.
- (3) Includes Cafeteria Allowance for health/dental/life/disability benefits (City Attorney \$1,718/mo.; Exempt \$1,325/mo.), and Medicare tax. Also includes a 4% of salary ICMA contribution for City Attorney; and, Auto Allowance for City Attorney (\$650/mo.).

With two positions eliminated in this scenario compared to Scenario 1, it is assumed that ancillary support costs would also be reduced by half, from the \$41,400 down to \$20,000.

For this scenario, it is assumed that of the 1,700 productive hours available from the appointed City Attorney, 200 would be spent on managing contract attorneys, leaving 1,500 available for legal work. Taking the 2,835 total hours of attorney work needed by the City as shown in Table 2 above, and subtracting out the 100 hours included therein for managing staff/contract attorneys, leaves 2,735 hours remaining, with 1,500 being covered by the appointed City Attorney and 1,235 non-litigation hours contracted out.

There will be some economy of scale, and even some predictability to workload, when there are this many hours of work contracted out. Given this fact, it is assumed that the hourly rate for this Scenario 2 would be less than the hourly rate charged for the limited amount of specialized work contracted out in Scenario 1. Given that, the 1,235 hours contracted out in this scenario is assumed at \$250/hour, which is a blended rate assuming use of associate- and partner-level attorneys, and results in a contract attorney cost estimate for the City of \$308,750.

To summarize, adding estimated Personnel costs (\$370,400), contract attorney costs (\$308,750) and ancillary support costs (\$20,000), Scenario 2 results in a \$699,150 cost to employ just an appointed City Attorney and contract out the rest of the attorney work, and which results in a City Attorney department rate of \$247/hour for the 2,835 hours assumed in the model.

**Scenario 3: Employ an Appointed City Attorney and a 3/4 time Assistant or Deputy City Attorney, and contract out the remainder of the work, including specialty work (Range: \$614,240 to \$634,600)**

This scenario is built from Scenario 1, with a reduced number of hours and costs for the Assistant City Attorney, and an increased number of hours contracted. It shows a range in costs should the Assistant City Attorney position be downgraded further to a Deputy City Attorney position, with the latter having a lower, 3/4 part-time salary of \$93,750 and fully burdened personnel cost of \$106,340. The annual savings from downgrading the position is \$20,360.

The number of productive hours from staff attorneys is 2,975 hours, with the full 1,700 hours provided by the appointed City Attorney, and 1,275 by either an Assistant or Deputy City Attorney. Where Scenario 1, with two full-time staff attorneys, assumed 100 hours contracted out for excess/specialty work, this Scenario 3 assumes 150 hours at the same average of \$350/hour, for a total estimated contracting cost of \$52,500. The Legal Assistant (Part-time) position remains as it is in Scenario 1.

Table 5: Scenario 3 Personnel Costs

Estimate for One Full- and One Part-time In-House Attorney - Personnel Costs				
Position	Salary(1)	Pension(2)	Benefits(3)	Total
City Attorney	\$ 220,000	\$ 23,700	\$ 40,400	\$ 284,100
Assistant City Attorney (3/4 part-time)	112,500	8,400	5,800	126,700
Legal Secretary	60,000	9,500	16,800	86,300
Legal Assistant – Part-time	40,000	3,000	600	43,600
Estimated Personnel Costs	\$ 432,500	\$ 44,600	\$ 63,600	\$ 540,700

- (1) Based on mid-salary range average salaries from both Orange County cities and other similarly sized coastal cities in California.
- (2) Assumes persons hired have previous municipal experience and thus would be considered a CalPERS Pension Classic member; Dana Point's pension rate for Classic members is 8.921% of salary; plus, \$4,100/employee average towards City's unfunded pension liability based on FY19 CalPERS required contribution for full-time employees. Part-time positions are included in the ICMA deferred contribution pension plan that is 7.5% of salary.
- (3) Includes Cafeteria Allowance for health/dental/life/disability benefits (City Attorney \$1,718/mo.; Asst. or Deputy City Attorney and Legal Assistant Part-time: \$0/mo.; Exempt \$1,325/mo.), and Medicare tax. Also includes a 4% of salary ICMA contribution for City Attorney; and, Auto Allowance for City Attorney (\$650/mo.) and Assistant or Deputy City Attorney Part-Time (\$350/mo.).

As in Scenario 1, roughly \$41,400 of annual budget for “ancillary” costs would be needed to support the Department.

To summarize, adding estimated Personnel costs (\$540,700), contract attorney costs (\$52,500) and ancillary support costs (\$41,400), Scenario 3 results in a \$634,600 cost to staff a City Attorney Department with one full-time appointed City Attorney and one part-time Assistant City Attorney, which results in a City Attorney department rate of \$224/hour for the 2,835 hours assumed in the model.

As mentioned above, downgrading the part-time Assistant City Attorney to a part-time Deputy City Attorney results in savings of \$20,360, bringing the total for this variation to \$614,240 or a City Attorney department rate of \$217/hour for the 2,835 hours assumed in the model.

### **Other Information Gathered**

Provided for background are excerpts from prior City Financial Review Committee (FRC) Meetings, including minutes and documents presented by members (See Supporting Document B), and a document transmitted to the City Council on October 17, 2017 by former FRC member Nelson (Supporting Document C).

A review of other cities was conducted to gain some understanding as to how they manage their requisite legal services. A list of 23 cities was compiled based on input from the Financial Review Committee. Contracts and budgets were reviewed, along with follow-up discussions where information was not readily discernable from the former. Data collected includes population, in-house vs. contract or both, contract rates, employee counts and budget. The information gathered was used to assist in designing the in-house and contracting scenarios above.

It is important to note that out of the 34 Orange County cities, only 4 have in-house staff serving as their City Attorneys, including Anaheim (pop. 351,043), Santa Ana (pop. 334,217), Huntington Beach (pop. 200,652) and Newport Beach (pop. 86,688). Also, their City Attorney budgets range from a low of \$2 million per year, up to over \$8 million per year.

In discussing attorney services with other cities, and culling through budgets, contracts, council agenda reports, and other information gathered, Staff looked hard for metrics that would provide relevant, comparable information that could be used to assess the efficiency of attorney services. The reality is that there are so many variables that drive attorney costs that there is no cost-effective way to identify and explain any solid, objective metrics with which to compare cities. Every city deals with different issues, and even when dealing with similar issues the timing, varying legal positions taken and extent of effort involved makes relevant comparisons cost prohibitive to perform, if not impossible. I have to point out that an easy metric to compute and that is commonly bantered about is cost per capita; where cost per capita may be useful in pointing out a difference, it falls short of being truly useful in that it is not an end-all solution to either

identifying a problem or a solution. The biggest cost driver for the labor component of legal services is the number of work hours consumed, which is driven by leadership decisions in regards to giving direction to the attorney on legal issues, and the effectiveness of Counsel; the effect of these drivers can make the hourly rate pale in comparison. At some level, some weight in assessing counsel performance should be given to whether they win the battles they fight on your behalf, particularly those battles they expressed confidence in before being given direction to proceed.

### Summary of Other Cities

City	Population	In-House or Contract	Basic Information	FY18 Budget
Aliso Viejo	51,424	Contract	Retainer \$18,389/mo. – hours vary based on historical average computation; Special projects: \$220/hr. attorney, \$112/hr. paralegal – as designated by Council; Specialized services: \$248/hr. attorney, \$141/hr. paralegal – CEQA, Labor, Personnel, Anti-Discrimination; CPI up to 5% annually.	\$ 417,000
Anaheim	351,043	In-House / Contract	33 FTE's; Police, Fire, Utilities; Conventions Center, Anaheim Stadium, etc.	\$ 8,092,588
Carlsbad	113,952	In-House / Contract	Includes city attorney, two assistant city attorneys, a deputy city attorney and support staff (6.5 FTE). FY18 budget added a full-time deputy city attorney to serve as the city prosecutor and code enforcement attorney. Budget includes \$300k for contract legal.	\$ 1,814,588
Chula Vista	267,172	In-house / Contract	14 FTE's; Police and Fire.	\$ 2,980,359
Costa Mesa	112,822	Contract (multiple)	No retainer; Attorney: \$210/hr.; Paralegal: \$119/hr. (adjusted for CPI from contract) CPI adjustments. 3 <sup>rd</sup> Party work charged at design rate. *The \$2,233,410 was FY17 actual legal costs, including litigation of \$977k.	\$2,233,410*
Dana Point	34,012	Contract	Retainer \$9,867/mo.; Attorney \$253/hr.; 3 <sup>rd</sup> Party Work charged at design rate.	\$ 869,500
Encinitas	63,131	Contract	Contract not obtained. Budget includes \$375,000 general and \$150k Insurance Fund	\$ 525,000

Garden Grove	174,858	Contract	Attorney: \$210/hr.; Paralegal: \$116-\$119/hr. (adjusted for CPI from contract)	\$ 825,000
Huntington Beach	200,652	In-House / Contract	11 FTE's, includes elected City Attorney, Chief Assistant City Attorney, two Assistant City Attorneys, two Sr. Deputy City Attorneys, Deputy City Attorney, and four support staff. Budget includes \$2,602,105 City Attorney Department and \$348,000 contracts.	\$ 2,602,105
Irvine	266,122	Contract	Attorney \$215/hr., Law Clerk \$140/hr., Paralegal \$110/hr.; Special Services \$245/hr. 3rd party reimbursable work charged at full design rate. City paid City Attorney firm \$1.8 million last year.	n/a
La Habra	61,664	Contract	\$229/hr. for all legal services rendered, except for labor which ranges from \$200-\$350/hr. Contract separately for Redevelopment & Housing, and other specialist	\$ 250,000
Laguna Beach	23,190	Contract	Retainer: \$8,500/mo. up to 60 hrs.; additional services: \$235/hr. Use District Attorney to prosecute Municipal Code violations.	\$ 1,000,000
Laguna Hills	31,509	Contract	Attorney \$205/hr. Paralegal \$115/hr. (since 2012.	\$ 345,000
Laguna Niguel	65,328	Contract	Attorney \$195/hr.	\$ 360,000
Laguna Woods	16,272	Contract	Attorney \$225/hr.; special services \$240/hr.	\$ 153,900
Lake Forest	83,240	Contract	Attorney \$173/hr; specialized services \$200/hr.; Paralegal \$100/hr. (rates adjusted by CPI from contract); 3 <sup>rd</sup> Party reimbursed work at design rates.	\$ 1,318,000
Mission Viejo	96,396	Contract	Retainer \$2,300/mo. for 20 hrs./mo.; City Attorney \$161/hr. (rate adjusted for CPI from contract); Other Attorneys based on years of experience: range \$182/hr. to \$223/hr.; paralegal \$166/hr. (rates adjusted for CPI)	\$ 384,000
Newport Beach	86,688	In-House / contract	7 FTE's plus 2 p/t paralegals. Budget shown does not include separate budget for litigation/claims and outside attorneys.	\$ 2,001,908

Oceanside	175,464	In-House	8 FTEs plus part-time staff.	\$ 1,750,000
Placentia	52,228	Contract	Retainer \$8,916 up to 55 hrs./mo.; Non-retainer \$199/hr.; Specialized projects \$199/hr., Paralegal \$102/hr.; Litigation attorney \$214/hr.; City prosecutor \$225/hr. (rates adjusted by CPI from contract).	\$ 811,000
San Clemente	65,309	Contract	Retainer \$10,190/mo. for up to 55 hrs.; Non-Retainer: \$255/hr.; Paraprofessional \$183/hr.; Paralegal \$132/hr.; Special services: Attorney: \$306/hr.; Paraprofessional: \$224/hr.; Paralegal \$148/hr. (rates adjusted by CPI from contract)	\$ 1,382,630
San Juan Capistrano	36,276	Contract	Retainer \$10,190/mo. for up to 55 hrs.; Non-Retainer \$260/hr.; Paralegal \$132/hr.; Special services attorney \$316/hr. (rates adjusted by CPI from contract) Note: additional \$575,000 paid to non-City Attorney legal firms in FY17	\$ 420,000
Santa Ana	334,217	In-House / Contract	14 FTE's; City Attorney; two Chief Assistant City Attorneys; 5.5 Senior Assistant City Attorneys; 1 Executive Secretary; 1.5 Senior Legal Secretaries; 3 Senior Paralegals. *FY17 General Fund budget (excludes additional costs paid by Insurance Fund).	\$ 2,878,925*
Seal Beach	24,440	Contract	Retainer \$20,000/mo., or \$240,000/yr. Litigation billed at 85% of regular attorney hourly rates (2014 rates ranged from associate attorney \$225/hr. to partner \$500/hr.); Prosecution \$184/hr.; Special Services \$300/hr. (from 2010, rate adjustments equal to avg. management raises management received.	\$ 475,000
Yorba Linda	68,235	Contract	Attorney \$210/hr.; Specialized services \$225/hr. Paralegal \$125/hr.	\$ 650,000

**SUPPORTING DOCUMENTS:**

- A. [July 3, 2007 City Council Agenda Report Proposing the most recent Contract with the City Attorney.....17](#)
- B. [Prior City Financial Review Committee Excerpts of Minutes related to the City Council referred City Attorney contracting review.....26](#)
- C. [Former FRC member Nelson submittal.....42](#)



## ATTACHMENT A

7/3/2007

Page 1

Item # 14

**CITY OF DANA POINT****AGENDA REPORT**

Reviewed By:	
DH	_____
CM	_____
CA	_____

**DATE: JULY 3, 2007****TO: THE HONORABLE CITY COUNCIL****FROM: DIANE HARKEY, MAYOR****SUBJECT: ADJUSTMENT TO THE EXISTING AGREEMENT FOR LEGAL  
SERVICES – RUTAN AND TUCKER****RECOMMENDED ACTION:**

That the City Council authorize the Mayor to execute an amended professional services agreement with Rutan and Tucker.

**BACKGROUND:**

Prior to hiring Rutan, the City Attorney did not staff Planning Commission meetings or have regular office hours at City Hall. In essence, the City was paying for virtually no presence at City Hall and not achieving many victories in Court. Thus, we were paying our fees as well as the fees of the prevailing parties. In a number of the cases, Rutan & Tucker represented the prevailing party against the City.

The law firm of Rutan and Tucker has been representing the City since December 2002. When the City Council originally approved the City Attorney's contract with Rutan and Tucker, it used the San Clemente rate and level of service as a model due to the desire for weekly regular office hours as well as coverage at Planning Commission meetings, similar to San Clemente.

Hence, it was originally intended that the same rates applicable in San Clemente would apply in Dana Point. Since its appointment in December of 2002 Rutan and Tucker has received one rate adjustment, approximately 19 months ago in December 2005. However, rates for similar services in the City of San Clemente have increased annually by an amount that approximates CPI increases during the same period. San Clemente is currently paying a rate of \$220/hr with an \$8,600 retainer. Commencing July 1, San Clemente's rate will increase to \$230/hr with a \$9,000 retainer. In comparison Dana Point currently pays \$203/hr with a \$7,865 retainer. The original rate in 2002 was \$185/hr with a retainer of \$7,150.

7/3/2007

Page 2

Item # 14

Based upon the review of the rates paid in San Clemente, and other Coastal Cities with similar development issues and demographics as compared to Dana Point, an ongoing desire to avail ourselves to the current level of service we receive from Rutan & Tucker, and the fact Rutan has performed well for us on a consistent basis, I am proposing the following contract adjustments:

1. Adjust the rate for legal services to \$220/hr, which equates to 5.3% annualized increase since the 2005 adjustment or a 3.4% annualized increase since contract inception in 2002, and still \$10 per hour less than our larger neighboring city. The hourly rate is only paid after the contracted 50 hours under retainer have been utilized.
2. Adjust the retainer to \$8,600, which equates to a 3.6% annualized adjustment since 2002. (Note that the retainer covers approximately 50 hours/month which equates to approximately \$172/hr.), still \$400 less per month than our larger neighboring city.

In addition, to avoid budgeting uncertainty, potential for politicizing of the City Attorney's office and the need for constant contract review, I am recommending that a provision be added to the agreement to allow annual hourly rate and retainer adjustments to occur on July 1 based on the January Consumer Price Index (CPI) which tracks the level of inflation, of the same calendar year.

The historic January CPI index since 2002 is as follows:

2003 = 3.5%	2004 = 1.8%	2005 = 3.7%
2006 = 5.4%	2007 = 3.2%	

The goal of this proposed adjustment is to keep the rates in Dana Point as low as possible for the taxpayers, but consistent and competitive with other contract cities requiring similar services. Nothing in the contract prohibits the City Council from renegotiating or terminating the agreement at any time after providing a 30 day notice.

#### **FISCAL IMPACT**

The FY 2007-2008 budget includes a monthly retainer of \$9,146, plus an increase of 5% to the contract price. For FY 2006-07 it is projected that the City Attorneys fee would not exceed the sum of the budget in department 71 (City Attorney) and department 97 (Risk Management). Therefore no budget adjustment is necessary for the FY 2007-08 budget to implement the proposed contract amendments. Rutan and Tucker have done a good job of reducing the amount of litigation that has plagued the City in the past and at this time there are no litigation matters involving the City (excepting those covered by our "insurance" coverage.) Staff monitors the City Attorney budget on a monthly basis. Should a budget adjustment need to be made, it will be brought forward for Council consideration at the appropriate time.

7/3/2007

Page 3

Item # 14

**ALTERNATIVE ACTIONS:**

Other action as deemed appropriate by the Council.

**ACTION DOCUMENTS:**

**Page NO.**

A. Agreement for Provision of City Attorney Services

4

**AGREEMENT FOR PROVISION  
OF CITY ATTORNEY SERVICES**

THIS AGREEMENT is made and entered into as of the 1st day of July, 2007, by and between the City of Dana Point, a California municipal corporation (the "CITY") and Rutan & Tucker LLP, a California limited liability partnership ("ATTORNEY").

**RECITALS**

A. CITY and ATTORNEY entered a contract dated December 9, 2002 by which Attorney has been providing city attorney services for City, and which was amended in December 2005.

B. CITY and ATTORNEY desire to restate and amend their agreement as set forth herein.

**COVENANTS**

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and ATTORNEY hereby agree as follows:

**ARTICLE 1  
APPOINTMENT OF CITY ATTORNEY**

1.1 Pursuant to Government Code Section 36505, City Council of CITY hereby appoints ATTORNEY to provide contract city attorney services for CITY.

1.2 A. Patrick Muñoz, a partner with ATTORNEY shall serve as City Attorney for CITY, who shall be primarily responsible to perform or cause to be performed the work described in this Agreement.

1.3 The City Attorney shall be entitled to appoint one Assistant City Attorney and Deputy City Attorneys as necessary to perform the services referenced in this Agreement. The selection of the Attorney to act in the capacity of Assistant City Attorney and/or Deputy City Attorney shall be subject to the approval of the City Council.

**ARTICLE 2  
RESPONSIBILITIES OF ATTORNEY**

2.1 ATTORNEY shall perform any and all work necessary for the provision of City Attorney services to CITY, including without limitation the following: attendance at regular City Council and Planning Commission meetings; drafting and review of ordinances, resolutions and agreements; weekly office hours at City Hall from 1:30 p.m. to 5:00 p.m. on all regularly scheduled City Council meeting days, and from 9:00 a.m. to 5:00 p.m. on all regularly scheduled Planning Commission meeting days; provision of legal services to the City Council, City

Manager, and Boards, Commissions, Committees, officers and employees of CITY as requested by CITY's City Council or in accordance with such policies and procedures as may be established by CITY from time to time; attendance at meetings other than the regular City Council and Planning Commission meeting on an as-requested basis; provision of litigation and bond counsel services on an as requested basis; and provision of such other legal services as shall be necessary.

2.2 ATTORNEY represents the tasks and services required herein will be performed by ATTORNEY, or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable state and local law to perform such tasks and services.

2.3 ATTORNEY shall not subcontract any portion of the work required herein without prior written approval of CITY; provided, however, that ATTORNEY shall be authorized to retain on behalf of CITY expert witnesses for litigation matters and other nonlegal subcontractors as may be necessary to enable ATTORNEY to perform the required services required hereunder. Retention of any expert witness or other subcontractors costing more than \$10,000.00 shall require prior consent of the City Council.

2.4 ATTORNEY shall perform all work required hereunder in a prompt and professional manner and shall exercise the standards of care required for the provision of legal services. Upon request or in accordance with such procedures as CITY may establish from time to time, ATTORNEY shall periodically report to CITY regarding the status of all legal matters being handled by ATTORNEY.

2.5 ATTORNEY shall comply with all applicable federal, state and local laws, ordinances, and regulations.

2.6 ATTORNEY shall make no change in the character or extent of the work required by this Agreement, except as may be authorized in writing by CITY. Such supplemental work authorization shall set forth the specific changes of work to be performed and/or adjustment of fees to be paid to ATTORNEY by CITY.

2.7 The above provisions notwithstanding, ATTORNEY shall not represent any party before the City Council of CITY or any of CITY's commissions, boards, or committees. Nor shall ATTORNEY represent any party in any litigation when CITY is an adversary party in such litigation.

### ARTICLE 3 RESPONSIBILITIES OF CITY

3.1 CITY shall provide full information to ATTORNEY and cooperate with ATTORNEY to the extent necessary to enable ATTORNEY to provide all services required pursuant to this Agreement.

3.2 CITY shall provide an office to ATTORNEY at City Hall for ATTORNEY's use during ATTORNEY's office hours. Said office shall be wired for access to the Internet to enable ATTORNEY to perform such legal research as may be necessary during ATTORNEY's office

hours. CITY shall provide at its expense such legal books for ATTORNEY's use at City Hall as City Council may approve from time to time during the normal budgetary process.

ARTICLE 4  
PAYMENT

4.1 CITY shall compensate ATTORNEY for the Retainer and Non-Retainer Services as provided herein. CITY shall compensate ATTORNEY for Retainer Services at a rate of \$8,600.00 per month, plus reimbursable costs. CITY shall compensate ATTORNEY for Non-Retainer Services at the composite rate of \$220.00 per hour, plus reimbursable costs. The monthly rate for Retainer Services shall apply regardless of the number of hours of legal services actually provided. The monthly rate for Retainer Services and the hourly rate for Non-Retainer services shall apply to all attorney services, regardless of the identity of the ATTORNEY performing the work.

4.2 For the purposes of this Agreement, Retainer Services shall mean office hours at City Hall on regular City Council and Planning Commission meeting days, as well as attendance at all regular City Council and Planning Commission meetings, as referenced in Section 2.1 of this Agreement. Non-Retainer Services shall include all legal services provided to CITY other than Retainer Services, with the exception of Bond Counsel Services and Reimbursable Services. Bond Counsel Services shall be billed in accordance with standard rates for bond counsel services charged by ATTORNEY from time to time to ATTORNEY's public agency clients (currently out of pocket costs plus 1% of the first \$1 million issued, ½% of the next \$4 million and ¼% for amounts in excess of \$5 million.) Reimbursable Services are services for which CITY will be reimbursed by third parties and ATTORNEY may bill CITY at its current design rates for all such services.

Adjustment in the above rates shall occur on an annual basis effective July 1, in an amount equal to percentage change in the Consumer Price Index for All Urban Consumers for the Los Angeles – Riverside – Orange County area, for the 12-month period ending January of the same calendar year. Any other changes may be considered by the City Council for as part of CITY's annual review of ATTORNEY'S performance.

4.3 In addition to its billing for attorney services, ATTORNEY shall be paid for all of its reimbursable costs. As used herein, the term "reimbursable costs" shall include the following: attorney's normal hourly charge for paralegal services; charges for any expert witnesses, consultants or subcontractors authorized to be retained by ATTORNEY on behalf of CITY; long distance telephone charges (excluding telephone calls between ATTORNEY's office and City Hall); reasonable travel expenses (excluding travel between ATTORNEY office and City Hall); document reproduction expenses; telecopier charges; mobile internet connection charges; computerized research charges; litigation expenses, including without limitation court filing fees, court reporter's fees, jury fees, witness fees, and the like; personal messenger service charges; and other reasonable and necessary out-of-pocket expenses. The term "reimbursable costs" shall not include any overhead or administrative charge relating to ATTORNEY's office or ATTORNEY's normal cost of equipment and supplies except as expressly set forth herein.

4.4 ATTORNEY shall bill CITY monthly for services performed pursuant to this Agreement. ATTORNEY shall establish such separate billing matters as deemed appropriate by CITY and consistent with this Agreement. Each bill shall be itemized and shall reflect the date each task is performed, the amount of time spent performing each task, a brief description of the task performed, the identity of the ATTORNEY performing each task, and the total monthly charge. Reimbursable costs shall be separately itemized. CITY shall pay all fees and reimbursable costs due to ATTORNEY within 30 days after receipt of invoice.

#### ARTICLE 5 INDEPENDENT CONTRACTOR

5.1 The designated City Attorney in ATTORNEY's office shall be directly responsible and shall report to the City Council in accordance with applicable California law. Otherwise, ATTORNEY is an independent contractor and not an employee of CITY and neither CITY nor any of its employees shall have any control over the conduct of ATTORNEY or any of ATTORNEY's employees, except as herein set forth, and ATTORNEY expressly warrants not to, at any time or in any manner, represent that ATTORNEY, or any of ATTORNEY's agents, servants, or employees, are in any manner agents, servants, or employees of CITY, it being distinctly understood that said ATTORNEY is and shall at all times remain as to CITY a wholly independent contractor and that ATTORNEY's obligations to CITY are solely such as are prescribed by this Agreement.

5.2 This Agreement contemplates the personal services of ATTORNEY and ATTORNEY's partners and employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of ATTORNEY and ATTORNEY's employees. Neither this Agreement nor any interest therein may be assigned by ATTORNEY, except upon written consent of CITY. Nothing herein contained is intended to or shall be construed as preventing ATTORNEY from employing or hiring as many employees as ATTORNEY may deem necessary for the proper and efficient execution of this Agreement.

#### ARTICLE 6 TERMINATION

6.1 The Term of this Agreement shall commence on July 1, 2007 and shall continue thereafter unless terminated by either party hereto pursuant the terms of this Agreement. City may terminate this Agreement upon providing Attorney thirty (30) days' written notice prior to termination. Attorney may terminate this Agreement on the giving of ninety (90) days written notice to the City of such termination. Attorney will comply with all obligations required of it pursuant to the State Bar Act in connection with such termination and the transition to replacement counsel. ATTORNEY shall be compensated for its costs and services rendered through the effective date of such termination.

ARTICLE 7  
MISCELLANEOUS

7.1 Notices. Any notice to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed to ATTORNEY at 611 Anton Boulevard, Suite 1400, Costa Mesa, California, 92626, Attention: A. Patrick Muñoz, and to CITY at 33282 Golden Lantern Drive, Dana Point, California, 92629, Attention: City Manager.

7.2 Non-Discrimination. In connection with the execution of this Agreement, ATTORNEY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. ATTORNEY shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

7.3 Interpretation of Agreement. This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California.

7.4 Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force of effect with respect to those matters covered in this Agreement.

7.5 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

7.6 Insurance and Indemnification.

(a) Insurance.

(i) Attorney carries Professional Liability/Errors and Omissions insurance in the amount of \$20,000,000 and will do so throughout the term hereof. Insurance shall continue to be effective to cover all claims made within three (3) years of the completion of the work in the Agreement.

(ii) The amount of said coverage will not be materially changed without Attorney notifying City of such change in writing.

(iii) Attorney shall carry Workers Compensation insurance in amounts that satisfy all legal requirements, or otherwise comply with all laws and regulations relating to such coverage.



(iv) Attorney shall carry General Liability insurance, with coverage limits in an amount satisfactory to City, and shall name City as an additional insured there under throughout the term hereof.

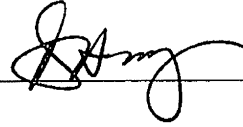
(b) Indemnification. Attorney does hereby agree to hold City, and its elected and appointed officers and officials, employees and other agents free and harmless from any claim, demand, or judgment which may arise based upon personal injury or damage to property to a third party arising out of the performance of services by Attorney hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed with all the formalities required by law on the date first written above.

"CITY"

City of Dana Point

By: \_\_\_\_\_  
Mayor



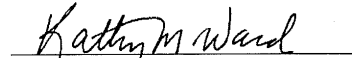
"ATTORNEY"

Rutan & Tucker, LLP

By: \_\_\_\_\_



Attest:

  
Kathy M. Ward, City Clerk

## ATTACHMENT B

## SUPPORTING DOCUMENT B

Excerpt of August 29, 2017 Financial Review Committee Meeting Minutes

**3. Referral from City Council: City Attorney Services Model**

Assistant City Manager Killebrew provided a Staff Report and asked the Financial Review Committee for direction on how the committee would like to proceed.

Chair Porter provided direction by asking which cities would be designated, if the attorneys are under contract, and if they are in-house or a firm. What is the approximate cost of that attorney for the in-house and/or the firm, and if the attorney is in-house is there additional staff required and how do the city's budget their attorney's costs and asked that the city's being reviewed be of comparable size to Dana Point if possible and noted that there are differences between coastal city costs as opposed to inland city costs due to the Coastal Commission.

Member Nelson asked if Chair Porter wanted to review comparable sized cities because he was trying to gauge whether Dana Point's expenses are in line with other cities.

Chair Porter responded that the committee has to better understand how neighboring cities are providing legal services, are they in-house or not, and if it is in-house do they have additional staffing requirements, how are they budgeting the costs, then once the committee has all the information they can compare the data to Dana Point to see if Dana Point is in line or not in line with neighboring cities.

Member Nelson stated that she believes the committee should analyze the City of Dana Point's

legal expenses. She stated that she sent out an email on June 23<sup>rd</sup> asking for an analysis of the legal expenses and for the expenses that are recoverable, where are those dollars being credited to. She does not understand as a member how she can ask for information and not receive a response.

Assistant City Manager Killebrew apologized and stated that her questions had been addressed in the spreadsheet that was provided earlier but understands that he might not have explained it well enough. He further explained that there is a General Reimbursable Revenue in the General Fund and as of July 1<sup>st</sup> he explained that he had the accounting staff set up a separate fund just for legal fees.

Member Nelson asked what happens if the client is not able to pay the fees back to the City and is not recoverable is it moved into the City's expenses or does it stay in recoverable.

Assistant City Manager Killebrew responded that it is always in our expenses, every dollar is expensed and when the City receives the bill it gets paid. There is not a separate expense account designated as recoverable or non-recoverable.

Member Nelson asked that of the items that are recoverable are they 100 percent recovered.

Assistant City Manager Killebrew responded, yes with the exception of a case having to do with the Headlands and the City expensed them, but the money was

not collected and never accrued as a receivable either and the money was never received.

Member Nelson asked if that was typical accounting for all cities.

Assistant City Manager Killebrew stated, yes. He corrected his earlier statement and stated that there was one other issue area that the City was not able to collect on and that was with the medical marijuana. It's currently a judgment, the City incurred legal costs and it is technically recoverable, but the City has not received any money yet.

Member Nelson asked if the spreadsheet Killebrew had provided earlier included all legal costs.

Assistant City Manager Killebrew stated, yes.

Member Nelson stated that from an informational point of view she believes including everything in one account provides a misperception in the public's eye.

Assistant City Manager Killebrew responded that as of July 1<sup>st</sup> the City has a separate revenue account which will be tracked going forward.

Member Nelson stated she found an article online from Michael Reiter ([Attachment A](#)) a municipal attorney from Beswick, Levine & Knox LLP, 2011. It his analysis of in-house City Attorneys by city. She contacted Mr. Reiter to ask if there was an update and Mr. Reiter stated, "no" but he didn't believe anything had changed. The document provides all the cities that have in-house attorneys. She found the salaries of the attorneys online at Transparent California and the average, base salary of a City Attorney for 2016 is \$212,821 and total package to include benefits is \$300,875. The lowest cost City Attorney base salary is \$120, 137 with a total benefits package at \$178,091. She believes that based on these numbers, the City of Dana Point could hire a Senior City Attorney and possibly a paralegal for well under what the City is currently paying for routine activities through Rutan and Tucker.

Chair Porter stated that he would like these cities to be contacted to determine the additional legal costs incurred for using outside legal counsel as well for a total cost.

Assistant City Manager Killebrew informed the committee members that the financial information provided on this website does not reflect how many hours the attorney's worked in that particular year.

Vice-Chair Hill suggested that Assistant City Manager Killebrew call all the Chief Financial Officers of all the cities that the FRC committee identifies to determine what the total expenses are for those cities for both in-house and outside legal services.

Chair Porter agrees that Assistant City Manager Killebrew contact the cities and to use the list that Member Nelson has provided.

Member Rolapp stated that he agrees that Member Nelson's list is a good place to start, but that the committee should also provide some coastal cities and some neighboring cities such as San Clemente, Laguna Beach and Newport Beach and maybe even consider Oceanside so that expenses are measured apples to apples.

Assistant City Manager Killebrew asked the committee if they would also be interested in information pertaining to judgements against those cities and if the court cases were lost and the success of the firms.

Member Nelson agreed, but only if they use in-house counsel and she provided staff with the list of cities with in-house attorneys ([Attachment A](#))

Chair Porter stated that he would be interested to see both in-house and outside attorney outcomes of court cases.

Assistant City Manager Killebrew stated that he would provide the document to staff to make copies and distribute to the rest of the committee for their information and so it is on the record.

Member Nelson stated that there is an Excel spreadsheet on the Government Finance Officers website that analyzes expenses by city and provides percentages, but she was unable to access the information and asked Killebrew if he would access the information for the committee. She feels this comparison document may give the committee an idea as to if the City is in line with other cities. In her research to determine what percentage of legal expenses a city should typically be spending she found an article on Governing.com ([Attachment B](#)) indicating legal expenses should be less than 1 percent of expenses. She continued that she found another article entitled the "Five Benefits of Hiring In-House Counsel" ([Attachment C](#)). She stated that she contacted the author of the article to ask his opinion and he responded that there was definitely an advantage to having in-house counsel because of the independence factor and the desire to keep costs low to keep the City solvent in contrast to outside legal counsel where there would be a conflict because outside legal counsel has an interest in keeping their legal fees high.

Member Wall asked Assistant City Manager Killebrew when he begins the work of collecting data from the list of identified cities, to be sure to ask those cities what they believe the advantages and disadvantages are of having in-house counsel.

Vice-Chair Hill asked Assistant City Manager Killebrew to review total Dana Point legal department costs with reimbursable costs netted out with settlement amounts separated out of total reimbursable costs to make comparisons to the list of cities that have been identified.

Member Rolapp stated that there is a variable that should be considered as well; how aggressive are the various City Councils in pursuing litigation?

Member Nelson informed Assistant City Manager Killebrew that the City of San Clemente has a program that farms out their Code Enforcement issues and they take the judgements on a contingency and believes this to be a good way to save money and instructed Killebrew to provide the committee with more information on that program, does it make sense and is it effective for them.

Assistant City Manager Killebrew provided the committee with his knowledge of stories from the City of Los Angeles where the aggressiveness of the firms working on contingency might be beyond what the City of Dana Point would find acceptable

in the treatment of its citizens. He continued that the City's approach with regards to Code Enforcement is compliance and not punishment.

Vice-Chair stated that many departments within the City can currently request legal support and it is never separately charged to each specific department. He believes that one of the reasons the Rutan and Tucker expenses are so high is because so many people can request help from them. So he would like to recommend how the City should account for it and who has the authority to do what.

Chair Porter asked Assistant City Manager Killebrew if the City Council had asked him at one point to restrict who within the City can engage Rutan and Tucker.

Assistant City Manager Killebrew stated that at the staff level it was discussed how to adjust the lines of communication with regards to engaging the City Attorney. He further explained that he had been in discussion with the new City Manager about possibly distributing components of the City Attorney budget and having departments manage any expenses within their own department's budget.

Member Rolapp suggested that Assistant City Manager Killebrew ask the various cities identified what full time means to that City and what is the City Attorney's schedule.

## Attachment I – Provided by Members Hill and Nelson

CITY	POPULATION	C A BUDGET (\$)	TOTAL OPERATING EXP (\$)	C A %	Position	Salary (\$)	Benefits (\$)	Total (\$)
Santa Ana	334,000	3,226,160	234,235,795	1.38%	City Attorney			300,000
					Chief A C A	186,798	95,122	281,920
					Senior A C A	170,109	77,919	248,028
					Senior A C A	165,867	63,174	230,041
					A C A	157,862	81,911	239,793
					A C A	154,650	80,086	234,736
					A C A	153,322	61,751	215,073
					Sr. Paralegal	85,736	34,945	120,681
					Sr. Paralegal	87,356	40,758	128,114
					Sr. Legal Sec.	67,924	43,110	111,034
					Salary info missing for 3 attorneys, 2 staff			
Duties include:								
Provide advisory and litigation services to land use and development agencies, boards and commissions								
Prosecute violations of Santa Ana Municipal Code								
Provide litigation services and general counsel to Police dept, public works, management, finance, parks and Rec. and community services								
Manage all tort and civil litigation								
Support risk management division of Personnel Services								
Orange	141,000	1,523,933	107,750,188	1.41%	City Attorney	215,591	83,635	299,226
NOTES:					Assistant C A	155,697	71,695	225,392
Total of 4 attorneys and 3 staff								
Duties include:								
Provide legal services to Council, Planning Commission, other advisory bodies and all city depts.								
Directly handle litigation and administrative proceedings								
Manage outside legal counsel services and maintain effective cost control								
Provide training on loss prevention, legal matters								
Draft resolutions and ordinances, attend hearings on civil matters, defend city.								
Provide advice and representation on development projects								
Coordinate Public Record Act requests								
CITY	POPULATION	C A BUDGET (\$)	TOTAL OPERATING EXP (\$)	C A %				

ERC Hill/Nelson 8/29/17

Item #7

Page 43

10/17/17

San Juan Capistrano	36000	1,062,830	104,229,583	1.02%					
San Clemente	66,000	991,730	70,960,680	1.40%					
Laguna Niguel	66,000	360,000	52,709,648	0.68%					
Newport Beach	87,000	2,444,007	270,749,404	0.90%					
Laguna Beach	23,000	750,000	78,543,500	0.95%					
Seal Beach	24,000	475,000	30,184,900	1.57%					
Huntington Beach	200,650	2,969,511	225,878,625	1.31%					
Anaheim	351,000	7,679,039	198,941,295	3.86%					
Palos Verdes Estates	16,000	222,000	11,876,922	1.87%					
Redondo Beach	68,000	3,428,217	90,897,838	3.77%					
Rancho Palos Verdes	42,000	925,000	25,604,300	3.61%					
Manhattan Beach	35,741	647,142	114,350,560	0.57%					
Carlsbad	114,000	1,514,588	250,146,253	0.61%					
Rancho Santa Margarita	49,000	350,000	31,050,455	1.13%					
Mission Viejo	268,000	620,000	68,617,337	0.90%					
CITY	POPULATION	C A BUDGET (\$)	TOTAL OPERATING EXP (\$)	C A %					

FRC Hill/Nelson 8/29/17

[illegible]



10/17/17

Page 45

Item #7

Attachment J – Provided by Member Nelson

**CITY OF DANA POINT**  
**CITY ATTORNEY CONTRACT**

	<b>Estimated</b>	
	<b>Retainer/mo.</b>	<b>Hourly rate</b>
7/1/2007	8600	220 per 7/1/07 contract
CPI % change	3.9	3.9
7/1/2008	8935	229
CPI % change	-0.1	-0.1 *
7/1/2009	8926	228
CPI % change	1.8	1.8
7/1/2010	9087	232
CPI % change	1.8	1.8
7/1/2011	9251	237
CPI % change	2.1	2.1
7/1/2012	9445	242
CPI % change	2.0	2.0
7/1/2013	9634	246
CPI % change	0.8	0.8
7/1/2014	9711	248
CPI % change	-0.1	-0.1 *
7/1/2015	9701	248
CPI % change	3.1	3.1
7/1/2016	10002	256
CPI % change	2.1	2.1
7/1/2017	10212	261

Current retainer is \$122,544 annually (may be off slightly due to rounding).  
 Hourly rate outside retainer is approximately \$261 per hour

CPI change equals the percentage change in the CPI for all Urban Consumers for the Los Angeles  
 Riverside and Orange County area, for the 12 month period ending January of the same year.  
 Bureau of Labor Statistics, BLS.gov

\* Not sure if the contract would allow a decrease in fees for negative CPI

FRC - Nelson 8/29/17

08/29/17

Page 12

Item #1

Michael Reiter, Municipal Attorney with Milligan, Attorney, Beswick, Levine & Knox LLP Blog

California Code Enforcement Law / Municipal Law / Small Business Law / Real Property Law (909) 798-3300

## In-House City Attorney's Offices in Southern California

AUGUST 29, 2011 [LEAVE A COMMENT \(HTTPS://MICHAELREITERLAW.WORDPRESS.COM/2011/08/29/IN-HOUSE-CITY-ATTORNEYS-OFFICES-IN-SOUTHERN-CALIFORNIA/#RESPOND\)](https://michaelreiterlaw.wordpress.com/2011/08/29/in-house-city-attorneys-offices-in-southern-california/#RESPOND)

By Michael Reiter, Attorney at Law (<http://michaelreiterlaw.com/municipal-law.html>)

I was recently speaking to an investigative journalist about in-house versus contract City Attorneys. The journalist asked me if there were a list of in-house City Attorney's Offices in California. Upon review, there does not appear to be a list, though the League of California Cities does keep a list of all City/Town Attorneys in California. So, I created a list of in-house City Attorney's Offices in Southern California:

City Name	Pop. (2011 est.)	City Form	Full Service	E
San Bernardino County				
San Bernardino ( <a href="http://www.ci.san-bernardino.ca.us/cityhall/attorney/default.asp">http://www.ci.san-bernardino.ca.us/cityhall/attorney/default.asp</a> )	211,076	Charter	Yes	E
Redlands ( <a href="http://www.ci.redlands.ca.us/manager/cityattorney.htm">http://www.ci.redlands.ca.us/manager/cityattorney.htm</a> )	69,231	General Law	Yes	A
Riverside County				
Moreno Valley ( <a href="http://www.moreno-valley.ca.us/city_hall/departments/city-attorney.shtml">http://www.moreno-valley.ca.us/city_hall/departments/city-attorney.shtml</a> )	195,216	General Law	No	A
Riverside ( <a href="http://www.riversideca.gov/attorney/">http://www.riversideca.gov/attorney/</a> )	306,779	Charter	Yes	A
Los Angeles County				
Burbank ( <a href="http://www.ci.burbank.ca.us/index.aspx?page=69">http://www.ci.burbank.ca.us/index.aspx?page=69</a> )	104,304	Charter	Yes	A
Compton ( <a href="http://www.comptoncity.org/index.php/Elected-Officials/craig-j-cornwell-city-attorney.htm">http://www.comptoncity.org/index.php/Elected-Officials/craig-j-cornwell-city-attorney.htm</a> )	96,925	Charter	No	E
Culver City ( <a href="http://www.culvercity.org/en/Government/CityAttorney">http://www.culvercity.org/en/Government/CityAttorney</a> )	38,973	Charter	Yes	A
Glendale ( <a href="http://www.ci.glendale.ca.us/city-attorney/default.asp">http://www.ci.glendale.ca.us/city-attorney/default.asp</a> )	192,473	Charter	Yes	A
Hawthorne ( <a href="http://www.cityofhawthorne.com/city_offices/city_attorney/default.asp">http://www.cityofhawthorne.com/city_offices/city_attorney/default.asp</a> )	84,854	General Law	No	A
Inglewood ( <a href="http://www.cityofinglewood.org/depts/cityattorney/default.asp">http://www.cityofinglewood.org/depts/cityattorney/default.asp</a> )	110,028	Charter	No	A
Long Beach ( <a href="http://www.longbeach.gov/attorney/">http://www.longbeach.gov/attorney/</a> )	463,894	Charter	Yes	E
Long Beach City Prosecutor ( <a href="http://cityprosecutordoughaubert.com/">http://cityprosecutordoughaubert.com/</a> )	Included Above	Charter	Yes	E

08/29/17

Page 13

Item #1

Los Angeles ( <a href="http://atty.lacity.org/index.htm">http://atty.lacity.org/index.htm</a> )	3,810,129	Charter	Yes	E
Palmdale ( <a href="http://www.cityofpalmdale.org/city_hall/city_depts.html#city%20attorney">http://www.cityofpalmdale.org/city_hall/city_depts.html#city%20attorney</a> )	153,334	Charter	No	A
Pasadena ( <a href="http://www.ci.pasadena.ca.us/CityAttorney/">http://www.ci.pasadena.ca.us/CityAttorney/</a> )	138,915	Charter	Yes	A
Redondo Beach ( <a href="http://www.redondo.org/depts/city_attorney/default.asp">http://www.redondo.org/depts/city_attorney/default.asp</a> )	66,970	Charter	Yes	E
Santa Monica ( <a href="http://www.smgov.net/departments/cao/">http://www.smgov.net/departments/cao/</a> )	90,174	Charter	Yes	A
Torrance ( <a href="http://www.torranceca.gov/115.htm">http://www.torranceca.gov/115.htm</a> )	145,927	Charter	Yes	A
Orange				
Anaheim ( <a href="http://www.anaheim.net/section.asp?id=93">http://www.anaheim.net/section.asp?id=93</a> )	341,034	Charter	Yes	A
Huntington Beach ( <a href="http://www.ci.huntington-beach.ca.us/Government/Elected_Officials/city_attorney/">http://www.ci.huntington-beach.ca.us/Government/Elected_Officials/city_attorney/</a> )	190,377	Charter	Yes	E
Newport Beach ( <a href="http://www.newportbeachca.gov/index.aspx?page=55">http://www.newportbeachca.gov/index.aspx?page=55</a> )	85,376	Charter	Yes	A
Orange ( <a href="http://www.cityoforange.org/depts/city_attorney/default.asp">http://www.cityoforange.org/depts/city_attorney/default.asp</a> )	136,995	General Law	Yes	A
Santa Ana ( <a href="http://www.ci.santa-ana.ca.us/cao/default.asp">http://www.ci.santa-ana.ca.us/cao/default.asp</a> )	325,228	Charter	Yes	A
Santa Clara County				
Oxnard ( <a href="http://cityattorney.cityofoxnard.org/Default.aspx?DepartmentID=1">http://cityattorney.cityofoxnard.org/Default.aspx?DepartmentID=1</a> )	199,722	General Law	Yes	A
Simi Valley ( <a href="http://www.simivalley.org/index.aspx?page=76">http://www.simivalley.org/index.aspx?page=76</a> )	125,026	General Law	No	A
Thousand Oaks ( <a href="http://www.toaks.org/government/depts/city_attorney/default.asp">http://www.toaks.org/government/depts/city_attorney/default.asp</a> )	127,557	General Law	No	A
Ventura ( <a href="http://www.cityofventura.net/ca/about">http://www.cityofventura.net/ca/about</a> )	107,124	Charter	Yes	A
San Diego County				
Carlsbad ( <a href="http://www.carlsbadca.gov/cityhall/attorney/Pages/default.aspx">http://www.carlsbadca.gov/cityhall/attorney/Pages/default.aspx</a> )	106,555	Charter	Yes	A
Chula Vista ( <a href="http://www.chulavistaca.gov/city_services/administrative_services/city_attorney/default.asp">http://www.chulavistaca.gov/city_services/administrative_services/city_attorney/default.asp</a> )	246,496	Charter	Yes	E
Escondido ( <a href="http://www.escondido.org/city-attorney.aspx">http://www.escondido.org/city-attorney.aspx</a> )	145,196	General Law	Yes	A
National City ( <a href="http://www.ci.national-city.ca.us/index.aspx?page=35">http://www.ci.national-city.ca.us/index.aspx?page=35</a> )	58,785	General Law	Yes	A
Oceanside ( <a href="http://www.cityofoceaside.com/Datarelation.aspx?Content=289">http://www.cityofoceaside.com/Datarelation.aspx?Content=289</a> )	168,173	Charter	Yes	A
San Diego ( <a href="http://www.sandiego.gov/cityattorney/">http://www.sandiego.gov/cityattorney/</a> )	1,311,882	Charter	Yes	E
Vista ( <a href="http://www.cityofvista.com/departments/cityattorney/">http://www.cityofvista.com/departments/cityattorney/</a> )	94,431	Charter	No	A

08/29/17

Page 14

Item #1

Imperial				
El Centro ( <a href="http://www.cityofelcentro.org/ca/index.html">http://www.cityofelcentro.org/ca/index.html</a> )	43,145	Charter	Yes	A

I define Southern California in this case as Imperial, San Diego, Orange, Riverside, San Bernardino, Los Angeles and Ventura Counties.

It can be difficult to directly compare cities and City Attorney's Offices directly. The difficulty is that different cities use different accounting. For example, Newport Beach places the outside counsel directly in its budget. Some cities use a Risk Management/liability account to pay for outside counsel. Other differences are whether the city prosecutes State law misdemeanors, which increases the size of the budget and the number of attorneys. One City offset the budget with internal fund transfers. I just added them together to get the budgeted amount. Long Beach has both an elected City Attorney and an elected City Prosecutor, which I have listed separately. The population figures are the January 2011 estimates from the California Department of Finance. There are a variety of definitions of "full service." For the purposes of this list, I define "full service" as having both a Fire Department and a Police Department.

I tried to use equivalent data. However, some cities have not adopted 2011-2012 budgets, so I used the proposed budget if available, and the 2010-2011 Adopted budget if neither the FY 12 adopted or proposed budget was available online. Also, some full service cities are more full service than others. For example, Redlands has both an airport and a landfill, while San Bernardino has neither, but San Bernardino is about three times as big as Redlands in population. Some full service cities do not have any utilities, while others have solid waste, water and electricity. The coastal cities have harbors and have to deal with the Coastal Commission. As far as complexity, I would imagine that the City and County of San Francisco as a the only Charter City and County in California, as well as having its own transit system, would be the most complex City in the State.

The data came mostly from the City's website. Sometimes, the number of attorneys comes from the City Attorney's website, sometimes from the adopted or proposed budget, sometimes from the State Bar's website (though it is more difficult to do than in the past), and the State Controller's compensation website. The determination whether the City is a Charter or General Law City comes from the list maintained by the League of California Cities. The names of City Attorneys comes from an August 2011 list from the City Attorney's division of the League of California Cities, and checked against the Internet. The year the City Attorneys were appointed or elected came from a variety of internet sources, such as newspaper archives, Google, or the City's website. I couldn't find two. I counted from the initial appointment (including interim appointments). I derived the data about which cities have in-house City Attorney's Offices from Google searches cross-checked against the League's list of City Attorneys.

The information you obtain at this blog is not, nor is it intended to be, legal advice. No attorney-client relationship is established by reading or commenting on this blog. You should consult an attorney for advice regarding your individual situation.

Copyright 2011 Michael Reiter, Attorney at Law (<http://michaelreiterlaw.com/>).

Michael Reiter, Attorney at Law, (<http://michaelreiterlaw.com/>)

A: 300 E. State St. Suite 517

Redlands, CA 92373-5235

T: (909) 708-6055

E: [michael@michaelreiterlaw.com](mailto:michael@michaelreiterlaw.com) (<mailto:michael@michaelreiterlaw.com>)

W: <http://michaelreiterlaw.com> (<http://michaelreiterlaw.com/>)

08/29/17

Page 15

Item #1

Advertisements

FILED UNDER BUDGET, CITY ATTORNEY, CITY OF ANAHEIM, CITY OF BURBANK, CITY OF CARLSBAD, CITY OF CHULA VISTA, CITY OF COMPTON, CITY OF CULVER CITY, CITY OF EL CENTRO, CITY OF ESCONDIDO, CITY OF GLENDALE, CITY OF HAWTHORNE, CITY OF HUNTINGTON BEACH, CITY OF INGLEWOOD, CITY OF LONG BEACH, CITY OF LOS ANGELES, CITY OF MORENO VALLEY, CITY OF NATIONAL CITY, CITY OF NEWPORT BEACH, CITY OF OCEANSIDE, CITY OF ORANGE, CITY OF OXNARD, CITY OF PALMDALE, CITY OF REDLANDS, CITY OF REDONDO BEACH, CITY OF RIVERSIDE, CITY OF SAN BERNARDINO, CITY OF SAN BUENAVENTURA, CITY OF SAN DIEGO, CITY OF SANTA ANA, CITY OF SANTA MONICA, CITY OF SIMI VALLEY, CITY OF THOUSAND OAKS, CITY OF TORRANCE, CITY OF VENTURA, CITY OF VISTA, CODE ENFORCEMENT, CRIMINAL LAW, IMPERIAL COUNTY, LOS ANGELES COUNTY, MUNICIPAL LAW, ORANGE COUNTY, SAN BERNARDINO CITY ATTORNEYS OFFICE, SAN BERNARDINO CITY CHARTER, SAN DIEGO COUNTY, VENTURA COUNTY. TAGGED WITH CITY ATTORNEYS OFFICE, CITY OF HUNTINGTON BEACH, IMPERIAL COUNTY, IN-HOUSE, LOS ANGELES COUNTY, MICHAEL REITER ATTORNEY AT LAW, ORANGE COUNTY, SAN DIEGO COUNTY, SOUTHERN CALIFORNIA

**About Michael Reiter, Attorney at Law**

Michael Reiter is a Redlands, California-based lawyer, serving San Bernardino County and Riverside County in Southern California's Inland Empire. Michael Reiter is a lawyer practicing in the following fields of law: Municipal Law, Code Enforcement Law, Small Business Law and Real Estate Law. Michael Reiter practices in all the local courts, including San Bernardino Superior Court, Riverside Superior Court, and the United States District Court for the Central District of California. Michael Reiter was admitted to the California State Bar in 1998. Michael Reiter was Assistant City Attorney for the City of Redlands, a Deputy City Attorney for the City of San Bernardino, and Staff Attorney for Legal Aid Society of San Bernardino. Michael Reiter serves all of San Bernardino and Riverside County, Orange County, and Los Angeles County. Michael Reiter can be reached at (909) 296-6708, or by electronic mail at michael@michaelreiterlaw.com. 300 E. State St. #517 Redlands CA 92373-5235

08/29/17

Page 16

Item #1

ORANGE COUNTY CITIES - IN HOUSE CITY ATTORNEY COSTS 2016  
Source: Transparentcalifornia.com

City	City/Senior Attorney		Lowest Cost Attorney	
	<u>Base Salary</u>	<u>Total Pkg</u>	<u>Base Salary</u>	<u>Total Pkg</u>
	\$	\$	\$	\$
Anaheim	216,247	302,434	93,296	126,474
Huntington Beach	208,562	304,210	138,192	200,775
Newport Beach	236,907	316,586	134,547	175,286
Orange	215,591	299,226	152,058	228,119
Santa Ana	186,798	281,920	82,590	123,803
Average	<u>212,821</u>	<u>300,875</u>	<u>120,137</u>	<u>170,891</u>

*Don Clemente*

08/29/17

Page 17

Item #1

*governing.com*

FINANCE HEALTH INFRASTRUCTURE MANAGEMENT POLITICS PUBLIC  
SAFETY URBAN EDUCATION DATA PUBLIC OFFICIALS OF THE YEAR WOMEN IN GOVERNMENT

MAKING NEWS: ELECTIONS EVENTS TAPERS  
DATA

## City Lawsuit Costs Report

Each year, cities spend millions fighting and settling lawsuits involving alleged police misconduct, injuries on public property and a range of other legal challenges.

To approximate the fiscal impact that these cases have, we requested financial data from the 25 largest U.S. cities, 20 of which responded. Cases typically originate as claims, then turn into lawsuits if not resolved. Payments made to plaintiffs, legal costs associated with cases and liability insurance premiums were obtained to provide for a comprehensive picture of costs in each locality.

***Payouts:** Payments made resulting from lawsuit settlements, judgments or claims settled prior to litigation. Figures do not reflect costs related to worker's compensation claims and employment matters unless noted.*

***Litigation:** Expenses reflect total compensation for internal staff, outside counsel and any other costs associated with lawsuits unless otherwise noted.*

***Insurance:** Costs paid for liability or excess liability insurance. Most larger cities are either primarily or entirely self insured.*

### Lawsuit costs for largest U.S. cities

Reported costs for cities vary significantly. Larger, more densely-populated cities incur greater lawsuit expenses. Types of public services provided also influence costs as some are much more prone to legal challenges than others. Jurisdictions operating public hospitals, for instance, are subject to costly medical malpractice lawsuits. Different state laws dictating what a government can be held liable for and limits on damages awarded further drive cities' costs up or down.

New York's legal bills far exceed that of all other cities. While lawsuit costs account for less than 1 percent of total spending in most cities, they often represent much-needed money that could be used to fund other areas of the budget.

08/29/17

Page 18

Item #1

## Five Benefits Of Hiring In-House Counsel

As your company continues to grow, you may start wondering whether it's time to hire in-house counsel. Between acquisitions, contracts, personnel and finances, an in-house attorney could handle nearly all of your business's growing legal matters, and may even foresee problems a private practice attorney could miss.

But how can you be sure you're selecting counsel that's best suited for *your* business?

The right in-house attorney doesn't just bring experience to the table. Once they're part of your staff, it's important that he or she is compatible with your team and understands how to best support the long-term vision of your company. Below, five legal experts and executives from Forbes Legal Council discuss the benefits of hiring in-house counsel and the top things to look for once you do.

### 1. They Support Your Growth

In-house counsel provides businesses, both small and large, with expeditious advisement. A company with in-house counsel increases their likelihood of opportunities for growth and development. Most importantly, in-house counsel will spot legal issues for you so that you are not reacting to a problem after the fact, but avoiding the problem to begin with. In terms of what to look for, find someone who will get along with your fellow employees, and most importantly, has experience in a wide variety of legal fields. This way, he or she can provide advice and spot issues in any legal area that may come into play. - Perry Liss, The Law Offices of Perry Liss, LLC

### 2. They Communicate With Outside Counsel

Depending on the size of your business and legal needs, it can be advantageous to have in-house counsel deal with outside law firms for specific matters. An on-staff attorney can help select the best outside firms for specific case types and can serve as a "watchdog" on those cases, ensuring that you are not being over-billed and that matters are being handled properly. You should also find an in-house counsel with experience and knowledge to handle your core business matters. Your lawyer should be able to work well with outside counsel on matters that are handled externally. - Lawrence Buckfire, Buckfire & Buckfire, P.C.  
Forbes Legal Council is an invitation-only community for partners of prestigious



08/29/17

Page 19

Item #1

law firms and experienced chief legal executives. *Do I qualify?*

### **3. They Give You Peace Of Mind**

If it makes financial sense for your organization, one pro of hiring in-house counsel is peace of mind. Having immediate access to a licensed attorney who is 100 percent focused on your business is truly unbeatable. It can also be the difference between success and failure on a given deal. - Matthew Rossetti, Sentient Law, Ltd.

### **4. Their Knowledge Is Priceless**

By definition, outside counsel doesn't understand the nuanced details and relationships of your business anywhere near the same level as in-house counsel would. Having a lawyer dedicate 100 percent of his or her time and skill set to your business is worth every penny. Identify what your company's biggest liability is and hire an expert in that area. My employer is heavily regulated by federal and state consumer finance protection laws. When we hire, we look to experts in the consumer finance field to reduce our company's largest liability. - Matthew Digesti, Bristlecone Holdings

### **5. They're Emotionally Intelligent**

An effective in-house counsel must have emotional intelligence (EQ). Yes, lawyers have emotions too. The ability to interact with different stakeholders, understand what they need to achieve their goals, and apply the law to guide legally compliant solutions is an invaluable skill. - Tracy Gray, Holland & Hart LLP

*The information provided here is not legal advice and does not purport to be a substitute for advice of counsel on any specific matter. For legal advice, you should consult with an attorney concerning your specific situation.*

Source: Forbes.com

## ATTACHMENT C

**CITY OF DANA POINT  
PROS AND CONS OF IN-HOUSE CITY ATTORNEY VS. OUTSOURCED  
LEGAL SERVICES**

**PROS:**

1. The net cost of full time hours for an experienced in house attorney is considerably less than that of an outside firm (roughly one third). Average cost of an in-house City Attorney or senior assistant City Attorney in Orange County is \$250,000 per year plus \$120,000 for a paralegal (benefits included). Total in-house cost would be \$370,000 versus \$870,000 budgeted for routine work and muni code violations and prosecution for FY18, leaving ample room for an outside specialty litigation budget. (There is currently no litigation budget for FY 18). Actual city attorney costs for FY 2016 were \$1, 263,347, and the FY2017 amended budget was \$1,067,500. A comparison to other cities shows that most cities of comparable size have legal expenses that are in the range of 1 to 1.6% of total operating expenses. Dana Point's actual legal expenses in 2017 were 3.9% of the total City budget. Budget for FY 18 is 2.4% of total operating expenses. While some of these expenses are recoverable, the non-reimbursable fees for Rutan and Tucker for the first 10 months in 2017 were \$815,616.
2. An in house CA is loyal only to the City whereas outside counsel will be loyal first to their firm. Partners are compensated based on the revenue they bring into the firm and become partners based on billable hours charged to clients. Therefore, the incentive is to maximize billings on all clients.
3. No conflict with meeting billable hour requirements or quotas. The City would be paying their City Attorney (CA) a fixed salary and benefits for full time work. An outside attorney must often meet billable hour requirements or quotas, and billings are a key measure of associate and partner productivity which influences their journey up the career ladder.
4. An in house attorney has an incentive to use the best possible outside expert for necessary outsourced specialty services. An outside CA may be conflicted by the desire to steer work toward their employer.
5. An in house CA will be incentivized to keep specialty legal fees in check. They are more likely to monitor costs closely, warn against changes in lawyers assigned to a case, and more likely to seek settlement in order to preserve and safeguard their employer's (the City's) assets.

6. In the event of litigation, the CA represents the City as a party to the suit, and will manage the process which costs the City nothing extra. In the case of an outside attorney, the City pays twice - an hourly rate for management of the litigation, plus the costs of the litigation itself.
7. The vast majority of legal fees for the City has been for routine work that can be done by many qualified attorneys. In the case of municipal code prosecutions alone, the FY18 budget is \$325,000 on top of the other billings for routine work. In the cities with in house attorneys examined, such work was done by the in-house attorney.
8. In house attorneys often have a better work-life balance and a more predictable 9 to 5 schedule. They may therefore be less fatigued and stressed than outside attorneys that are struggling up the firm ladder and constantly focused on new business development.
9. The in house CA is on premises daily as part of the senior management team, liaising with upper level executives in all departments as needed, without the fear that the "meter is running" every time they ask a legal question. This may lead to loss prevention and better risk management training of staff.
10. The in house CA not only becomes an expert in municipal law, but an expert on the City of Dana Point. There is no wasted time in explaining background, City needs, and other things unique to our city. The CA is available, on-site with Dana Point's needs and only those needs in mind as he/she faces legal issues.
11. The in house attorney is part of any legal deals from start to finish, including strategic discussions and pre-planning. They also have to live with the results of their work and have an incentive to do what is best for their employer.
12. The in house attorney has only one client which he/she gets to know extremely well. The outside attorney may be juggling many clients and projects and is therefore perhaps less focused and cohesive.
13. The full time in house attorney will get to know Council members, staff, City commissioners and other key players and will have a better grasp of personalities, communication styles and key issues that play a part in effective legal negotiations.
14. The City always has the option of supplementing the inhouse attorney with outside Counsel as necessary.

**CONS:** *(Mitigating factors in italics)*

1. For some cities, using the services of a law firm as opposed to in-house Counsel can be less expensive. *This is not the case for Dana Point. Legal expenses as a percentage of total operating budget are significantly higher than most other cities of its size and complexity.*
2. A law firm has many lawyers with a broad range of expertise in real estate law, labor law, tax law, land use law, etc. for specialty work. *Dana Point has used one particular lawyer at Rutan and Tucker almost exclusively for City work since 2002, and continues to use outside experts when necessary. Most cities with in-house attorneys cite exactly the same objectives as those listed for the CA in the FY18/19 adopted budget (page 219).*
3. In the case of only one lawyer on staff, there is no backup should the in-house attorney become sick or take personal leave. *Dana Point may consider hiring a lower level attorney versus a paralegal to allow for such coverage. It can also choose to create or retain an arrangement with R & T or another firm to preserve familiarity if this is an issue.*
4. Longevity can be an issue with an in-house attorney. *Or not.*
5. When new issues come up, it's likely that someone at the legal firm has experience with it in the past. *This is the same situation for any unusual legal work that comes up in the in-house CA scenario. Such work can easily be out-sourced to one of the many firms specializing in municipal work.*

**Sources:** *Reviewed city attorney budgets, objectives, goals, structures etc. in several Orange County cities. Also reviewed on-line information at League of California Cities, and various articles including, "5 Reasons Law Firms Top In-House Counsel for Local Gov't" by Alan S. Zimmet; "Top 10 Reasons Attorneys Go In-House" by Sharon A. McLaughlin, Esq., and "In-house City Attorney's Offices in Southern California", Michael Reiter. (Also corresponded with the latter on this topic).*