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Title: FISCAL REPORT ON IMPACT ON THE CITY'S GENERAL FUND RELATED TO CITY ATTORNEY SERVICES FOR YEARS 2015, 2016, 2017, AND 2018 (CITY COUNCIL)

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Report to Mayor and City Council

Tuesday, March 19, 2019

Consent

SUBJECT:

FISCAL REPORT ON IMPACT ON THE CITY'S GENERAL FUND RELATED TO CITY ATTORNEY SERVICES FOR YEARS 2015, 2016, 2017, AND 2018 (CITY COUNCIL)

I. SUMMARY

This item was originally on the agenda at the request of Councilwoman Davis-Holmes and appeared on the February 5, 2019 agenda. The original request was for an accounting of the impacts on the City's General Fund due to the City Attorney's services for the last fiscal year. The February 5 report provided information for the last 2 fiscal years.

However, at the meeting, Council provided a page from the City's Fiscal Year 2015-2016 Certified Annual Financial Report (CAFR) that showed a \$12,000,000 cost allocated to the City Attorney for that fiscal year. Naturally, such a large number raised concern among the Council and with the City Attorney, since it represented a four- or five-fold larger City Attorney "budget" than in any typical fiscal year. Considering this line item to be the same as the City Attorney budget would be a mistake, as an incorrect amount would have been allocated to the City Attorney budget. In the CAFR, the "City Attorney" line item includes not just legal fees but judgments and other legal exposure as well.

The City Attorney's actual budget impact on the General Fund for Fiscal Year 2015-2016 was \$2,400,000. However, in that year the City faced the exposure of nearly \$8,000,000 in

the Colony Cove litigation because of a verdict in Federal District Court; as a result, the Council had set aside money from the reserves for this litigation in case the City would ultimately lose. This money was never spent. Moreover, it should have never been allocated to the City Attorney budget; rather, it would have been spent directly pay off a judgment. Fortunately, the Colony Cove case is over and the United States Supreme Court has ruled in the City's favor and the \$8,000,000 has since been returned to the reserves.

II. RECOMMENDATION

RECEIVE and FILE.

III. ALTERNATIVES

None.

IV. BACKGROUND

Aleshire & Wynder, LLP (A&W) has provided the City full legal services for the past several years, with Sunny Soltani serving as the City Attorney. These services include general legal work, transactional attorney work (agreements), litigation, and most recently, code enforcement support. The City is currently involved in numerous active litigation cases and has over \$500 million in ongoing economic development.

Workers' compensation cases are handled by a separate specialized firm. Separately, as a result of cost savings produced by A&W over the previous City Attorney firm, in 2015 the City Council asked A&W to take over the code enforcement work being done by another law firm that focused almost exclusively on code enforcement. The first end-of-year analysis showed that A&W saved the City approximately \$70,000 annually in code enforcement when compared to the previous firm.

In Fiscal Year 2017-2018, the City Attorney's impact to the general fund was \$2,170,000. The City had budgeted \$3,000,000 for City Attorney's costs to the general fund. The City Attorney's office came in under budget by over \$800,000.

As far as actual annual expenditures in the General Fund, the City Attorney has consistently been in the neighborhood of \$2,000,000. See below chart for years 2015, 2016, 2017 and 2018. (Note this chart is based on calendar year expenditure, but it would be consistent with fiscal year expenditures as well.)

2015 Actuals	2016 Actuals	2017 Actuals	2018 Actuals
\$1,225,545	\$1,103,052	\$1,412,263	\$1,747,468
\$772,356	\$1,610,261	\$782,772	\$394,064
\$1,997,901	\$2,713,313	\$2,195,035	\$2,141,532

As it can be seen, year 2016 was unusually high in litigation, as the City was settling a large number of personnel-related cases from previous years, and the Colony Cove trial occurred during that year (within that total, the City spent over \$700,000 just on Colony Cove litigation legal fees that year). This was true in general of Fiscal Year 2015-2016.

It should be noted again that considering the CAFR's "City Attorney" line item to be the same as the City Attorney budget would be a mistake, as an incorrect amount would have been allocated to the City Attorney budget. The CAFR summarizes large expenditure categories: in the CAFR, the "City Attorney" line item includes not just legal fees paid to the attorneys but judgments and other legal exposure as well, including the potential exposure of nearly \$8,000,000 for Colony Cove.

The City Attorney's actual budget impact on the General Fund for Fiscal Year 2015-2016 was \$2,400,000 (the table above is calendar years). The City faced the exposure of nearly \$8,000,000 in the Colony Cove litigation because of a verdict in Federal District Court; while the City bonded to deposit the amount of the judgment to file the appeal, the Council prudently set aside money from the reserves for this litigation in case the City ultimately lost. While it was reserved within the overall reserves, and therefore reportable as a material event in the CAFR, this money never left the City and was never spent. Moreover, it should have never actually been allocated to the City Attorney line item budget; rather, it would have been spent directly to pay off the judgment if the appeal had been unsuccessful. Fortunately, the Colony Cove case is over and the United States Supreme Court has ruled in the City's favor and the nearly \$8,000,000 has since been returned to the reserves.

To sum it up, those funds were reserved in the General Fund but not expended, and ultimately released back into the General Fund.

V. FISCAL IMPACT

Not applicable.

VI. EXHIBITS

None.

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