



## Legislation Details (With Text)

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## Report to Mayor and City Council

Monday, April 08, 2019

Discussion

### SUBJECT:

CITY ATTORNEY BUDGET (CITY COUNCIL)

### I. SUMMARY

Councilwoman Davis-Holmes and Mayor Pro Tem Hicks requested the item on the "City Attorney" line item in the City's 2015-2016 CAFR brought back to City Council for further discussion. A full report on the City Attorney budget and expenditures was approved on the March 19 Consent Calendar. Staff's understanding is that the additional discussion would have been less on the City Attorney budget and expenditures, which was well covered in the March 19 report, but rather a more detailed discussion about the \$7,964,718 reserved for the Colony Cove litigation, which can now be released back into the General Fund.

### II. RECOMMENDATION

Review and Discuss.

### III. ALTERNATIVES

None.

#### IV. BACKGROUND

Councilwoman Davis-Holmes and Mayor Pro Tem Hicks requested the item on the City Attorney's line item in the City's 2015-2016 CAFR brought back to City Council for further discussion. A full report on the City Attorney budget and expenditures was approved on the March 19 Consent Calendar. Staff's understanding is that the additional discussion would have been less on the City Attorney budget and expenditures, which was well covered in the March 19 report, but rather a more detailed discussion about the \$7,964,718 reserved for the Colony Cove litigation, which can now be released back into the General Fund.

Staff wanted to confirm that the \$7.9 million was in fact reserved outside the unrestricted fund balance of the General Fund, and that it could then be released and added back into the General Fund. The Finance Director confirmed last week that the Colony Cove Litigation reserve was reserved outside the unrestricted fund balance. Finance has now reversed the liability and moved the \$7.9 million to the unrestricted fund balance.

The long history of litigation with Colony Cove led to a jury trial in Federal court in April, 2016. Upon the adverse jury verdict, the previous Finance Director worked directly with the auditors on the process of locking the funds away in a reserve. The previous director left in October, 2018; while the accounting staff is familiar with the transaction, they wanted the paper trail that demonstrated the liability no longer existed. The previous City Manager asked the Interim Finance Director to research the transaction before they both left, and the Interim left behind a short one-paragraph email describing the accounting, which was before the Supreme Court denied Colony Cove's appeal. Like any prudent Finance Director, the new Finance Director and the Accounting Manager wanted to independently verify the transaction and the location of the funds.

No Council action was necessary to reserve the funds, nor was a Council action necessary to release them from the restricted account. These are General Ledger entries.

Here is the sequence of events:

1. April 2016. City receives adverse jury verdict in Colony Cove lawsuit in Federal District Court and owes owner almost \$7.9 million, which includes nearly \$4.0 million in attorney's fees. Council decided to appeal and purchase a bond for the appeal deposit rather than deposit the judgment amount (cash) with the Court. No funds were paid out from General Fund.
2. End of 2016. The 2015-16 CAFR showed a \$12,586,274 "cost" under the City Attorney line item, which is an amalgam of legal costs (City Attorney and other attorneys, plus paid or "owed" judgments). The CAFR is not the budget. The \$7.9 million owed to the property owner was "reserved" in the General Fund, not to be touched or used for any other purpose. The auditors felt that the risk of losing the money was material enough to book it into this line item. The Finance Director set this aside as a liability in the General Ledger (GL). There was an offsetting amount in the Cash GL, which was cash restricted for the potential payout. It has been carried in all of the CAFRs since 2016 as the same amount.

3. From 2016 to January 2019. These funds were in fact in the General Fund, but they were reserved for this purpose only. Before reporting this to City Council, the Acting City Manager wanted to confirm with the new Finance Director whether these funds were included in the overall totals of the General Fund unrestricted reserves, or not. For example, the Mid-Year Budget Workshop staff report (which goes to Council on April 9) reports that the anticipated fund balance of the General Fund on June 30, 2018 was expected to be \$19.8 million (and in fact, it was higher). So staff wanted to confirm (a) did this \$19.8 million include the \$7.9 million, meaning that if the City had to pay the owner the full amount on June 29, 2018, the anticipated fund balance would have been \$11.9 million? Or (b) did it mean that the \$19.8 million should be added to the otherwise-reserved \$7.9 million, to give the City an actual anticipated fund balance of over \$27 million - before we had the other factors that added another \$7.0 million or so? The correct answer turned out to be (b). Which is very good news.
4. Post January 2019. The City will book the release of the “hold” on these funds and their availability to the General Fund. This will show up in the 2018-19 CAFR, not due until the end of the calendar year. Since we would be putting that money “back” into the General Fund, it increases the unrestricted fund balance by that amount.

## **V. FISCAL IMPACT**

There is no net fiscal impact of the removal of the reserve requirement on the \$7,964,718 set aside in 2016 for the Colony Cove judgment, except that it is now in the Unrestricted Fund Balance of the General Fund.

## **VI. EXHIBITS**

None.

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