

**Office of the
City Attorney**
Richard Doyle, City Attorney

M
I
S
S
I
O
N

T*he Office of the City Attorney is committed to providing excellent legal services, consistent with the highest professional and ethical standards, with the goal of protecting and advancing the City's interests in serving the people of San José*

City Service Area

Strategic Support

Core Services

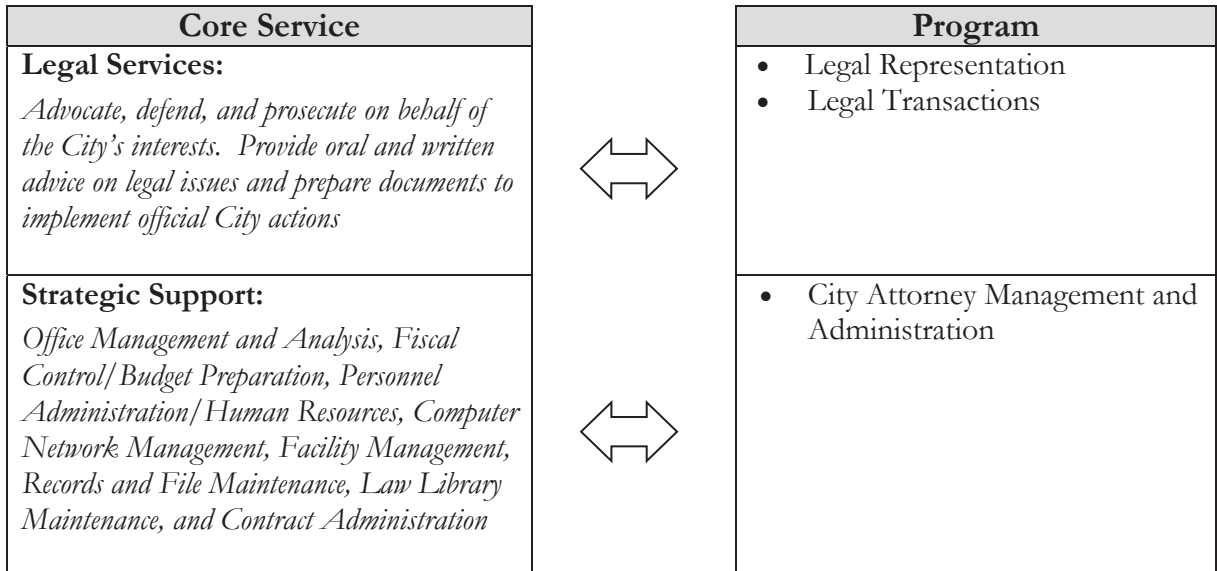
Legal Services

Advocate, defend, and prosecute on behalf of the City's interests. Provide oral and written advice on legal issues and prepare documents to implement official City actions

Strategic Support: Office Management and Analysis, Fiscal Control/Budget Preparation, Personnel Administration/Human Resources, Computer Network Management, Facility Management, Records and File Maintenance, Law Library Maintenance, and Contract Administration

Office of the City Attorney

Service Delivery Framework



Office of the City Attorney

Department Budget Summary

Expected 2017-2018 Service Delivery

- The City Attorney's Office will continue to provide legal representation and advice, while facing the challenge of meeting legal services demand that is largely driven by outside factors. Transactional legal assignments are generated by City Council direction and department requests are often driven by technology innovations, economic conditions, and state and federal mandates. Litigation matters often originate from claims and lawsuits against the City; consequently, workloads and liability exposure are largely out of the Office's control. In addition, the Office prosecutes criminal cases and files a variety of affirmative litigation. The Office will continue to provide in-house legal services while managing unpredictable fluctuations in demand.
- Transactional legal services will continue to be delivered by the Office with priority given to matters that will provide the greatest benefit to the City or have the potential for increasing revenue. Lower priority assignments will be performed as time and staffing allows.
- Increased legal services will be required to assist on: 1) advice to the Planning Division, Office of Economic Development, and other departments supporting development; 2) Housing-related ordinances and issues, including Housing transactions, and Council initiatives on homelessness, rent control, and mobile homes; 3) major real estate-related projects, including the Coleman Soccer Fields and Parkside Hall; 4) capital construction projects and issues related to the Water Pollution Control Plant; and 5) innovation efforts to improve City technology.
- Litigation defense services will continue to take priority over proactive suits by the City. Limited litigation attorney positions necessitates a more reactive approach to case handling.
- Because of potential legal conflicts of interest, outside legal counsel will continue to be retained to represent the City's interests in pension-related litigation matters. Use of outside legal counsel continued to decrease during 2016-2017. If the pension-related lawsuits are resolved, it is anticipated that use of outside legal counsel will continue to decline.
- Significant legal staff and resources are dedicated to collecting, reviewing, and responding to time-consuming and time-sensitive Public Records Act (PRA) requests, litigation records, and electronic discovery. The Office continues to work toward obtaining technology that will reduce the amount of staff time required to respond to electronic discovery and PRA requests.

2017-2018 Key Budget Actions

- Adds 1.0 Senior Deputy City Attorney position to support legal analysis and work related to rental rights, including the implementation of the Tenant Protection and Ellis Act ordinances.
- Shifts funding on a one-time basis for 2.2 positions from the General Fund to the Water Utility Fund for City Attorney staff work that will support the Municipal Water System.
- Adds one-time funding of \$200,000 to address unfair business practices, including actions against businesses and property owners who have taken advantage of flood victims.
- Continues 1.0 Legal Analyst II position on an ongoing basis to assist transactional attorneys supporting the Planning, Building and Code Enforcement Department.
- Continues one-time funding of \$90,000 for attorney services to provide training and other transactional services related to Planning, the Regional Wastewater Facility, and Municipal Water programs as well as general assistance. Also adds \$104,000 to fund a Legal Analyst II through June 30, 2018 to support Workers' Compensation Litigation matters.

Operating Funds Managed

N/A

Office of the City Attorney

Department Budget Summary

	2015-2016 ¹ Actual 1	2016-2017 ¹ Adopted 2	2017-2018 ¹ Forecast 3	2017-2018 Adopted 4
Dollars by Core Service				
Legal Services	n/a	n/a	n/a	\$ 16,720,702
Strategic Support	n/a	n/a	n/a	1,561,044
Strategic Support - Other	n/a	n/a	n/a	19,289,450
Total	n/a	n/a	n/a	\$ 37,571,196
Dollars by Category				
Personal Services and Non-Personal/Equipment				
Salaries/Benefits	\$ 15,051,982	\$ 16,403,905	\$ 16,461,718	\$ 17,129,165
Overtime	41,163	0	0	0
Subtotal Personal Services	<u>\$ 15,093,145</u>	<u>\$ 16,403,905</u>	<u>\$ 16,461,718</u>	<u>\$ 17,129,165</u>
Non-Personal/Equipment	1,202,775	1,024,381	977,581	1,152,581
Total Personal Services & Non-Personal/Equipment	\$ 16,295,920	\$ 17,428,286	\$ 17,439,299	\$ 18,281,746
Other Costs				
City Attorney Other Dept - City-Wide	n/a	n/a	n/a	\$ 19,289,450
Total Other Costs	n/a	n/a	n/a	\$ 19,289,450
Total	n/a	n/a	n/a	\$ 37,571,196
Dollars by Fund				
General Fund	n/a	n/a	n/a	\$ 34,084,561
Airport Maint & Oper	n/a	n/a	n/a	688,613
Comm Dev Block Grant	n/a	n/a	n/a	17,854
Home Invest Partnership	n/a	n/a	n/a	75,227
Housing Trust Fund	n/a	n/a	n/a	39,032
Integrated Waste Mgmt	n/a	n/a	n/a	47,193
Low/Mod Income Hsg Asset	n/a	n/a	n/a	742,406
Multi-Source Housing	n/a	n/a	n/a	291,524
Water Utility Fund	n/a	n/a	n/a	358,355
Sewer Svc & Use Charge	n/a	n/a	n/a	511,646
SJ/SC Treatment Plant Oper	n/a	n/a	n/a	148,542
Workforce Development	n/a	n/a	n/a	183,932
Capital Funds	n/a	n/a	n/a	382,311
Total	n/a	n/a	n/a	\$ 37,571,196
Authorized Positions by Core Service				
Legal Services	n/a	n/a	n/a	71.40
City Attorney Strategic Support	n/a	n/a	n/a	7.10
Total	n/a	n/a	n/a	78.50

¹ Some data for the 2015-2016 Actual, 2016-2017 Adopted, and 2017-2018 Forecast columns are not available. With the change to a program-based budgeting model in 2017-2018, historical budget data by the new programs and core services is not available for prior periods. Beginning with the 2018-2019 Proposed Budget, data by program and core service will be provided for all budget periods.

Office of the City Attorney

Department Budget Summary

	2015-2016 ¹ Actual	2016-2017 ¹ Adopted	2017-2018 ¹ Forecast	2017-2018 Adopted	2017-2018 Adopted FTE
Dollars by Program					
Legal Services					
Legal Representation	n/a	n/a	n/a	\$ 7,963,502	35.54
Legal Transactions	n/a	n/a	n/a	8,757,200	35.86
Sub-Total	n/a	n/a	n/a	\$ 16,720,702	71.40
City Attorney Strategic Support					
City Attorney Management & Administration					
	n/a	n/a	n/a	\$ 1,561,044	7.10
Sub-Total	n/a	n/a	n/a	\$ 1,561,044	7.10
City Attorney Strategic Support - Other *					
City Attorney Other Deptml - City-Wide					
	n/a	n/a	n/a	\$ 19,289,450	
Sub-Total	n/a	n/a	n/a	\$ 19,289,450	0.00
Total	n/a	n/a	n/a	\$ 37,571,196	78.50

¹ Data for the 2015-2016 Actual, 2016-2017 Adopted, and 2017-2018 Forecast columns are not available. With the change to a program-based budgeting model in 2017-2018, historical budget data by the new programs and core services is not available for prior periods. Beginning with the 2018-2019 Proposed Budget, data by program and core service will be provided for all budget periods.

Office of the City Attorney

Budget Reconciliation

Personal Services and Non-Personal/Equipment

(2016-2017 Adopted to 2017-2018 Adopted)

	Positions	All Funds (\$)	General Fund (\$)
Prior Year Budget (2016-2017):	77.50	17,428,286	14,139,522
Base Adjustments			
One-Time Prior Year Expenditures Deleted			
• Rebudget: Workers' Compensation Legal Analyst Support	0.00	(110,000)	(110,000)
• Legal Transactions Staffing (1.0 Legal Analyst II)	(1.00)	(191,538)	(165,038)
• Litigation Division Staffing	0.00	(90,000)	(90,000)
• Legal Software Upgrade		(60,000)	(60,000)
One-time Prior Year Expenditures Subtotal:	(1.00)	(451,538)	(425,038)
Technical Adjustments to Costs of Ongoing Activities			
• Salary/benefit changes		449,351	342,750
• Municipal Water System Litigation Staffing Funding Shift	0.00	0	401,256
• Legal Research Contractual Services		13,200	13,200
Technical Adjustments Subtotal:	0.00	462,551	757,206
2017-2018 Forecast Base Budget:	76.50	17,439,299	14,471,690
Budget Proposals Approved			
1. Unfair Business Practices Legal Staffing	0.00	200,000	200,000
2. Rental Rights and Referrals Program - Tenant Protection Ordinance and Ellis Act Ordinance Legal Staffing	1.00	139,339	0
3. Planning Division Legal Transactions Staffing	1.00	106,302	106,302
4. Workers' Compensation Legal Analyst Staffing	0.00	104,000	104,000
5. Planning and Environmental Services Legal Staffing	0.00	90,000	66,600
6. Alternative Pension Reform Measure F Implementation		27,806	24,474
7. Municipal Water System Litigation Staffing	0.00	0	(352,955)
8. Rebudget: Electronic Information Document Review and Production Software		100,000	100,000
9. Rebudget: Computer Hardware		75,000	75,000
Total Budget Proposals Approved	2.00	842,447	323,421
2017-2018 Adopted Budget Total	78.50	18,281,746	14,795,111

Office of the City Attorney

Budget Changes By Department Personal Services and Non-Personal/Equipment

2017-2018 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
1. Unfair Business Practices Legal Staffing <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i> This action provides one-time funding to address unfair business practices in San José, including actions against businesses and property owners who have taken advantage of flood victims and victims of rental rights violations. This funding will support, as necessary, Unfair Business Practices lawsuits pursuant to Sections 17200 and 17500 of the California Business and Professions Code. On March 28, 2017, the City Council directed the City Attorney to return through the budget process to identify funding required to perform these services. (Ongoing costs: \$0)	0.00	200,000	200,000
2. Rental Rights and Referrals Program – Tenant Protection Ordinance and Ellis Act Ordinance Legal Staffing <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Transactions Program</i> Offset by Rental Rights and Referral fee revenues, this action adds 1.0 Senior Deputy City Attorney position, starting August 1, 2017, to provide legal support for the expanded Rental Rights and Referral Program, a new Tenant Protection Ordinance, and a local Ellis Act Ordinance. On April 18, 2017, the City Council directed staff to return with a revised Tenant Protection Ordinance (TPO) and an Ellis Act Ordinance. The TPO will provide all tenants with just cause protections from no-cause evictions. The Ellis Act Ordinance will provide relocation benefits for residents displaced due to removal of apartments from the market under the Ellis Act. This action will support the work associated with legal issues relating to development and ongoing implementation of these rental rights ordinances. In addition, included in the Housing Department are the addition of a 1.0 Information Systems Analyst and 1.0 Senior Analyst and the elimination of a Senior Development Officer to support the expanded rental housing program. (Ongoing costs: \$152,000)	1.00	139,339	0
3. Planning Division Legal Transactions Staffing <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation and Legal Transactions Programs</i> This action makes permanent 1.0 Legal Analyst II to support attorneys working with the Planning Division of the Planning, Building, and Code Enforcement Department. The analyst provides review of resolutions and ordinances, coordinates Planning-related Public Records Act requests, and supports CEQA-related litigation. The position also coordinates the review and positing of Planning-related legal documents for the Planning Commission and City Council agendas as required by the City's Open Government regulations. (Ongoing costs: \$106,000)	1.00	106,302	106,302

Office of the City Attorney

Budget Changes By Department Personal Services and Non-Personal/Equipment

2017-2018 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
<p>4. Workers' Compensation Legal Analyst Staffing</p> <p><i>Strategic Support CSA Legal Services Core Service Legal Representation Program</i></p> <p>This action continues on a one-time basis 1.0 Legal Analyst II, limit-dated through June 30, 2018, to continue legal support to the Workers' Compensation attorneys' team. The position supports comprehensive case review and legal research, including the extensive review of medical records, developing case evidence, drafting legal correspondence, and monitoring case activity. The position provides temporary support to coincide with the workers' compensation program hybrid service delivery model evaluation and assessment period, which is scheduled to be completed in June 2018. (Ongoing costs: \$0)</p>	0.00	104,000	104,000
<p>5. Planning and Environmental Services Legal Staffing</p> <p><i>Strategic Support CSA Legal Services Core Service Legal Representation and Legal Transactions Programs</i></p> <p>This action continues one-time funding of \$90,000 for temporary part-time attorney services to provide training and other transactional legal services related to Planning, the Regional Wastewater Facility, and Municipal Water programs, as well as provide as needed assistance for general legal assignments. Services include revision to the City's Sign Code and Zoning Code and various other provisions in the Municipal Code. Funding comes in part from the Water Utility Fund (6%) and the Sewer Service and Use Charge Fund (20%) as the position will assist with environmental issues. (Ongoing costs: \$0)</p>	0.00	90,000	66,600
<p>6. Alternative Pension Reform Measure F Implementation</p> <p><i>Strategic Support CSA Core Service: Department-Wide Program: Department-Wide</i></p> <p>This action increases the Personal Services appropriation in various funds to account for additional retirement costs associated with the implementation of the Alternative Pension Reform Framework Settlement Agreement and the corresponding ballot measure, also known as Measure F, which was approved by the voters in November 2016. In 2015, the City entered into Alternative Pension Reform Framework Agreements with the eleven (11) bargaining units that represent City employees. The changes impact Tier 2 employees in the Federated City Employees' Retirement System and the Police and Fire Department Retirement Plan. As part of these Agreements, the City and the bargaining units agreed to enhance the Tier 2 pension benefits so that Tier 2 would be comparable to the CalPERS benefits at surrounding agencies. These revised pension benefits will assist with the recruitment and retention of City employees by making the City more competitive with other public agencies. The revised pension benefit structures have resulted in increased pension contribution rate</p>		27,806	24,474

Office of the City Attorney

Budget Changes By Department Personal Services and Non-Personal/Equipment










2017-2018 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
6. Alternative Pension Reform Measure F Implementation			
<p>costs for the City and employees. In addition, the revised pension contribution rates contain the unfunded liability associated with enhancing the Tier 2 benefit retroactively as each current employee's Tier 2 pension will be changed to the new formula retroactive to their date of hire. This cost is split on a 50/50 basis between the City and the Tier 2 employees. The Boards for the Federated City Employees Retirement System and the Police and Fire Department Retirement Plan approved the revised pension contribution rates factoring in Measure F on May 18, 2017 and June 1, 2017. (Ongoing costs: \$27,806)</p>			
7. Municipal Water System Litigation Staffing	0.00	0	(352,955)
<p><i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i></p> <p>This action continues to shift funding on a one-time basis for 2.2 positions (1.0 Legal Analyst II and 1.2 Senior Deputy Attorney) in the City Attorney's Office from the General Fund to the Water Utility Fund. The funding shift provides for 2017-2018 costs related to legal support and services required for a class action lawsuit regarding water rates for the Municipal Water System. (Ongoing costs: \$0)</p>			
8. Rebudget: Electronic Information Document Review and Production Software		100,000	100,000
<p><i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i></p> <p>This action rebudgets unexpended 2016-2017 non-personal/equipment funding for software to assist in the collection, review, and response to time-sensitive Public Records Act requests, litigation records, and electronic discovery. The Office is currently in the process of evaluating proposals received and additional time is needed to complete the review before the software can be purchased. (Ongoing costs: \$0)</p>			
9. Rebudget: Computer Hardware		75,000	75,000
<p><i>Strategic Support CSA</i> <i>Strategic Support Core Service</i> <i>City Attorney Management and Administration Program</i></p> <p>This action rebudgets unexpended 2016-2017 non-personal/equipment funding to complete the purchase of upgraded computer workstations, monitors, and to provide for additional laptop computers for checkout when legal staff are working outside City Hall offices. (Ongoing costs: \$0)</p>			
2017-2018 Adopted Budget Changes Total	2.00	842,447	323,421

Office of the City Attorney

Performance Summary

Legal Services

Performance Measures

	2015-2016 Actual	2016-2017 Target	2016-2017 Estimated	2017-2018 Target
 % of time final case results are within staff analyses and/or recommendations	90%	90%	90%	90%
 Cost of representation compared to law offices of similar size, practice, and expertise, including other governmental law offices				
- City Attorney's Office average hourly rate	\$139	\$135	\$142	\$145
- Outside Legal Counsel average hourly rate	\$356	\$360	\$358	\$362
 % of time client is timely informed of significant developments in a case	73%	80%	73%	80%
 % of survey respondents rating this core service satisfactory or better based on quality, cycle time, and professionalism	87%	90%	87%	90%
 % of time final documents accurately reflect the approval of City action	90%	100%	90%	100%
 % of time that advice identifies and analyzes legal issues and risks	91%	85%	91%	85%
 % of time that advice provides alternatives where appropriate	78%	70%	78%	70%
 Cost of advice and documentation compared to law offices of similar size, practice, and expertise including other governmental offices				
- City Attorney's Office average hourly rate	\$139	\$135	\$142	\$145
- Outside Legal Counsel average hourly rate	\$356	\$360	\$358	\$362
 % of time client receives advice/document within mutually accepted time frames	81%	85%	80%	85%

Office of the City Attorney

Performance Summary

Legal Services

Activity and Workload Highlights

	2015-2016 Actual	2016-2017 Forecast	2016-2017 Estimated	2017-2018 Forecast
# of claims filed against the City	788	656	725	725
# of lawsuits filed against the City	176	252	180	215
# of lawsuits and administrative actions filed or initiated by the City	206	228	200	200
# of Council/Board/Manager memoranda:				
- Prepared	1,354	1,100	1,100	1,200
- Reviewed	1,068	1,025	900	800
# of formal Opinions issued	9	10	5	8
# of Resolutions	582	400	450	442
# of Ordinances	194	170	200	180
# of Agreements	2,392	2,540	2,000	2,236

Office of the City Attorney

Departmental Position Detail

Position	2016-2017 Adopted	2017-2018 Adopted	Change
Accounting Technician	1.00	1.00	-
Assistant City Attorney	2.00	2.00	-
Associate Deputy City Attorney	1.00	1.00	-
Chief Deputy City Attorney	4.00	4.00	-
City Attorney	1.00	1.00	-
Deputy City Attorney I/II/III/IV	8.00	8.00	-
Executive Assistant	1.00	1.00	-
Legal Administrative Assistant	10.00	10.00	-
Legal Analyst II	13.00	13.00	-
Legal Services Administrator	1.00	1.00	-
Messenger Clerk PT	0.50	0.50	-
Network Engineer	1.00	1.00	-
Office Specialist II	2.00	2.00	-
Police Officer	1.00	1.00	-
Police Sergeant	1.00	1.00	-
Senior Deputy City Attorney I/II/III/IV	27.00	28.00	1.00
Senior Legal Analyst	3.00	3.00	-
Total Positions	77.50	78.50	1.00