

Office of the City Attorney

Nora Frimann, City Attorney

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The 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: Provides administrative oversight for the department, including executive management, financial management, and human resources.

Office of the City Attorney

Service Delivery Framework

PROGRAM	DESCRIPTION
<i>Legal Services Core Service</i>	
Legal Representation	Provides legal representation to advocate, defend, and prosecute matters on behalf of the City and the Successor Agency to the Redevelopment Agency. This involves a variety of activities including defense of lawsuits; general liability claims management; prosecution of municipal code violations; workers' compensation investigations and litigation; seeking injunctions for general nuisance, gang and drug abatements; alternative dispute resolution and contract dispute assistance; and initiation of litigation which can result in significant revenue collections.
Legal Transactions	Provides oral and written legal counsel and advice to the Mayor, City Council, Council Appointees, City departments, City boards, commissions and committees, and to the Successor Agency to the Redevelopment Agency, and is responsible for review and preparation of ordinances, resolutions, contracts, permits and other legal documents to implement official City and Agency actions.
<i>Strategic Support Core Service</i>	
City Attorney Management and Administration	Provides administrative oversight for the department, including executive management, financial management, and human resources.

Office of the City Attorney

Department Budget Summary

Expected 2020-2021 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 that 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 lawsuits. The Office will continue to provide in-house legal services while managing unpredictable fluctuations in demand for these services.
- 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) real estate-related projects, including the negotiations with Google and Parkside Hall for the Museum Place project; 4) advising staff related to the feasibility of forming a Community Facilities District to finance the acquisition of the Tech Expansion Space in connection with the Museum Place Project; 5) capital construction projects and issues relating to the Regional Wastewater Facility; 6) innovation efforts to improve City technology; and 7) legal guidance to the Emergency Operations Center as the City responds to the COVID-19 pandemic and other emergencies.
- Litigation defense services will continue to take priority over proactive suits by the City. The net loss of litigation attorney positions has, at times, affected the Office's ability to adequately staff lawsuits and other litigation matters.
- 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. When pension-related lawsuits are resolved, it is anticipated that use of outside legal counsel will 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 discovery.

2020-2021 Key Budget Actions

- As directed in the Mayor's March Budget Message for Fiscal Year 2019-2020, continues 1.0 Deputy City Attorney position for a second year, through June 30, 2021, to provide legal support for the purpose of proactive legal enforcement of blighted and nuisance properties.
- As directed in the Mayor's March Budget Message for Fiscal Year 2020-2021, continues 1.0 Senior Deputy City Attorney position through June 30, 2022 to support the Affordable Housing Program in the Low and Moderate Income Housing Asset Fund.
- Continues 1.0 Legal Analyst II position through June 30, 2021 to support Worker's Compensation Litigation matters.
- Continues 1.0 Legal Analyst II and 1.0 Senior Deputy City Attorney positions through June 30, 2021 to provide legal support to the Water Pollution Control and the Sanitary Sewer System Capital Improvement Programs.
- Rebudgets \$200,000 of unexpended 2019-2020 non-personal/equipment funding, in the Sewer Service and Use Charge Fund, for outside litigation support to the Environmental Services Department for a tributary matter.

Operating Funds Managed

N/A

Office of the City Attorney
Department Budget Summary

	2018-2019 Actuals ***	2019-2020 Adopted	2020-2021 Forecast	2020-2021 Adopted
Dollars by Core Service				
Legal Services	18,293,985	21,110,493	19,479,195	20,262,206
Strategic Support - City Council Appointees	1,588,656	1,495,157	1,765,053	1,751,734
Strategic Support - Other - Council Appointees	3,924,621	11,174,594	6,771,501	15,757,182
Total	\$23,807,262	\$33,780,244	\$28,015,749	\$37,771,122
Dollars by Category				
<i>Personal Services and Non-Personal/Equipment</i>				
Salaries/Benefits	18,202,127	20,357,747	19,689,750	20,259,442
Overtime	67,641	0	0	0
Subtotal Personal Services	\$18,269,768	\$20,357,747	\$19,689,750	\$20,259,442
Non-Personal/Equipment	1,650,035	2,247,903	1,554,498	1,754,498
Total Personal Services & Non-Personal/Equipment	\$19,919,803	\$22,605,650	\$21,244,248	\$22,013,940
<i>Other Costs*</i>				
City-Wide Expenses	3,800,224	10,287,474	6,000,000	14,763,000
Other	64,573	0	0	0
Other - Capital	0	0	0	0
Overhead Costs	22,662	887,120	771,501	994,182
Total Other Costs	\$3,887,459	\$11,174,594	\$6,771,501	\$15,757,182
Total	\$23,807,262	\$33,780,244	\$28,015,749	\$37,771,122

* Fund Balance, Transfers, and Reserves for funds that may be managed by this department have been excluded from this display. This information can be found in Source and Use of Funds Statements elsewhere in this document. The amounts in the 2019-2020 Adopted Budget column may vary from the published Adopted Budget due to the realignment of Other Costs (primarily City-Wide Expenses and General Fund Capital) between Departments.

** The positions displayed in the 2018-2019 Actuals column reflect those included in the 2018-2019 Adopted Budget.

*** 2018-2019 Actuals may not subtotal due to rounding.

Office of the City Attorney
Department Budget Summary

	2018-2019 Actuals ***	2019-2020 Adopted	2020-2021 Forecast	2020-2021 Adopted
Dollars by Fund				
Capital Funds	408,590	427,708	265,385	465,564
General Fund (001)	20,130,594	27,204,237	22,824,939	31,096,103
Workforce Development Fund (290)	141,110	227,753	110,031	110,031
Low And Moderate Income Housing Asset Fund (346)	722,954	1,159,983	778,733	1,100,993
Integrated Waste Management Fund (423)	62,007	73,641	68,394	67,923
Housing Trust Fund (440)	276	39,369	38,402	38,102
Community Development Block Grant Fund (441)	18,650	20,746	20,712	20,576
Home Investment Partnership Program Trust Fund (445)	31,826	81,260	84,411	83,760
Multi-Source Housing Fund (448)	330,905	164,705	94,291	93,510
Rental Stabilization Program Fee Fund (450)	0	576,565	609,506	606,395
San José Clean Energy Operating Fund (501)	320,627	1,092,777	1,030,207	1,025,251
San José-Santa Clara Treatment Plant Operating Fund (513)	60,304	193,109	114,976	114,289
Water Utility Fund (515)	99,134	152,827	166,254	346,889
Airport Maintenance And Operation Fund (523)	755,979	834,640	861,749	836,714
Sewer Service And Use Charge Fund (541)	724,307	1,530,924	947,759	1,765,022
Total	\$23,807,262	\$33,780,244	\$28,015,749	\$37,771,122
Positions by Core Service**				
Legal Services	76.90	79.90	75.20	77.70
Strategic Support - City Council Appointees	7.10	7.10	7.80	7.80
Total	84.00	87.00	83.00	85.50

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** The positions displayed in the 2018-2019 Actuals column reflect those included in the 2018-2019 Adopted Budget.

*** 2018-2019 Actuals may not subtotal due to rounding.

Office of the City Attorney
Department Budget Summary

	2018-2019 Actuals**	2019-2020 Adopted	2020-2021 Forecast	2020-2021 Adopted	2020-2021 Adopted Positions
Dollars by Program*					
Legal Services					
Legal Representation	8,359,607	9,874,547	9,397,492	9,576,393	35.59
Legal Transactions	9,934,378	11,235,946	10,081,703	10,685,813	42.11
Sub-Total	18,293,985	21,110,493	19,479,195	20,262,206	77.70
Strategic Support - City Council Appointees					
City Attorney Management and Administration	1,588,656	1,495,157	1,765,053	1,751,734	7.80
Sub-Total	1,588,656	1,495,157	1,765,053	1,751,734	7.80
Strategic Support - Other - Council Appointees					
City Attorney Other Departmental - City-Wide	3,751,340	10,287,474	6,000,000	14,763,000	0.00
City Attorney Other Operational - Administration	16,925	0	0	0	0.00
City Attorney Overhead	156,356	887,120	771,501	994,182	0.00
Sub-Total	3,924,621	11,174,594	6,771,501	15,757,182	0.00
Total	\$23,807,262	\$33,780,244	\$28,015,749	\$37,771,122	85.50

* Fund Balance, Transfers, and Reserves for funds that may be managed by this department have been excluded from this display. This information can be found in Source and Use of Funds Statements elsewhere in this document.

** 2018-2019 Actuals may not subtotal due to rounding.

Office of the City Attorney

Budget Reconciliation

Personal Services and Non-Personal/Equipment (2019-2020 Adopted to 2020-2021 Adopted)

	Positions	All Funds (\$)	General Fund (\$)
Prior Year Budget (2019-2020):	87.00	22,605,650	16,916,763
Base Adjustments			
One-Time Prior Year Expenditures Deleted			
• Environmental Services Department Legal Support (1.0 Legal Analyst II and 1.0 Senior Deputy City Attorney II)	(2.00)	(573,870)	(115,531)
• San José Clean Energy Legal Support		(500,000)	0
• Affordable Housing Legal Support (1.0 Senior Deputy City Attorney IV)	(1.00)	(298,381)	0
• Proactive Legal Enforcement of Blighted and Nuisance Properties (1.0 Deputy City Attorney IV)	(1.00)	(220,238)	(220,238)
• Workers' Compensation Litigation Support Staffing (1.0 Legal Analyst II)	(1.00)	(142,828)	(142,828)
• Legal Services Temporary Staffing	0.00	(90,000)	(66,600)
One-time Prior Year Expenditures Subtotal:	(5.00)	(1,825,317)	(545,197)
Technical Adjustments to Costs of Ongoing Activities			
• Salary/benefit changes and the following position reallocations: - 1.0 Accounting Technician to 1.0 Senior Supervisor, Administration		(66,500)	141,756
• City Attorney's Office Staff Funding Realignment	0.00	295,022	295,022
• Community Energy Department Legal Staffing (City Council approval November 19, 2019) (Adds 1.0 Deputy City Attorney III)	1.00	218,798	0
• Contract Services: Litigation Consultants and Experts		16,595	16,595
Technical Adjustments Subtotal:	1.00	463,915	453,373
2020-2021 Forecast Base Budget:	83.00	21,244,248	16,824,939
Budget Proposals Approved			
1. Environmental Services Department Legal Support	2.00	385,983	73,583
2. Affordable Housing Legal Support	1.00	307,548	0
3. Proactive Legal Enforcement of Blighted and Nuisance Properties	1.00	237,068	237,068
4. Workers' Compensation Litigation Support Staffing	1.00	147,166	147,166
5. City Attorney's Office Staffing Realignments	0.00	0	(488,744)
6. City Attorney's Office Staffing Reduction	(2.50)	(335,828)	(319,060)
7. City Retirement Contributions Pre-Funding		(138,095)	(107,699)
8. Measure E - Legal Administration	0.00	(34,150)	(34,150)
9. Rebudget: Outside Legal Counsel		200,000	0
Total Budget Proposals Approved	2.50	769,692	(491,836)
2020-2021 Adopted Budget Total	85.50	22,013,940	16,333,103

Office of the City Attorney

Budget Changes By Office

Personal Services and Non-Personal/Equipment

2020-2021 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
1. Environmental Services Department Legal Support	2.00	385,983	73,583
<i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Transactions Program</i>			
<p>This action continues 1.0 Senior Deputy City Attorney and 1.0 Legal Analyst II positions to provide legal support to the Water Pollution Control and the Sanitary Sewer Capital Improvement Programs through June 30, 2021. Staff assigned to these capital projects will focus on consultant and contractor procurement. In addition to supporting these Capital Improvement Programs, 0.5 of the Legal Analyst II position will be assigned to the General Fund to support encroachment permits, street and easement vacations, creation of special assessment districts, mapping, and other public and private development issues. These positions will continue to be jointly funded: 35% from the Water Utility Fund, 30% from the San José-Santa Clara Treatment Plant Capital Fund, 25% from the General Fund, and 10% from the Sanitary Sewer System Capital Improvement Fund. (Ongoing costs: \$0)</p>			
2. Affordable Housing Legal Support	1.00	307,548	0
<i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Transactions Program</i>			
<p>As directed in the Mayor's March Budget Message for Fiscal Year 2020-2021, as approved by the City Council, this action adds 1.0 Senior Deputy City Attorney position, limit-dated through June 30, 2022, to provide transactional legal services to support the Affordable Housing Program in the Low and Moderate Income Housing Asset Fund. This funding will increase the City Attorney's Office capacity to provide legal support to the projects associated with the Notice of Funding Availability (NOFA) process to award \$100 million for affordable housing developments. This funding will also support other Affordable Housing Project professional legal services for matters of considerable complexity as necessary, including 12 outstanding Affordable Housing projects that will begin in the near future. The City Attorney's Office is unable to absorb this additional workload with current staff. It is estimated that the legal work associated with these projects will warrant a dedicated full-time attorney. (Ongoing costs: \$307,548)</p>			
3. Proactive Legal Enforcement of Blighted and Nuisance Properties	1.00	237,068	237,068
<i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i>			
<p>As directed in the Mayor's March Budget Message for Fiscal Year 2019-2020, as approved by the City Council, this action provides second year funding for 1.0 Deputy City Attorney IV position through June 30, 2021. As part of the 2019-2020 Adopted Budget, a reserve was established to fund this position through Fiscal Year 2020-2021 to provide legal support for the purpose of proactive legal enforcement of blighted and nuisance properties. This funding will enable the City Attorney to maintain a dedicated Deputy City Attorney for the purpose of litigating these matters for an additional year. (Ongoing costs: \$0)</p>			

Office of the City Attorney

Budget Changes By Office

Personal Services and Non-Personal/Equipment

2020-2021 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
4. Workers' Compensation Litigation Support Staffing <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i> <i>Legal Transactions Program</i> This action continues 1.0 Legal Analyst II position, through June 30, 2021, to continue legal support to the Workers' Compensation Program. This 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. This action allows greater efficiencies in the City Attorney's Office, as increased legal analyst support provides the Workers' Compensation team critical resources for case management. (Ongoing costs: \$0)	1.00	147,166	147,166
5. City Attorney's Office Staffing Realignments <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i> This action shifts funding on a one-time basis for a total of 2.0 positions (0.5 Chief Deputy City Attorney, 0.5 Senior Deputy City Attorney, 0.5 Legal Administrative Assistant, and 0.5 Legal Analyst) in the City Attorney's Office from the General Fund to the Sewer Service and Use Charge Fund. This funding will provide for staff work in the City Attorney's Office that will provide legal support and services required for litigation regarding a tributary matter. (Ongoing costs: \$0)	0.00	0	(488,744)
6. City Attorney's Office Staffing Reduction <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i> <i>Legal Transactions Program</i> This action eliminates 2.5 vacant positions (1.0 Legal Analyst II, 1.0 Legal Administrative Assistant II, and 0.5 Messenger Clerk PT) in the City Attorney's Office from the General Fund and Airport Maintenance and Operations Fund. The remaining workload will be reallocated to current staff. The Office will continue to be proactive in seeking technology advancements to improve operational efficiencies and to lessen the impact on staff. (Ongoing savings: \$336,398)	(2.50)	(335,828)	(319,060)

Office of the City Attorney

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










2020-2021 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
7. City Retirement Contributions Pre-Funding <i>Strategic Support CSA</i> <i>Core Service: Department-wide</i> <i>Program: Department-wide</i> This action reduces the City Attorney Office's Personal Services appropriation by \$138,095 in all funds, and \$107,669 in the General Fund, to reflect the anticipated expenditure savings associated with lower retirement contributions from the prepayment of the City's retirement costs for both the Tier 1 pension costs and the Unfunded Actuarial Liability in the Federated City Employees' Retirement System Plan and the Police and Fire Department Retirement Plan. By the City making annual prepayments of its employer contributions to the Retirement Plans in lieu of biweekly contributions, this will generate approximately \$13.9 million in savings in all funds, \$11.4 million in the General Fund. In the General Fund, these savings will be offset by an estimated loss in interest earnings of \$2.6 million and costs in TRANs debt service of \$1.4 million, giving a total net savings of \$7.4 million. (Ongoing savings: \$138,095)		(138,095)	(107,699)
8. Measure E - Legal Administration <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Transactions Program</i> This action shifts 0.1 Senior Deputy City Attorney IV position, ongoing, from the General Fund to funding collected from Measure E. The position will support matters related to Measure E, a real property transfer tax that would provide funding to assist the homeless and provide affordable housing, as approved by the voters in March 2020. As approved by City Council, 5% of the overall revenues will be set aside for City Administration. This position will provide legal support to the Finance and Housing Departments regarding the appropriate use of Measure E funds for proposed projects. (Ongoing savings: \$34,150)	0.00	(34,150)	(34,150)
9. Rebudget: Outside Legal Counsel <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Transactions Program</i> This action rebudgets unexpended 2019-2020 non-personal/equipment funding of \$200,000 within the Sewer Service and Use Charge Fund for specialized outside counsel, technical experts, and other consultant and expert witness services to provide legal support to the Environmental Services Department for a tributary matter. (Ongoing costs: \$0)		\$200,000	0
2020-2021 Adopted Budget Changes Total	2.50	769,692	(491,836)

Office of the City Attorney

Performance Summary

Legal Services

Performance Measures

	2018-2019 Actual	2019-2020 Target	2019-2020 Estimated	2020-2021 Target
 % of time final case results are within staff analyses and/or recommendations	75%	90%	N/A ¹	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	\$142	\$145	\$141	\$143
- Outside Legal Counsel average hourly rate	\$350	\$360	\$355	\$360
 % of time client is timely informed of significant developments in a case	83%	80%	N/A ¹	80%
 % of survey respondents rating legal services satisfactory or better based on quality, cycle time, and professionalism	90%	90%	N/A ¹	90%
 % of time final documents accurately reflect the approval of City action	96%	100%	N/A ¹	100%
 % of time that advice identifies and analyzes legal issues and risks	97%	85%	N/A ¹	85%
 % of time that advice provides alternatives where appropriate	80%	70%	N/A ¹	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	\$142	\$145	\$141	\$143
- Outside Legal Counsel average hourly rate	\$350	\$360	\$355	\$360
 % of time client receives advice/ document within mutually accepted time frames	93%	85%	N/A ¹	85%

¹ Data for this measure is collected through a biennial survey. The survey was not conducted this year due to the Shelter-in-Place Order issued in March 2020, which was subsequently extended and modified.

Office of the City Attorney

Performance Summary

Legal Services

Activity and Workload Highlights

	2018-2019 Actual	2019-2020 Forecast	2019-2020 Estimated	2020-2021 Forecast
# of claims filed against the City	695	725	637	771
# of lawsuits filed against the City	119	175	111	160
# of lawsuits and administrative actions filed or initiated by the City	116	150	586 ¹	216
# of Council/Board/Manager memoranda:				
- Prepared	1,596	1,200	1,507	1,259
- Reviewed	743	800	752	787
# of formal Opinions issued	1	5	2	3
# of Resolutions	490	450	466	501
# of Ordinances	173	180	140	183
# of Agreements	2,239	2,200	2,447	2,214

¹ 2019-2020 Estimated totals exceeded 2019-2020 Forecast level due to an increased number of criminal citations. The 2020-2021 Forecast reflects a higher average activity level, factoring the increase observed in 2019-2020.

Office of the City Attorney

Departmental Position Detail

Position	2019-2020 Adopted	2020-2021 Adopted	Change
Accounting Technician	1.00	0.00	(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	10.00	11.00	1.00
Executive Assistant	1.00	1.00	-
Legal Administrative Assistant	10.50	9.50	(1.00)
Legal Analyst II	16.00	15.00	(1.00)
Legal Services Administrator	1.00	1.00	-
Legal Services Manager	1.00	1.00	-
Messenger Clerk PT	0.50	0.00	(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	30.00	30.00	-
Senior Legal Analyst	3.00	3.00	-
Senior Supervisor, Administration	0.00	1.00	1.00
Total Positions	87.00	85.50	(1.50)

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