

Office of the City Attorney

Nora Frimann, City Attorney

MISSION

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

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.
City Attorney Pandemic Response	Provides for the coordination and delivery of emergency services and recovery activities in response to the COVID-19 pandemic.

Office of the City Attorney

Department Budget Summary

Expected 2022-2023 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 reflect Council priorities and 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 Cultural Affairs, 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 as its development continues and other developers with regard to various projects throughout the City; 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 Park Habitat Project; 5) capital construction projects and issues relating to the Regional Wastewater Facility and various City facilities, streets, and infrastructure; 6) innovation efforts to improve City technology; 7) proposed Charter amendments and campaign finance reform proposals; 8) proposed reforms in connection with the City's Reimagining Policing efforts; and 9) continuing legal guidance to the Emergency Operations Center as the City recovers from 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.
- 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.

2022-2023 Key Budget Actions

- Adds 1.0 Senior Deputy City Attorney position to support work related to the California Environmental Review Act (CEQA) process.
- Continues 1.0 Deputy City Attorney position on an ongoing basis to provide legal support for the purpose of proactive legal enforcement of blighted and nuisance properties.
- Continues one-time funding of \$200,000 for temporary staff to support Gun Violence Restraining Orders and criminal litigation work.
- Adds 1.0 Legal Analyst and 1.0 Deputy City Attorney positions and continues 1.0 Senior Deputy Attorney IV position to provide legal support for housing projects and grants.
- Adds one-time non-personal/equipment funding of \$350,000 to support the review of body worn camera footage.

Operating Funds Managed

N/A

Office of the City Attorney

Department Budget Summary

	2020-2021 Actuals ***	2021-2022 Adopted ****	2022-2023 Forecast	2022-2023 Adopted
Dollars by Core Service				
Legal Services	19,751,498	21,056,014	20,427,135	22,482,894
Strategic Support - City Council Appointees	1,838,022	1,728,244	1,806,517	1,806,517
Strategic Support - Other - Council Appointees	2,239,843	20,048,137	7,255,181	17,271,845
Total	\$23,829,363	\$42,832,395	\$29,488,833	\$41,561,256
Dollars by Category				
<i>Personal Services and Non-Personal/Equipment</i>				
Salaries/Benefits	20,091,899	21,004,253	20,614,597	22,035,356
Overtime	4,084	0	0	0
Subtotal Personal Services	\$20,095,983	\$21,004,253	\$20,614,597	\$22,035,356
Non-Personal/Equipment	1,429,135	1,780,005	1,619,055	2,254,055
Total Personal Services & Non-Personal/Equipment	\$21,525,118	\$22,784,258	\$22,233,652	\$24,289,411
<i>Other Costs*</i>				
City-Wide Expenses	2,267,175	18,861,993	6,000,000	15,961,640
General Fund Capital	0	0	0	0
Housing Loans and Grants	0	0	0	0
Other	7,397	0	0	0
Other - Capital	0	0	0	0
Overhead Costs	29,673	1,186,144	1,255,181	1,310,205
Total Other Costs	\$2,304,245	\$20,048,137	\$7,255,181	\$17,271,845
Total	\$23,829,363	\$42,832,395	\$29,488,833	\$41,561,256

* 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 positions displayed in the 2020-2021 Actuals column reflect those included in the 2020-2021 Adopted Budget.

*** 2020-2021 Actuals may not subtotal due to rounding.

**** The amounts in the 2021-2022 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.

Office of the City Attorney

Department Budget Summary

	2020-2021 Actuals ***	2021-2022 Adopted ****	2022-2023 Forecast	2022-2023 Adopted
Dollars by Fund				
General Fund (001)	18,948,064	35,692,412	22,372,435	33,681,447
Building Development Fee Program Fund (237)	0	0	73,965	73,965
Planning Development Fee Program Fund (238)	0	0	49,311	386,518
Workforce Development Fund (290)	138,899	113,180	117,970	117,970
Low And Moderate Income Housing Asset Fund (346)	964,461	1,397,928	1,067,013	1,450,090
Coronavirus Relief Fund (401)	12,078	0	0	0
Integrated Waste Management Fund (423)	60,622	75,223	76,154	76,154
Housing Trust Fund (440)	35,640	42,771	32,229	53,223
Community Development Block Grant Fund (441)	15,525	21,155	14,361	21,597
Home Investment Partnership Program Trust Fund (445)	1,184	16,324	0	20,994
Multi-Source Housing Fund (448)	0	101,090	124,395	124,395
Rental Stabilization Program Fee Fund (450)	622,310	673,942	795,800	589,703
San José Clean Energy Operating Fund (501)	698,266	1,374,009	1,410,223	1,410,223
San José-Santa Clara Treatment Plant Operating Fund (513)	73,410	84,360	89,526	89,526
Water Utility Fund (515)	155,618	152,603	163,541	163,541
Airport Maintenance And Operation Fund (523)	758,024	908,307	757,192	757,192
Sewer Service And Use Charge Fund (541)	911,554	1,467,925	1,635,390	1,835,390
Capital Funds	433,708	711,166	709,328	709,328
Total	\$23,829,363	\$42,832,395	\$29,488,833	\$41,561,256
Positions by Core Service**				
Legal Services	77.70	76.70	72.70	79.70
Strategic Support - City Council Appointees	7.80	6.80	6.80	6.80
Total	85.50	83.50	79.50	86.50

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Office of the City Attorney

Department Budget Summary

	2020-2021 Actuals**	2021-2022 Adopted	2022-2023 Forecast	2022-2023 Adopted	2022-2023 Adopted Positions
Dollars by Program*					
Legal Services					
Legal Representation	9,085,748	9,652,592	9,378,496	10,730,700	36.39
Legal Transactions	10,665,750	11,403,422	11,048,639	11,752,194	43.31
Sub-Total	19,751,498	21,056,014	20,427,135	22,482,894	79.70
Strategic Support - City Council Appointees					
City Attorney Pandemic Response	12,078	0	0	0	0.00
City Attorney Management and Administration	1,825,944	1,728,244	1,806,517	1,806,517	6.80
Sub-Total	1,838,022	1,728,244	1,806,517	1,806,517	6.80
Strategic Support - Other - Council Appointees					
City Attorney Other Departmental - City-Wide	1,970,199	18,861,993	6,000,000	15,961,640	0.00
City Attorney Other Operational - Administration	255,195	0	0	0	0.00
City Attorney Overhead	14,449	1,186,144	1,255,181	1,310,205	0.00
Sub-Total	2,239,843	20,048,137	7,255,181	17,271,845	0.00
Total	\$23,829,363	\$42,832,395	\$29,488,833	\$41,561,256	86.50

* 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.

** 2020-2021 Actuals may not subtotal due to rounding.

Office of the City Attorney

Budget Reconciliation

Personal Services and Non-Personal/Equipment

(2021-2022 Adopted to 2022-2023 Adopted)

	Positions	All Funds (\$)	General Fund (\$)
Prior Year Budget (2021-2022):	83.50	22,784,258	16,830,419
Base Adjustments			
One-Time Prior Year Expenditures Deleted			
• Rebudget: Outside Legal Counsel		(200,000)	0
• Affordable Housing Legal Support (1.0 Senior Deputy City Attorney IV)	(1.00)	(307,548)	0
• Proactive Legal Enforcement of Blighted and Nuisance Properties (1.0 Deputy City Attorney IV)	(1.00)	(241,705)	(241,705)
• Santee Neighborhood Injunction Support (1.0 Legal Analyst I)	(1.00)	(159,100)	(159,100)
• Workers' Compensation Litigation Support Staffing (1.0 Legal Analyst II)	(1.00)	(150,290)	(150,290)
• Public Safety Initiatives		(90,000)	(90,000)
• Measure E - Legal Administration		(60,118)	0
One-time Prior Year Expenditures Subtotal:	(4.00)	(1,208,761)	(641,095)
Technical Adjustments to Costs of Ongoing Activities			
• Salary/benefit changes		619,105	251,250
• Fund Shift: Development Fee Program Legal Support		0	(106,711)
• Contractual Services: Litigation Consultants and Experts		39,050	38,572
Technical Adjustments Subtotal:	0.00	658,155	183,111
2022-2023 Forecast Base Budget:	79.50	22,233,652	16,372,435
Budget Proposals Approved			
1. Housing Legal Support Staffing	3.00	371,024	152,668
2. Body Worn Camera Review		350,000	350,000
3. Planning Development Fee Program CEQA Review Staffing	1.00	290,031	0
4. Proactive Legal Enforcement of Blighted and Nuisance Properties	1.00	250,054	250,054
5. Public Safety Initiatives		200,000	200,000
6. Neighborhood Injunction Legal Support	1.00	154,825	154,825
7. Workers' Compensation Legal Support	1.00	154,825	154,825
8. Electronic Discovery Software Upgrade		85,000	85,000
9. Rebudget		200,000	0
Total Budget Proposals Approved	7.00	2,055,759	1,347,372
2022-2023 Adopted Budget Total	86.50	24,289,411	17,719,807

Office of the City Attorney

Budget Changes by Department

Personal Services and Non-Personal/Equipment

2022-2023 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
1. Housing Legal Support Staffing <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation and Legal Transactions Programs</i>	3.00	371,024	152,668

This action adds 1.0 Legal Analyst and 1.0 Deputy City Attorney III positions; continues a temporary position on an ongoing basis by adding 1.0 Senior Deputy Attorney IV position; and shifts 80% of a Deputy City Attorney I position from the Rental Stabilization Program Fee Fund to the General Fund. The Legal Analyst position will support housing projects involving City loans and bond issuance, perform due diligence, and draft and complete all legal documents. After the closing of each Housing project, this position will compile the final documents for distribution and create reports of outstanding items. The Deputy City Attorney III position, funded by Measure E revenues, will provide legal support for housing production and homelessness issues. The Senior Deputy Attorney IV position will support housing grant agreements/contracts, homeless issues (bridge housing), encampment issues, and the preservation of affordable housing. This position will also be the point person for Goodwill and the Legal Aid attorneys with whom the City interacts with on homelessness matters. The fund shift of the Deputy City Attorney I position will realign the funding sources with the associated legal support that will be provided by this position. The position was initially added to provide support to the Rental Stabilization Program; however, the activity level in this program did not materialize as initially anticipated and the position will shift its focus to address the increased workload related to personal injury cases and public safety cases. (Ongoing costs: \$381,760)

2. Body Worn Camera Review <i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i>		350,000	350,000
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This action adds one-time non-personal/equipment funding of \$350,000 to support the review of body worn camera footage. As police body worn camera and private citizen recordings are becoming more prevalent in litigation cases, a dedicated resource is required to review, edit, and reproduce the abundance of these videos to defend the City. Under the California Supreme Court's ruling in National Lawyers Guild v. City of Hayward, 9 Cal.5th 488 (2020), agencies must bear the cost of redactions in response to a citizen request if the redacted materials are subject to exemption from disclosure. The funds will be used to contract a dedicated vendor to review, edit, and reproduce the body worn camera footage. Though one-time resources are recommended to deal with a surge in cases, this work will be reevaluated for continued funding during subsequent budget cycles. (Ongoing costs: \$0)

Office of the City Attorney

Budget Changes by Department

Personal Services and Non-Personal/Equipment

2022-2023 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
3. Planning Development Fee Program CEQA Review Staffing	1.00	290,031	0

Strategic Support CSA
Legal Services Core Service
Legal Transactions Program

This action adds 1.0 Senior Deputy City Attorney III position, funded by the Planning Development Fee Program Fund, to support work related to the California Environmental Review Act (CEQA) process. This position will primarily work with the Planning Division on reviewing, revising, and drafting environmental and Planning documents for public and private projects; perform legal research and writing and advise the Planning Division on CEQA and land use issues; attend weekly and other meetings on priorities, strategies, and process improvements; stay up to date on CEQA and land use cases, statutes, requirements, and best practices; and defend the City on public and private CEQA and land use challenges. (Ongoing costs: \$316,398)

4. Proactive Legal Enforcement of Blighted and Nuisance Properties	1.00	250,054	250,054
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Strategic Support CSA
Legal Services Core Service
Legal Representation Program

This action continues a temporary position on an ongoing basis by adding 1.0 Deputy City Attorney IV position to continue providing legal support for the purpose of proactive legal enforcement of blighted and nuisance properties. This position was first authorized in the City Council-approved Mayor's March Budget Message for Fiscal Year 2019-2020. In the last three years, this position has followed up on Code Enforcement and Police investigations and citations by communicating with property owners and initiating legal proceedings when appropriate to enforce Code actions, address ongoing nuisance activities, and collect on fines levied. The continuation of the position will enable the City Attorney to maintain a dedicated Deputy City Attorney for the purpose of litigating these matters on an ongoing basis. (Ongoing costs: \$250,054)

Office of the City Attorney

Budget Changes by Department

Personal Services and Non-Personal/Equipment

2022-2023 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
<p>5. Public Safety Initiatives</p> <p><i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i></p> <p>This action adds one-time personal services funding of \$200,000 to continue temporary staffing to support Gun Violence Restraining Orders (GVRO) and criminal litigation work. Initial funding to support GVRO was included as part of the City Council-approved Mayor's June Budget Message for Fiscal Year 2021-2022. The San José Police Department (SJPD) leads the County in requests for GVROs and the City Attorney's Office (CAO) evaluates and pursues GVROs initiated by SJPD and handles further filings and court appearances. Due to changes in the GVRO law effective January 1, 2020, which require police to consider GVROs in cases involving domestic violence, as well as apparent effects of shelter-in-place orders on families in San Jose, CAO experienced a significant increase in GVROs. In calendar year 2020, there were a total of 32 GVROs filed; in calendar year 2021, there were a total of 34 GVROs filed; and in the first three months of 2022, there have been 17 GVROs filed. Because of the increase in GVROs, the temporary staffing will help address the increased workload. Further, the recent reopening of the criminal courthouse for trials has increased the need for attorney support. (Ongoing costs: \$0)</p>		<p>200,000</p>	<p>200,000</p>
<p>6. Neighborhood Injunction Legal Support</p> <p><i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i></p> <p>This action continues a temporary position by adding 1.0 Legal Analyst II position, through June 30, 2023, to continue legal support for the Santee Neighborhood Injunction and provide assistance for other code enforcement projects. Although the injunction in the Santee Neighborhood has been successful, this position will continue to monitor and enforce it by providing compliance oversight, ongoing tracking of sales of properties subject to the injunction, service of the injunction on new owners, outreach to residents, development of factual information and evidence to support compliance efforts, and draft various legal documents necessary to ensure that property owners are abiding by the terms of the injunction. The continuation of the position will enable the City Attorney to maintain a dedicated legal analyst to support the attorneys responsible for enforcement and assist with other code enforcement projects. (Ongoing costs: \$0)</p>	<p>1.00</p>	<p>154,825</p>	<p>154,825</p>
<p>7. Workers' Compensation Legal Support</p> <p><i>Strategic Support CSA</i> <i>Legal Services Core Service</i> <i>Legal Representation Program</i></p> <p>This action continues a temporary position by adding 1.0 Legal Analyst II position, through June 30, 2023, 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 for greater effectiveness in the City Attorney's Office, as increased legal analyst support provides the Workers' Compensation team critical resources for case management. (Ongoing costs: \$0)</p>	<p>1.00</p>	<p>154,825</p>	<p>154,825</p>

Office of the City Attorney

Budget Changes by Department

Personal Services and Non-Personal/Equipment










2022-2023 Adopted Budget Changes	Positions	All Funds (\$)	General Fund (\$)
8. Electronic Discovery Software Upgrade		85,000	85,000
<i>Strategic Support CSA</i>			
<i>Legal Services Core Service</i>			
<i>Legal Representation and Legal Transactions Programs</i>			
<p>This action adds non-personal/equipment funding of \$85,000 to fund enhancements to the City's e-discovery software solution. The program upgrades will provide additional functionality that will improve efficiencies with redactions, legal holds, and production software service. Additionally, more storage capabilities will be included. These upgrades will also aid with the timeliness of Public Records Act (PRA) responsiveness and reduce the time office support staff dedicates to assisting other departments with PRAs and legal holds. (Ongoing costs: \$85,000)</p>			
9. Rebudget		200,000	0
<i>Strategic Support CSA</i>			
<i>Legal Services Core Service</i>			
<i>Legal Representation Program</i>			
<p>This rebudget of unexpended 2021-2022 funds will allow for the completion of previously approved projects or other expenditure items in 2022-2023. The item listed below was approved by the City Council as part of a previous budget action. (Ongoing costs: \$0)</p>			
Outside Legal Counsel	200,000		
2022-2023 Adopted Budget Changes Total	7.00	2,055,759	1,347,372

Office of the City Attorney

Performance Summary

Legal Services

Performance Measures

	2020-2021 Actual	2021-2022 Target	2021-2022 Estimated	2022-2023 Target
 % of time final case results are within staff analyses and/or recommendations	N/A ¹	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	\$158	\$158	\$157	\$160
- Outside Legal Counsel average hourly rate	\$355	\$360	\$416	\$416
 % of time client is timely informed of significant developments in a case	N/A ¹	80%	N/A ¹	80%
 % of survey respondents rating legal services satisfactory or better based on quality, cycle time, and professionalism	N/A ¹	86%	N/A ¹	86%
 % of time final documents accurately reflect the approval of City action	N/A ¹	96%	N/A ¹	96%
 % of time that advice identifies and analyzes legal issues and risks	N/A ¹	90%	N/A ¹	90%
 % of time that advice provides alternatives where appropriate	N/A ¹	75%	N/A ¹	75%
 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	\$158	\$158	\$157	\$160
- Outside Legal Counsel average hourly rate	\$355	\$360	\$416	\$416
 % of time client receives advice/document within mutually accepted time frames	75%	85%	77%	80%

¹ The survey was not conducted in 2020-2021 and 2021-2022 due to the Santa Clara County Shelter-in-Place Order that was issued in March 2020, which was subsequently extended and modified, and low response rates. The next survey is scheduled for 2022-2023.

Office of the City Attorney

Performance Summary

Legal Services

Activity and Workload Highlights

	2020-2021 Actual	2021-2022 Forecast	2021-2022 Estimated	2022-2023 Forecast
# of claims filed against the City	568	675	458	567
# of lawsuits filed against the City	110	150	116	125
# of lawsuits and administrative actions filed or initiated by the City ¹	767	400	306	350
# of Council/Board/Manager memoranda:				
- Prepared	1,987	1,500	2,013	2,000
- Reviewed	865	750	635	750
# of formal Opinions issued	8	2	0	3
# of Resolutions	500	475	396	450
# of Ordinances	203	155	168	175
# of Agreements	2,242	2,240	1,780	2,000

¹ 2020-2021 Actual is higher than 2021-2022 and 2022-2023 Forecast levels due to an increased number of criminal citations.

Office of the City Attorney

Department Position Detail

Position	2021-2022 Adopted	2022-2023 Adopted	Change
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	11.00	12.00	1.00
Executive Assistant	1.00	1.00	-
Legal Administrative Assistant	9.50	9.50	-
Legal Analyst I/II/III	16.00	17.00	1.00
Legal Services Administrator	1.00	1.00	-
Legal Services Manager	1.00	1.00	-
Network Engineer	1.00	1.00	-
Office Specialist I/II	1.00	1.00	-
Senior Deputy City Attorney I/II/III/IV	30.00	31.00	1.00
Senior Legal Analyst	3.00	3.00	-
Senior Supervisor, Administration	1.00	1.00	-
Total Positions	83.50	86.50	3.00