



Takoma Park City Council Meeting – July 10, 2019

Agenda Item 1

Presentation

Report from Legal Services Review Advisory Group

Recommended Council Action

Receive report from the Legal Services Review Advisory Group

Context with Key Issues

In recent years, the City has experienced an increased need for legal services, as well as a broader range of legal expertise than in the past. Given these developments, the Council decided to form an advisory group to evaluate the City's legal needs and provide recommendations on how those needs might best be met. In September 2018, the Council adopted a resolution formally establishing the group.

The primary tasks of the "Legal Services Review Advisory Group" were to:

- Identify the City's legal services needs now and in the near future; look for and present possible new opportunities for utilizing legal services in ways they are not currently available or being considered
- Review and document how the existing arrangement for legal services is meeting or not adequately meeting identified needs (where are there gaps?)
- Interview current Councilmembers regarding their perspectives and legal services needs
- Interview staff members who frequently interact with the City's legal service providers in the course of their work regarding their perspectives and legal services needs
- Gather comparative information on various options and arrangements for legal services
- Develop recommended approaches for Council's consideration for most effectively and efficiently meeting legal services needs

The attached Charter provides more details about the group and its charge.

Tonight, the Legal Services Review Advisory Group will share its report and recommendations with Council for their consideration.

Council Priority

Fiscally Sustainable Government

Environmental Considerations

Not applicable

Fiscal Considerations

For the past several years, the City has spent approximately \$155,000-\$175,000 per year on contracted legal services for the City Attorney. We also utilize the services of labor counsel and a development attorney, which we pay on an hourly basis. We are currently in the final year of a five-year contract with our existing firm, and plan to release a Request for Proposals for legal services in the coming months.

Racial Equity Considerations

Receiving the Legal Services Review Advisory Group report and presentation will not disproportionately impact any particular group in either a negative or positive way.

Attachments and Links

- Report from the Legal Services Review Advisory Group
- [Legal Services Review Advisory Group Charter](#)

LEGAL SERVICES REVIEW ADVISORY GROUP REPORT

FEBRUARY 21, 2019

Date: February 21, 2019
To: Takoma Park City Council
From: Legal Services Review Advisory Group
Subject: Final Report and Recommended Next Steps Regarding Takoma Park City Outside Counsel

TASK FORCE CHARGE

Pursuant to Resolution 2018-44, the City Council created the Legal Services Review Advisory Group (the “LSRAG”) and tasked it with reviewing and documenting the City’s current legal service needs and what legal needs we expect in the near future. The LSRAG was also asked to document the manner in which those needs are currently being met, along with the advantages and disadvantages of the existing structure and processes. Finally, the LSRAG was asked to provide recommendations to the City Council for how to meet the City’s legal service needs in the future.

OVERVIEW OF TASK FORCE WORK PLAN

The LSRAG conducted the following tasks, as outlined in the group’s Charter, to ascertain and analyze the information requested by the Council:

- Identify the City’s legal services needs for now and in the near future; look for and present possible new opportunities for utilizing legal services in ways they are not currently available or being considered.
- Interview current Council members regarding their perspectives and legal services needs.
- Interview staff members who frequently interact with the City’s legal service providers in the course of their work regarding their perspectives and legal services needs.
- Gather comparative information on various options and arrangements for legal services.
- Develop recommended approaches for Council’s consideration for most effectively and efficiently meeting legal services needs.

TASK FORCE METHODOLOGY

The LSRAG gathered a wide range of information in order to inform its analysis. We first reviewed past contracts of legal service providers to the City, submissions from the last Request for Proposals for City Attorney services (2014), and a 2016 memorandum outlining Council expectations regarding legal services provided by the City Attorney outside of the fixed fee arrangement. Following our review of documents establishing the current relationship with the

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City Attorney, the group interviewed several city elected officials and professional staff members that regularly interact with the City Attorney.

All City Councilmembers and the Mayor were invited to provide feedback to the group. The group interviewed five current Councilmembers to gather feedback about legal needs. The group gathered feedback about the existing framework for meeting the City's legal services needs, which involves working with the City Attorney and specialized outside counsel. In order to elicit consistent information, the group devised a questionnaire for feedback on the following subjects: legal needs, interaction with the City Attorney, thoughts on the existing framework, utility of consulting with a generalist versus specialized counsel, and how to distinguish between general matters and matters requiring specialized advice. The group gathered the information it received and organized it by subject matter in order to analyze common themes and concerns.

The group next interviewed the City Manager, Deputy City Manager, key department heads who interact with and/or utilize the services of the City Attorney, and other local government professionals. The same questionnaire was utilized to elicit feedback from this group of professionals. In addition, the interviews provided an opportunity to solicit information, including but not limited to the following subjects: perceived quality of advice received from the City Attorney, frequency of contact, responsiveness, and strengths and weaknesses.

In addition to personal interviews, the group analyzed the various types of legal representation utilized in cities and municipalities similar in size to Takoma Park. We reviewed model forms for legal representation from the Association of Corporate Counsel and the Local Government Insurance Trust ("LGIT"). Each member of the committee drew on their professional knowledge as attorneys to inform the group.

The group was not originally asked to interview the current City Attorney, specialized counsel retained by the City, or any offerors that responded to prior solicitations for legal services. Therefore, the perspective of the legal services providers and offerors is beyond the scope of our overall analysis. The comments LSRAG received from the City Attorney have been forwarded to the City Council in a separate confidential personnel assessment.

After gathering information from City stakeholders, the group approached several City Managers in other jurisdictions with similar populations and legal needs. The City Managers were asked to describe the procurement of legal services in their city, type of representation, experience, and advice based on the legal services they obtained, as well as the costs of services.

The LSRAG determined that municipalities that are similarly situated to Takoma Park generally chose large firms to represent their interests in order to increase the likelihood that the selected

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law firm could handle the majority of the legal issues, rather than retaining additional specialized law firms for particular matters. The larger law firms have subject matter experts with existing legal expertise in areas commonly needed by cities. The accessibility of these subject matter experts creates economies of scale that have the potential to produce savings for existing Council and staff time that would otherwise be used to solicit, procure, administer, and pay for legal services from outside firms (on top of flat-fee and other payments to the City Attorney). The selection of a larger firm with broad subject matter expertise also reduces the need for legal research on routine matters. In addition, our research and interviews indicated that selection of a larger firm enabled the delegation of routine matters to staff billed at significantly lower rates (junior associates, paralegals and clerks) whenever possible without jeopardizing quality of work.

We also observed that selection of a firm outside of the City/Municipality, perhaps with multiple cities in their clientele, enabled the larger firms to gain important insight into the issues and experiences of other cities faced with similar issues to Takoma Park, including best practices and lessons learned.

On the other hand, a small local firm may have significant historical knowledge about the particular jurisdiction and issues unique to that location. A local firm may also have strong ties to the community and local constituencies.

SUMMARY OF TASK FORCE FINDINGS

The LSRAG developed the following information using the methodology described above.

LEGAL REPRESENTATION REQUIREMENTS

The LSRAG concludes that the City requires legal representation and advice in the following areas of law:

Police Matters	Union/Pension
Employment	Union, Pension, HR matters, Policies, Training
Landlord Tenant	COLTA
Labor/Management	HR
Transportation	Street, Public, Vehicles
Economic Development	Opportunity Zones, i.e. New Hampshire Avenue Corridor, Takoma Junction, Flower Avenue, Washington Adventist University, Business Development and Incubation
Planning	Zoning, Code, Building Standards, Regulations
FOIA	Requests Increase During Controversial Matters

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Litigation	Risk Assessment, Status Reports, Unresolved Matters, Judicial Matters, Settlements
Telecommunications	Cable, Satellite, PEG Channel
Real Property	Abandonment, Vacancy, Acquisition, Improvements, Special Assessment Appeals, Easements, Parks, Land Use, Public Improvements, Rights-of-Ways, Deeds
Environmental	Stormwater, Sanitation, Tree Commission
Procurement	Municipal Contracts, Review and Drafting
Code Revision	Draft of Ordinances, Resolutions, Update Code Overall
Code Enforcement	Municipal Infractions, Nuisance matters
Finance	Bonds, Securities
Insurance	Torts, Health, Liability
Legislation	Draft and Review Ordinances and Resolutions, Policies, Best Practices
General Legal Advice	Legal Opinions on Municipal Matters, Updates on New State and Federal Legislation and Judicial Decisions Impacting Municipality with Suggested Amendments, Subpoenas, FOIA, Election Law

CURRENT LEGAL REPRESENTATION UTILIZED BY THE CITY

LRSAG determined that the City currently receives legal advice from two sources: 1) the City Attorney; and 2) specialized counsel, as necessary.

Specialized counsel are retained for areas of the law that require specific expertise, like labor law, some development matters, telecommunications, and insurance defense. As a general matter, the engagement of specialized counsel is procured on an hourly basis.

The more frequently used counsel is the City Attorney (“City Attorney”). The scope of the City Attorney representation is established by the Contract for Legal Services dated February 1, 2015, between Silber, Perlman, Sigman & Tilev, P.A. and the City of Takoma Park, Maryland (“contract”). The representation is procured on a monthly flat fee arrangement with a billable escalator for specialized services, which are envisioned as rare.

CURRENT QUALITY OF WORK RECEIVED BY THE CITY VIA THE CITY ATTORNEY

As noted above, the LSRAG interviewed several individuals, including the Mayor and Councilmembers, City staff, and other city managers in similarly situated cities to better inform its analysis of the quality of legal work currently received by the City Council. Since the City Attorney is tasked with a wider range of legal responsibilities and has more frequent contact with

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the City Council and staff, the information gathered by the LSRAG is naturally more related to the City Attorney's role and performance.

TASK FORCE RECOMMENDS A LEGAL QUALITY OF WORK STANDARD

The LSRAG recommends that the City Council include the following elements in any future assessment of the quality of legal services received by the City. These best practices for qualitative analysis of legal services was informed by our review of applicable literature and the feedback we received from our interview process.

Quality of Work	Analytical ability/attention to detail/logical reasoning
Response Time	Being a priority, setting a time to be accessible, deal with time sensitive matters accordingly
Conflicts	Objective standards development to determine actual and/or potential conflicts
Proactive	Knowledge of external information that directly impacts City
Reactive	Develop a plan to be reactive on time sensitive matters while creating a plan to be proactive on upcoming matters
Advocacy	Develop an advocacy plan to roll out yearly
Sound Judgment	Confident in judgment
Persuasiveness	Ability to bring stakeholders on to same page
Writing ability	Grammar, Spelling, writing style as to the level of legalese
Research Skills	Access to research tools
Creativity	Out-of-the-box thinking/brainstorming
Attendance at Meetings	Ability to access pulse of community and culture within
Agenda/Minutes Review	Ability to access pulse of community and culture within
Budget	Maintain detailed billing
Respect/Relationship	Builder of relationships
Problem Solver	Go-to person who can competently solve City-related issues.
Organized	Quickly and easily accessible by client and firm

PROFESSIONAL SKILLS REQUIRED FOR LEGAL REPRESENTATION UTILIZED BY THE CITY

The City Council and staff desire an innovative lawyer(s) who can assist the Council in addressing a wide array of complex and unique legal matters. The Council expressed the need for legal counsel to be proactive in identifying and addressing matters of legal and political

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importance to advance the City's progressive values. These tasks require counsel to keep informed about challenges facing the City, understand the political implications of matters before the Council, and provide responsive legal advice.

The City must continue to retain specialized counsel in specific areas of law that is outside the expertise of the City Attorney.

REQUIRED PROFESSIONAL SKILLS FOR CITY LEGAL REPRESENTATION

The City Council and staff want to engage a team of passionate lawyers to represent its interests, including a City Attorney and specialized counsel. The LSRAG identified the following non-legal professional skills that we believe are critical in opening up a productive dialogue in the attorney/client relationship, while building trust between the parties. We compiled this list of professional skills identified by Councilmembers and professional City staff, and a review of relevant literature:

PROFESSIONAL SKILLS

ADDITIONAL FACTORS TO CONSIDER

Trust	Reputation
Leadership qualities	Track record
Style	Office size
Passion/Motivation	Office location
Genuine desire to help	Language abilities
Integrity	Cultural sensitivity
Humility/sensitivity	Knowledge of forum, judges, opposing counsel
Simplicity	Internal politics
Empathetic listener	Legal Team: attorneys, non-attorney & technical staff
Confidence	Tech platforms for clients
Persistence	Diversity of firm
Discipline	Credentials of legal team
Dependability	Training of City Staff experience
Loyalty	Access to industry resources/news
People Skills	Media/PR Team
Work under pressure	Privacy/Confidentiality and security of matters

REVIEW OF THE CURRENT LEGAL SERVICE AGREEMENT (CONTRACT)

The LSRAG determined that the current contract for the City Attorney contains deficiencies that may contribute to some of the issues the City has identified it requires for the effective delivery of legal services. The monthly retainer amount has no mechanisms to determine if it is cost-effective for the City. For example, the current monthly retainer is about \$152,500.00/year (~\$12,700/month), but it is not possible to assess if the City is receiving sufficient value for the

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retainer. There is no detailed billing required or provided by the City Attorney, so the return on investment is unknown. At times, the City Attorney has asserted that the retainer would not adequately cover the number of hours worked if converted to an hourly basis, but there is no way to verify those assertions. For instance, if the City paid the City Attorney at a rate of \$150.00/hour directly, they should have received 960 hours of legal work under the retainer to break even. We observed that the flat fee plus overage structure of the current contract has led to possible misunderstandings between the City Council, professional staff and City Attorney about the amount of work required and provided by the City Attorney.

A second issue of concern is the scope of legal work that is covered by the monthly retainer amount. The scope of work covered under the retainer is vague and lacks a reflection of the actual needs of the City (and expectations). In addition, the individual determining what falls under or outside of the vague terms is the City Attorney, which we determined poses a conflict of interest (though we note that work not covered under the retainer must be approved by the City Manager). There is no objective method contained in the contract to elaborate on what is included in the flat fee portion of the compensation, and which issues warrant an additional fee. In addition, the City Attorney also determines if they have the legal expertise to handle specific areas of law. If the City Attorney decides they can represent the City on a particular matter, they retain the work, regardless of the efficacy of the representation. We received comments from interviewees that some matters retained by the City Attorney should most likely have been referred to specialized counsel due to the amount of time required for the City Attorney to research unfamiliar issues in order to provide competent counsel. There should be a more objective process to make this assessment. Without agreed parameters for the City Attorney's scope of representation, we believe the City Attorney has the potential for a direct conflict in determining their own expertise. Some interviewees observed that the City Attorney has a strong financial interest in reserving legal work to itself, even in areas in which its expertise has not been established. No waiver process for potential conflicts exists within the contract. We believe it is essential to include a specific waiver process for possible conflicts of interest in any future agreement for legal services that the City executes.

A third issue is the need for the City Attorney to train the staff on various legal matters that will aid the flow of documents and review needs. For example, if the City Attorney agreed to one or two training sessions per year, the staff could select the topics to be covered, which may include human resource matters, sexual harassment matters, or contract review tools. Currently, outside counsel provides some of this training.

A fourth issue is the need for the City Attorney to meet with various boards, such as the Election Board, Ethics Board, and the City Council itself. This will enable the City Attorney to better

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understand the needs of the board while developing better relationships and a deeper understanding of the cultural makeup of the boards.

Lastly, the discussions with other municipalities revealed some important data on the budget and composition of the legal team these similarly situated municipalities have employed. Specifically, the average dollars spent per year on outside counsel, in total, ranged from \$150,000 to \$220,000, at an average hourly rate of \$150.00 to \$175.00 for partners and associates, and \$120.00 to 130.00 for clerks and paralegals. It is important to note that the municipalities work often with paralegals, when possible, to conserve the budget.

THE LSRAG'S RECOMMENDATIONS

The LSRAG makes the following recommendations based on our analysis:

Recommendation #1:

Determine the legal skills and personal quality skills required for the City's counsel.

Recommendation #2:

Extend a Request for Proposals to firms that meet the conclusions of recommendation #1 task above and comments herein.

Recommendation #3:

Determine the minimum requirements that should be included in the contract for outside counsel. These requirements should consider hard (legal expertise) and soft skills (professional skills) that the Council and staff desire in an attorney. The LSRAG recommends that a future review process for the desired legal counsel identify certain goals in both substantive and non-substantive areas and provide constructive feedback as to how those goals are met. The attorney-client relationship is more nuanced than sufficiently completing a legal task. Given the public nature of the City Council's duties and responsibilities, there is a need for counsel that recognizes the "politics" of certain legal issues, and thus any future review or appraisal process for the City Attorney must take this into account.

Beyond the professional skill requirements, the LSRAG has developed this non-exhaustive checklist (below) for the City to consider when negotiating outside counsel contracts:

Budget increase	Increased budget for legal services, as legal issues are on the rise for the City and the review of the Code has been delayed due to lack of budget for years.
Retainer specificity	Detailed tasks and expectations (i.e. review agenda/minutes/video of meetings, x number of emails from Council Members per month)

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Removal of monthly retainer	Consider removing monthly retainer and convert to a lower hourly rate for one year. ROI assessment at end of year and determine cost effectiveness
Alternative fee arrangements	Other than hourly billing, Outside Counsel needs to be willing to consider: <ul style="list-style-type: none"> - Fixed/flat fees provide predictable pricing for routine legal matters (5-page contract cost x amount) - Blended hybrid rates where Outside Counsel charges an agreed rate for ALL attorneys staffing a legal matter - Capped fees, which are based on the number of hours each attorney bills to the matter at that attorney's usually hourly rate, but the law firm agrees that the total bill cannot exceed a capped amount/pre-set - Collared fees where City pays the Outside Counsel hourly fees subject to a case budget and a collar (a range above and below the budget, typically 10%). If the total fees are less than the lower collar amount, outside counsel receives a bonus. If the total fees are higher than the upper collar amount, the City receives a discount off the Outside Counsel's regular hourly rate. - Holdbacks where the City withholds an agreed fee amount until a certain result is achieved or until the end of the matter - Success fees where the City pays the law firm a bonus for achieving a certain result - Contingent fees where the City pays the Outside Counsel a percentage of the total financial recovery obtained in a matter
Specialized firms	Maintain a pre-approved list of firms for specific areas of expertise that fall outside the counsel firm selected (negotiate hourly rate with specialized firms ahead of need)
Staff training	Conduct annual legal training for City Personnel (done by selected Outside Counsel).
Varying hourly	Select a varying hourly rate for Partner, Associates, Paralegal, and Administrative and determine when items can be done at a lower rate
Review plan	Set a time frame in which the outside counsel contract will be reviewed, that will not be influenced by politics, an election, etc...
Conference/Membership fees	City solely cover Maryland Municipal League or Maryland Municipal Attorneys' Association registration fee, shared by all other municipal clients of firm/attorney and exclude International Municipal Lawyers Association fees and bar fees.
Implement Legal Project Management (LPM) System/Plan	Defining a matters scope, including: <ul style="list-style-type: none"> - Setting a clear goal against which to measure the matter's success - ID the legal work that must be performed - Outline the steps that must be taken to complete the legal work - Determine the legal team size for a project (attorney, legal assistant, paralegal)

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	<ul style="list-style-type: none"> - Set a schedule for completing each work phase and a monitor platform - Determine a budget
Outsourcing	Use legal process outsourcing (LPO) providers that can complete tasks such as: litigation document review, trademark search)
Analyze matter outcome	<p>At the end of a task/matter, analyze the outcome by considering:</p> <ul style="list-style-type: none"> - Compare outcome and cost to predicted - Positive/negative factors that contributed to outcome - Lessons learned by legal team/City personnel - Ways to do things differently in future matters - Rate outside counsel via feedback from stakeholders
Most Favored Nation Clause	Some outside counsel guidelines require that law firms bill the company at the lowest billing rates for any of their similarly situated municipal clients
Office tasks	Do not allow Outside Counsel to bill for copying and other overhead expenses
Travel expenses	Place tight restrictions on travel and meal expenses
Legal research	Require prior approval
Matter staffing	Set level of attorney on matter, diversity and dis-allow staffing changes without client consent
Meetings	Invite Outside Counsel to meet key employees annually
RFP	<p>Outside Counsel submissions need to include:</p> <ul style="list-style-type: none"> - Present their capabilities - Introduce the matter team of all levels within Outside Counsel - Submit a bid that includes a detailed estimate of all fees and costs - Provide a list of previous engagements for similar matters - Provide client references
Institute the 9 F's	<ul style="list-style-type: none"> a. First-rate attorney/firm <ul style="list-style-type: none"> i. Knowledgeable on the relevant subject matter ii. Analytical iii. credible/honesty/meet deadlines/refrain from aggressiveness iv. Articulate properly to all types of people v. Interested in issues vi. Confident, not arrogant vii. Willing to recognize perfect is often the enemy of the good viii. Ready to speak up ix. Push back respectfully b. Fast learner and responder <ul style="list-style-type: none"> i. Quickly get up to speed ii. Bring business and legal head to issues c. Focused

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	<ul style="list-style-type: none">i. Good listenerii. Go extra miled. Facilitator<ul style="list-style-type: none">i. Recognize your specific value to the organization/cliente. Friendly<ul style="list-style-type: none">i. Treat client/city personnel professionallyii. Keep cooliii. Look for opportunities to complement their ideas or strategiesf. Forecaster<ul style="list-style-type: none">i. Credibilityii. realisticg. Finder of solutions<ul style="list-style-type: none">i. Be option oriented, not obstacle orientedii. Brainstorm with clientiii. Don't dismiss ideas until thought throughh. Finisher<ul style="list-style-type: none">i. Completeii. Timeiii. Confidence in sign off
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LSRAG believes Takoma Park strives to be a leader in community initiatives that often are precedent setting statewide (and even nationwide). This community practice often entails cutting edge legal issues which require foresight, a high level of legal expertise to project legal trends, novel and insightful legal approaches, additional research, and thus, incur corresponding additional fees.

LIST OF TASK FORCE MEMBERS

- a. Ellen Zavian (Chairperson of LSRAG), Attorney, Takoma Park residence (2003-present), Focus on transactional, negotiation, labor, and arbitration matters. Professor of Law.
- b. Rizwan A. Qureshi (Former Ward 3 Councilmember), Assistant United States Attorney, U.S. Attorney's Office for the District of Columbia.

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- c. Anne Hollander, Attorney, Takoma Park resident (2000 - present), Senior Assistant Attorney General, Legal Counsel Division, Office of the Attorney General for the District of Columbia.

- d. Staff Liaison: Jason Damweber, Deputy City Manager

Thank you for the opportunity to serve on this important task force. We welcome any questions you have on this report.