

Lompoc City Council Agenda Item



City Council Meeting Date: July 16, 2013

TO: Honorable Mayor and Council Members

FROM: Joseph W. Pannone, City Attorney
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SUBJECT: Public Employee Evaluation: City Attorney Response to Evaluation Comments

Recommendation:

Staff recommends the Council discuss the below comments and responses and provide input and direction, as desired.

Background/Discussion:

As permitted by the Brown Act, the City Council recently completed a closed session evaluation of the City Attorney's performance. As part of that effort, several questions were provided the City Attorney for review, response and discussion. The City Attorney advised three of those questions and responses were not topics allowed to be discussed in closed session. The Council directed those questions and responses be placed on a public agenda.

Those three questions and City Attorney's responses are:

Question 1 – Discuss your recommendations on actions the City could take to reduce the bill with your firm. This could include, but not be limited to, reducing the frequency of your visits to Lompoc through scheduling or through alternative communication methods such as video conferencing.

Response 1 – Cost control of legal bills is of utmost importance. Using forms and templates is one means to reducing those costs, which we do at present. Having the City's counsel attend Council/Commission/Board public meetings by teleconference is technically possible, but not recommended. Physical presence during those meetings is important for that counsel to understand fully the context of matters being handled in public sessions.

Physical presence in Lompoc is typically not needed at times other than when I am at City Hall for regular office hours. I do not have regular office hours with either of my other city clients; nor did I have those during my tenure as City Attorney for two other clients. However, during my presence at Lompoc City Hall, there are many times when a matter can be handled much more quickly,

effectively and efficiently, and at no additional cost to the City. It's likely if the same were attempted by *ad hoc* contact or teleconferencing the efficiency and effectiveness could be lost. Regularly scheduling a teleconference meeting, as opposed to presence at City Hall, could be an alternative. Again, however, the day-to-day nature of the legal issues that may face the City does not always conform to the time frames of pre-scheduled meetings, whether by teleconference or on-site. In fact, meetings for which my presence is needed are typically set for when I would otherwise be present at City Hall or are handled by teleconference. Lastly, there are many times when I am present at Lompoc City Hall, which provides the ability to respond quickly to questions, but no pressing Lompoc issues are at hand and I am actually working on other clients' matters. During those times, Lompoc is not billed for my immediate availability.

Question 2 – Discuss the consolidation of legal work traditionally done by other firms for the City into your firm.

Response 2 – In addition to the services my firm provides for day-to-day City Attorney services, we are also providing the City legal assistance in the following specialized issues and areas:

- labor negotiations and personnel
- utilities
- transportation and airport
- telecommunications
- water rights
- litigation for personal injury and extraordinary writs
- successor agency and oversight board issues
- CEQA review and planning matters
- code enforcement
- police matters
- economic development
- public financing, including grants

Some of those services are provided while present at City Hall during regular office hours.

Question 3 – Discuss why the current contract with your firm, in Exhibit A #5, the recovery rate is set at \$300 per hour, which is higher than the rate paid to your firm. Explain how and why this rate was set.

Response 3 – The \$300 per hour was set for when the City is being reimbursed from a developer. While still quite low, comparatively, that fee was set as being more reflective of what private parties pay for such services. The higher fee can

help subsidize the lower rates the firm charges Lompoc overall. To date, the firm has not charged that higher fee in Lompoc.

The hourly rates the firm charges Lompoc are \$150 for the first 50 hours per month of regular City Attorney services, and \$165 for any hours per month over that. In addition, our rate is \$180 for non-risk management litigation and special services, \$165 for risk management litigation and Code Enforcement, \$180 for Successor Agency related matters, \$95 for law clerks and paralegals and \$45 for document clerks. The firm has not increased any of our rates since we started serving as City Attorney on November 3, 2009.

Fiscal Impact:

The FY 2013-15 Budgeted appropriations for attorney services are adequate to support the current level of services provided by Aleshire & Wynder for the range of services utilized by the City. In particular, it is anticipated the level of support needed to assist the Successor Agency's winding down of the former Lompoc Redevelopment Agency will be less during the FY 2013-15 budget cycle than it has been since the enactment of AB X1 26 and AB X1 27 on June 28, 2011.

Conclusion:

The City Attorney will be ready to respond to questions and comments the Council may have regarding the above.

Respectfully submitted,

Joseph W. Pannone, City Attorney

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Laurel M. Barcelona, City Administrator