



CITY OF MILPITAS

CITY COUNCIL CITY ATTORNEY SUBCOMMITTEE AGENDA REPORT

Item Title:	Receive a report from staff regarding transition to an in-house City Attorney and provide direction
Category:	Leadership and Support Services
Meeting Date:	8/13/2021
Staff Contact:	Ashwini Kantak, Assistant City Manager, 408-586-3053 Jeannine Seher, Human Resources Director, 408-586-3086
Recommendation:	Receive a report from staff regarding transition to an in-house City Attorney and provide direction.

Background:

On June 22, 2021, City Council reported out of closed session its decision to transition to an in-house City Attorney, moving away from the current contract model. At the August 5 City Council meeting, Council approved the establishment of an ad-hoc City Council Subcommittee, comprised of Mayor Tran and Vice Mayor Montano, in order to provide further direction to staff to transition to an in-house City Attorney's Office, including the recruitment of the Council appointee.

Legal services are currently provided by the firm of Best, Best & Krieger (BB&K). Transition to an in-house City Attorney office will require several steps including the recruitment, selection, and appointment of a City Attorney, development of a staffing model and recruitment of other positions in the City Attorney office, and transfer of all legal work from BBK to the in-house City Attorney office. Based on benchmarking done by staff of other peer cities as well as the City's past experience when it had an in-house City Attorney office, selection of a legal firm to provide specialized services will also be required.

Analysis:

To ensure a smooth and timely transition, staff is seeking direction from the Subcommittee on the following:

1. City Attorney desired qualifications
2. Timeline and process for the following:
 - a. Recruitment of the City Attorney
 - b. Selection and confirmation process by the City Council
 - c. Transition to an in-house City Attorney office
3. Next Steps

Based on Subcommittee input, staff will present an amendment to Resolution No. 1626 to the City Council on September 7, 2021 to authorize the City Attorney position, including an amendment to the classification plan and the citywide budgeted allocated positions.

Proposed City Attorney Desired Qualifications

The experience, education, licenses and knowledge, skills and abilities for the City Attorney class specification are listed below. Staff requests the Subcommittee review and provide input on any suggested edits.

Experience: Seven (7) years of experience practicing law with at least five (5) years of substantial municipal law in the State of California and includes at least two (2) years' experience at a management level in a governmental legal office.

Education: Juris Doctorate degree from an accredited school of law.

License or Certificate: Active membership in the State Bar of California and Possession and maintenance of a valid California Driver's License is required.

Knowledge of:

- Organization, duties, powers, limitations, and authority of City government and the City Attorney's Office.
- Legal principles and practices, including civil, criminal, constitutional, and administrative law and procedure.
- Ordinances, statutes, and court decisions relating to municipal corporations.
- Laws and practices with specific reference to redevelopment and community development.
- Judicial procedure and rules of evidence.
- Methods of legal research.
- Established precedents and sources of legal reference applicable to municipal activities.
- Principles and practices of public administration.
- Principles and practices of effective office management and supervision.

Ability to:

- Communicate clearly and concisely, orally and in writing.
- Effectively plan, organize, and direct the activities required of a municipal legal office.
- Organize, interpret, and apply legal principles and knowledge of complex legal problems; effectively apply legal knowledge and principles in court.
- Present statements of law, fact and argument clearly and logically.
- Prepare and present difficult cases in court.
- Conduct research on complex legal problems and prepare sound legal opinions.
- Properly interpret and make decisions in accordance with laws, regulations, and policies.
- Establish and maintain effective working relationships with employees, public officials, other departments and agencies, and the general public.
- Select, supervise, train, and evaluate assigned staff.

Recruitment

Consistent with other Council appointee and executive management level recruitments, staff recommends contracting with an executive recruiter to maximize outreach and to attract candidates, including passive candidates who may be open to changing employers, but who are not actively engaged in a job search. Through the use of an executive recruitment firm, a recruitment brochure will be developed to describe the opportunity, highlight the City as an employer, explain important details regarding salary and benefits, and to describe the ideal candidate to help ensure a fit within the organization.

In order to successfully recruit candidates to the City, the following steps must be completed:

Description of Task	Responsible Party(ies)
Review and update Class specification	Human Resources
Provide input on ideal candidate, job competencies and qualifications	Subcommittee and Council
Complete salary analysis for City Attorney	Human Resources
Submit and recommend approval of an amendment to Resolution 1626 to authorize the City Attorney position	Human Resources to submit; Council to authorize
Contract with Executive Recruitment Firm	Human Resources
Establish timelines and process for recruitment	Human Resources & Executive Recruiter with Subcommittee and/or Council presentation
Conduct recruitment and selection process	Executive Recruiter
Contingent job offer; background process for final candidate	Executive Recruiter & HR (Live Scan)
Salary negotiation and final job offer	Executive Recruiter & HR

An executive recruitment typically takes 12-15 weeks on average, depending on the number of meetings, interviews and steps involved in the process. In order to help expedite the recruitment process, staff is seeking direction on the ideal candidate, job competencies and qualifications from the Subcommittee at the August 13 Subcommittee meeting.

Additional input from the Council and community can be solicited by staff and the Council at the September 7 Council meeting.

A tentative timeframe for the recruitment is included below. Staff is seeking input from the Subcommittee on the process, specifically the role of the Subcommittee and Council during the selection process. For example, would the Subcommittee like to screen the finalists and recommend a shortlist to the Council?

Estimated Activity Time Frame

The steps below reflect typical steps in the recruitment process. Some of the activities can be completed prior to bringing the matter to Council – such as securing the executive recruiter, drafting a tentative timeline and developing a draft recruitment brochure.

No.	Action	Time Frame	Approval/Lead
1.	Execute contract with executive recruiter	3 weeks after Subcommittee direction	City Manager or designee
2.	Project Organization – discuss process, schedule	1 week	Human Resources
3.	Candidate Profile Development – seek input from Subcommittee and Council	1-2 weeks	City Manager or designee, based on input from Subcommittee and Council
4.	Recruitment – advertise, outreach to potential candidates	4 weeks	Executive Recruiter
5.	Preliminary Interviews – screen resumes and applications, conduct interviews	2-3 weeks	Executive Recruiter
6.	Recommend finalists to City and Subcommittee – written recommendations, virtual meeting to provide overview of candidates	1-2 weeks	Executive Recruiter to present to City staff. Could be potentially presented to Subcommittee in closed session, based on legal analysis, or the City Council in closed session
7.	Finalists interview process	1 week (includes second round, if needed)	Subcommittee in closed session, based on legal analysis, or City Council in closed session
8.	Second round of finalist interview (if needed)	N/A	City Council in closed session
9.	Background check and negotiations with leading candidate	2 weeks	Executive Recruiter
10.	City Council approval of Council Appointee’s contract	1-2 weeks	City Council in closed session
11.	Confirmation of Council Appointee	2 weeks	City Council in open session
12.	Candidate gives notice to current employer	3 weeks	Selected candidate

Transition to an in-house City Attorney Office

As stated earlier, a transition to an in-house City Attorney Office will require not just the hiring of the City Attorney but also the development and implementation of an in-house staffing model and the selection of a firm to provide specialized services. This will likely require 3-6 months after the City Attorney is in place. A more detailed plan will be brought forward for Council consideration by the future City Attorney.

Next Steps

The transition to an in-house City Attorney will involve several next steps as noted below:

No.	Timeframe & Venue	Action	Approving/Responsible Entity
1.	August 13 Subcommittee Meeting	Seek preliminary input from Subcommittee on desired qualifications and timeline and process	Council Subcommittee
2.	Subcommittee Meeting (TBD)	Follow up discussion at Subcommittee meeting, if needed	Council Subcommittee
3.	August	Based on direction from Subcommittee, execute agreement with Executive Recruiter	City Administration
4.	September 7 Council meeting	City Council approval of position and input on desired qualifications; enable public comment	City Council
5.	Early September (tentative)	Based on Council input, finalize job specification and recruitment materials	City Administration, Executive Recruiter
6.	Mid-September (tentative)	Begin recruitment	Executive Recruiter
7.	November-December	Engage Subcommittee and/or Council in selection process	City Administration, Executive Recruiter
8.	TBD (based on contract negotiations, backgrounding, and notice time required by selected candidate)	Confirmation of Council Appointee	City Council

Fiscal Impact:

Hiring an executive recruitment firm will cost approximately \$25,000-\$35,000 depending on the number in person meetings required, engagement of the community and advertising methods selected. The contract will be funded from the Unanticipated Expenditure Reserve. The fiscal impact of the in-house City Attorney's Office will be brought forward for Council consideration as information becomes known including the City Attorney's position cost with the appointment of the in-house City Attorney and the Council Appointee's budget requests for staff and non-personnel expenditures.

California Environmental Quality Act:

Approval of the recommendation is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) as it can be seen with certainty that a discussion about establishing a salary range will not have a significant effect on the environment. Further, the item is not a project pursuant to CEQA Guidelines Section 15378(b)(5) as it involves organizational or administrative activities of a local government entity that will not result in direct or indirect physical changes in the environment.

Recommendation:

Receive a report from staff regarding transition to an in-house City Attorney and provide direction.

Attachment: City Attorney draft class specification



CITY ATTORNEY

City of Milpitas

Effective: 09/04/2007
Revised: 2021
EEOC: Admin
FLSA: Exempt
Unit: Management
Physical:

DEFINITION

Under administrative direction acts as legal advisor to, and counsel for, the City Council, Mayor, City Manager and City departments; performs difficult and responsible professional civil and criminal legal work for the City, its agencies, boards and commissions; plans, organizes and directs activities of the City Attorney's Office and performs related work as required. This is an at-will position that serves at the pleasure of the City Council.

DISTINGUISHING CHARACTERISTICS

This single position class manages all City legal activities, including civil litigation, whether performed by in-house staff or outside counsel. Responsibilities also include personally handling sensitive and complex legal matters and rendering advice and opinions to the City Council, Boards and Commissions, the City Manager and others. The incumbent is accountable for accomplishing departmental goals and objectives and for furthering City goals and objectives within general policy guidelines.

SUPERVISION RECEIVED AND EXERCISED

- Receives direction and supervision from the City Council
- Exercises management and supervision of the department

EXAMPLE OF DUTIES – Duties may include, but are not limited to, the following:

- Develops and directs the implementation of goals, objectives, policies, procedures, budget and work standards for the Legal Department.
- Plans, organizes, administers, reviews and evaluates the activities of professional, support and contract staff; selects assigned staff and provides for their training and professional development.
- Provide legal counsel and opinions for the City Council, City staff, commissions, committees and officials in legal matters pertaining to City business.
- Attend City Council meetings and Planning Commission meetings for the purpose of providing legal advice and counsel on matters affecting the City. Also attend other meetings, as requested by the City council or City Manager.
- Draft and review legal documents, petitions, contracts, leases, resolutions, ordinances and other legal documents relative to the administration of legal processes affecting the City.
- Provides legal service to and on behalf of the City, its officers, boards, commissions and departments; renders legal opinions to the City Council, City Manager, and Department Managers as requested; confers with and renders assistance to the City Manager and Department Heads in establishing departmental policies.
- Examine and analyze court decisions and legislation to determine their effect upon municipal affairs.

- Provides legal counsel and assistance in the field of employee relations and provides representation for the City in Workers' Compensation cases and self-insured liability program.
- Prosecute for civil remedies to enforce City ordinances, abate public nuisances, recover for damages to City property, and condemn property for public purpose and other matters.
- Appears before courts and administrative bodies to represent the City's interest as required.
- Serve as the Redevelopment Agency general counsel and monitor Redevelopment Agency legal needs.
- Select, supervise, train and evaluate staff.
- Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

- Organization, duties, powers, limitations, and authority of City government and the City Attorney's Office.
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- Ordinances, statutes, and court decisions relating to municipal corporations.
- Laws and practices with specific reference to redevelopment and community development.
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Ability to:

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- Conduct research on complex legal problems and prepare sound legal opinions.
- Properly interpret and make decisions in accordance with laws, regulations, and policies.
- Establish and maintain effective working relationships with employees, public officials, other departments and agencies, and the general public.
- Select, supervise, train, and evaluate assigned staff.

EDUCATION AND EXPERIENCE

Experience: Seven (7) years of experience practicing law with at least five (5) years of substantial municipal law in the State of California and includes at least two (2) years' experience at a management level in a governmental legal office.

Education: Juris Doctorate degree from an accredited school of law.

LICENSE OR CERTIFICATE

- Active membership in the State Bar of California
- Possession and maintenance of a valid California Driver's License is required.

SPECIAL REQUIREMENTS

Essential duties require the following physical abilities and work environment

- Ability to work in a standard office environment
- Ability to attend night (evening) meetings
- Ability to travel independently to various locations within and outside the City of Milpitas