



City Council Agenda Item

City Council Meeting Date: July 5, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Dean Albro, City Manager
d_albro@ci.lompoc.ca.us

SUBJECT: Approval of Amendment to Contract Services Agreements for City Attorney and Successor Agency Legal Services with Aleshire & Wynder, LLP; Adoption of Resolution No. 6528(22) Supplemental Appropriations

Recommendation:

Staff recommends the City Council:

- 1) Approve and authorize the City Manager to execute Amendments to the Contract Services Agreements for City Attorney and Successor Agency Legal Services with Aleshire & Wynder, LLP (Attachments 1 and 2), increasing the hourly rates of compensation as described in this staff report; and
- 2) Adopt Resolution No. 6528(22) providing supplemental appropriations for the Biennial Budget Fiscal Years 2021-23 (Attachment 3).

Background:

Aleshire & Wynder, LLP guided the City while it transitioned from an in-house City Attorney and Assistant City Attorney using several separate law firms for specialty work, to being served by one firm with comprehensive municipal law experience and expertise at less expensive rates. The firm not only has expertise and experience with general, everyday legal services needed by local government (Brown Act, Public Records Act, purchasing and contracting), but also handles City legal matters related to personnel, labor negotiations, ethics, public financing (bonds and community facility districts [CFD]), transportation, police and fire, property acquisition and sale, code enforcement, utilities, environmental regulations, storm water, airport, public works, cannabis, annexations, taxes, and complex litigation involving police, land use and development, constitutional, and other issues.

Due to the number of years the firm has served the City, its attorneys have significant institutional knowledge regarding the City and its activities and needs, which is of great benefit to the community, especially with recent personnel changes the City has experienced in upper management positions.

Jeff Malawy serves as City Attorney, advises the City Council and City staff, and manages all legal matters for the City. The firm's litigation team for Lompoc is headed by Steve Onstot and Ross Trindle, who have defended and are handling several land use development, environmental, and police matters in court for the City. Brian Wright-Bushman serves as Assistant City Attorney, covering Planning Commission meetings, advising Planning staff on development issues, and handles complex matters of all sorts for the City. Danny Aleshire continues to spearhead the ongoing effort to advocate for the City's Bailey Avenue annexation application with LAFCO. Gina Chung assists the Police Department with requests and legal actions seeking public records, including personnel information. Colin Tanner and Michael Huston have handled personnel and labor negotiations matters for the City since March 2010. Anita Luck assists the Finance Department with matters such as reissuance of bonds, CFD formation and other financial issues. Ross Trindle also serves as the City Prosecutor, holding office hearings at City Hall, as well as commencing and pursuing court actions for code enforcement when necessary and prudent given available evidence.

Aleshire & Wynder's rates were last increased on July 1, 2017. They have not requested rate increases to keep up with CPI for the past five years, in order to assist the City during its recent years of financial and budgeting difficulties. The cost of operating a municipal law firm in California, including competitive salaries, rent, and health insurance, has significantly increased over those five years. Aleshire & Wynder, LLP is requesting a rate increase because it is necessary at this time to allow the firm to continue to attract and retain qualified and talented attorneys and to cover firm operating expenses.

As shown below, Aleshire & Wynder, LLP, has one of the lowest rates compared to other municipal law firms serving other cities in the area. Even after the requested rate adjustment, their rates will remain under market.

The following table shows Lompoc's current City Attorney rates compared with Solvang and Buellton:

Service Category	Lompoc Current Rates Aleshire & Wynder	Solvang Rates (as of January 2021) Richards, Watson, & Gershon	Buellton Rates (as of January 2019) Burke, Williams, & Sorensen
General Services (first 50 hrs/mo)	\$170	\$225	\$205 (\$10,250 retainer for first 50 hours/mo)
General Services (over 50 hrs/mo)	\$185	\$250	\$260 Partners \$235 Associates

Special Services ¹	\$200	\$250	\$260 Partners \$235 Associates
Litigation	\$200	\$295	\$260 Partners \$235 Associates

Discussion:

Since July 2017, when the last rate change to the City Attorney's contract was made, the Consumer Price Index-LA Region has increased 21.3%. It is recommended to increase the City Attorney's rates at this time based on the compensation increases received by the Management and Supervisor and Confidential (MS&C) employees group since the City Attorney last received an increase (July 2017). Aleshire & Wynder is essentially holding positions in that employment group. Since July 1, 2017, MS&C has received 10% COLA salary increases and is scheduled to receive an additional 4% increase effective July 2022 with a 4% increase scheduled in July 2023. An additional approximately 4% increase is recommended to credit the City Attorney's office for non-salary compensation increases received by the MS&C group since July 2017 (healthcare, etc). Therefore Aleshire & Wynder's rate overall should be increased approximately 18% effective July 1, 2022, with a 4% increase scheduled for July 1, 2023, as shown in the tables below. Future rate adjustments would be subject to City Council approval and would be agendized when the City Council considers MS&C compensation increases.

Aleshire & Wynder is also requesting the reimbursable rate be increased from \$320/hr to \$395/hr (this is charged only when a developer or other private third party has agreed to reimburse the City for the attorney fees). They are requesting the rate for non-contingent municipal bond financing work be increased from \$350/hr to \$400/hr. And rates for insurance defense work to increase from \$185 to \$230, for paralegal and student law clerk work from \$115 to \$140, and for document clerk work from \$65 to \$75. The agreement increases maximum lodging charges from \$150 to \$200 per Council meeting week², and caps travel charges at a maximum of 3 hours per roundtrip to City Hall.

The following tables show what the new rates would be effective July 1, for Fiscal Year (FY) 2022-23 and then for FY 2023-24. The rates are rounded to the nearest multiple of 5. It should be noted these rates are well below the outlying cities within the local area.

The City Attorney rates beginning July 1, 2022 would be the following:

Service Category	Requested Attorney Rates Aleshire & Wynder	Requested Paralegal & Law Clerk Rates Aleshire & Wynder	Requested Document Clerk Rate
General Services (first 50 hrs/mo)	\$200	\$140	\$75

¹ Labor, personnel, redevelopment (successor agency), utilities, and enterprise matters.

² The City Attorney holds office hours in City Hall Tuesdays through Thursdays on weeks containing a City Council meeting.

General Services (over 50 hrs/mo)	\$215	\$140	\$75
Special Services	\$240	\$140	\$75
Litigation	\$240	\$140	\$75
Reimbursable	\$395	\$140	\$75
Non-contingent bond financing	\$400	\$140	\$75
Insurance Defense	\$230	\$140	\$75

The City Attorney rates beginning July 1, 2023 would be as follows:

Service Category	Requested Attorney Rates Aleshire & Wynder	Requested Paralegal & Law Clerk Rates	Requested Document Clerk Rate
General Services (first 50 hrs/mo)	\$210	\$145	\$80
General Services (over 50 hrs/mo)	\$225	\$145	\$80
Special Services	\$250	\$145	\$80
Litigation	\$250	\$145	\$80
Reimbursable	\$395	\$145	\$80
Non-contingent bond financing	\$400	\$145	\$80
Insurance Defense	\$230	\$145	\$80

It should be noted these are not hourly wages paid to the firm's attorneys or staff (or the City Attorney himself). Rather, they support the entire cost of operating a municipal law firm in California. And as stated above, even after the requested rate adjustments, Aleshire & Wynder's rates will remain below market.³

Fiscal Impact:

The majority of the charges for legal services fall under the City Attorney's Office budget. The insurance defense and reimbursable categories are paid separately. Adoption of Resolution No. 6528(22) requires supplemental appropriations for FY 2022-23. Funding for the supplemental appropriations are as follows:

³ The Second Amendment to Agreement for Successor Agency Legal Services will also make a technical cleanup change to list Jeff Malawy as the Successor Agency General Counsel, which was not done when Mr. Malawy was appointed City Attorney in 2019.

Budget Adjustments			
Account No.		Account Name	Amount
To:	110ATT-533200	City Attorney Prof Svcs – Legal	\$108,000
From:	110-321100	General Fund Balance Designated	\$108,000

Conclusion:

Approval of the rate increases in the attached Amendments will bring the City Attorney's Office's rates more in line with their costs, and help them to continue to retain and attract competent employees who assist the City with its various legal requirements.

Respectfully submitted,

Dean Albro, City Manager

- Attachments:
- 1) Proposed Third Amendment to Agreement for City Attorney Services
 - 2) Proposed Second Amendment to Agreement for Successor Agency Legal Services
 - 3) Resolution No. 6528(22)