



OFFICE OF THE CITY MANAGER MEMORANDUM

DATE: August 26, 2013

TO: Honorable Mayor and City Council

FROM: Brian M. Kischnick, City Manager
Sehrish Salah-Ud-Din, Assistant to the City Manager
Gary Mayer, Chief of Police
Lori Bluhm, City Attorney

SUBJECT: City Attorney's Office Prosecution Services Evaluation

On July 22, 2013, City Council asked the City Manager to develop options assessing the ICMA recommendation for the Law Department specifically dealing with outsourcing prosecution services. This is a follow-up on the status of the ICMA recommendation. The following is a discussion on the background studies and potential outline for future evaluation and next steps.

Background Studies

Before discussing study criteria, it's important to highlight the study that the International City/County Management Association (ICMA) conducted for background knowledge. On January 26, 2011, ICMA reported to the City of Troy the recommendations of the study they did for the City. ICMA did an overall and departmental analysis of City departments to support the City's ongoing effort to address significant financial challenges. ICMA worked with the International Municipal Lawyers Association (IMLA) to research and conclude the findings for the Troy Law Department at an approximate cost of \$14,000. The research and findings for the, City Attorney Office are outlined from pages 79- 94 in the ICMA report.

Per their findings and recommendations, ICMA lists outsourcing the legal services department not as a recommended practice. It was stated that based on the size of the City and its various operations, the City operates the Attorney Office at a barely sustainable level. At the time of the study and per current operations, the attorney's office has 7 full time employees.

The following was given to support **why the City should not outsource Troy's legal department.**

- 1) Cost of City Attorney services appear generally lower than comparable costs for insurance defense.

- 2) Cost of City Attorney services are substantially lower than comparable costs for insurance defense.
- 3) Efficiencies and advantages of in-house services outweigh advantages of outsourcing.

However, **it was also recommended that some of the city's legal services should be analyzed further for outsourcing using private, public-private options for analysis, including all or part of the function.** Those services are as follows:

- 1) Prosecutorial function
 - Evaluation should include whether to transfer this function to the county (similar to evaluation of whether to transfer police function to the sheriff).
- 2) Eminent domain cases
- 3) Collection Cases

Some ***advantages per ICMA/IMLA for outsourcing*** include:

- 1) If a city outsources, it can be an attractive client for several reasons. Most cities pay their bills on time and most private firms will frequently offer lower rates to a government client because the steady income stream can support its overhead while it makes its profit elsewhere. Therefore, the city may be able to get an attractive bid.
- 2) Benefits in timeliness and in accommodating a fluctuating demand for services.
- 3) Benefit of law firm's malpractice insurance.
- 4) If an outside counsel makes a mistake, the city may have a recoverable claim.

Some ***disadvantages per ICMA/IMLA for outsourcing*** include:

- 1) Dismantling the law department means that the city must rely on outside representation for several years.
- 2) Switching from in-house to outside counsel, the City risks losing the benefit of "preventative maintenance." "An oil change and a new oil filter every few thousand miles will generally be less expensive than a major engine repair" (ICMA 87).
- 3) The outside counsel contract would be more intricate than the in-house contract. Outside counsel contract will need to protect the City against unanticipated expenses that would be covered if in-house counsel were continued.
- 4) If an outside counsel is pursued, the city should "structure an RFP that would protect the price advantage for at least 5 years by locking in rates for that period at least ensuring that they escalate only to the extent that the City's budget can afford as escalator: i.e., tie any increase into affordability, not some external factor such as CPI" (ICMA 86).

Study Outline

The following study outline is presented for discussion and consideration regarding the evaluation of the in-house City Attorney Prosecution Services.

City Attorney Prosecution Services Evaluation Outline

1) Define “Prosecution” and Identify Volumes for each type of Case/Procedure

a) Types of Cases

i) Criminal Matters

- a) Alcohol
- b) Drugs
- c) Theft offenses/Retail Fraud
- d) Domestic Violence
- e) Assaults
- f) Disorderly/Disturbing the Peace
- g) Destruction of Property
- h) Firearms

ii) Traffic Misdemeanors and Civil Infractions

- a) Operating While Intoxicated
- b) Suspended Drivers
- c) Preliminary Breathalyzer
- d) Driver's License Appeals
- e) Motor Carrier Violations

iii) Municipal Civil Infractions and other Misdemeanor matters

- a) Liquor licenses
- b) Massage parlors
- c) Smoking lounges
- d) Nuisance claims
- e) Zoning enforcement
- f) Building code violations
- g) Fire code violations including Fireworks
- h) Citizen Complaints that do not warrant initiation of criminal charges

b) Criminal Procedures

- i) Warrant Review
- ii) Discovery (e.g. reports, audio/video recordings)
- iii) Witness interviews
- iv) Evidentiary Hearings
- v) Motion Practice (drafting and responding)
- vi) Bench Trials
- vii) Jury Trials
- viii) Appeals
- ix) Probation Violations
- x) Administrative Search Warrants

2) Literature Review

- a) Review 2010 ICMA/IMLA Study
(International Municipal Lawyers Association)
- b) Discuss with ICMA/IMLA Study Authors

3) Discuss Prosecution Reputation/Service of City Attorney with the following:

- a) Internal - Police Department, Fire Department,
Public Works
- b) External- District Court Judges, Magistrates,
Court Administrator and Staff, Probation Officers

4) Financial Breakdown/Bucket Cost of Prosecution Service in City Attorney's Office

5) Evaluate In-House vs. Contracted Out

- a) Cost
- b) Logistics
- c) Access
- d) Services to City Departments
- e) Impact on other departments (intangibles)

6) Identify Comparable Communities and Evaluate Similarities and Differences

7) Conclusions

Next Steps

If council directs staff to facilitate further study/analysis of the Troy City Attorney Prosecution Attorney Services, an objective, outside consultant should be selected to perform the work. A peer review group may be utilized in addition to a municipal legal consultant to add a layer of analysis, review and objectivity.