

**Charter Review Committee
Supplemental Report to City Council
Elected/Appointed City Attorney
May 10, 2010**

This supplemental report contains the following sections:

1. Draft language for an amendment to the City Charter, prepared by City Attorney Robert Zweben;
2. Draft language for a clause to address the concurrent election of City Attorney;
3. Question about who writes the City Attorney impartial analysis of the ballot measure;
4. Model City Charter text related to City Attorneys;
5. City Attorney impartiality when working with divided City Councils;
6. Information on the costs of appointed and elected attorneys;
7. A discussion of civil rights issues related to elected/appointed City Attorneys.
8. RFP from StopWaste.Org (as requested by Mayor Wile);

Section 1. Draft language for an amendment to the City Charter, prepared by City Attorney Robert Zweben

**ALBANY CITY CHARTER
PROPOSED CHARTER MODIFICATION TO SECTION 3.01**

SECTION 3.01. OFFICERS AND EMPLOYEES. All officers and department heads, except as otherwise provided, shall be appointed by the City Council and shall hold office at the pleasure of the City Council. The City Treasurer ~~and City Attorney~~ shall be elected from the City at large, and shall hold office for four (4) years and until ~~their a successors are is~~ elected and qualified. Effective at the November 2010 election, the City Attorney shall be elected from the City at large for a term ending on December 5, 2011. Commencing December 6, 2011, or sooner if there is a vacancy in the office, the City Attorney shall be appointed by the City Council as provided herein. The Council shall establish by ordinance the administrative offices of the City and shall designate the department heads of the City. The City Council shall be empowered to create, abolish, or reorganize departments and divisions as necessary for the proper administration of the City business, but not inconsistent with other sections of this Charter. (Amended, ratified, August 16, 1967; May 29, 1968; April 15, 1975; April 13, 1976; April 21, 1981; November 6, 2001)

Section 2. Draft language for a clause to address the concurrent election of City Attorney

See Section 3 above. The draft amendment includes this language. The Charter Review Committee concurs with the language proposed for this amendment to the City Charter.

Section 3. Question about who writes the City Attorney impartial analysis of the ballot measure

As the current City Attorney may be a candidate for re-election in the November election, should the City Council engage another qualified attorney to write the impartial analysis of the ballot measure?

The Charter Review Committee considered this question, and the discussion reflected views on both sides. Those in favor of the City Attorney writing the impartial analysis stated that concerns about impartiality may arise from a misunderstanding of the difference between the impartial ballot analysis versus arguments for and against the measure, that the City Attorney would present a professional perspective on the measure, and that the city did not need to incur the additional expense of hiring outside legal counsel, particularly as there will be statements for and against the ballot measure in addition to the impartial analysis. Those opposed to the City Attorney writing the impartial analysis stated that the City Attorney has a financial interest in the outcome of this measure, and thus cannot be expected to be impartial, that there may be a conflict with the Regulations of the California Fair Political Practices Commission (FPPC), and that there would be a public perception of bias even if the analysis is impartial. A motion was made to recommend that the City Council engage outside counsel to write the City Attorney impartial analysis of the ballot measure. The motion passed, 3-2, with one abstention.

Section 4. Model City Charter text related to City Attorneys

The National Civic League Model City Charter, 8th Edition, has the following text regarding City Attorneys:

Section 4.03. Legal Officer

(a) Appointment

Alternative I. There shall be a legal officer of the city appointed by the city manager as provided in Section 4.01 (b).

Alternative II. There shall be a legal officer of the city appointed by the city manager subject to confirmation by the city council.

Alternative III. There shall be a legal officer of the city appointed by the city council.

(b) Role. The legal officer shall serve as chief legal adviser to the council, the manager and all city departments, offices and agencies, shall represent the city in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.

Section 5. City Attorney impartiality when working with divided City Councils

The responsibility of a City Attorney is to serve the City Council and its agents, namely City staff, and to render legal advice. The City Attorney is not the lawyer for the general public or any individual or group within the City. The people that have spoken at CRC meetings, including both elected and appointed City Attorneys, and one (Gary Ragghianti) who has worked as both an elected and an appointed City Attorney, have all confirmed that it is the responsibility of the City Attorney to provide legal advice to city officials, and not to the general public. This perspective is also reflected in the Government Code for General Law Cities in California (see Charter Review Committee Report to City Council, February 5, 2010), as well as in the Model City Charter of the National Civic League (see Section 4.03b, above).

When the City Council is divided in its viewpoint on an issue, the City Attorney must provide a professional legal perspective on the issue. The City Attorney does not function as a judiciary branch of city government, nor is the City Attorney a policymaker. As noted in this Committee's previous report to the City Council (February 5, 2010), an attorney should be able to assist a client in choosing wisely from a range of lawful discretionary actions. The City Attorney, who owes a high duty of loyalty to his or her client (in this case the City, acting through the City Council), must not be influenced by personal interest in the political or other external consequences of any such decision, and the attorney's advice must be perceived as being free of these influences.

If the City Council is divided, the majority view, as reflected in motions passed, is the official perspective of the city, and the City Attorney's responsibility is to serve the city. The City Attorney, like any legal adviser, takes direction from the client, and provides professional legal advice to assist the client in pursuing his or her legal objectives.

The issue of working with a divided City Council faces all city officials, not only the City Attorney. Lawyers have a legal code of ethics that provides a framework for their professional activities and should ensure that their personal perspectives do not influence their professional legal advice. For its part, the City Council has a civic responsibility to listen to the professional advice that is provided by the City Attorney as well as by other city staff acting in their professional capacities.

Section 6. Information on the costs of appointed and elected attorneys

Information was obtained from the cities of Piedmont and El Cerrito on the costs of appointed City Attorneys. Both cities indicated that the annual costs for legal services depend far more on the issues that confront a city during the year than on whether the City Attorney is elected or appointed. Recent costs in Piedmont have been in the \$180,000-200,000 range, not including the costs of a lawsuit related to underground environmental issues. In El Cerrito costs have been about \$300,000, not including costs related to redevelopment issues. Costs in Albany in the past four years have been in the \$150,000-175,000 range. These numbers also suggest that the costs of a City Attorney depends more on the issues facing a city than on whether the City Attorney is appointed or elected.

It was noted that in the current economic climate, law firms are willing to discount fees, and cities have some room for negotiation. It was also noted that many lawyers do not have trial experience, and that the rates for litigators are higher than rates for lawyers who do office work and do not go to court.

Section 7. A discussion of civil rights issues related to elected/appointed City Attorneys

Although some citizens may expect their City Attorney to support their civil rights, and thus support having an elected rather than an appointed City Attorney, on the grounds that an elected City Attorney has more independence, this reflects a misunderstanding of the role of the City Attorney as stated in both California General Law and in the Model City Charter (see above).

As noted in this Committee's previous report to the City Council (February 5, 2010), the concern about independence may stem from a misunderstanding of the role of City Attorney. The City Attorney is the lawyer of the Council and city administration and not directly of the citizens. The duties of this position are no more and no less than to provide legal advice to the City Council. There is some concern that an elected City Attorney may become involved in policy and politics beyond the duty of offering legal advice to the City Council and City staff. Although this involvement may have helped to protect the civil rights of some citizens in the past, the role of a City Attorney has changed and greatly expanded, and cities now face a wide range of legal issues, including laws related to contracts, criminal activity, employment, environment, hiring and firing personnel, land use, property, and waste management issues. Absent a request from City Council, advocating for or enforcing the civil rights of residents is not the responsibility of a City Attorney.

Section 8. RFP from StopWaste.Org (as requested by Mayor Wile)

Section II (Scope of Work) of this RFP reflects the diverse areas of expertise that lawyers for public bodies are expected to possess.

http://www.stopwaste.org/docs/acwma_authority_counsel_rfp_2008.pdf

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ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY

Authority Counsel Request for Proposals

StopWaste.Org is the Alameda County Waste Management Authority and the Alameda County Source Reduction and Recycling Board operating as one public agency.

Member Agencies
Alameda County
Alameda

Albany
Berkeley
Dulhin
Emeryville
Fremont
Hayward
Livermore
Newark
Oakland
Piedmont
Pleasanton
San Leandro
Union City
Castro Valley
Sanitary District
Orinda
Sanitary District

Agency Programs
Bay Friendly Gardening & Landscaping
Green Building in Alameda County
StopWaste Business Partnership
iRecycle@School
Environmentally Preferable Purchasing
Food Scrap Recycling
Grants to Non-Profits
Household Hazardous Waste Recycling
Multifamily Recycling
Recycling Information Hotline

Introduction

The Alameda County Waste Management Authority (Authority) is a public agency formed in 1976 by a Joint Exercise of Powers Agreement among the County of Alameda, each of fourteen cities within the county, and two sanitary districts that provide refuse and recycling collection services. The Authority has seventeen-member board composed of elected officials appointed by each member agency. An Executive Director serves at the pleasure of the Board.

The Authority is responsible for preparation of the Alameda County Integrated Waste Management Plan and Alameda County Hazardous Waste Management Plan. It manages a long-range program for development of solid waste facilities and offers a wide variety of other programs in the areas of source reduction and recycling, organics, landscaping, green building, business, technical assistance and public education. Funding is provided by per ton disposal and waste import mitigation fees. A staff of thirty works for the Authority.

This Request for Proposal is for Authority Counsel for services beginning July 1, 2008 through June 30, 2013.

The Authority Board meets monthly and from time to time requires its Counsel to attend an Authority Committee meeting. Most of the Counsel's work is at the direction of the Executive Director based on programmatic policy/operations as adopted by the Authority in its annual budget. For the last two fiscal years the Authority has expended \$60,000 and \$100,000 respectively for Authority Counsel.

I. **INSTRUCTIONS TO PROPOSERS**

A. **Submission of Proposals**

All proposals are to be submitted to Karen Smith, Executive Director, Alameda County Waste Management Authority, 1537 Webster Street, Oakland, CA, 94612. Proposals must be delivered no later than 4:00 p.m. on March 20, 2008. Proposals received after this time will not be accepted.

The proposal should be printed 2-sided on recycled content paper.

The proposer shall submit two (2) copies of its proposal in a sealed envelope, addressed as noted above, bearing the proposer's name and address, and clearly marked as "RFP for Authority Counsel." Alternatively, proposal may be submitted by email to ksmith@stopwaste.org in pdf format. The stated deadline for

submittal still applies. Email time stamp will be used for verification pdf deadline requirement.

Questions regarding this RFP should be directed to Karen Smith at 510-891-6507.

B. Rights of the Authority

This RFP does not commit the Authority to enter into a contract, nor does it obligate the Authority to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

The Authority may investigate the qualifications of any proposer under consideration, require confirmation of information furnished by the proposer, and require additional evidence of qualifications to perform the Services described in this RFP.

The Authority reserves the right to:

1. Reject any or all proposals.
2. Issue subsequent Requests for Proposals.
3. Postpone evaluation of the proposals for its own convenience.
4. Remedy technical errors in the Request for Proposal process.
5. Approve or disapprove the use of particular subconsultants.
6. Negotiate with any, all, or none of the proposers.
7. Solicit best and final offers from all or some of the proposers.
8. Accept other than the lowest rates.
9. Waive informalities and irregularities in the proposals.

C. Contract type

The resulting contract will be similar to the Professional Service Agreement as attached.

II. SCOPE OF WORK

The Authority is seeking Counsel to its Board and staff with a contract not to exceed five years beginning July 1, 2008.

While known as "Stopwaste.Org," Stopwaste.Org is the Alameda County Waste Management Authority and the Alameda County Source Reduction and Recycling Board operating as one public agency. The Source Reduction and Recycling Board has its own legal counsel. The Authority has responsibility for administrative matters related to both public agencies. Programmatic activities are funded by both agencies.

The following areas of expertise are required:

- Environmental issues including but not limited to wind power, green building, landfills, waste import, recycling, climate change
- Governance regulations, including Brown Act, Public Records Act, contracting and leasing requirements, CEQA
- Solid waste franchise issues
- Integrated Waste Management Planning, including legislation/judicial opinions related to implementation/regulation of fees

The following areas of expertise are desired:

- Personnel matters, including labor issues
- Property Management

III. **EVALUATION AND SELECTION**

Evaluation & Selection: Authority will review responses to the RFP and may interview any or all of the proposing firms.

IV. **PROPOSAL FORMAT AND CONTENT**

- A. **Summary and Overview** – Use this section to summarize your approach to performing as Authority Counsel.
- B. **Team Personnel** – The proposer shall comply with applicable federal, state and local regulations concerning equal employment opportunity requirements. The proposer is required to list the key individual who will be "Authority Counsel." The proposer shall provide a resume for the Attorney that includes but is not limited to the following information:
- Name
 - Years of experience
 - Education – degrees, schools and years obtained
 - Professional registration(s) and certification(s)

Attorneys with specific expertise/experience shall be identified and resumes included.

- C. **Reference** – List three (3) references with contact information. List all current contracts with Public Agencies in Alameda County.
- D. **Cost information** – Include hourly and any fixed costs charges for July 1, 2008 to June 30, 2009 and a suggested method for determining costs for July 1, 2009 through June 30, 2013.