

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: March 21, 2011  
Reviewed by: BP

**SUBJECT:** Transition from an elected to an appointed City Attorney

**REPORT BY:** City Council Subcommittee: Council Members Lieber and Thomsen  
Robert Zweben, City Attorney  
Beth Pollard, City Manager

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**COUNCIL SUBCOMMITTEE AND STAF RECOMMENDATION**

That the City Council review and discuss the draft criteria prepared by the Council subcommittee, and provide direction to the subcommittee and staff for preparation of a Request for Proposals for review and approval by the City Council.

**BACKGROUND**

At the last Municipal Election, the voters of Albany approved Measure N, a modification to Albany City Charter, Section 3.01, to provide that the City Attorney be elected at the November 2, 2010 election to a one year term and that in December 2011, the City Attorney be appointed by the City Council.

At its meeting of January 18, 2011, the City Council appointed a Council subcommittee comprised of Council Members Lieber and Thomsen. This subcommittee was asked to work with staff to identify alternatives for a process to recruit and select an appointed City Attorney, and to develop some initial criteria and structure options, for Council discussion and direction.

The subcommittee has met with the City Manager and City Attorney to discuss criteria, and also to review information from other cities on attorneys' structure, requests for proposals, contracts, and costs.

**DISCUSSION**

The subcommittee has drafted the following list of recommended criteria for qualifications and general requirements:

- Has at least five years of California Municipal law experience as well as current knowledge of public agency law

- Is able to determine when specialized legal counsel is needed, identify and secure services of special outside counsel most qualified and appropriate for the matter at hand, and oversee their services to ensure time/costs are controlled and on point
- Has a style conducive to providing City Council with a range of options along with advice on pros and cons, while also prepared to provide recommendations
- Is open and able to craft innovative legal approaches to local issues
- Is willing to express a contrary view to City staff and Council, but support implementation once decisions are made
- Agrees to a payment structure as primarily flat fee/salary rather than by the hour
- Is accessible to advise appointed and elected officials of the City
- Would be available to members of the public for brief consultation or referral on City regulations or other City-related legal matters

With respect to municipal law experience and knowledge, other staff members have noted the particular importance of familiarity with land use law, the California Environmental Quality Act, public records and open meeting acts, and requests for police personnel records (aka “Pitchess motions”) because of the frequency with which these matters arise.

The range of options the subcommittee considered for structuring the position included full-time salary, part-time salary, contract with sole practitioner, contract with individual in small to medium law firm, and contract with small, medium, or large law firm. At this point the subcommittee reflected on whether a part time salary position may best fit within Albany’s staffing structure that places a high premium on dedication to the community. Alternatively, the subcommittee believes that a relationship with a municipal law firm may have its benefits. And, persons with the desired municipal law backgrounds who express an interest in the Albany position may not be a member of a municipal law firm nor desire a salaried position. Until there are further opportunities to review and weigh the benefits of applicants with various backgrounds, the subcommittee recommends that a Request for Proposals (RFP) be issued without restriction; this RFP could reflect the intent in seeking a commitment to the City of Albany, and the desire not to be limited to any one firm to contract for specialized legal counsel when those services are needed.

Attached are samples of requests for proposals and contracts, as well as financial information.

**SUSTAINABILITY IMPACT**

N/A

## **FINANCIAL IMPACT**

It is anticipated that the budget for City Attorney may have to increase with the selection of a new attorney. Attached is information on costs experienced by other cities in the region.

## **NEXT STEPS**

The next step is for Council to discuss the draft criteria and information reviewed to date, and provide direction to the subcommittee and staff for preparation of a Request for Proposals (RFP) for City Attorney services. This RFP would be presented to Council for approval and establishing selection steps. The timing of that agenda item, the release of the RFP, and start date for a new attorney will need to be coordinated and timed with the retirement plans of the incumbent City Attorney.

### **Attachments:**

1. Requests for proposals – Davis, Tulare, San Ramon, Piedmont
2. Contracts – Pinole, Piedmont
3. Cost summaries – Albany and other cities