

## **SALT LAKE CITY COUNCIL STAFF REPORT**

### **BUDGET ANALYSIS – FISCAL YEAR 2005-06**

**DATE:** May 17, 2005

**BUDGET FOR:** **CITY ATTORNEY'S OFFICE**

**STAFF REPORT BY:** Lehua Weaver and Gary Mumford

**cc:** Cindy Gust-Jenson, Rocky Fluhart, Sam Guevara, Ed Rutan, Sim Gill,  
Lynn Pace, Steve Fawcett, Kay Christensen, DJ Baxter

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The City Attorney's Office contains three divisions: Civil Practice, City Prosecutor's Office, and Risk Management. Budgets relating to the Risk Management Division are analyzed separately with the Governmental Immunity Fund and the Insurance & Risk Management Fund.

The Mayor's Recommended Budget for the City Attorney's Office (General Fund) for fiscal year 2005-06 and proposed changes from fiscal year 2004-05 are as follows:

<b>CITY ATTORNEY'S OFFICE PROPOSED BUDGET (General Fund)</b>				
	Adopted 2004-05	Proposed 2005-06	Differenc e	Percent Change
Civil Practice	\$1,337,057	<b>\$1,767,331</b>	\$430,274	32.2%
City Prosecutor's Office	1,590,314	<b>1,831,305</b>	240,991	15.2%
<b>Total</b>	\$2,927,371	<b>\$3,598,636</b>	\$671,265	22.9%

#### **Civil Practice Division – Key Elements**

The Civil Practice Division provides legal support for the City's departments, including the City Council and Mayor, and litigation defense of state and federal court lawsuits filed against the City. The Division is organized into five teams or functions: Departmental Legal Support, Litigation, State Legislative Advocacy, Paralegal Support, and Administrative Support. The costs of some of these positions are charged to the Governmental Immunity Fund or to the Insurance & Risk Management Fund. *Council staff prepared separate staff reports on the budgets for these two separate funds.*

1. Staffing Adjustments

- \$118,667, Addition of Senior City Attorney position – 75% of the costs for this new position will be reimbursed by the Redevelopment Agency. The Administration indicates that the addition of this position could result in a significant cost savings for the RDA, by a reduction to the expense for their outside legal services. However, some RDA issues would still require the engagement of outside legal counsel, such as litigation, bond issues, special projects (i.e. CBD extension), and tri-party agreements. (Please see attached for a transmittal from the Administration and memo from RDA staff providing additional information.)
- Approximately \$150,000, Reallocation of salary costs from Governmental Immunity – The Mayor's Recommended Budget includes a transfer of 2.18 staff positions from the Governmental Immunity Fund to the Civil Division.

2. Supplies, Services and Equipment (\$31,270 decrease) – The equipment and services budget is proposed to decrease from \$179,272 to \$148,002, or by 17.4%. The change includes an increase of \$11,718 in anticipated support costs for the new staff positions, but various budget increases are offset by a reduction of \$53,260 in outside legal fees. The proposed decrease would be from \$59,372 to \$6,112. Actual costs for contractual legal services for the first ten months of the current year have been \$4,085 and fiscal year 2003 actual costs of contractual legal services were \$6,404. An additional midyear appropriation may be requested if major contracted legal services become necessary.

The change is broken out in the following areas:

- Materials and Supplies (Increase of \$7,000) - technical books: \$5,000; and postage: \$2,000.
- Charges, Services, and Fees (Decrease of \$38,270) – legal fees: (\$53,260); computer maintenance contract: \$1,729; telephone lease expense: \$1,543; and support for new attorney: \$11,718.

3. Training & Memberships – No change is recommended to the budget for educational training, memberships or conventions & workshops.

**City Prosecutor's Office – Key Elements**

The City Prosecutor's Office screens, charges, files, and prosecutes criminal violations. The Prosecutor's Office estimates that it will handle roughly 24,500-cases annually. In addition, the passage of UCA 77-2-4.2 requires that traffic school diversions are to be pursuant to a plea in abeyance agreement, which will add 8,000 to 10,000 cases.

The City Prosecutor's Office is organized into five teams as follows:

<b>City Prosecutor Teams</b>		
Team	Attorneys	Paralegal & Support Staff
Justice Court (including two new positions)	8	3
District Court	2	1
Domestic Violence	2	1
Screening	2	3
Management (including two new positions)	1	5
Total	15	13

1. Two Additional Prosecutor Positions (\$120,000 increase) – The current caseload is approximately 2,250 cases per prosecutor. The proposed addition of two prosecutors would reduce this caseload to approximately 1,900 cases per prosecutor in the office.
2. Additional office technician position (\$40,000 increase) – The additional office technician would assist in data processing, file creations, discovery, witness subpoena issues, and calendaring obligations for the prosecutors' caseload.
3. Additional file clerk position (\$38,700 increase) – The additional file clerk would file citations and warrants. Historically, this function was filled at no charge to the Prosecutor's Office by a retired Salt Lake City Police Officer, who would voluntarily assist with filing duties outside the scope of his job description.
4. Supplies, Services and Equipment (\$77,081 increase; \$15,000 in one-time expenditures) – The equipment and services budget is proposed to increase from \$116,774 to \$193,855, or 66.0%. An increase of \$57,081 is proposed to restore funding that was cut during prior year reductions. \$20,000 is also included in anticipated support costs for the new staff positions. (Please see attached for a transmittal from the Administration providing additional information.)

The increase is broken out in the following areas:

- Materials and Supplies (Increase of \$9,500) – technical books: \$3,500; and postage: \$6,000.
- Charges, Services, and Fees (Increase of \$32,581) – other professional and technical services: \$9,500; cell phone expense: \$930; computer maintenance: \$5,277; computer discretionary fund: \$4,500; process services-traffic: \$7,613; educational training: \$2,000; telephone lease: \$2,761.

- Equipment Replacement (Increase of \$35,000) – Proposed for equipment purchases, which includes one-time costs of \$15,000 from fund balance.

## **QUESTIONS FOR CONSIDERATION**

1. The Civil Division has undergone a time study of attorney time spent with different departments and divisions. The study provided necessary data to correct attorney time charged to the Governmental Immunity fund, and has also assisted in assigning attorneys as departmental liaisons. The Council may wish to ask how this change has helped the Civil Division meet organizational goals.
2. Due to technological advances, both the District Court and the City's Justice Court have started to accept more electronic filing of informations than before. The Council may wish to ask whether the Prosecutor's Office has equipment that would enable them to take advantage of this and increase efficiency.
3. The Prosecutor's Office used to have two Community Action Team attorneys funded by a Department of Justice grant. The attorneys worked closely with the CAT Teams, and provided necessary resources to handle nuisance abatement cases. After the grant money ran out, the positions were not restored in the general fund. The Council may wish to ask the Prosecutor's Office about available resources and the ability to process nuisance abatement cases. The Council may also wish to ask about the prioritization of nuisance abatement cases, and the working relationship with the CAT Teams.

## **LEGISLATIVE INTENT STATEMENTS**

No legislative intent statements are outstanding for the City Attorney's Office.

*The Council may wish to consider issuing some legislative intent statements relating to items discussed during the budget briefing.*

## **SIX YEAR BUSINESS PLAN**

- The attorney's office anticipates during the next six years that there will be a constant increased demand for legal services. While specifics are not outlined, it is likely that additional staff and up-to-date equipment may be needed to keep a continued level of service while demand increases.
- The Prosecutor's Division intends to restructure the workload in the division, and install a Prosecutor Dialogue program to allow for monitoring performance. It also intends to modernize out-of-date office equipment.

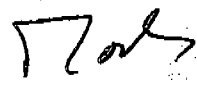
MAY 13 2005


EDWIN P. RUTAN, II  
CITY ATTORNEY

**SALT LAKE CITY CORPORATION**  
LAW DEPARTMENT

ROSS C. ANDERSON  
MAYOR

**COUNCIL TRANSMITTAL**

**TO:** Rocky J. Fluhart   
Chief Administrative Officer

**FROM:** Ed Rutan   
City Attorney  
Lynn Pace  
Deputy City Attorney  
Sim Gill  
City Prosecutor

**DATE:** May 12, 2005

**SUBJECT:** Supplemental Budget Information for the City Council

**DOCUMENT TYPE:** Information only.

**RECOMMENDATION:** No action is required.

**BUDGET IMPACT:** None.

**BACKGROUND/DISCUSSION:** A narrative description of the proposals for the City Attorney's Office is provided on page B-10 of the Mayor's Recommended Budget for FY 2005-06. This memorandum provides additional information supporting the proposals.

**PUBLIC PROCESS:** Not required.

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I. Civil Practice

A. Addition of Senior Attorney Position (75% Supported by RDA)

The Administration has proposed that the City Attorney's Office provide the primary legal support for the RDA. Four points warrant further discussion.

First, there is a potential for significant cost savings. Over the past several years, the RDA has paid its outside attorneys a blended hourly rate of roughly \$170. The hourly "cost" for civil attorneys in the City Attorney's Office is roughly \$80--half the outside attorney cost.

Second, as you are aware, the State law regarding RDA's is the subject of a legislative task force. The State Legislature will likely modify the RDA Statute in the 2006 Legislative Session. It is unclear how those changes may affect the amount of RDA legal work required.

Third, the City Attorney's Office would not provide bond law advice. That would continue to be provided by outside counsel. Thus there would be no cost savings for this work. There are two reasons for continuing to use outside counsel for this work. First, the financial markets require the opinions of independent counsel. The City Attorney's Office, as inside counsel, would not meet that requirement. Second, bond law is a highly technical expertise with heavy demands on remaining up to date. The City's "bond practice" is not large enough to make it economic for our office to maintain the necessary level of expertise.

Fourth, because the RDA is an independent body, the possibility of conflicts must be kept in mind. However, the possibility of conflict is not an inherent bar to the City Attorney's Office performing this work. See generally Utah Rules of Professional Conduct, Rule 1.13(f) and Comment (government lawyers "may be authorized to represent several government agencies in intergovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients."); Rule 2.2 and Comment (intermediation to develop mutual interest while avoiding cost of separate legal representation). Our office routinely represents both the Administration and the City Council on an "equal and independent" basis [SLCC Code Section 2.08.040(A)(2)], even though the possibility of conflict is always present.

The role of independent outside bond counsel could address this concern in some of the most sensitive contexts. In addition, independent counsel could be retained if needed in specific situations.

If this proposal is adopted, it may be appropriate to amend SLCC Section 2.08.040 to specify representation of the RDA by the City Attorney's Office.

#### B. Future Technology Costs

While not an issue for the 2005-2006 fiscal year, the civil side of the City Attorney's Office may experience significant technology costs in the not too distant future. (See also, the discussion for the City Prosecutor's Office below.) The federal courts already have moved to an electronic filing system, and it is reasonable to expect that the state courts will soon follow. We have appointed a Technology Committee which will work with IMS to determine what our future technology needs will be.

## II. City Prosecutor's Office

The demand for services from the Salt Lake City Prosecutor's Office continues to press our resource limits. We are sensitive to the limitations of resources city wide, but need to raise these current resource concerns to be able to meet our obligations and the expectations expressed by the Administration and City Council (and citizens) in the delivery of service to the community.

The Council and the Administration have had previous data in the form of audits and benchmark information in our prior department reports, thus we will not replicate that information here. However, we would like to provide some new "benchmark" type information and an updated discussion of our caseload.

### A. Two Additional Prosecutors (Attorneys)

#### (1) The Caseload

The creation of the Justice Court created a funnel through which a large number of cases are captured and presented for adjudication by the SLC Prosecutor's office. This case flow is significant not only for the quantity of the new filings, but also for the time demands of the types of cases filed. For example, some 24,500 new cases entered the prosecution and court adjudication stream in Calendar Year 2004. This included some 2500+ Dui's and some 1000+ DV cases, which are particularly time intensive.

Preliminary findings in the Council Audit of Justice Court, as well as the experience of the prosecutor's office, will attest that there is a significant rollover of cases from one CY to another CY. Currently, matters are being set out some 90-120 days with the adjudication rate of some 71% during the year. Thus some 29% of the cases (approximately 5-6,000 cases) will continue forward. The adjusted working caseload of the office thus at any given time is around 30,000 cases. This adjusted caseload does not include approximately 10,000 traffic plea in abeyances which have also become a part of the portfolio of the office. We have streamlined the process to minimize its impact on our baseline of the 24,500-30,000 (non-plea-in-abeyance traffic) cases.

#### (2) Carrying Capacity Analysis

A different type of benchmark that we have not previously discussed is "carrying capacity". The American Prosecutors Research Institute ("APRI") did a study of six states, finding on average that a prosecutor spends 4.3 hours per misdemeanor case. Assuming roughly 1770 hours of available "case" time, that would suggest a caseload of roughly 410 misdemeanor cases per year, per prosecutor. Studies by the National Advisory Commission on Criminal Justice Standards and Goals in 1973 and 1989 recommended misdemeanor caseloads of no more than 400 cases and 300 cases respectively.

Our current caseload per prosecutor is roughly 2000-2500 cases. We are not suggesting that the APRI and National Advisory Commission numbers are absolute standards to be met because it is always difficult to assure full comparability. However, they are another directional indicator of the problematic implications of our current caseload.

An additional two prosecutors would reduce the caseload to the range of 1700 -2100 cases per prosecutor--still a very heavy caseload, but a significant improvement.

An important consideration in any analysis of misdemeanor caseload (and of comparables) is the number of jury trials to verdict. Jury trials are extremely time-intensive. Last year, our office tried 160<sup>1</sup> cases to verdict, most of them being DUI or DV cases.

#### B. One Additional Clerical Staff Position

The Council audit of the office showed that the prosecutor's office was understaffed with support staff. For every court event there is a corresponding office event as well. The current support staff is overwhelmed by the current caseload, data processing; file creations, discovery, witness subpoena issues and calendaring obligations. An additional support staff would greatly assist the staff to manage our current caseloads. The council audit in 2003 showed that the closest prosecution entity, Scottsdale Arizona, with a caseload of 12,000 cases had 18 support staff (excluding their victim/witness coordinators which would have pushed this number even higher). Our office has since then added another 10,000 cases to the 2003 caseload of 14,000 cases and we have not kept up with the support staff need. By current standards we would have double the rate of Scottsdale but still not close to the allocation of support staff they had for 12,00 cases. This position will also augment and help us to create a more streamlined process which will ultimately lessen the overall support staff needs in the future. (see the clerk discussion below).

#### C. One Additional File Clerk Position

The departure of Bill Abbott (SLCPD retired) from the police department has left a gap in work that was performed by him for free for the office. Bill Abbott was a retired officer who would come to the office to sign and file our formal Information's with the court. While here to do that particular work Bill also began to file (internally in our office) citations and warrants. This clerical task was not a part of Bill's job description but he did so to help out the support staff that has been historically low in support. This clerical task can no longer be completed with his departure. Although this position could be done by a half time clerk we are requesting a full time clerk for the following reasons. This clerk along with the additional staff person will allow

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<sup>1</sup> The office took to verdict 160 jury trials @ 16 hours prep time (8 hours day before and 8 hours for the day of trial. Note, the day before prep was devoted not only to the matter to be tried but as much 10-11 other matters set for the same time). This yields another 213 hours tax on the 1770 hours available. That is,  $16 \times 160 = 2560$  divided by 12 attorneys = 213 hours for juries per attorney thus leaving 1559 total hours to devote to the caseload.



us to transform our filing system and create a formal file room. The centralization of all of the prosecution files with a staff dedicated to their filing, updates and docket/calendar pulling would give systemic relief to the remaining support staff. This systems change will allow us to consolidate the workloads of the remaining staff and give them relief as well as streamlining our internal paper and work flow. This process change will allow us to approach support staff positions in the most conservative and manageable way. That is, it will lessen future needs not increase them.

#### D. Operational Budget Adjustments (\$57,081)

The Salt Lake City Prosecutor's office was approached last year with one time budget cuts. In an effort to assist in that effort we made cuts to our operation costs. We have gone without updating our resource books, certain paper supplies, and other infrastructure costs which were sacrificed. The items cut were basic infrastructure and operations costs. These costs and items are the bare bone necessities, paper, toner, folders, forms, postage etc. to run the office. These are needed to run and supply the office.

#### E. Future Technology Costs

The SLC Prosecutor's office concurs with the statement of the City Attorney's office as to future costs. Currently, we are in the process of developing software with the State of Utah to update the next generation of prosecutor dialog as well as our IMS to develop a seamless methods of screening and filings domestic violence cases digitally. The State project should not cost the City any money and the DV project is being funded by a Federal Grant. We are aware of the Council's audit finding the need to upgrade our technology and we have been working with IMS to identify software or technology that can impact our ongoing resource concerns. We are examining a local vendor with the possibility of leveraging multiple municipalities through an Inter-local Agreement which would defray costs if the technology can assist in lessening our workload.



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**INTEROFFICE MEMORANDUM**

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**TO:** ERIC JERGENSEN  
**FROM:** VALDA TARBET  
**SUBJECT:** REDEVELOPMENT AGENCY LEGAL FEES  
**DATE:** 5/12/2005  
**CC:** DAVID OKA

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You requested that staff provide you with information about the costs incurred and types of legal services provided by the Agency's outside legal counsel. During the last five fiscal years, legal costs have been as follows:

Fiscal Year	Total Legal Costs
1998/1999	\$183,444
1999/2000	\$196,925
2000/2001	\$132,095
2001/2002	\$115,526
2002/2003	\$245,390
2003/2004	\$200,216

Because of the nature of the work the RDA does, legal fees vary each month depending upon which projects are ready for legal documentation. In order to give you an idea of the fluctuation of the legal work, we have also put together the following information which shows distribution of the 950 hours of legal time required by the Agency during calendar year 2004.

Month	Legal Costs	Hours Based on \$200/per hour
January	\$1,364	7
February	\$4,159	21
March	\$66,151	331

April	\$21,129	106
May	\$11,618	58
June	\$ 12,495	62
July	\$ 11,029	55
August	\$ 3,348	17
September	\$ 12,665	63
October	\$ 3,061	15
November	\$ 29,499	147
December	\$ 12,349	62
	\$188,897	944

Finally, we thought it would be helpful to understand the types of work the Agency's legal counsel do. During the 2004 calendar year we worked on the following projects:

Work	Law Firm	Amount
CBD Extension	Ballard Spahr	\$18,275
Block 57 Contract Administration (AlphaGraphics, Wells Fargo and Ocean Properties)	Fabian & Clendenin and Jones Waldo	\$12,900
Sale and loan documents for property at 1285 West 500 North	Jones Waldo	\$6,150
Review of RFQ for offering of West Capitol Hill properties	Jones Waldo	\$5,000
Administration of Gateway Associates Participation Agreement, Bridges, CitiFront	Jones Waldo	\$9,000
Work on Salt Lake City Mission case	Jones Waldo, Hal Hintze	\$2,000
Demolition Documents for West Capitol Hill	Jones Waldo	\$2,150
Loan Documentation (Kemmethmueller, CDC,	Fabian & Clendenin,	\$7,500

Onequa Corners, Redman Lofts, McClelland I)	Jones Waldo	
Sale of Property at 850 South Washington	Jones Waldo	\$750
Block 53	Jones Waldo	\$86,750
Ballet West	Jones Waldo	\$2,100
Aquarium	Fabian & Clendenin, Jones Waldo	\$11,650
MUAH, Main Street Grants, Main Street Incentives	Jones Waldo	\$15,225
State Street Land Acquisition	Fabian & Clendenin	\$1,400
RDA tenant negotiations and lease compliance	Jones Waldo and Fabian and Clendenin	\$3,650
TRAX Station	Ballard Spahr	\$1,800
Total		\$186,300.00

- Of the amount shown above, the bolded lines totaling \$8,250 are reimbursed to the Agency at loan closing or at the sale of the property.
- Typically the Agency would need separate litigation counsel for work such as the Salt Lake City Mission issue. (\$2,000)
- Help from Ballard Spahr was invaluable in the CBD extension discussion with the taxing entities. (\$18,275)
- Many documents in the Gateway Associates and Bridges Participation Agreements are tri-party agreements. In all likelihood, the Agency and City would need separate legal counsel. (\$9,000)

If you need any additional information, please let me know.

