

SALT LAKE CITY COUNCIL STAFF REPORT

BUDGET ANALYSIS – FISCAL YEAR 2006-07

DATE: May 16, 2006

BUDGET FOR: CITY ATTORNEY'S OFFICE

STAFF REPORT BY: Lehua Weaver

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

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. This separate analysis will address the proposed property tax related to Governmental Immunity.

The Mayor's Recommended Budget for the City Attorney's Office (General Fund) for fiscal year 2006-07 and proposed changes from fiscal year 2005-06 are as follows:

CITY ATTORNEY'S OFFICE PROPOSED BUDGET (General Fund)				
	Adopted 2005-06	Proposed 2006-07	Difference	Percent Change
Civil Practice				
Personal Services	1,592,304	1,784,357	192,053	12.06%
Other Operating Expenses	148,002	154,002	6,000	4.05%
Civil Practice Total	\$ 1,740,306	\$ 1,938,359	\$ 198,053	11.38%
City Prosecutor's Office				
Personal Services	1,541,079	1,770,972	229,893	14.92%
Other Operating Expenses	193,855	200,191	6,336	3.27%
Prosecutor's Office Total	\$ 1,734,934	\$ 1,971,163	\$ 236,229	13.62%
Attorney's Office Total	\$ 3,475,240	\$ 3,909,522	\$ 434,282	12.50%

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 as well as bringing lawsuits and administrative proceedings on behalf of the City.

The Division is organized into five teams or functions: Departmental Legal Support, Litigation, State Legislative Advocacy, Paralegal Support, and Administrative Support.

Some of the attorneys' time is spent on the Governmental Immunity Fund, and are reimbursed by that Fund, or are charged to the Insurance and Risk Management Fund. *Council staff prepared separate staff reports on the budgets for these two separate funds.*

Staffing Adjustments (\$192,053 total increase) - The bulk of the increase to Personal Services is due to reallocating positions in order to facilitate more accurate recording of time within the Attorney's Office.

- Positions from Governmental Immunity – The largest portion of the increase is due to the reallocation of 2.17 FTEs previously charged directly to the Governmental Immunity Fund. These are proposed to be transferred to the City Attorney's Office, which will assist in simplifying the staffing allocations to the different tasks supported by the Attorney's Office. The Governmental Immunity Fund will reimburse the general fund for attorneys' time.
- Increase for the additional .25 FTE for the attorney position approved last year. This quarter percent was approved in Budget Amendment No. 4; this increase would be for the full year. (\$20,000 increase)
- A portion of the increase to the Personal Services budget is attributable to benefits, pensions, and pay increases.
- The Attorney's Office is also proposing a reallocation of FTEs between their existing cost center accounts. The change would simplify the accounting for personal services and other operating costs for the Attorney's Office.

Other Operating Expenses (\$6,000 increase) – this will be used for additional stationary supplies needed to be ordered this year.

It should be noted that in recent years the funding available for outside counsel and experts has been reduced. In some cases these expenses can be applied to the governmental immunity fund, but that fund could be considered 'under funded' by private industry liability exposure standards. **The Council may wish to discuss whether, as a general rule they prefer to have funding for experts and outside counsel come through one-time budget requests in budget openings (as was done this past year), through a standard reserve amount in the annual budget, or whether it is acceptable to consider the governmental immunity fund as the funding pool.**

CITY PROSECUTOR'S OFFICE – KEY ELEMENTS

The City Prosecutor's Office screens, charges, files, and prosecutes criminal violations.

Staffing Changes (\$229,893 total increase)

The City Prosecutor's Office is organized into teams as follows (includes proposed new positions):

City Prosecutor Teams		
Team	Attorneys	Paralegal & Support Staff
Justice Court	9	4
District Court	3	1
Domestic Violence (funded by the YWCA)		2
Screening	2	3
Filing, reception, other support		4
Management	1	1
Total	15	15

- Additional Prosecutor Position (\$64,516 increase) – The additional prosecutor would be assigned to the Justice Court. Currently, eight of the prosecutors are assigned to the Justice Court, two per judge. A ninth prosecutor assigned to the Justice Court would help to reduce the average caseload per attorney.
- Additional office technician position (\$42,304 increase) – The additional office technician would assist in data processing, file creations, discovery, witness subpoena issues, and calendaring obligations for the prosecutors' caseload.

The Administration provided some additional analysis about the ways in which the Justice Court, Prosecutor's Office, Police Department and Legal Defenders are all interconnected. (A copy of the memo is attached for your reference.) The memo addresses situations where changes to staffing or workload would also create corresponding impacts to these other entities involved.

- The Department is proposing that these prosecutor and support staff positions would be needed regardless of the Council's decision about any additional staff in the Justice Court, because of existing workloads.
- However, with regard to the request for additional staffing in the Justice Court, that would likely cause a need for more staff in the Prosecutor's Office as well.
- Benefits and Salary Increases (\$123,073 increase) - the remaining portion of the increase to the Personal Services budget is attributable to benefits, pensions, and pay increases.

Other Operating Expenses (\$6,336 increase) – \$6,319 of this amount will be used for additional stationary supplies needed to be ordered this year.

QUESTIONS FOR CONSIDERATION

- 1. The Council may wish to ask about the progress of prosecuting nuisance abatement cases on both the civil and criminal side.**
- 2. The Council may wish to ask which cases the Prosecutor's Office still tries in District Court.**
- 3. The Council may wish to ask how competing demands are handled in the Prosecutor's Office, especially with regard to schedules in the Justice Court and District Court.**

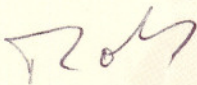
LEGISLATIVE INTENT STATEMENTS

The Council has an open item, which states, "*It is the intent of the City Council that the Administration provide the Council with periodic reports on the development of nuisance cases.*" Some of this is satisfied through Council staff's involvement with the CAT teams. In addition, the Administration has provided some statistics of the number of cases which involve Housing and Zoning. The Administration has also indicated that a report would be forthcoming.

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.

COUNCIL TRANSMITTAL

TO: Dave Buhler, Chair 
Salt Lake City Council

DATE: May 9, 2006

FROM: Rocky Fluhart, Chief Administrative Officer

SUBJECT: Salt Lake City Justice Court

BACKGROUND/DISCUSSION: See attached memorandum.

MEMORANDUM

TO: Steve Fawcett

FROM: Kay Christensen

DATE: May 8, 2006

ISSUE: The Salt Lake City Justice Court is part of a systemic operation with four separate, but interdependent components: the Court itself, the Police Department, the City Prosecutors and the Legal Defenders. Any change in one of these components has a ripple effect on the other three. When resources are allocated, that interdependency should be a primary consideration. The FY 2006-2007 Mayor's Recommended Budget calls for increases in each.

BACKGROUND

The Justice Court

The Salt Lake City Justice Court opened its doors on July 1, 2002. The Court has jurisdiction over all Class B and C misdemeanors, ordinance violations and infractions committed within the corporate boundaries of Salt Lake City. The Court works with numerous law enforcement agencies, including the University of Utah Police, the Utah Highway Patrol, the Salt Lake County Sheriff and the Salt Lake City Police Department and any other law enforcement agency that might enforce violations of class B misdemeanor or lower in our municipal boundaries.

The Justice Court is made up of three sections. The criminal section handles misdemeanor criminal violations such as driving under the influence and domestic violence cases. The civil/traffic section handles primarily parking and traffic violations as well as returned check collections, vehicle booting, impound hearings, and animal control cases. The third section is the small claims section, which handles legal issues and problems from contractual or service disputes or others claims which do not exceed the sum of \$7,500.

The Salt Lake City Justice Court handles 12% of the overall judicial caseload in Utah and 24% of all DUI cases.

The City Justice Court handles approximately 225,400 cases per year including parking, traffic, civil, criminal and small claims. Approximately 66,000 of those cases could require the involvement of a prosecutor. Approximately 25,000 of those cases are settled when the individual charged simply comes to court and pays the fine. Another 10,000 to 12,000 cases will be handled through a plea in abeyance, leaving approximately 29,000 cases that will be calendared in the Justice Court and will require a prosecutor. Another 1,200 to 1,500 City Class A misdemeanor cases will be calendared in the Third District Court and will also require a prosecutor. Approximately 5800 of the cases will also require the assignment of a legal defender (projected total in this calendar year).

The four sitting Justice Court Judges each carry approximately 7,300 cases, compared to 1,202 for each judge in the Salt Lake County Justice Court, 1,278 cases for each judge in the Sandy Justice Court and 5,712 for each judge in the West Valley Justice Court. The average caseload for a judges is 2,000 in Salt Lake County and nationwide.

The recent management audit of the Salt Lake City Justice Court recognized that the court is operating at a much higher caseload level per judge and support staff than any of the other courts surveyed in the audit.

Recently the Justice Court sponsored a two day workshop through the National Center for State Courts' Institute for Court Management to study the issue of caseload management. The workshop included participants from every phase of the process, including court personnel, legal defenders, prosecutors, police, and jail personnel. The Justice Court is making a sustained effort to run the Court in the manner most conducive to justice and quality service for the public and maximum efficiency in the use of resources.

City Prosecutors

The average caseload handled by the City Prosecutors Office is, as stated, approximately 30,000 a year. In 2005 there were 24,417 new filings, with a rollover of approximately 5,000 cases from the previous year. The management audit showed a yearly clearance rate of 71%, resulting in a rollover of 29%. The criminal filings have been stable for the last two years

and the Prosecutors Office believes that figure will remain stable unless there is a substantial change in the system. For example, an increase in police officers on the street could have an impact on the caseload (the officers approved in the FY 2005-2006 budget have just recently entered the force, for a net increase of seven).

It is also important to note that a backlog of cases may be created if an adequate rate of adjudication or clearance is not maintained. This may be the result of both the lack of initial resources to effectively clear the cases or also because defendants fail to appear. The ability to clear cases is directly related to the capacity to increase the number of cases set for a judge and funding of the proper number of prosecutors and legal defenders to assist in adjudicating these set matters.

Each of the four judges is supported by two full time prosecutors, resulting in a caseload for each attorney of approximately 3600 cases. When a case is given a court calendar, the prosecuting attorney may participate in video arraignments with incarcerated defendants, attend pre-trial conferences, conduct discovery, prepare and take evidence on motions hearings, and participate in bench and jury trials. Post adjudications may also include Trial de novo appeals and Hearing de novo appeals to Third District Court where the process begins anew on the same case.

There are no national standards established for the recommended caseload for misdemeanor prosecution given the jurisdictional and other case variables. The American Bar Association endorsed the level of 300 misdemeanor cases per year. In 2002, the American Prosecutors Research Institute (APRI) concluded that it would be more advantageous to look at average processing time per case and compare that to the number of hours a prosecutor has available. They arrived at an average per misdemeanor case time of 4.3 hours. The gross working hours for each prosecutor are 1772 a year (minus sick leave, vacation, holidays and continuing legal education requirements). Using that basis, the carrying capacity of an attorney is 412 cases a year. Obviously, many cases take much less 4.3 hours, but many take much more. For example, DUI cases average between 5 to 8 hours a case and Domestic Violence cases are close behind (the average number of DUI cases a year is 2000).

In addition to the 3 prosecutors who cover cases in the District Court and the 8 who work in the Justice Court, the Prosecutors Office is aided by 2

full time employees funded by the YWCA. These employees serve as victim advocates and work with witnesses in domestic violence cases. They are often supported by interns who offer additional assistance.

Legal Defenders

The Salt Lake Legal Defender Association has a contract with Salt Lake City to provide legal representation to low income defendants when requested in all Class A, B and C misdemeanor cases. The FY 2005-2006 City budget for this service was \$466,794. This provided the services of 7 legal defenders, 2 secretaries and a part-time law clerk. The Legal Defender Office has 63 full-time attorneys and 100 full-time staff. All other funding comes from Salt Lake County, the other contractual client of the Defenders Office.

As stated above, the legal defenders are assigned approximately 5800 cases in a calendar year at current levels. This is an increase of nearly 800 cases in the last year. One legal defender is assigned to each judge, one assists as needed with all cases and court calendars, and two cover Class A misdemeanor cases at the Third District Court. As a result, each legal defender averages approximately 830 cases. The American Bar Association and the National Legal Aid & Defender Association recommend a maximum yearly caseload of 400 cases per attorney. In reality, the Justice Court caseload is much higher because 2 legal defenders cover the more involved Salt Lake City Class A misdemeanor cases and cases from the County Attorney at the Third District Court. They covered 956 cases last year for an average caseload of 428 per legal defender, a much more manageable figure. That leaves the five legal defenders in the Justice Court to cover over 4,800 cases, an average of 960 cases per each defender.

At the present level of support, Salt Lake City is receiving services from the Legal Defenders that are not covered in their budget. Director F. John Hill's administrative time is not covered nor is the work of Assistant Director, Vernice Trease, or Patrick Anderson, Chief of the Misdemeanor Division. Mr. Anderson meets regularly with the City Prosecutors to coordinate schedules and other matters. Mr. Anderson covers mental health court, Passages, Safe at Home, CAT support and numerous other programs. His work frequently deflects cases into the mental health system, and then the County takes responsibility. Mr. Anderson allocates a portion of his time to City-related work. One additional secretary partially funded by Salt

Lake City opens City case files and an investigator is available as needed to assist in City cases. That investigator also serves subpoenas. Social Service staff at the Legal Defenders Office also serves as a City resource.

The Legal Defender Office encourages courts to assess recoupment costs where possible and does not stand in the way of recoupment.

With a budget of \$466,794 and a caseload of 5,818, the cost to the City for the work of the legal defenders for FY 2005-2006 was \$80 a case.

Salt Lake City Police Department

It is obvious that the caseload at the Justice Court is the direct result of the number of citations and arrests made by the Police Department and other law enforcement entities active within the City's jurisdiction. An increase in officers on the street is likely to result in an increase in arrests and citations.

Patrol officers spend a significant portion of their time supporting the work of the Justice Court. Officers must appear in court when subpoenaed whether on duty or off. When on duty officers appear in court there is no additional cost to the City other than the opportunity costs associated with taking that officer off the street. When off-duty officers appear in court, by contract, they are paid for 2 hours of preparation time and whatever time they actually spend in court. During the FY 2005-2006 budget year it is projected that court costs for off-duty officers will be \$365,000 (this is not broken down by court). Obviously, the City has a major interest in having officers on patrol as much as possible and spending the least amount necessary to cover the costs of court time.

ANALYSIS- Budget Request

The Mayor's Recommended Budget for 2006-2007 contains requests for increases in personnel and services that will impact the interconnected relationships described above.

In anticipation of a positive recommendation from the auditor hired by the City Council to conduct a weighted caseload study of Justice Court operations, the Administration is recommending an additional judge, 3 criminal court clerks to support the judge, and 4 additional clerks, one for each sitting judge. The Administration is also recommending 1 new hearing

officer, 1 small claims clerk, and a file clerk. The Administration also recommends making a part-time traffic coordinator full-time and continuing the 4 contractual clerks until the full-time clerks are hired.

If the City Council approves the new judge, the 3 new clerks are essential. The other positions are necessary regardless of the decision on the additional judge. Those positions affect the internal efficiency of the Court, while the additional judge affects all the interdependent parties.

An additional judge will reduce the number of cases per each judge from 7300 to 5840. In addition, a fifth judge will allow the Court to set smaller calendars and therefore, police officers will not be called as often to cases that are not heard on any given day and their wait to testify could be shortened.

The Administration is also requesting an additional prosecutor and an office technician for the office. If a new judge is added, this additional prosecutor will be essential to cover the judge's calendar. A court without the proper number of attorneys to help facilitate the case flow will result in the dismissal of cases (or no adjudication at all). Thus, the addition of a judge necessitates that a proper number of prosecutors and legal defenders also be funded to be efficient and effective. The City Prosecutors Office continues to seek ways to maximize the use of allocated resources. Both the original council audit and the current case flow support the additional attorney and support staff allocation.

The Salt Lake Legal Defender Association is requesting a budget increase in FY 2006-2007 of \$148,368. This will allow them to add two new attorneys and one new legal secretary to handle Salt Lake City's caseload. This increase is necessary whether the fifth judge is added or not. The Association has stated in writing that the current staffing level is not sufficient for them to continue to meet their constitutional and ethical duty to provide adequate defense services. The Administration strongly supports this request and included it in the Mayor's Recommended budget. If case referrals remain at approximately the same level, this will mean that the cost for representation for Salt Lake City is at \$105 per case.

The Administration is also recommending an increase of 8 new police officers and 1 new sergeant. With the 7 new officers who have just entered the force, this could result in an eventual increase of officers in the field that

would impact caseload (an increase of 7 officers would only mean that 1 or 2 more officers would be in the field at any given time).

The Administration urges the City Council to consider the above requests as a set of recommendations aimed at achieving maximum efficiency and effectiveness in our law enforcement and justice system, and to consider the impact of each funding decision on the overall system.