Tracy Reeve, City Attorney 1221 S.W. 4th Avenue, Suite 430

Portland, Oregon 97204 Telephone: (503) 823-4047 Fax: (503) 823-3089

September 6, 2019

INTEROFFICE MEMORANDUM

TO:

City Budget Office

FROM:

Tracy Reeve A

City Attorney

SUBJECT:

FY2019-20 Fall Budget Monitoring Process

Attached is the City Attorney's Office's Fall Budget Monitoring Report for FY2019-20. In summary, the office's prior year expenditures were 6% under budget. There are no significant issues to report for the prior year.

Fall BMP requests include the following:

- Portland Harbor Superfund Staffing increases funded with interagency resources;
- Water Main Break Claims Transfer of funds from Policy Set Aside account to the City Attorney's Office for settlement of claims resulting from the March 16, 2019 Water Main Break (Ordinance No. 189572);
- Encumbrance Carryover to complete work with Delaris LLC for development of business and technology requirements for practice management software.

TPR/ccj Encls.

F4 - BMP Amendment Request Report (Fall)

CBO Discussion & Recommendations Run Time: 3:49:41 PM

AT - Office of the City Attorney

DP Type

New Revenue

Run Date: 9/4/19

Page 1 of 4

Request Name: 9213 -Portland Harbor Superfund Staffing

Package Description

This request adds one ongoing Deputy City Attorney position funded with interagency resources from the Bureau of Environmental Services (BES). This attorney position will focus on the City's defense in the Portland Harbor Superfund settlement process. The US Environmental Protection Agency (EPA) notified approximately 150 parties, including the City, that they are potentially liable for the costs of environmental cleanup at Portland Harbor. Most of these parties are engaged in a massive, non-judicial settlement process. This process will allocate liability for more than 400 facilities with over 150 years of operations. Because of the scale of operations to be assessed and the magnitude of anticipated costs to be allocated among the parties (over \$2 billion), the settlement process is formal, detailed and labor intensive.

After nearly 10 years of discovery, advocacy is about to begin. To complete advocacy in a timely manner, the multitude of facilities and issues are grouped in a series of overlapping briefing timelines. The City is a party in each briefing series. The overlap results in major litigation briefs being due approximately every two weeks over the course of several years. This briefing is in addition to the ongoing Portland Harbor legal work required to ensure compliance with existing US EPA Settlement Agreements and pursuing recovery of City funds through bankruptcy proceedings, insurance claims and associated environmental cost recovery claims.

The City Attorney's Office and BES have anticipated that an additional attorney would be needed for the allocation, but it has not been clear when the advocacy phase would begin. Recently, EPA clarified its schedule expectations and backed it up with a threat of enforcement. The allocation advocacy process is now scheduled to begin in mid-2020. The City Attorney's Office does not have the capacity to adequately defend the City and pursue affirmative claims in all of these simultaneous briefing schedules. Litigation attorneys are working at or beyond capacity and Superfund is a highly specialized area of practice. To mount a vigorous defense, the City must prepare most of its briefs and secure expert testimony before the first proceedings begin. The City's strategic objective is to ensure that the City pays only its fair share of the cleanup costs and defend against industrial and other private operators foisting their liabilities on the City. The City's ultimate liability will increase if the City cannot adequately defend itself in the allocation. BES agrees this work is critical and has funding for this attorney position in its existing budget.

Service Impacts

If this position is not added, the City Attorney's Office will not be able to adequately defend the City in the Portland Harbor Superfund matter. The City Attorney's Office's existing resources are already stretched thin. Therefore, the office cannot fill the need by reassigning work internally. With this additional position, the City will be able to appropriately limit its liability to the City's fair share of costs, while also better ensuring that the damage to the Willamette River is remedied.

Equity Impacts

Remedying the environmental damage to the Willamette River will benefit all Portlanders, particularly those communities that rely on fishing for subsistence or cultural practices. Those affected communities may include recent immigrants and members of tribal nations.

CBO Analysis

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL	Recom Total
External Materials and Services	6	02	0	0
Personnel	202,3	98	0	0

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL R	ecom Total
Interagency Revenue	203,0	00	0	0

Position Detail								
Job Class - Name	FTE	Salary	Supplemental	Statutory	Benefit	Total		
30003020 - City Attorney, Deputy	1.00	143,000	0	10,313	49,085	202,398		

City of Portland

F4 - BMP Amendment Request Report (Fall)

Page 2 of 4

CBO Discussion & Recommendations

Run Date: 9/4/19

Run Time: 3:49:41 PM

Position Detail								
Job Class - Name		FTE	FTE Salary Suppleme		Statutory	Benefit	Total	
Total		1.00	143,000	0		49,085	202,398	

F4 - BMP Amendment Request Report (Fall)

CBO Discussion & Recommendations Run Time: 3:49:41 PM

AT - Office of the City Attorney

DP Type

Other Adjustments

Run Date: 9/4/19

Page 3 of 4

Request Name: 9254 -Water Main Break Claims

Package Description

On March 16, 2019, a large water main burst in Northeast Portland near Northeast 23rd Avenue and Skidmore Street. At its peak, the burst water main released 40,000 gallons of water per minute into the neighborhood. This type of large water main failure is exceedingly rare, and the failure was unforeseeable. Several residents and others suffered property damage as a result of the water main break and have asserted claims against the City. While the City denies legal responsibility for any damages, the City acknowledges that it would incur costs to defend claims and the results of any litigation can be uncertain. Accordingly, given the scope of the impacts, disputed claims related to the water main break should be resolved for the benefit of the City according to the process established in Ordinance No 189572.

The Commissioner-in-Charge of the Water Bureau introduced an ordinance that established a process to submit documented claims to the City Attorney's Office and authorized the City Attorney's Office to attempt to resolve the claims. The ordinance set aside a total of \$250,000 to settle all claims, and the ordinance specifies the types of damages and costs the City Attorney's Office is authorized to pay in settlement of a claim. The ordinance requires claimants to execute a full release and an assignment of claims as part of any settlement. Claims must be submitted by July 1, 2019, and the City Attorney's Office must complete processing of the claims by September 30, 2019.

The ordinance directed the City Budget Office to allocate \$250,000 in unrestricted General Fund contingency resources to a Policy Set Aside account via the FY 2018-19 Over Expenditure Ordinance. These funds were carried over to the FY 2019-20 budget for this purpose and are available for appropriation to the City Attorney's Office in the FY 2019-20 Fall Budget Monitoring Process. The City Attorney's Office may only draw funds from the Policy Set Aside account necessary to settle claims, and any excess money in the account shall remain available as unrestricted General Fund contingency. To date, the office has settled claims in the amount of \$133,534.

Service Impacts

The large water main break was an unforeseeable and exceedingly rare event that had a wide scope of impacts. Several residents and others suffered property damage as a result of the water main break and have asserted claims against the City. Given the scope of the impacts, disputed claims related to the water main break should be resolved for the benefit of the City according to the process established by the ordinance. The goal of the ordinance is to resolve legitimate claims as soon as possible for the benefit of the City and affected claimants, which will allow the City to use its limited resources to efficiently handle other disputed claims, if necessary.

Equity Impacts

The goal of this ordinance is to resolve legitimate claims as soon as possible for the benefit of the City and affected claimants. An efficient claims resolution process should benefit all those impacted and may reduce the costs and burdens on those making claims.

CBO Analysis

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL Recom Total	
External Materials and Services	133,5	34	0	
	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL Recom Total	
General Fund Discretionary	133,5	34	0	

City of Portland

F4 - BMP Amendment Request Report (Fall)

CBO Discussion & Recommendations Run Time: 3:49:41 PM

AT - Office of the City Attorney

DP Type

Encumbrance Carryover

Run Date: 9/4/19

Request Name: 9299 - Encumbrance Carryover

Package Description

The office requests a \$29,000 encumbrance carryover for a contract with Delaris LLC for development of business and technical requirements for software upgrades. (DPO #22231267).

Service Impacts

Page 4 of 4

This work is necessary to prepare an RFP for new software. The office intends to issue the RFP and select new software in FY19-20.

Equity Impacts

Technology improvements are expected to create efficiencies in the office allowing City Attorney staff to focus on legal work, including equity work.

CBO Analysis

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL R	ecom Total
External Materials and Services	29,0	00	0	0

	2019-20 FALL Requested Adj	2019-20 FALL CBO Adj	2019-20 FALL F	Recom Total
General Fund Discretionary	29,0	00	0	0

Prior Year Fund Reconciliation Report

Office of the City Attorney

100 - General Fund

EXPENDITURES	2018-19 Revised Budget	2018-19 Actuals	Percent of Actuals to Revised
Personnel	11,648,835	10,924,452	93.78%
External Materials and Services	416,038	413,395	99.36%
Internal Materials and Services	1,148,190	1,133,036	98.68%
TOTAL EXPENDITURES	13,213,063	12,470,884	94.38%

REVENUES	2018-19 Revised Budget	2018-19 Actuals	Percent of Actuals to Revised
Charges for Services	100,000	43,556	43.56%
Miscellaneous	0	33	
General Fund Discretionary	2,805,068	0	0%
Interagency Revenue	6,560,569	6,560,569	100%
General Fund Overhead	3,747,426	0	0%
TOTAL REVENUES	13,213,063	6,604,158	49.98%

Expenditure Discussion

Personnel Services were about 6% underspent due to retirements and employee turnover. Internal and External Materials and Services expenses were very close to budget.

Revenue Discussion

Revenue was as expected. The Charges for Services category, which includes legal fees for civil forfeiture work, public records fees, and other miscellaneous revenue, was less than budgeted. These revenues are inconsistent and difficult to predict but are also immaterial as they are less than 1% of the office's overall revenue.

Service Area	Bureau Name	Decision Package Title	Package Description	Funded in	Year Funded:	Package Funding	Package FTE		Package Update
Legislative, Administrative, and Support	Office of the City Attorney	Water Main Claims Set Aside	On March 16, 2019, a large water main burst in Northeast Portland near Northeast 23rd Avenue and Skidmore Street. At its peak, the burst water main released 40,000 gallons of water per minute into the neighborhood. This type of large water main failure is exceedingly rare, and the failure was unforeseeable. Several residents and others suffered property damage as a result of the water main break and have asserted claims against the City. While the City denies legal responsibility for any damages, the City acknowledges that it would incur costs to defend claims and the results of any litigation can be uncertain. Accordingly, given the scope of the impacts, disputed claims related to the water main	FY 2018-19 OEO	FY 2018-19	0		Package Status In Progress	The office has paid two claims to date totaling \$133,534. The office estimates an additional \$88,730 in claims that will be processed by the October deadline.
Legislative, Administrative, and Support	Office of the City Attorney	Portland Harbor Nat Res. Trustees Carryover	This carryover request is for \$108,001 for the FY19-20 budget for expenses related to the Portland Harbor Natural Resource Trustees Participation Agreement. City Council authorized the City's participation in funding the Portland Harbor Natural Resource Damage Assessment Plan to resolve liability before a Record of Decision is issued for the Portland Harbor Superfund Site. The Council authorized \$400,000 by Ordinance No. 186810. To date \$291,999 has been spent and the remaining \$108, 001 will not be required until next fiscal year.		FY 2018-19	-108001		In Progress	Pursuant to Ordinance No. 186810, the City has entered into a funding and participation agreement with the Portland Harbor Natural Resource Trustees to pursue settlement of natural resource damages. \$291,999 of the original \$400,000 has been spent. The remaining \$108,001 was carried over into FY18-19 and is still in progress. The timeline is unknown but it is expected to be complete in FY19-20.
Legislative, Administrative, and Support	Office of the City Attorney	FY 2017-18 Carryover: Barriers to Employment	00	FY 2018-19 Adopted Budget	FY 2018-19	5,000		In Progress	The office contracted with BOLI to provide administrative enforcement of complaints for violations of Portland City Code Chapter 23.10 and implementing administrative regulations addressing the removal of barriers to employment. The office has paid BOLI for responding to inquiries and complaints, creating and distributing materials, and conducting seminars that include information on the City's ordinance. Costs have been minimal and the office expects to fund this work with existing budget going forward.
Legislative, Administrative, and Support	Office of the City Attorney	FY 2017-18 Carryover: Collections Support	This program carryover was created during the Mayor's Proposed budget for FY 2018-19. The City Attorney has adequate underspending in FY 2017-18 to fund the revenue collections positions on a one-time basis.	FY 2018-19 Adopted Budget	FY 2018-19	228,122	2.0	In Progress	The office hired a limited term Paralegal and Legal Assistant to work on business license collection matters. In FY18-19 to date, the office has handled 285 cases, closed 171 cases and collected \$972,869 in business license revenue. The office also collected an additional \$1.4 million in revenue from other, non-business license matters such as transient lodging taxes. 96% of cases result in a favorable outcome for the City. The office requested ongoing funds in the FY19-20 budget to continue this revenue-generating program.
Legislative, Administrative, and Support	Office of the City Attorney	FY 2017-16 Carryover: Contract Support	The City Attorney requested contract paralegal support in FY 2018-19 budget development. This position will reduce workload for the attorney's who review contracts and enable the City Attorney to make certain both attorney's who work on contract approval are cross-trained. The City Attorney has adequate underspending in FY 2017-18 to support this request. A program carryover package was created during the Mayor's Proposed FY 2018-19 budget development process.0	FY 2018-19 Adopted Budget	FY 2018-19	126.586		In Progress	Providing paralegal support has freed up the attorneys to focus full-time on contract reviews, which have more than doubled in the past five years. YTD the paralegal has reviewed insurance and other regulatory documents related to over 2500 City permits, bonding documents, and contract amendments, allowing the attorneys to focus on more complex agreements. The paralegal also captures, assigns and tracks the incoming work, ensuring that responses are timely and that nothing falls through the cracks. Because of this transfer of work, the lead contract attorney has not been forced to work the unsustainable amount of overtime that had become the norm before adding the paralegal support. With continued support, the office expects to substantially decrease the turnaround time on many contracts and provide contract submittal training to bureaus to increase the quality of submittals to the office. Higher quality submittals will both reduce the number of reviews and the amount of time required for each contract review, increasing efficiency even more.
	Office of the City Attorney	FY 2017-18 Carryover: Superfund		FY 2018-19 Adopted Budget	FY 2018-19	108,001		Complete	Pursuant to Ordinance No. 186810, the City has entered into a funding and participation agreement with the Portland Harbor Natural Resource Trustees to pursue settlement of natural resource damages. \$291,999 of the original \$400,000 has been spent. The remaining \$108,001 was carried over into FY18-19 and is still in progress. The timeline is unknown but it is expected to be complete in FY19-20.
Legislative, Administrative, and Support		FY 2017-18 Carryover: Technology Fund	00	FY 2018-19 Adopted Budget	FY 2018-19	200,000		In Progress	The office is working with a consultant to identify and document the office's software needs and to draft an RFP. The RFP should be released this fiscal year and selection and implementation are planned for FY19-20. The office will not be able to cover those costs without carryover funds. Like the BTS hardware replacement fund, this program enables the office to put aside funds to pay for technology upgrades and replacement costs that otherwise would not be possible within one year's budget. The project is taking several years to complete due to staff time constraints.
Legislative, Administrative, and Support	Office of the City Attorney	Legal Services to BDS for Vacant Houses Work	This Deputly City Attorney position supports Portland's effort to reduce vacant and abandoned houses by foreclosing on City liens. This position has been funded using one-time resources for each of the past two budget cycles, including a General Fund appropriation in FY2016-17 and an interagency agreement between the Bureau of Development Services (BDS) and the City Attorney's Office in FY2017-18. Based on the success of the foreclosure program, the office requests \$165,260 in ongoing interagency funding. This request addresses all four of the office's strategic goals and addresses Citywide housing and livability goals. For example, vacant and abandoned houses are a major problem affecting neighborhood livability, particularly during a housing crisis. Collecting the money due on the liens and returning these properties to productive use as housing stock benefits the City, neighborhoods, and residents. To date, the foreclosure and lien recovery work has brought in more than \$737,000 in revenue to the City through BDS, which covers the liens, penalties, interest, collection costs and sales costs. Under this program, the City successfully pursued foreclosure for the first time in about 50 years. Utilizing the	1	FY 2018-19	165,250	1.0	in Progress	Vacant and abandoned houses are a major problem affecting neighborhood livability. Extensive legal work was required to get the City's foreclosure program developed, as well as coordination between the Bureau of Development Services, the Bureau of Revenue and Financial Services, and the City Auditor. The office is moving forward with foreclosures and multiple liens have been paid off as a result. Additional changes made to the program over the past year should increase the program's efficiency. The Assessments, Finance and Foreclosure section has moved from the Auditor to the Bureau of Revenue and Financial Services, where it will benefit from closer proximity to the City's other collection teams. The foreclosure program has been successful at prompting long-time problematic property owners to either pay off their outstanding city liens or sell their properties to new owners who are more willing to address the maintenance and improvement of the properties. This position is funded through an interagency agreement with the Bureau of Development Services and the work will continue as houses are recommended and approved for foreclosure. In FY19-20, this work will be funded through an IA with BRFS with Local Improvement District Funds.
Legislative, Administrative, and Support	Office of the City Attorney	Legal Services to PPB for Policy Analysis	Bureau's (PPB) policy development and training. Work includes researching relevant legal standards, synthesizing input from multiple internal and external stakeholders, producing and reviewing documents, ensuring that all necessary policies are drafted in accordance with the settlement with the United States Department of Justice (DOJ) and other legal requirements, and regularly and systematically monitoring legal precedent on law enforcement policies and tactics to update PPB		FY 2018-19	181,000	1.0	In Progress	This position supports PPB's continued ability to maintain and build on the systemic improvements achieved under the USDOJ Settlement Agreement. As a result of these improvements, PPB has implemented a standing policy team which regularly drafts, reviews and as appropriate revises bureau policies, with community and stakeholder feedback. Currently, USDOJ is still reviewing key policies, but the policy team's work will continue even after full compliance with the terms of the Settlement Agreement is achieved. The policy team, including this position, works on these policies as they come up for review, and also tackles new areas where additional policy development is deemed appropriate. This attorney performs any requested legal analysis as policies are revised during universal review. This attorney also works to assist PPB in ensuring that new and revised policies are effectively implemented, once adopted and/or revised, and also provides training on these policies and other legal issues as needed. In addition to the work supporting PPB policy development and training, this position also supports PPB's other legal needs, including work on the civil forfeiture program, coordinating the process for blood draw warrants, assisting on PPB public records issues, and supporting PPB's legal needs during critical incidents and free speech calcivities and demonstrations. This position is an integral part of the office's continuing effort to meet PPB's legal needs and to assist PPB in continuous improvement in equitably providing public safety services to the community. This position is currently vacant as the incumbent left for a permanent position at another public agency, demonstrating the difficulty of retaining talented lawyers in positions that are only budgeted for a single year at a time. The City Attorney's Office and PPB have requested ongoing funding for this position but at this time, it has not been recommended. The office are premanent as belied to the solution is not approved, the office provide these key se

Run Date: 9/5/19

Run Time: 1:39:30 PM

Bureau Performance Narrative

Over the past year, the City Attorney's Office achieved many significant results while also navigating through challenges. The office continues to provide exceptional legal services to the City, as demonstrated by the 96% success rate in litigation, the over 10,000 contracts reviewed, and the over 400 trainings provided to City staff. The office performed these exceptional services – and more – while also keeping outside counsel expenses low and maintaining a comparably inexpensive cost of service per attorney hour in our office. The office has handled successful litigation against the Trump administration, ably defended the decisions of City employees in court, collected over \$1.8 million in unpaid City taxes, and provided legal advice on the City's top policy priorities, including housing, demonstrations, fossil fuels, and other high-profile matters.

The office continues to face challenges from both internal and external factors. Internal factors include retirements and regular turnover, which necessitates hiring, training and the reassignment of work. These challenges can impact the continuity of legal services in some areas. External factors include the increasing number of tort claims filed against the City, both for the City's response to demonstrations and other non-police torts. In addition, office attorneys are called upon more and more to provide sound and creative legal advice to help policy-makers confront the challenges of a changing and growing City. These demands can put a strain on existing office resources. The office's main response to these challenges is to try to continue to hire and retain the best attorneys and staff available, and the recent Class/Comp and Pay Equity work by the Bureau of Human Resources has greatly assisted this effort.

The office continues to make a commitment to equity, and advancing equity remains one of the four main office goals. The office has maintained the Honors Attorney program, which is intended to help develop attorneys from under-represented communities who are interested in public service. In addition, the office continues to look for ways to retain, develop, and advance employees of color in the office, all of which is consistent with the office's Racial Equity Plan.

	Key Performance Measures	Measure Type Name	FY 2016-17 Actuals	FY 2017-18 Actuals	FY 2018-19 Target	FY 2018-19 Actuals	FY 2019-20 Target	Strategic Target	Details
AT_0006	Number of training hours provided by City Attorney staff to other City staff	WORKLOAD	468	394	400	421	400	450	Training hours were higher than target.
AT_0007	Annual costs of outside counsel	EFFICIENCY	\$508,718	\$490,695	\$575,000	\$341,568	\$500,000	\$500,000	Outside counsel costs were lower than estimated.
AT_0008	Cost of service per attorney hour	EFFICIENCY	\$138	\$141	\$150	\$150	\$164	\$164	Cost of service per attorney hour remains low compared to outside counsel.
AT_0010	Percentage of cases favorably resolved	EFFECTIVE	90%	97%	85%	96%	90%	90%	The office has excellent litigation results overall.
	Other Performance Measures	Measure Type Name	FY 2016-17 Actuals	FY 2017-18 Actuals	FY 2018-19 Target	FY 2018-19 Actuals	FY 2019-20 Target	Strategic Target	Details
AT_0001	Number of litigation cases	WORKLOAD	1,580	1,481	1,600	1,324	1,300	1,300	Number of litigation cases remains steady.
AT_0004	Number of contracts reviewed and approved	WORKLOAD	9,938	11,432	10,500	10,290	11,000	10,000	Number of contract reviews is very high.