



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: May 15, 2018

Agenda Item 6-J

Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney [Signature]
Finance [Signature]

Department: Finance and Administrative Services
Prepared By: Erik Sund, Assistant City Manager

Subject: *DESIGNATION OF LEGAL FEES*

Fiscal Impact: Yes. A supplemental appropriation for \$421,750 is being requested.

Summary: As significant legal matters arise, it has been staff's intent to obtain City Council approval prior to incurring substantial legal costs on the matter. Staff will provide City Council with a description of the matter and an estimated cost of the legal services required. If legal costs for the matter continue beyond the original estimate, staff will bring the item back to City Council for further review.

If the estimated legal costs are approved by Council, but exceed the remaining available legal budget for the fiscal year, additional budget appropriations will be requested, as needed.

Discussion: At this time, these are the four legal matters for which staff seeks Council approval to proceed:

Villa San Clemente, LLC Litigation
Harper & Burns, LLP
estimate of new funds needed: \$48,750
previously approved: \$45,000-60,000

Harper & Burns is representing the City in four state court actions filed by Villa San Clemente. Villa San Clemente sued the City when temporary banner permits could not be issued because the proposed banners did not comply with the sign ordinance requirements related to location and length of time displayed. In addition, special counsel Alan Burns is representing the City in a writ regarding the timeliness of the preparation of the Draft Supplemental Environmental Impact Report for the Sign Exception Permit and Discretionary Sign Permit for a Master Sign Program for Freeway Oriented Signs at the Outlet Mall. Additionally special counsel Burns is representing the City over the amendment to the Master Sign Program. Lastly, special counsel Burns is representing the City over the latest lawsuit over the denial of temporary signs. City Council at March 6, 2018 meeting approved an estimate of \$45,000 to \$60,000 to take these matters through summary judgment. However, due to on-going litigation additional funding of \$48,750 and contractual authority is being requested

Villa San Clemente, LLC Litigation**Kutak Rock, LLP****estimate of new funds needed: \$233,000****previously approved: \$117,000, remaining available budget \$67,000****total contract estimate: \$300,000**

Villa San Clemente has filed an action in federal court related to the City's non-issuance of temporary banner permits due to non-compliance with the requirements of the sign ordinance regulations related to proposed location and length of time displayed. Jenkins & Hogin was previously representing the City in the federal action. Recently, Jenkins & Hogin has merged with BB&K and can no longer represent the City. The City has selected Kutak & Rock to represent the City on this matter. To date, the City has only spent \$46,748.60 out of the March 6, 2018 Council approved amount of \$117,000.

Case Budget CEQA Writ SC Vacation Rental Alliance Litigation**estimate of new funds needed: \$50,000****previously approved: \$118,000**

San Clemente Vacation Rental Alliance filed a lawsuit to challenge the City's adoption of three ordinances relating to the regulation of short-term lodging units, sober-living facilities, and boarding houses under the California Environmental Quality Act, the Planning and Zoning Law and the Coastal Act. Petitioner seeks to have the City's approval of the ordinances set aside. At the City Council meeting of October 4, 2016 City Council approved \$118,000. Work since that time had included a prolonged mediation and settlement process culminating in the City Council's approval of a draft settlement agreement that would resolve all outstanding charges in the case, if implemented. If this occurs, the case can be closed out during this fiscal year with a budget augmentation of \$50,000. If not, an additional trial budget of \$65,000 for fiscal year 2018-19 to try the case will be required.

Case Budget for Sovereign Health Litigation**estimate of new funds needed: \$90,000****previously approved: \$1,100,000**

Sovereign Health had filed a federal court lawsuit seeking an unspecified amount of damages from the City. Sovereign claimed the City is discriminating against sober living facilities when the City takes action to stop public nuisances or municipal code violations occurring at certain sober living facilities. The City filed several lawsuits to stop public nuisance conditions and municipal code violations occurring at various sober living facilities operating within residential neighborhoods and several office/commercial facilities. At the City Council meeting of October 4, 2016, the City Council approved an overall case budget of \$1,100,000, with this total expected to span two fiscal years. This budget will require an augmentation of \$90,000 for 2017-18 to close out the residual disputes in the case. If these disputes are not resolved, an additional budget appropriation for 2018-19 will be presented.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council:

1. Authorize the Mayor to execute a Professional Services Agreement with Kutak Rock, LLP for City Attorney Services for \$300,000.
2. Authorize the Mayor to execute an amendment to the Professional Services Agreement with Harper & Burns, LLP for City Attorney Services for \$48,750.
3. Approve a supplemental appropriation from the General Fund's Unassigned Fund Balance in the amount of \$421,750 to Other Legal Services, Account #001-203-43635-000-00000.

Attachments:

Notification: None