

APPENDIX D:
Law Department
Report and Analysis

Law Department

INTRODUCTION

The first step in the ICMA analysis identified the core services, functions and activities of each area of study and of the City of Troy. The ICMA team developed a methodology to acquire baseline information (below). Each department completed a Core Services Analysis Matrix; the ICMA team then used the matrices as the basis for interviews with key department staff. (The matrices are provided in Appendix A.) Both the matrices and interviews informed ICMA's understanding of the City's operations and its recommendations

The ICMA team noted significant variability in the matrix responses. This is due at least in part to the differences between operational and support departments and in part to the lack of clarity regarding core services in some areas. Given time and resource constraints we accepted the information as provided. The ICMA team notes that acceptable service levels for each core function are not identified. Based on our review, the team will recommend that the Council and staff work together to determine acceptable service levels in each area.

Process

The ICMA data gathering process included the following steps:

1. Identify all departmental functions and activities.

The matrix provided data from FY2010/11 Budget Functional Organization Chart. Department staff were asked to list all major areas of work accomplished by their department and identify functions performed by each unit.

2. Determine why the function is performed.

Departments analyzed each function through a variety of lenses. Is it required or mandated by state or federal requirements? Is it required to assure that critical outputs are accomplished? Is it required to assure accountability within the system? Which functions help ensure that the department will provide timely, high quality and least costly services or goods to accomplish the mission?

Staff classified the functions and activities according to the following:

Mandated (M)	Required by federal or state law or contractual agreement
Essential (E)	Basic function of government (service level determined by City Council)
Discretionary (D)	Service, program or activity established based on City Council direction
Administrative (A)	Department directors and administrative aides
Revenue Supported (RS)	Services completely funded from dedicated revenue sources (i.e. utilities)
Non-Program/Other Adjustments (O) -	Services that are not direct; i.e. insurance costs, charges from internal service funds

3. Determine which functions/activities are "core functions" related directly to the City or department mission.

Departments ranked the identified functions according to whether they are core to the City's operation, keeping in mind that a core service is one that should be supported by "core" sustainable revenues. A non- or partial core function or service may be highly valued and contribute significantly to quality of life. Core functions or services are directly related to the department's mission or the City's Priority Outcomes. Are they required or mandated by state or federal law? Are they required to assure that critical outputs are accomplished? Are they required to assure accountability within the system? Which ones help ensure that the department provides timely, high quality and least costly services or goods to accomplish your mission?

4. Define and quantify each of the activities (indicate what resources (staffing) are required to produce each output)

Staff identified the approximate staff resources (FTEs) required to provide the service or function and estimated the approximate cost of the FTE allocation.

5. Group functions by outputs (what goods or benefits are provided)

ICMA provided outputs from the FY2010/11 Budget and asked the departments to add or delete as needed. Department staff also indicated the outcomes or the results expected from the service, activity or function.

6. Identify who benefits and how from each function/activity

Departments identified who benefits from the activity or service provided.

7. Determine whether the function/activity needs to be done and what the consequence(s) is of no longer performing the function.

Can the service be eliminated or reduced? Can it be provided in a different way?

8. Determine whether the function/activity could be done better/less expensively by the private sector or another government entity.

Are there alternate service delivery options? Can it be outsourced to another government or to the private sector?

9. Determine the consequences of no longer providing the service, outsourcing, cutting or reducing it.

What would be the consequences of providing the service or function differently or of eliminating it? Can the highest priority outcomes be accomplished without performing these activities? If not, can they be performed more efficiently or effectively by other providers (privatized or under contract to another government entity)? Can the core functions be improved? Provided more efficiently? What are the short- and long-term effects of no longer providing the service(s)?

FINDINGS

IMLA worked with the ICMA team in studying the law department, using the same methodology stated above.

In response to the team’s request, the City Attorney prepared a matrix reflecting all of the duties of the City Attorney and categorized them as required. The City Attorney identified 34 functions and activities described as mandated services. In comparing these functions against Charter §3.17 and the City Code (discussed hereafter), IMLA agrees with the City Attorney that current law requires these functions to be performed. Absent some state mandate, however, functions not mandated in the Charter can be modified by the Council through amendment of the City’s Code.

The mandated functions and services required by law form the bulk of the work of the City Attorney. As the following table indicates, the mandated duties of the office, as reported, constitute a little over 6.5 FTEs out of the law department’s complement of 7.0 FTEs. The following table (see Table 1) condenses those functions and activities into six broad categories (Administration, Advice, City as Plaintiff, Defense of the City, Prosecution and Other).

TABLE 1

FUNCTION	TIME IN FTE'S	TIME IN HOURS ¹	COST
Administration	.03	62.4	\$4,527
Advice	.625	1300	\$121,391
City as Plaintiff	.75	1560	\$123,360
City as Defendant	1.255	2610.4	\$171,345
Prosecution	2.77	5761.6	\$242,611
Other	1.1	2288	\$134,790

Mandated, Administrative and Essential Services

As stated, the City Attorney described the functions and services performed by the law office that are mandated, administrative or essential. The City Charter, state law and City Code determine which functions and services are mandated.

In the City of Troy, the City Attorney holds a unique position.² The Charter creates seven administrative offices: City Manager, City Attorney, Clerk, Treasurer, Assessor, Police Chief and Fire Chief. The Charter provides that the Council appoint the City Manager and City Attorney to indefinite terms of office, while providing that the City Manager appoint all other administrative officers, whether the office is established by the Charter or by law, subject to confirmation by the Council. Officers appointed by the City Manager must report to the City Manager, take direction from the Manager and, with the consent of the Council, may be discharged by the City Manager; however, the Council appoints the City Attorney and it is from the Council that the City Attorney takes direction while working with the City Manager to help the Manager meet goals and fulfill the duties assigned to the Manager. Thus, unlike other employees of the city, the City Manager does not supervise the City Attorney and the City Attorney’s duties are, for the most part, established by law.

The following charts (see Tables 2-6) reflect what the City Attorney concludes are Mandated, Administrative and Essential services. IMLA has reviewed these functions and added a reference to the law that requires the service.

TABLE 2

ADMINISTRATION		
Prepares and administers department budget	A	–
Serves as a liaison with local, federal and state agencies, associations and groups	A	–
Monitors progress of outside retained counsel	M	Code, Ch.3, §1.131
Serves as a liaison with other City departments	M	–
Coordinates staff development	A	–
Explores use of available technological advances for increased efficiency	A	–

TABLE 3

ADVISING CITY OFFICIALS		
Consults and provides counsel and legal advice and updates for City Council	M	Charter §3.17, Code Ch. 3, §1.31
Regularly attends meetings of City Council, boards and commissions and management	M	Charter §3.17, Code Ch. 3, §1.31, Ch. 10, §3.6D
Provides legal advice and updates for City boards and commissions	M	Charter §3.17, Code, §1.31, Ch. 10, §3.6D
Provides legal advice and updates for City management, department directors and employees	M	Charter §3.17, Code, §1.31, Ch. 10, §3.6D
Monitors compliance with Open Meetings Act and Freedom of Information Act	M	Charter §3.17, Code, §1.31
Provides information to the general public, as well as other local, state and federal governmental agencies and municipal government associations	E	–
Sponsors Law Day activities	D	–

TABLE 4

CITY AS PLAINTIFF		
Handles eminent domain cases	M/RS	Code, Ch.3, §1.131
Initiates invoice collection procedures	M/RS	Code, Ch.3, §1.131
Pursues nuisance abatement	M	Code, Ch.3, §1.131, Ch. 82, §106.3
Pursues license revocations with Secretary of State	M	–
Prepares administrative search warrants	M	Code, Ch. 100, §108
Represents City at administrative hearings, including but not limited to environmental law hearings	M	Code, Ch.3, §1.131, Ch. 100, §108

TABLE 5

DEFENSE OF THE CITY		
Represents the City when its zoning and planning decisions are challenged	M	Code, Ch.3, §1.131
Defends the City, its officials and volunteers when sued for the performance of governmental functions	M	Code, Ch.3, §1.131;Ch. 4, §10; Ch.82 §103.4
Defends the City and its officials in personal injury cases	M	Code, Ch.3, §1.131;Ch. 4, §10; Ch.82 §103.4
Defends the City and its officials in civil rights matters	M	Code, Ch.3, §1.131;Ch. 4, §10; Ch.82 §103.4
Defends City Assessor's value	M	Code, Ch.3, §1.131

TABLE 6

ORDINANCE PROSECUTIONS ³		
Processes misdemeanor ordinance violations	M	Charter §3.17
Prosecutes drug and alcohol cases	M	Charter §3.17
Pursues building and zoning ordinance cases	M	Charter §3.17
Handles domestic abuse cases	M	Charter §3.17
Prosecutes shoplifting cases	M	Charter §3.17
Represents the City in traffic matters	M	Charter §3.17
Prosecutes disorderly conduct cases	M	Charter §3.17
Handles assault and battery cases	M	Charter §3.17
Assists with municipal civil infraction matters	M	Charter §3.17
Defends appeals of criminal convictions	M	Charter §3.17
Defends appeals of civil infractions	M	Charter §3.17

OTHER ACTIVITIES		
Negotiates or assists in negotiation of contracts, agreements, bonds and real estate transactions as needed	M	Charter §3.17, Code Ch. 4, §1.137
Researches, drafts and reviews all ordinances, policies and legal documents	M	Charter §3.17, Code Ch. 3,§1.31
Recommends necessary revisions of the City Charter and Code	M	Charter §3.17, Code Ch. 3,§1.31
Receives citizen complaints, mediates disputes and issues criminal misdemeanor warrants	M	Code, Ch. 100, §100.04.03
Provides training regarding the law and legal procedures for employees and officials	M	–
Prepares numerous agenda items for City Council consideration	M	Charter §3.17, Code Ch. 3,§1.31
Assists citizens on a daily basis by answering inquiries and providing appropriate referrals when warranted	E	–
Responds to media inquiries	E	–

The City Attorney reports that all of these services are core services. Under the existing law and charter that is true. Administering the law office, advising the clients, defending the City and its officers and employees, suing on behalf of the City, prosecuting ordinance violations and the myriad of functions listed under other, all are part and parcel of the legal representation of the City. Nevertheless, in setting policy the Council can direct the extent to which these functions need to be performed. By changing policy, the Council can affect whether a function or service continues as a core service and the level of services necessary to meet the City's policy goals. For example:

- The Council can weigh whether it is more cost effective to pay higher insurance premiums rather than having the City Attorney defend the City in covered cases.
- The Council can weigh whether it would prefer its police department to charge offenders under State law rather than City ordinance.
- The Council and Manager can weigh the extent to which they wish the laws of the City to be enforced.
- When a suit is filed against the City, the Council can determine not to defend, by settling the claim rather than incurring legal expenses.
- The Council and Manager can reduce the amount of advice they and agencies seek from the City Attorney.

None of these options are without cost and should not be seen as recommendations, as each will be discussed later in this report.

STAFFING

The City of Troy law department employs seven people. The positions include: the City Attorney, two Attorney II positions, an Attorney I, a Legal Assistant, a Legal Assistant II, and a Legal Secretary. The City Attorney has five direct reports and the Legal Assistant II supervises the Legal Assistant. Until recently, the department employed nine people and the budget for the department called for 8.5 FTEs; in FY11 the department reduced the number of people employed to seven and the FTE's to 7.0. Due to its size, the law department rotates attorneys' substantive area and practice area assignments. Doing so promotes the development of the attorneys' skills, relieves the tedium of unattractive assignments and protects the City from loss of talent, knowledge and expertise. To some extent the prosecution function drives the size of the office. Over two and one half of the FTEs are devoted to this function and, with three judges, each having a weekly municipal docket, the office must have sufficient capability to handle the dockets.

IMLA conducted a survey of members during the Spring of 2010 that sought information regarding local government law department budgets, staffing, salary and other pertinent information. Because the survey was self-reported, it was not validated; however, it provides the best possible comparison available. Of the several hundred responding members,⁴ we identified approximately 65 communities having a similar size to the comparison cities.⁵ The populations of these local governments ranged from 125,000 to 45,000, but the survey does not distinguish between cities that have a prosecutorial function and those that do not.

Staffing for the office compares with the IMLA survey as follows (see Table 7). In an effort to establish measurables to compare with the benchmark communities used for this report, the IMLA considered a number of available measures and suggested others. The following are the measures that Troy has available (see Table 8).

TABLE 7

POSITION	TROY	IMLA SURVEY
Chief Legal Officer	1	0.88
Deputy Attorney		0.52
Managing Attorney		0.15
Non-Lawyer Manager		0.28
Assistant City Attorney		.51
Attorney II	2	0.8
Attorney	1	0.96
Attorney, recent graduate		0.06
Law Clerk		0.55
Budget, accountant, bookkeeper		0.28
Collections manager		0.08
Collections staff		0.03
HR		0.06
Investigator		0.03
IT		0.06
Legal Assistant II	1	0.06
Legal Assistant	1	0.44
Legal Secretary ⁶	1	0.78
Total	7.0	7.07

TABLE 8

MEASURABLE	TROY
Law Department Budget	1,036,260
Billable rate per hour ⁷	\$83.03
Insurance Expense	325816
Cases handled	6800
Number of insurance defense cases handled	6
Cost of defense ⁸	\$74,727
Average cost of ⁹ defense/case	\$12,455
Number of civil cases handled or defended (other)	30
Prosecutions (total)	6800
Prosecutions (bench trial)	105 ¹⁰
Evidentiary hearings	121 ¹¹
Number of administrative search warrants reviewed	181
Number of ordinances drafted/reviewed	21
Number of contracts drafted/reviewed	138
Number of agendas reviewed	175
Number of meetings attended	92
Number of FOIA matters handled	878

SUSTAINABILITY

IMLA was asked to consider if the effect of downsizing the City Attorney's Office can be sustained over the short term and the long term. As the city downsizes, workload in the law department may decrease over time. In the initial stages of a downsizing, the workload in a city law office tends to increase disproportionately, as the law department will often be faced with reviewing more contracts, dealing with more personnel issues, attending more meetings or handling matters that are no longer handled by others in city government. Thus, the increased demands on the office during the City's efforts to downsize may overwhelm the City Attorney's staff for the short term. If the City chooses to outsource services, the City Attorney must review the structure of the proposal and the contract to ensure that the proposal and contract conform and that the City's goals are met through an enforceable contract. As a community downsizes, generally morale suffers and the City can expect increased tensions between management and labor. These tensions often lead to more personnel issues arising, more workers compensation claims and, often, litigation involving claims of mistreatment. Meetings proliferate as departments and agencies attempt to design a system that will work or to discuss issues associated with a projected change of service delivery. Once downsizing becomes fully operational throughout the City, workload in the law department could decrease, but not necessarily.

Downsizing the police department offers an example of how downsizing other departments can affect the City Attorney. If the city chooses to downsize its police department, crime rates may or may not be affected. Case closure rates may decline, but unless the total number of cases entering the court decline, the City Attorney's workload remains effectively the same. To assume that the City Attorney's prosecutorial workload drops when the City reduces its police force necessarily assumes that crime rates increase and decrease disproportionately with the number of police,¹² or that prosecutions will drop because fewer police will catch fewer criminals. Recently, Oakland, California, announced that its budget woes have forced it to no longer respond to certain calls, including burglary.¹³ Decisions such as these may reduce the number of prosecutions, but they also may add work to an office like the City Attorney. In Troy, the City Attorney must review complaints filed by residents and not the police. If people continue to shoplift, to steal, to assault one another or to commit other petty crime, the City Attorney's workload may increase to handle complaints filed by residents seeking justice. A possible solution includes referring residents to the county prosecutor in those cases where the violations are also state crimes.¹⁴ As cities like Oakland cut services to the public, the issue of whether residents need a city or should consider disincorporation arises. Cities are formed to provide certain basic and specific functions to residents different and unique from those provided by a county to its unincorporated areas.¹⁵ Indeed, police services were one of the reasons for cities to incorporate when their county sheriffs were unable to handle the increased demands that more densely populated areas required while they served the county as a whole. If the county can provide the same services as the city, then residents may question the continued viability of maintaining both.

To consider sustainability, IMLA was asked to look at the effects Option 1 would have on the City Attorney's office.

For several years, the City has been downsizing. Faced with what appears to be a continuing decline in revenues and increasing costs,

the City began looking at a six-year plan to further downsize through outsourcing and layoffs as well as reorganization. That process, labeled Option 1, confines the analysis for this report. In other words, can the City sustain the changes suggested in Option 1 and what effect will those changes have on the law department?

The law department plays a small role in Option 1 as compared to some other departments. The City Attorney's Office moved from 8.5 FTEs in FY10 to 7.0 FTEs in FY11. IMLA's analysis confirms that absent changes that will increase the workload in the office, the city can sustain that level of service but is staffed very thin. Any change that increases workload will put a strain on the office's ability to properly serve the City's legal needs.

There are external and internal forces that will likely play a role in whether changes to the City Attorney's workload will increase or decrease over time. Some of these forces reflect the proposed downsizing, some reflect changes in the economy and some represent IMLA's belief that the City needs to increase its legal services to some of its functions and programs.

External forces may require the Council to consider if it can maintain reductions to the law office already implemented and into the future. Analysis of several of the City's special or enterprise funds suggests that some may be underserved by the law department and may need additional attorney resources directed to those areas. For their size, the City's retirement and pension plans spend little if anything on legal services. While that does not necessarily indicate problems, there are significant issues affecting plans today. Recently, the SEC fined five public officials (and is holding them personally liable for those fines) in San Diego for issues associated with the city's pension plan, its unfunded liability and failure to disclose information in bond issues; it fined the state of New Jersey for similar disclosure issues. In 2007, the IRS adopted regulations imposing new restrictions on pension plans that have normal retirement ages that are lower than 62. Those regulations have been delayed but will take effect in the next few years. Similarly, regulators are imposing additional fiduciary responsibilities on plan sponsors and trustees that require advice and counsel. Because these issues exist, one would expect the City to expend money on legal fees,¹⁶ but the budgets do not reflect services in this area. The City should expect that demand for legal services in this area will increase; some issues will likely need outside resources while others may be handled by the City Attorney if properly staffed.

The City's water and sewer budgets do not reflect any appropriation for legal fees. Water and sewer systems generally engage in a business that involves complex issues associated with rates, liability, bond issues and environmental regulation. While a mature system of the size of Troy's may not be expected to require significant legal services, it is difficult to believe that the systems do not require any legal services. For example, cities in Iowa have recently sued the EPA due to its proposals to change how it regulates the treatment and discharge in combined sewer systems following unusual rain events.¹⁷ Aging pipes and conduits in systems need to be replaced¹⁸ and issues such as pin hole leaks¹⁹ or lead in the water²⁰ due to older fittings all involve the potential for claims and other legal services.

Risk management plays a major role in the City's planning, as each function of government accrues risk and potential liability. The City seems well served by its risk management function. The city operates with a \$500,000 self insurance retention and insures to \$15 million. To keep its costs low, the City uses the City Attorney's office to represent

its self-insured risk. Clearly, Troy benefits from the low cost for insurance that this program enables. If the City reduces its legal staff beyond its ability to represent the City, then Troy will no longer gain the benefit of this aspect of its insurance program. Just as important, the risk manager and city departments use the City Attorney to review contracts. Some of the issues an attorney looks for in a contract include how the contract addresses risk. Some of these issues can be quite complex and are now handled by internal staff. Should the City Attorney be unable to handle these reviews in a timely manner or if they are outsourced, Troy can expect to see changes in productivity reflected by the lost efficiencies of switching from in-house counsel.

As the City Attorney represents the City in appeals of assessments, increased appeals will add to the City Attorney's workload and will become more important to the City as its assessable base declines with the housing market. The City Attorney advises that prosecutorial workload increased during the past calendar year, which she associates with the declining economic conditions and with an ambiguous medical marijuana law. Increases in either area will tax the City Attorney's ability to adequately represent the City in all areas.

Under Option 1, the City chose to outsource or eliminate some of its functions and services to achieve immediate savings. Outsourcing Permitting Services,²¹ Planning and Engineering can all have a long-term effect on the City's legal services budget. Each of these functions operates in a litigious area. Insurance protection in these areas only goes so far because the City cannot fully transfer its risk to the contractors. Despite agreements that call for the contractors to indemnify the City for their mistakes, most insurers and their insureds are hesitant to leave the defense of claims strictly to the contractors and their insurers. For that reason, the City's law office needs to be capable of reviewing and participating in the defense of any claim that makes the City a defendant. When it comes to engineering and architect contracts, the standard contracts limit an engineer's liability to the amount of money to be paid the engineer or architect under the contract. While cities can negotiate higher limits of protection, those limits are fairly meaningless unless supported by the engineer's malpractice insurance. When sued, the private contractors may well enjoy all the liability of the government, but without the immunities;²² thus, their exposure to liability can be substantially more than the City's and beyond the limits of their insurance. As with any litigation involving more than one party, the City risks finger-pointing by the contractors who will be asserting that they only followed the City's direction. Under those circumstances, the City will not be able to rely on risk transfer because the City would have liability if it directed the contractor in a manner that caused harm, and that liability would likely not be covered by the contractor's insurance.

Other aspects of the arrangement similarly do not reduce the City Attorney's workload but may increase it. In the area of building inspection and code enforcement, the City Attorney continues to be responsible for handling cases that the code official refers for enforcement. The same can be said for planning and zoning issues. Each requires legal advice and there can often be cases involving enforcement or challenges to determinations. Questions can arise regarding the terms of the contracts, amendments or renewals, and sometimes questions can arise over the contractor's performance or the lack of performance. Residents who are affected by their interaction with the City's contractors often seek relief or engage attorneys to help them. In either case, the City Attorney will likely be involved.

E-discovery, an evolving area of law, will likely affect Troy and its City Attorney. As the City, like other communities, adopts productivity enhancements using electronically stored information, the City will receive requests for that information either through FOIA or through litigation related discovery. While FOIA requests create issues associated with what records must be disclosed, which redacted and which withheld, litigation related discovery includes each of those issues and more. The cost for providing this discovery can be substantial²³ and the city should be formulating a plan for how to store and recover all of its information if required to do so to reduce those costs. For example, using multiple servers and flash drives require multiple searches; cloud computing poses challenges for recovery; and many different types of equipment can store information that requires retrieval.²⁴ To the extent the City has not done so already, it will need to equip its law office to be in a position to respond to these requests and will want to have its City Manager, City Attorney and IT Department develop a policy for issuing litigation holds and responding to demands for e-discovery. Seemingly unimportant decisions on how to store information can cost substantial sums if they are made without considering the costs of retrieval.²⁵

When compared to the IMLA survey, Troy has a smaller staff than average, although barely. Taking into account that the survey includes cities that do not have a prosecutorial function, Troy's staff size is likely

smaller as compared against the average for similarly sized cities that have prosecutorial functions. The City Attorney reports that bench trials through October 31 had increased 32.9 percent from the year before and that the number of motions and hearings had increased by 15.2 percent. These increases challenge the existing staff and signal concern for the future. From the foregoing, IMLA believes service delivery at current levels is sustainable under the Option 1 reductions as implemented, but concerns exist.

GENERAL OVERVIEW

As part of this study the team was asked to compare with certain benchmark cities how Troy provides services. As the cities and their law departments do not report the same measurables, nor do they account in the same manner in their budgets for legal and insurance expenses, this study uses available information (see Tables 9, 10, 11 and 12).

In 2007, *Michigan Lawyer's Weekly* published a survey of median salaries and fees prevalent in the state at the time. Attorneys working for state, city and county governments had a median salary of \$91,000. Their counterparts in corporate practice had median salaries of \$123,000; attorneys in private practice ranged in median salary from a low of \$96,000 to a high of \$186,000 based on a variety of factors,

TABLE 9

CITY	LEGAL SERVICES BUDGET	COST OF INSURANCE ²⁶	INSURANCE DEFENSE CASES HANDLED	CIVIL CASES HANDLED	AGENDA REVIEWED
Troy	1,036,260 ²⁷	325,816	6	30	175
Ann Arbor	1,811,479	About \$478,000	-	-	-
East Lansing	507,810 ²⁸	148,000 ²⁹	-	-	-
Farmington Hills	595,330	764,000 ³⁰	5**	2	50
Livonia	682,879	1,100,000 ³¹	3	38 + 372 ³²	12 ³³
Royal Oak	675,630	1,043,304	0	4	72
Southfield	923,010 ³⁴	-	-	-	-
Sterling Heights	712,600	600,139	26	-	Not tracked

**The City Attorney for Farmington Hills reports: Unlike Troy, Farmington Hills is not self-insured. The City's insurance is through the MMRMA, and I handle some of the cases from MMRMA and I handle all of the other civil cases not covered by insurance. The MMRMA cases have an SIR and attorney bills are sent to the MMRMA for those matters. My attorney billings for all other litigation not covered by insurance are sent to the City.

TABLE 10

CITY	ORDINANCES REVIEWED OR DRAFTED	CONTRACTS REVIEWED OR DRAFTED	MEETINGS ATTENDED	FOIA MATTERS
Troy	21	138	92	878
Ann Arbor	-	-	-	-
East Lansing	-	-	-	-
Farmington Hills	500hrs***	500hrs***	200hrs***	100hrs***
Livonia	6	255 ³⁵	101	Not tracked
Royal Oak	15	100 (estimate)	50	3
Southfield	-	-	-	-
Sterling Heights	18	Not tracked	28 ³⁶	Not tracked

***The City Attorney for Farmington Hills reports: "We do not keep track of the numbers of ordinances drafted/reviewed, contracts reviewed/drafted, FOIA matters and meetings attended. To come up with these numbers would be extremely difficult and time consuming. We do, however, keep track track of hours and I have very roughly estimated the number of hours attributed to each of these tasks..."

TABLE 11

CITY	REGULARLY SCHEDULED COUNCIL MEETINGS	REPORTED APPELLATE CASES 2009 AND 2010 ³⁷
Troy	29	5
Ann Arbor	24	4
East Lansing	24	1
Farmington Hills	21	0
Livonia	24	1
Royal Oak	24	3
Southfield	41	0
Sterling Heights	27	3 ³⁸

including the nature of their firm and their years of practice. According to the Bureau of Labor Statistics (BLS), the median³⁹ salary for lawyers nationally is \$113,240, the mean⁴⁰ annual wage is \$129,020 and for local government attorneys the mean annual wage is \$91,040. For Michigan, the BLS reports that the annual median wage for lawyers is \$95,210 and the annual mean wage is \$113,930. More locally, the BLS reports that for the Warren-Troy-Farmington Hills Michigan Metropolitan Division the median annual wage for lawyers is \$97,140 and the mean annual wage is \$126,450.⁴¹ Thus, attorneys in the Troy area would be expected to earn more than their counterparts in other areas of Michigan.

The *Lawyer's Weekly* survey showed a median fee of \$195 per hour for both transactional and litigation services for attorneys with \$150 per hour within the 10th percentile for each. According to the survey, paralegals billed at a median fee of \$75. While one might expect fees to go up over time, the current economy may have pushed these fees down somewhat. A new study should be released within the next few months.⁴² Currently, the MMRMA pays about \$135 an hour for defense. The Michigan Municipal League through its Michigan Municipal League Liability and Property Pool also provides coverage to Michigan municipalities and its cost of defense ranges from \$115 per hour for Workers Compensation Defense and about \$150 per hour for general liability defense to \$175 per hour for appellate work.

Median fees and median salaries provide a guide in determining what a client might expect when hiring an attorney, but they are only a guide. Because the median is an average, the city or any client may be forced to pay more or may negotiate a lower fee. In the practice of law, fees generally reflect an attorney's experience and reputation in the field. And, while no attorney can guarantee a result, clients generally pay higher fees based on higher expectations.

Using the foregoing as a guide, the Council can consider a number of different options regarding its legal representation to ensure that it and its agencies are well represented. Those options involve direct and indirect costs and benefits, which we will discuss.

There are several broad categories of options available to the Council. It can outsource legal services; it can enter into interlocal agreements to either outsource services or recover value from the services it provides; it can implement internal management reform, reorganization or restructuring; and it can eliminate functions.

Outsourcing

There can be no doubt that outsourcing or privatization can be used by a city for virtually every activity, service or program it offers, from management of the city on down. Management companies can provide the necessary services to manage a city just as law firms can provide legal services to the city and private waste hauling companies can handle solid waste services. Whether the city is best served by privatization, even when privatization might be less expensive, offers a difficult question for a city's policy makers. With legal services, the choice corporations and other entities make to bring the service in-house follows an effort to increase efficiency and reduce risk. Dismantling an in-house office runs counter to those goals, but may be justified if the client decreases its need for legal services.

Many communities use outside counsel to fulfill the role of city attorney. Indeed, IMLA has many members who use outside counsel, just as it has members who have full-time local government attorneys. Some of the comparable cities use outside counsel and are well served by their attorneys. Both methods of legal representation provide a city its necessary legal services. This report should not be interpreted to suggest that one form of representation should be favored over another, as each city's policies, goals and need for legal services will be

TABLE 12

CITY	PROSECUTIONS	BENCH TRIALS	EVIDENTIARY HEARINGS	WARRANTS
Troy	6,800	105	121	181
Ann Arbor	-	-	-	-
East Lansing	-	-	-	-
Farmington Hills	3,500****	360*****	8	59
Livonia	4,058	unknown	unknown	1123
Royal Oak	5,000 (est)	91	unknown	30
Southfield	-	-	-	-
Sterling Heights	6846	Not tracked	Not tracked	Not tracked

****The City Attorney for Farmington Hills reports: "Prosecution defendants often have more than one charge against them and each charge constitutes a separate case number on the court's docket. Please note, however, that the number of cases I have provided in this column only reflects one case for each defendant, not for each case number/ticket number. If we had included each case number, the total number of cases would have to be at least doubled or possibly more, because most defendants have two, three, four or more charges against them."

*****The City Attorney for Farmington Hills reports: "This number includes both bench and jury trials. We do not have them separated out."

different. Because legal representation often depends on personal relationships, preserving the status quo and the historical knowledge that is available from long-term relationships can often lead to maintaining better legal services than looking for the cheapest method of providing services.

There is no magical number that determines whether a city is too large or too small to be represented by in-house counsel or to be represented by outside counsel. Generally, cities start considering whether to use in-house counsel at a population of 25,000, and, by 75,000, most, but not all, seem to be represented by in-house counsel. The amount spent on legal services provides a sound basis for considering whether a city should use in-house counsel instead of relying on outside counsel. When a city regularly spends about \$250,000⁴³ in legal expenses for outside counsel, the city should consider whether going to in-house counsel might be less expensive. However, that number should not be viewed as a place where a city should change from outside counsel to inside counsel, but rather, it forms the starting point at which due diligence argues for it to begin an evaluation as to whether outside counsel provides the best value to the city.⁴⁴

When looking at its outside legal expenses, a client should consider the nature of the matters that incur the expense. If the matters involve defending lawsuits that are not covered by insurance, a far different calculus applies than if the bulk of the legal expense is primarily work that will likely repeat year after year. If the expenses derive primarily from work regularly performed year after year, then a city should determine if it could hire an in-house attorney to perform most of that work and operate an in-house office for less than the city is paying outside counsel. If the work involves unusual expenses, such as the defense of a very expensive lawsuit or an unusual amount of work, then the city should eliminate those expenses from its calculations and make its determination based on the costs of its normal expenses for legal services. Often these expensive cases may require outside counsel even in cities that have in-house counsel.

Unlike a city that must decide whether its outside legal expense can be sustained as compared to an assumed less expensive option, the City of Troy wishes to consider whether to outsource some or all of its in-house legal services. Current market conditions may make that choice more attractive today as the legal services industry suffers with the rest of the state and the country.⁴⁵

Outsource all the city's legal services

There are advantages and disadvantages to the option of outsourcing all legal services as there are with any other option, including the "no change" option. Some of the advantages may be temporary and erode over time, as may the disadvantages.

One must assume that the City will not outsource its legal services unless a due diligence review informs the Council that doing so will be more cost effective. Thus, cost savings are assumed, at least initially. If the Council were to move in this direction, it should structure an RFP that would protect that price advantage for at least five years by locking in rates for that period or at least ensuring that they escalate only to the extent that the City's budget can afford an escalator; i.e., tie any increase into affordability, not some external factor such as CPI.

In addition to locking in rate protections, the City will need to ensure that the contract fully covers the legal services that it expects to save on by outsourcing. As with any contract, the City risks increased costs due to change orders or inability of the contractor to

fulfill the terms of the contract, leaving the city without a viable means to recover its losses.

Generally, if outside counsel is a mid to large multi-faceted firm that concentrates in the area of local government law (including zoning, land use, liquor) and has other members who concentrate in areas as diverse as litigation, environmental law, construction law, pension law and tax law, a city tends to enhance the quality of its legal services, if only due to the expanded knowledge base.⁴⁶ There are several firms in Michigan that provide these services, including those that serve the comparable cities. Their ability to bring to bear expertise in a wide variety of practice areas often enables a city to reduce the legal time spent on certain projects or matters. Similarly, a multi-faceted firm offers the advantage of being able to respond to increased work while limiting the cost to the city when work decreases. Thus, outsourcing can provide the benefit of increased efficiencies in handling the peaks and valleys of workload.

A city can be an attractive client for many reasons. The prestige of representing the city has value, but more important, most cities pay their bills on time. A private firm will frequently offer lower rates to a government client because the steady income stream can support its overhead while it makes its profit elsewhere. For this reason, the city may be able to get a very attractive bid for legal services if it chooses to try to outsource legal services.

Some of the advantages to outsourcing other functions do not easily translate to legal services. For example, because a lawyer essentially markets knowledge and time, but under the Rules of Professional Conduct cannot limit the knowledge component of that calculation, a city can set a monetary cap on the services it will receive, but those caps can be difficult to hold. Nevertheless, by outsourcing, the city may see benefits in timeliness and in accommodating a fluctuating demand for services. By outsourcing, the city can gain the benefit of the law firm's malpractice insurance. With in-house counsel, mistakes do not yield recoverable damages whereas, if outside counsel makes a mistake, the city may have a recoverable claim.⁴⁷

But, there are also disadvantages to outsourcing. The greatest disadvantage, and one that must be fully vetted in the Council's due diligence, involves the question of what happens if outsourcing proves to be a bad choice. Dismantling the law department means that the City must rely on outside representation for several years. Because there are few well qualified attorneys who would want to accept a full-time position of City Attorney if the position held no long-term security and because some who would accept the position under those circumstances may not be counted on to be long-term employees, the City cannot jump back and forth between in-house and outside counsel. In other words, a vacillating policy will not earn the trust of those who want predictability when making employment decisions, which can make hiring a full-time city attorney difficult if the city decides to outsource the position and then bring it back inside. Thus, a decision to dismantle the law department and outsource its work cannot be made lightly or with the expectation that if it's not working a year or two later, the City can set it up again.

News accounts from around the country reflect that many cities that have outside counsel, whether as the city attorney or on retainer in special cases, often experience unanticipated expenses.⁴⁸ Thus, a contract with outside counsel will need to protect the City against unanticipated expenses that would be covered if in-house counsel were continued. In many areas of the country, cities are spending several

hundred thousand dollars defending public records cases, sign laws or restrictions against adult businesses. The merit of the City's position does not protect it against these costs. IMLA believes the City may find it difficult to enter a contract with a law firm that sets an upside limit on the City's cost, yet includes a requirement that outside counsel handle all matters referred to it regardless of quantity and time. Nevertheless, funding an in-house law office does not set an upside limit on the City's costs either. However, the City has less control in the former and has a better chance to limit its topside expenses with in-house counsel in the latter.

A somewhat indirect disadvantage of using outside counsel comes from its very nature: because the attorney bills for services, important questions are not asked and issues are not raised because agencies and employees fear incurring attorney's fees. Indeed, experience shows that when outside services are moved inside the costs are often increased over a few years as issues that require legal services have been ignored.⁴⁹ Bruce Collins, VP and General Counsel for C-Span, writes a regular column for *Inside Counsel* magazine and recently expressed the view that "One of the primary reasons for having and paying for inside counsel is to keep the organization on the legal straight and narrow as efficiently as possible."⁵⁰ Even with inside counsel, some departments and agencies can withhold raising legal issues to avoid accountability for problems that might have been avoided. So, inside counsel does not act as a failsafe, but helps to increase the efficiency of the organization.

Similarly, when evaluating the long-term cost to the City of switching from in-house to outside counsel, the City risks losing the benefit of "preventive maintenance." With in-house counsel, an indirect incentive exists to prevent problems from arising by solving them before they cause a loss or embarrassment. While outside counsel owes a duty of loyalty to its client, practicing preventive law can be more difficult. As the City reviews the outside attorneys' bills, the savings may not be as easy to visualize, so preventive legal services may slowly erode and, as they erode, problems will increase and, as they do, fees will increase. Somewhat akin to preventive maintenance of a vehicle - an oil change and a new oil filter every few thousand miles will generally be less expensive than a major engine repair - preventive law can help a city escape major lawsuits or penalties.

Another indirect disadvantage to using outside counsel involves accessibility.⁵¹ With in-house counsel, the attorney's office is usually quite close and attorneys reasonably available;⁵² albeit, with outside counsel, after-hour or weekend service may be more accessible. A city attorney's office often fields complaints from residents, acting as a resource to residents and, sometimes, a buffer to protect the Council and staff from irate and difficult people. These are not services that transfer well by contract to outside counsel.

There are some additional hidden costs and challenges. Because the City Attorney and City Manager each directly report to the Council, the City's Charter implements a designed system of checks and balances to ensure the Council is best served by its attorney and its manager. If the legal services are outsourced, the Council and its Charter Commission will need to reevaluate this system. The Council will need to consider how it will manage its outside attorney services. The attorney's bills must be reviewed. If that task is assigned to the City Manager, problems can arise if the Council is discussing with its attorney matters involving the performance of the City Manager and associated employment decisions. Often, the Council will not want bills for those services

reviewed by the City Manager. If the City Manager does not review these bills, then the Council must assign one of its members, or a member of its staff to that task. Whether the City Manager handles the task or the Council does, the City should consider engaging a service to audit those bills for accuracy and cost. Bills for legal services can often include charges that the client feels to be excessive, such as spending too much time on a matter or sending too many attorneys or staff to handle a deposition or meeting. The cost associated with this review should be included in a determination of whether to outsource.

The Rules of Professional Conduct for Lawyers guide attorneys in the practice of law and set a high ethical bar on their conduct. These Rules protect the public and clients from various forms of inappropriate conduct, including conflicts of interest. The Rules prohibit an attorney from accepting representation when doing so conflicts with the attorney's self interest, with the interests of those close to the attorney and with the interests of other clients, past or present. Often, this last limitation can prove very problematic. Generally, clients can be given the opportunity to waive the conflict if they are properly informed, but some states limit the extent to which a public body can waive a conflict and there are some conflicts that cannot be waived. There can be times when the conflict develops late in the representation or becomes apparent after the representation begins. Courts and ethics rules in some states demand the attorney cease representation of all clients under these circumstances. Because Michigan law may vary, the Council must be certain that issues of conflicts of interest be addressed carefully in its contract if it outsources its legal services. In doing so, it should be sure that the firm or attorney engaged to perform the services can fully serve the city without having any limiting conflicts now or in the future. To protect against conflict, a city inherently limits the field of available firms. The potential conflicts can affect the city's business in other ways, as a city that hires a firm to be its city attorney expects that firm to act as its spokesperson and representative, but if the firm has a reputation for suing other cities or Troy's business partners, then those relationships can be damaged.⁵³

One last issue that can be a disadvantage, but is as yet not fully resolved in the courts, involves the IRS treatment of an outside city attorney. When in-house, the city attorney must be treated by the city as an employee. A person holding the title of "city attorney," a position established by charter or code, falls within §3401(c), of the Internal Revenue Code. That section demands that the city treat a person holding a "public office" as an employee under the tax laws and pay the appropriate withholding and render a W-2.⁵⁴ The IRS takes the position that the traditional common law distinctions between employee and independent contractor do not apply.⁵⁵ If the city outsources the function, then it must consider if the "city attorney" will be subject to employment taxes that could reduce the benefit of the cost savings.

Outsource a portion of the law office's services and functions

As with a complete outsourcing, this report assumes that the Council has done its due diligence to ensure that the costs of outsourcing reduce the city's costs for legal services. Rather than repeat each of the advantages and disadvantages, this report will draw distinctions, where they exist, between outsourcing all or part of the function.

In determining to outsource a portion of the law office's services, the Council needs to weigh the extent to which the parts are more expensive than the whole; i.e., are there savings that accrue by having a fully functioning law office over one that has been constructed

to handle only a portion of the City's legal work. In evaluating the functions of the Troy City Attorney's office, there appear to be several clearly defined types of duties the office performs: advice and counsel; prosecution; tort and civil rights defense; and other litigation. Outsourcing some of these functions while retaining others offers the Council a choice and a challenge.

Prosecution

Currently, Troy uses 2.77 FTEs to handle prosecutions. This function is fairly discrete and, on the surface, lends itself to outsourcing strictly because it is discrete. Outsourcing prosecution must be evaluated under the context of Michigan law, as there may be laws and court rules that impose obligations and duties on a "city attorney" as prosecutor that may not be delegable.⁵⁶ The City could seek bids on this service and weigh whether it can accrue any savings by contracting out. In doing so, the City could ask the current employees to bid on the service and weigh the results against current costs and other bids.

This report assumes that the Council has done its due diligence and that a contract for these services locks in cost savings for a period sufficient to justify making the change, and that any potential conflicts have been resolved. Of the various benefits generally associated with outsourcing a function of government, outsourcing this function yields only one specific benefit and that is cost savings if the Council can obtain bids at prices less than what it now spends. Council is unlikely to see any quality improvement, timeliness is not a factor as cases are docket driven, Council does not seek productivity improvements in this option and outside expertise will unlikely increase productivity. There may be benefits associated with fluctuating demand for services, but those benefits will accrue to the city through the contract's lower cost.

Some of what normally are advantages to outsourcing will likely become disadvantages as work quality may suffer. That is because prosecution involves significant judgment regarding which cases to pursue vigorously and whether a case should be tried; contracting out this service can change the dynamic of city policy on crime. To briefly explain, if the prosecuting attorney in private practice receives the same pay regardless of how much time the attorney spends prosecuting cases, the attorney has an incentive to conclude the prosecutions quickly. If the prosecuting attorney is paid based on time or volume, those variables will likely argue against outsourcing, as the city cannot reasonably impose cost limits. This problem might be dealt with successfully in the contract, but doing so will be quite difficult. To some extent, this is why most elected prosecutors are constitutional officials of a county with an office funded based on the need to prosecute offenders, not its cost benefit to the county. If outsourced, the city can protect itself from these problems by charging the City Attorney with close supervision of the outside representation and the prosecutions. The extent to which the City Attorney supervises this function will necessarily divert the City Attorney from other functions and will likely remove many efficiencies that might otherwise be gained or even cause additional expense.

Assuming the prosecutors perform other duties in the City Attorney's office, the time spent on those functions will be lost to the City and cannot be recovered in a contract for prosecutorial services. Under those circumstances, the City Attorney must either cease to provide some services or seek additional resources to provide them. These costs will necessarily reduce the assumed beneficial cost savings of outsourcing the function.

Tort and legal defense

Defending the city does not provide the same clarity of function that prosecution does. To some extent, defending the city implicates other functions, such as advice and counsel and other litigation. Unlike prosecution, where the prosecutor can simply decide to limit expenses by not prosecuting cases or diverting offenders, the Council, in good conscience, cannot decide not to defend itself against damage claims. This report does not evaluate the city's risk management, but to understand some of the decisions the Council faces, the Council must understand some basic concepts of risk management. They are risk retention, risk transfer, risk minimization and risk avoidance.⁵⁷ Troy, like all cities, applies each to its various activities.

In discussing tort and legal defense for this portion of the report, the relevant concepts primarily involve risk retention and risk transfer. The city transfers its risk to the MMRMA insurance risk pool by obtaining insurance. By establishing a deductible or creating a self-insurance retention, the city retains risk to the extent of the deductible or the self-insurance retention. The city can vary its cost of insurance by increasing or decreasing its deductible or its self-insurance retention. Most insurance policies have limits of liability. If the city does not obtain insurance over and above those limits, it retains the risk that a judgment or judgments will exceed those limits. Modifying the limits of insurance affects the cost of insurance. Lastly, some insurance policies cover certain risks and others may cover risks not covered in a standard Commercial General Liability policy. To the extent risks are not covered, then the city retains risk in those areas. There are generally some risks that cannot be insured and those, the city either retains, can try to avoid, minimize or can seek to transfer. Insurance policies can be distinguished by whether they are "claims made" or "occurrence" policies, each carrying different costs and risks for the insured. Many policies provide that the insurer will indemnify, defend and hold harmless the insured for claims covered by the policy. Generally, before making decisions on coverage, limits, policy terms or deductibles, a risk manager will discuss these issues with the City Manager, City Attorney and Council as part of an overall plan.

As part of its risk plan, Troy has chosen to retain responsibility to defend itself. Thus, the City Attorney defends the City in cases that might otherwise be defended under a policy of insurance. According to the City Attorney, the MMRMA generally pays \$135 per hour to hire counsel to defend its insureds. Based on information provided by the City Attorney, MMRMA pays on average \$36,815 for the defense of a claim.⁵⁸ In responding to a request by IMLA, MMRMA enhanced its analysis and reported the following:

We, subjectively, believe that the City benefits from having inside legal services and that outside legal services would cost more. Our records reflect that, for all MMRMA lawsuits closed in the last three years, we have paid between \$20,000 and \$25,000 in legal fees on average for lawsuits closed with no payment to the plaintiff (cases that we 'won') and between \$35,000 and \$50,000 in legal fees for cases where we ultimately made some payment to the plaintiff (cases that we 'lost').

As noted in [Table 11](#), by using the City Attorney's office, the City's average costs for defense are uniformly lower and the hourly rate is less. IMLA believes the Council has two options to consider if it chooses to outsource its defense of tort and other litigation against the City.

TABLE 11

YEAR CASES CLOSED	AVERAGE LEGAL FEE FOR CASES WON	NUMBER OF CASES	AVERAGE LEGAL FEES FOR CASES LOST	NUMBER OF CASES
2010	\$21,426	229	\$40,843	126
2009	\$24,418	241	\$35,385	116
2008	\$20,389	241	\$49,957	100 ⁵⁹

1. It can seek bids, on a requirements basis, from or negotiate with private firms to perform these services and, when a suit is filed against the City, allow the City Attorney to select from among the firms by choosing one that has the most expertise in the area of law involved in the case or by choosing one using other factors for selection based on the nature of the suit. The Council and City Attorney may find it possible to coax firms into bidding on a cost per case basis as another option.
2. The Council can also decide to transfer the defense of the City to the insurer (MMRMA). MMRMA can price this additional cost into the insurance premium and the Council can evaluate what value it can gain from doing so.

Assuming that the City has conducted its due diligence and that the costs of outsourcing this function warrant doing so, the advantage will be primarily economic. The city can expect to gain increased expertise in some of the cases and may lose expertise in others. The City could expect savings associated with increased efficiencies in dealing with fluctuating demand for services.

As with outsourcing the prosecutorial function, if outsourced to private defense firms, conflicts must be addressed and the City Attorney will need to monitor bills and services and will lose some efficiency as a result. Outsourcing this function by having the insurer provide the defense, should not add additional administrative responsibilities to the City Attorney, although insurance counsel often seek advice and input from the City Attorney in handling a case, so there may be little gain. There are not as many disadvantages to outsourcing this function as with outsourcing prosecution; however, to the extent current staff provides other services, those services will either need to be abandoned or staff retained, thus affecting the calculus of cost. One other possible disadvantage involves the skill set of the staff. The more cases they handle in court the more able the attorneys are to act in court on behalf of the City and the more able the staff is to handle the administrative functions necessary for the attorneys to represent the City in court. By reducing the number of cases the staff handles, the City will likely lose this efficiency. Because not all litigation involves tort defense, retaining skilled litigation counsel can be important to the City.⁶⁰

A city must often defend cases that do not seek damages. These cases are not covered by insurance. For example, the city can be sued over issues associated with the release of information under a FOIA type law. It can be required to defend an ordinance or policy or a decision to grant or deny a license or permit, whether to conduct prayer at the legislative session or implement changes to benefits. Indeed, many local governments spend far more time and money addressing issues such as these than they do in defending claims for damages. While these matters can be outsourced to private counsel, their nature and complexity often affect the expertise necessary for the defense and therefore the rates and cost of defense. Structuring an RFP to seek bids

on these types of services in the abstract will be difficult. Thus, the Council may not be able to fully understand the cost that outsourcing this aspect of the City Attorney's functions will be until the first bills come in. At that point, it will be too late to minimize those costs should they exceed the Council's expectations.

Other litigation

There are times when the City engages in litigation as the Plaintiff. Currently, the City Attorney is handling several eminent domain cases and regularly handles collection matters. As with insurance defense, the eminent domain cases can be outsourced and the cost of doing so will be the major advantage or disadvantage. Collection cases are frequently outsourced. Private attorneys or collection firms handling those cases will generally take the cases for a percentage of the recovery at percentages that will likely vary between 25 percent and 40 percent. An effective in-house collections operation can increase the amount collected at a cost substantially less than those percentages if there is sufficient outstanding debt and all of the City's debt collection is concentrated in one office.⁶¹

In both the eminent domain cases and collection cases, outsourcing can risk creation of negative publicity as each of these types of case involves tactful consideration and treatment of the Defendant. Nevertheless, collection services can be outsourced. Doing so requires the City to evaluate if the change reduces its costs or will increase its collections as compared to what an effectively staffed in-house operation could do.

With eminent domain, in addition to the assumed cost savings, the City could accrue the benefit of eliminating fluctuating workload, assuming the city's capital program will likely not require additional property acquisition in the foreseeable future. Because these matters are in process, the City may lose some efficiency by outsourcing them now. Nevertheless, the Council may consider whether doing so in the future offers a savings by eliminating the need to have a staff capable of handling that number of cases when it is a diminishing caseload.⁶²

Advice and counsel

While outsourcing just the advice and counsel function and retaining other functions may be theoretically possible, IMLA does not see this option as having any practical benefit or advantage to the Council. Without doubt, the Council could direct that the City Attorney hire private attorneys to provide advice to the Council, the City Manager and the City's agencies, but any savings will likely be lost in inefficiency. Attorneys offer their expertise and knowledge as their service. As attorneys often disagree over the intent, meaning and purpose of a law as well as how to handle a matter or case, having too many attorneys advising the Council can only lead to battles over advice and policy. While these battles might foster a new spectator sport, they are unlikely to save the Council money.

Interlocal Agreements

Generally, local governments can enter into agreements with other local governments to provide services to their communities. The laws across the United States vary as to how much authority each community has in this regard. Assuming that Michigan allows these types of agreements, the City can agree with another local government to have various services provided for it by the other community. Similarly, Troy could consider offering to provide services to other local governments for a fee if it felt its staffing could absorb additional work to recoup some of its costs. Because the law department is staffed very thin, IMLA does not believe there is slack to use.

Interlocal agreements rarely involve law departments, but more frequently involve police, fire and general governmental services. Each of the functions of the law department can be viewed as options for outsourcing through an interlocal agreement. The analysis of advantages and disadvantages for outsourcing in general will be somewhat the same, although one might assume that the advantages of price might be better and that there could be fewer disadvantages in the prosecution function and the tort, legal defense and other litigation functions. A different form of disadvantage might be the likelihood that with the loss of control of the function, timeliness may decrease if the city is not the primary client, as services will likely first be rendered to the primary jurisdiction.

A modified form of outsourcing this function could be evaluated. For example, Troy may have attorneys with reputations for expertise in certain legal matters and an attorney with a nearby local government may have talents in other areas. An interlocal agreement could be structured to have Troy provide advice and counsel and represent the other community in some fields, with the other community providing aid to Troy in other areas. Unfortunately, this type of agreement does not address the cost of service directly. There can be some savings, but gaining savings will likely require an opportunity to evaluate an agreement or plan, rather than an abstract idea. In short, the concept of reducing Troy's legal expenditures through an interlocal agreement offering mutual aid cannot be evaluated except after a plan has been developed.

Another potential disadvantage to interlocal agreements for legal services involves conflicts between the clients. An attorney must not accept representation of a client when likely conflicts exist and, if conflicts develop after representation begins, an attorney often must terminate representation of all clients infected by the conflict. While conflicts can be waived, the attorney must be certain that the client fully understands the conflict and what may happen as a result. Conflicts can arise in a number of different ways and the Council must feel comfortable that if a conflict develops, the interlocal agreement, despite this disadvantage, provides the City benefits that outweigh the costs.

Internal Management Reform, Reorganization and Restructuring

There are limited options for changing the structure of the law office. Due to the economic collapse of local government budgets, some cities have adopted policies to share administrative staff and duties. While some cities consolidate administrative services and functions in the City Attorney's office, Troy's Charter does not allow this type of consolidation.

Elimination

One consideration we have been asked to consider is elimination. Due to the nature of government, eliminating the function of legal services cannot be viewed as viable. Eliminating some services or functions may be possible.

For example, the Council could determine that it will no longer have its police file city charges where there is a comparable state crime, or it may decide to abandon policing in favor of using the county's sheriff. By doing so, the city transfers responsibility for prosecution to the state and the costs to the county; it also loses the revenue that those prosecutions bring. The Council could identify ordinances it has passed that it believes no longer justify the cost of prosecution and eliminate them. While statistics are difficult to obtain on these prosecutions and lack of these statistics limits IMLA's ability to do a full analysis of this option, one could expect some savings. Those savings, however, may not be justified by the loss in revenue and what may be simply shifting costs from one governmental entity to another, funded by the same taxpayers. The city also loses a measure of control over how crimes in the city are prosecuted. What may seem important to the city may not be as important to a county prosecutor.

The function titled "other litigation" could be eliminated, as theoretically nothing in the law requires the City to collect debts or bring litigation to recover damages except the general admonition that the Council act in the best interest of the City. IMLA believes that discretion dictates that this function cannot be eliminated. As noted previously, there are 26 eminent domain cases in the City Attorney's office. If the project for which these cases are necessary is abandoned, then the cases could be eliminated. As these cases wind down, the Council and the City Attorney must consider if that changing workload justifies changes in the staffing of the office as they amount to about 1 FTE.⁶³ The two other major functions in the law office – defense of the City and advice and counsel – do not seem likely candidates for elimination in all or part.

The Council can consider another option, one similar to elimination of the function: it could consider disincorporation; i.e., elimination of the city itself. Disincorporation involves significant legal and political considerations. Issues such as dealing with the City's debts and assets are difficult to resolve. Nevertheless, if the City sees that a majority of its residents no longer desire the services that it provides, or that those services can be provided by the County or, through annexation or consolidation, by another city, these options become viable. Consolidation offers the potential for some savings by eliminating duplicate services, as might disincorporation. These issues are beyond the purview of this report. Nevertheless, Council can engage the voters in Troy to determine whether they believe consolidation or disincorporation better serve them than the skeletal structure that may remain as the city downsizes.

CONCLUSION

Based on our review, Troy's City Attorney's office holds an enviable reputation in Michigan for its talent. The City Attorney garners the respect of her peers and holds positions of leadership in various legal organizations. Her staff is likewise well respected. Based on the size of the City and its various operations, the City operates the Attorney's Office at a

barely sustainable level. Outsourcing the legal department brings with it many disadvantages that argue against outsourcing, unless the City can gain a significant cost advantage over the long term while accepting the disadvantages inherent in the change.

- The available data do not support outsourcing the City's legal services at this time.
 - Cost of City Attorney services appear generally lower than the rates for legal services in the community.
 - Cost of City Attorney services are substantially lower than comparable costs for insurance defense.
 - Efficiencies and advantages of in-house services outweigh advantages of outsourcing.
- Decreasing revenues and continued downsizing of the City argue that the City regularly evaluate if reduction in workload and demand for legal services suggest that some or all of the city's legal services should be outsourced using private, public-private options for delivering programs (outsourcing) – conduct financial and policy analysis, including all or part of the function.
 - Prosecutorial function.
 - Evaluation should include whether to transfer this function to county (similar to evaluation of whether to transfer police function to sheriff).
 - Eminent domain cases.
 - Collection cases.

- If the city outsources functions within the law office and reduces staffing, it should consider if maintaining sufficient staff to handle tort defense has costs that continue to be less than insurance.
- Consider outsourcing for peak workloads – conduct financial analysis.
- IMLA recommends that the City reflect the value provided by the City Attorney to various discrete City revenue sources⁶⁴ by charging those services to recoup the City Attorney's cost to them when appropriate, rather than charging the general fund.

Because the City Attorney's staffing is quite limited, the City will likely find it difficult to enter reciprocal interlocal agreements. Nevertheless, the City Attorney can explore with nearby cities or the county to determine if interlocal agreements can provide Troy a benefit.

- IMLA recommends that the City Attorney discuss with nearby cities and the county various options for interlocal agreements that can benefit Troy.

The following are suggestions to increase and enhance efficiency and effectiveness.

- Establish additional performance metrics to enable comparison to other public and private law departments.
- Conduct regular customer service satisfaction surveys.
- Train staff in competitive contracting and process improvement.