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## **2006 BUDGET BRIEFING NOTE: Options to Reduce to 2% Target**

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### **Issue/Background:**

At its meeting held on January 20, 2006, the Administration Committee “requested the City Solicitor to report to the Budget Advisory Committee meeting on January 27, 2006, with options to meet the 2 percent target, including specific options to limit the funding required for Outside Planners.”

### **Key Points:**

#### **Outside Planner Costs:**

- Outside experts are required to provide expert evidence at Ontario Municipal Board hearings when City Planning staff are not able to provide evidence under oath in support of Council’s position on a planning matter.
- The budget in Legal Services for Outside Planners is \$274k, while actual expenditures totalled \$496k in 2005.
- On average, Legal Services must absorb approximately \$200k of expenditures in excess of the allotted budget for the retention of External Planners through deferral of other expenditures.
- The division cannot reduce to the 2% target without a mechanism to limit these expenditures to the budgeted funding.
- Expenditures are not in the control of the Division but result from Council’s decisions on planning matters where Council does not approve the recommendations of City Planning staff and on appeals of Committee of Adjustment decisions.
- The rates charged by outside planning witnesses have increased since amalgamation whereas the budgeted amount has decreased or stayed the same.
- Based on appeals handled and costs incurred in 2005, the average cost to defend each Official Plan/Zoning appeal is \$15.8k; the cost for each Committee of Adjustment appeal is \$9.4k.
- In order for the division to make reductions to achieve its 2% target, the overages related to this activity must be eliminated through an enhanced process whereby:
  - the City Solicitor report to City Council quarterly on the expenditures related to external planning consultants;
  - Council be notified when the approved funding in legal has been exhausted; and
  - funding source be identified outside of Legal for each Notice of Motion with regard to Planning matters once the approved funding in Legal is fully committed/expended.

#### **Outside Legal Costs:**

- Since amalgamation, funding for external legal counsel within Legal Service’s Operating Budget has decreased from \$1.5 million to \$0.2 million. This budget is maintained to handle various corporate matters that may arise requiring the retention of external counsel requiring specific expertise not found in house, workload spikes and matters where there is a conflict.
- Expenditures related to external counsel have also decreased due to efforts to provide this service internally at a significant savings to the City.
- When necessary, external legal counsel is engaged through Legal Services on behalf of city programs and some ABC’s. Programs pay for these costs within their approved budget allocations. This practice should continue.
- Human Resources Division, a large consumer of external legal services, has a variety of files that were outsourced to external counsel due to conflict and workload issues. It is not feasible or efficient to

move any ongoing files to other legal counsel due to the knowledge the external solicitors have with respect to these matters. Legal Services budget cannot assume these costs without additional funding.

**Option 1: Increase Internal Legal Resources assigned to Claims Matters**

- As part of the 2005 Operating Budget, 2 additional temporary Insurance Claims Defence lawyers were requested to internalize legal services related to the legal work on claims defence files that were outsourced to external legal firms. City Council, at its meeting of December 14 and 16, 2005, approved the conversion of these positions to permanent status.
- The internal lawyers handle approximately 37% of the total claims defence work and charge rates that are lower than external counsel. The internal chargeback amount is still a small percentage of the overall insurance legal defence costs paid for from the insurance reserve fund.
- On average, external billing rates for claims defence work are \$120.00/hour higher than those calculated for internal staff. :

<b>Figure 1:</b>	<b>Internal Charge Out Rate Per Hour</b>	<b>External Hourly Rates for Claims Defence Work</b>
Lawyer 1-6 years	\$106.00	\$175.00 - \$230.00 (avg. \$202.50)
Lawyer 6-10 years	\$123.00	\$230.00 - \$280.00 (avg. \$255.00)
Lawyer 10 years & over	\$181.00	\$280.00 - \$350.00 (avg. \$315.00)

- The addition of an Insurance Claims Defence lawyer will result in overall savings to the City.
- By billing the reserve at the appropriate charge out rate, Legal Services will be attributed a portion of the overall savings generated by this initiative:

**Corporate Savings:**

- Fee for External Lawyer based on 1,300 hours @ \$301 \$391.3
  - Senior Solicitor Cost (bottom of range including fringes) \$135.8
- Savings to City through Internalization \$255.5**

**Savings Attributed to Legal Services:**

- Senior Solicitor Cost (bottom of range including fringes) \$135.8
  - Billing at average hours of 1,300 \$235.3
- Share of savings to Division \$ 99.5**  
**Savings to Insurance Reserve \$156.0**

**Option 2: Reduced Compliment of Solicitors:**

- By reducing the compliment of solicitors by 1, the division will achieve its target of 2%.
- Legal work is not discretionary as legal actions against the City must be defended, statutory obligations must be fulfilled and contractual obligations met
- Demand for legal services is increasing as a result of the Bellamy Report, implementation of the new City of Toronto Act, the complexity of transactions entered into by the City, and I&T and general procurement activities.
- The budget for external legal council has been reduced year over year to an amount that is reliant on the continued availability of internal resources to handle matters on behalf of the City.
- If the resources are not available in house, divisions will need to outsource at a greater costs, offering no efficiency to the City. In cases where a specific type of expertise is required, the hourly rate billed by an external legal firm can be as high as \$800 per hour.
- A decrease in the complement of solicitors will result in a significantly increased level of risk in liability and costs and will lead to delays in the provision of legal advice. Delays could lead to

operating divisions taking action without the benefit of legal advice or the inclusion of necessary protections for the City. This would result in more challenges of City decisions leading to legal actions and their associated costs and damage claims based on delay and increased cost exposure

- A decrease in the compliment of solicitors will lead to delays in implementing the new City of Toronto Act and to other City initiatives. Legal will not have the capacity to attend standing committees or community councils resulting in decisions made without the benefit of legal advice leading to an increase in challenges of Council decisions. Legal would not be in a position to provide legal services to the Library, the Zoo and other ABC's requiring them to obtain more expensive outside legal services.

**Option 3: Increase Gapping**

- Legal Services is currently gapped at 3.5%. The level of gapping is equivalent to the cost 6 solicitor positions or 12 support positions - \$919.9k.
- Each 0.5% increase in gapping equates to one solicitor or two support positions held vacant.
- An increase to gapping of 0.5% to 4% would reduce the budget by \$131.k
- Reduced availability of staff in any function reduces the capacity to handle work internally. Solicitors will be required to attend to more clerical activities if the support is reduced any further; alternatively there will be fewer solicitors available resulting in increased reliance on more costly external legal counsel, delays and a significant increase in the level of risk in liability and costs as set out above.

**Recommendation:**

Option #1 offers the most benefit to the Corporation. Although it does not bring Legal Service's budget to the 2% level, it does generate more than equivalent savings to the City as a whole. Options 2 and 3 offer reductions to Legal Services to the target level, but as the in-house capacity is reduced, costs in other programs will be impacted due to increases reliance on outside counsel together with a significant increase in the level of risk in liability and costs.

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