

City Council Work Session

5:30 PM
Council Chambers
August 6, 2012

ATTENDANCE:

Mayor/Council (please check) Hanel, Ronquillo, Cromley, Cimmino, Pitman, McFadden, Bird, Ulledalen, McCall, Astle, Crouch.

ADJOURN TIME: 8:45

Agenda

TOPIC #1	Animal Control Chicken Ordinance
PRESENTER	Dave Klein, Animal Control Supervisor
NOTES/OUTCOME	

- Two (2) options for Council to consider; one (1) based on Missoula's and one (1) that staff recommends because there are some concerns with making the Missoula code work in Billings. Explained the Missoula ordinance as adapted to Billings. Explained option #2, the ordinance that is recommended by staff. Recommend that chickens be allowed only on single family lots, height limit on coops, 10' setback from property lines for buildings and pens, no chickens in front yard, no slaughtering in public view, no automatic sunset, and violation is a municipal infraction, usually will cite after one (1) warning. Fee resolution is also needed. Higher fee is required if chickens are permitted in all zoning districts because it will require more paperwork.
- Cromley: clarify the explanation copies. When was Missoula ordinance adopted? Legal and staff review?
- Dave: Missoula's code adopted in approximately 2011. Legal and Code consulted with Animal Control.
- McCall: space limits that are necessary?
- Dave: housing is 2 sq ft per animal and outdoor enclosure is commonly 4 sq ft.
- Astle: initiative included a one (1) year sunset?
- Tina: yes, an initiative included that, but a second initiative to follow the Missoula ordinance did not have the sunset.
- Candi: confirmed Tina's statement. Sunset would not impact the zoning code, so grandfather clause would control, unless city council directs otherwise in the zoning ordinance.
- Brent: confirmed prior statements.
- Ronquillo: think that we'll know whether it's working within a year, so don't need an automatic sunset. Dogs are sometimes in even smaller enclosures.
- McFadden: experience with evolving Animal Control ordinances?
- Dave: yes.
- Cromley: annual permit has to be posted on the property?

- Dave: owner must be able to produce the permit but not required to post it; same as Missoula.
- Public comments:
- TJ Wierenga, 2215 Beloit: chicken coop should be 2 sq ft inside and 4 sq ft for outdoors. Coops and enclosures should be covered to keep chickens separate from wild birds. Backyard Hen initiative can agree with either option developed by staff.
- Astle: Two (2) sq ft really adequate?
- TJ: minimum. It's a humane space but more would be better.
- Carol Braaten, 183 Lexington Dr.: common sense should dictate coop and enclosure size. Asks supporters to stand. Either staff proposal is OK.
- Ulledalen: like the Billings version of the Missoula ordinance – option #2.
- Cromley: page I-2, fee resolution should be clear that this is an annual permit fee.
- Ulledalen: thinks \$25/yr fee is reasonable.

TOPIC #2	Districting & Apportionment Commission Correspondence
PRESENTER	Bruce McCandless
NOTES/OUTCOME	

- McCandless: review the contents of the letter and the Commission's schedule through January. Commission is meeting the week of August 13th which will set the 100 House Districts; therefore there would not be an opportunity for an additional city council meeting to take any further action. Endorse the Urban-Rural Plan.
- Ronquillo: still confusion by some legislators. Criticism that the city is involved with the process.
- Pitman: consistent with what we've done.
- Mayor will be in the office to sign the letter.
- McFadden: public comments on anything at anytime, have seen surprisingly few comments or emails on this topic.
- Public comments: none

TOPIC #3	HR and Legal Review
PRESENTER	Tina Volek
NOTES/OUTCOME	

- Tina: Following an initiative to have staff investigate the possibility of an audit on Human Resources functions, including the legal aspect of reviewing contracts, as the result of city personnel lawsuits, there are documents for review. A proposal from Associated Employers in Billings (\$16,000), and a review of the Troy, MI Office of the City Attorney, prepared by the International Municipal Lawyers Association (\$20,000 plus expenses). If either proposal meets the council's needs we will start preparing a RFP. Personnel litigation is a concern, the firefighter's lawsuit, which goes back to the language in the contract was handled by an outside attorney. Pending police officer's lawsuit based on language from the 2003 contract, written by the HR Director, at that time, had no legal review. There is a police case being handled by MMIA, we are asking for cost sharing as they declined city help. The Human Rights Bureau decision on

longevity benefits for the Communications Center Managers goes back many years. The last several years we have used the team approach, until three (3) years ago there was not an attorney on the bargaining team. If the council wishes we can set up a RFP for the process.

- Mayor: should proceed, present method has improved the process greatly with having the legal staff involved.
- McCall: should do the RFP, the sooner the better.
- Ulledalen: has become a bigger issue than intended. Issue is things cannot be explained to people, such as “why was it written this way”. Maybe we need to go to an outside source that has expertise in labor contracts. This initiative has drifted away from the initial initiative.
- Tina: there is also an initiative to review a previous presentation on hiring outside a city organization council RFP. I will pull that and get it to you. On legal and human resources staff have additional experience in the last couple years by working over the contracts and consulting with a firm that specializes in human resource and contract issues. In order to keep costs down we have to look to our own staff. Is there another direction you would like us to go?
- Pitman: how far should we proceed, what answers are we going to get? Are we fighting public perception vs. the actual lawsuits, it does not appear that we are out of line with other communities. Comes down to understanding your own staff, when they need extra help, get it. Don't think it is necessary to go any further.
- Ronquillo: now days people can sue you no matter what, we need to follow our own rules. If we need outside help we can do that.
- Astle: is the HR department fully staffed?
- Tina: there one position we are building an office for now; this would be an investigator/trainer.
- McCall: if we do not want to go in this direction then we need to understand what we are saying and agree so it does not come back to council in a few months. This has been back and forth for two (2) years now; we think we have it fixed and it comes back.
- Pitman: staff has done their job and provided the information to backup how the things are done when the city is named in a lawsuit.
- Consensus is for the staff to not pursue these studies at this time, probably delaying until we complete the Priority Based Budgeting (PBB) program reviews.
- Tina: the bargaining sessions are open to the public, you are welcome to attend. We are also working on Management Teambuilding. There is a Labor Management Program on September 19th and 20th in Bozeman Karla and I will be attending. We will send the council the program information.
- Public comments: none

TOPIC #4	Priority Based Budgeting
PRESENTER	Bruce McCandless

- Bruce: the council received a DVD and instruction to view the PBB program. There was an explanation of the different functions of the tool with the information for the city. The tool example was set up for the City of Cincinnati, so there will be things that are unfamiliar to you. The file will show all the city programs and the dollar cost. The

programs are in priority order that make up the dollars amounts shown in the top part of the table. The buttons are the important elements; “Every City Program”, “City-wide”, “All Departments”, and “Total Estimated Budget”, which break down the different funds. The programs are listed, by quartile, at the bottom of the page/sheet. There are filter options, “Custom Fund Menu #1 which allow you to select one or more funds, or “Custom Look” which allows you to select which programs you want. The numbers are based on the FY12 budget. These programs are scored in relationship to the seven (7) external results.

- Ulledalen: what's next?
- McCall: this is a very positive part of this process; it brings in the community ownership.
- Tina: look at the scoring that exists, tell us what you want investigated; we'll work on that, bring you information and let you make decisions. Has a relationship to the strategic plan – goals are old and may need to be updated. Probably will focus on General Fund and Public Safety Fund. After you've looked at it, staff will conduct meetings/discussion about operating the program.
- Crouch: are departments looking at this too?
- Tina: yes.
- Public comments: none

TOPIC #5	Quarterly Updates
PRESENTER	Pat Weber, Tina Volek, Greg Krueger, Bill Cochran
NOTES/OUTCOME	

- Budget: no questions
- Initiatives: list provided to Council. Questions?
- Ulledalen: August 2007 to sell Lampman and Lampman Strip Park. No progress until park district assessments. Was that dormant for (4) four years?
- Tina: I'll check the status.
- Hanel: date for the report on city-employee lawsuits should be changed to 8/6/12.
- Pitman: McCall initiative in July 2009, about the possibility of partnering with local groups to maintain parks.
- Ulledalen: asked a question to use volunteers for Phipps Park improvements, but are there union barriers? There is a group of people willing to volunteer at Phipps Park because they use that particular park. Would like to have some feedback on this issue?
- Tina: need to follow-up with research by St. John about volunteers and city needs to work on it as resources decline. Need to match staff time and volunteers and balance them.
- Cromley: June 9, 2008, selling memorials in city parks; is that for benches and tables? All kinds to parks? Only program is for Swords Park?
- Tina: brochure is for that park but it shows what donated items cost. Make it more of a generic list if Council wants. Could post the information to the website.
- Ulledalen: frustration that we know we have needs and we're not telling people what we need. Wide open opportunities and we're not taking advantage.
- Cromley: donation for Pioneer Park; how did resident know about how to do that?
- Cimmino: who decides what the costs are?
- Tina: will get more information and report back to you.

- Tina: longstanding initiative on national wastewater standards. Numerous discussions with federal delegation staff. May never get a definitive answer because delegation's hands are tied by federal litigation.
- Pitman: January 11, 2010 initiative? Invite them, but if no one shows up, remove it from the list.
- McFadden: would like to invite them again.
- Ulledalen: unfunded federal mandates. Congress could change the law or provide grants. Election year would be a good time to express their views. Could Mayor help schedule that? Have them speak at a work session so the council can ask questions.
- Downtown Billings Partnership: Greg Krueger – here to answer questions on report that was in the Friday packet. No questions.
- Strategic Plan:
 - Tina: question about whether Council wants new Councilmembers to receive the Communication Plan and schedule a new discussion at a future work session. Also make a presentation on using social media instead of printed newsletter. Parkland dedication – DPARB is working on the topic, realtors may be interested in changes but are just now working on it. On the agenda next month. Circulator bus route study is done but staff is reviewing it before coming to Council.
 - Ulledalen: only two (2) present members of Council who were involved in developing the plan, so need to refocus efforts and renew/redo it.
 - McCall: agree that it started a long time ago but have used it effectively since then. Dynamic tool but agree that it needs to be updated.
 - Tina: would like to get through one (1) full round of Priority Based Budgeting before we revise the plan. Looking at beginning of FY 2014.
- New library construction:
 - Bill Cochran: wouldn't normally give this report verbally since written report was sent out last week. Compliments Debi Meling and her staff. Thanks Pat Weber for bond work, great interest rate. Foundation has made its first payment to the city. Health Department issued permit for coffee shop. Jackson Contractors was on-site today and will start work with the subcontractors next week. US Department of Commerce, broadband program provided several computers, will train librarians on September 15. Training includes library futurists asking what services people will want in the future – so want everyone to attend.
 - Pitman: budget of \$20 million, due to continued donations, etc?
 - Bill: architect budget was \$18 million, \$2 million donation for design never part of the city budget. May be additional donations for things that aren't already in the project; naming rights and small donations program. Will use reserves for several more expenses and maintenance/ replacement fund.
 - Cimmino: naming rights for library?
 - Bill: yes, the Foundation authorized renaming for \$5 million donation, but new name would require Council and County Commission approval.
 - Cimmino: Would that be a one (1) time donation or paid over time?
 - Tina: compliment Bill Cochran and staff assistance to the project.
 - Bill: Can't believe we are on the eve of construction.
 - Public comments: none

Additional Information:

Other public comments:

- Jerry Ray, 2646 Grand Avenue #I: handed out a flyer, JEM LLC, commercial real estate developer. \$1 million investment in the Crane Building. Think it would be a good location for the Planning/Building Department. Didn't know that staff didn't want to cross the railroad tracks, or wouldn't have spent the money to put in a proposal. Want to have a group evaluate the proposal. Really want this to be the city office. 3005 1st Ave. South. New parking lot, elevator, heating and cooling, etc. Slap in the face that staff won't look at the building. No problems with indigents and/or Rescue Mission residents. 7,500 sq ft X 3 floors plus 500 sq ft entry. All floors sprinkled and separate HVAC for each floor. Have held out for five (5) years because want to rent all of it to one tenant.
- Hanel: nice building.
- Bruce Simon, 217 Clark Avenue: interesting ride on the Parking Advisory Board. Wanted current information, given two (2) year old information. Information has been hard to get. Disagree with your decision to increase meter rates. Can't serve as a member on the board any longer. Resignation letter submitted to the Mayor.
- Cimmino: rate increase was not a unanimous vote.
- Simon: no staff accountability when the revenue estimates are wrong.

Recess for executive session on pending litigation at 8:00.



URBAN
CHICKENS

INDEX

- A1 & A2 -----Background
- B1 & B2 -----Current Missoula Ordinance
- C1,C2,C3 -----Missoula Ordinance – Billings Draft Ordinance
- D1,D2,D3 -----Missoula Ordinance – Billings Draft Ordinance
With explanations of changes
- E1, E2 -----Power point slides – Missoula Ordinance to Billings
- F1,F2,F3-----Missoula Ordinance – Billings Draft Ordinance – Staff
Recommendations
- G1,G2,G3,G4-----Missoula Ordinance - Billings Draft Ordinance – Staff
Recommendations – With explanations of changes
- H1, H2-----Power point slides – Missoula Ordinance to Billings with Staff
Recommendations
- I1, I2-----Draft Resolution
- J1-----Draft Permit

URBAN CHICKENS

COUNCIL WORK SEASON AUGUST 6, 2012

BACKGROUND

On June 7, 2011, the City Zoning Commission voted unanimously to forward a recommendation of denial of the request to initiate a text amendment to the City Council to allow raising a limited number of chickens in residential zoning districts.

On July 19, 2011, the Backyard Hen Initiative group gave their presentation to the Animal Control Board. As the Board did not have a quorum at this time no business was discussed.

On September 26, 2011, public comments at the City Council regular meeting prompted Council members to request staff to bring back a report to Council with ideas on the Hen Initiative, to look at ordinances in other communities and draft reasonable guidelines that could apply to Billings; to bring back issues that other communities which have approved urban chickens were having; and reasonable restrictions that could be implemented.

On October 25, 2011, the Animal Control Board held a public meeting to hear the Billings Backyard Hen Initiative and receive public comment. This was an open discussion and all public attendees were in favor of allowing the raising of hens in the city limits of Billings.

Presentations of proposed possibilities allowing chickens within the City of Billings were presented to the Public during (3) three public Community Connection meetings held in November 2011.

On November 21, 2011 Staff gave City Council a presentation of the pro's and con's allowing chickens in the City Limits with examples of other cities requirements and regulations for keeping of chickens. Council voted to table the idea indefinitely.

On March 26, 2012 City Council was asked to approved amendments to City Zoning Code clearly stating that Livestock and Fowl were prohibited within the City Limits. Council chose to table this issue for 30 days. A Council initiative was passed asking for a draft ordinance that would allow chickens within the City, requiring attendance to training classes, setting a 1 year trial period, requiring permits, and asking that the Ordinance be based on Missoula and Bozeman Ordinances. Specifics such as setbacks and considering of 6 to 8 chickens. Recommendations to be brought to a Work Session.

On April 16, 2012 a Power Point presentation and Draft Ordinance was presented to City Council at a work session. Discussion at this meeting rejected some of the requirements being asked of in the Draft Ordinance.

On April 23, 2012 amendments to Zoning Code clarifying chickens and other livestock were not allowed within the City Limits were again presented. Council chose to table indefinitely the proposed changes.

On May 14, 2012 Council initiative directing staff to bring back an Urban Chicken Ordinance for the City of Billings based on the language of Missoula's City Code. It was recommended be given a 1 year trail period.

On June 5, 2012 a meeting of the City Zoning Commission was cancelled due to lack of quorum. Discussion was to be about changes to Zoning regulations that would allow chickens in residential and commercial zoning districts developed for residential uses.

On June 12, 2012 an Animal Control Board meeting was held. At the meeting draft ordinance options were presented to the Board and citizens attending. Option 1 based specifically on the Missoula city code and Option 2 based on the Missoula city code with staff recommendations were presented. Board members in attendance and citizens present voted in favor of Option 2 suggesting minor changes.

On July 3, 2012 the Zoning Commission unanimously voted a recommendation of denial to be forward to City Council for City Zone change #899 a text amendment allowing poultry in residential zoning districts and commercial zoning districts developed for residential uses.

On July 23, 2012 City Council voted to postpone on First Reading passage or denial of Zone Change 899 which would allow chickens within the City Limits until changes to the Animal Control Ordinances placing requirements when doing so could be presented with the proposed Zoning changes.

As requested by Council Initiative we now bring before you an Ordinance strictly based of the Missoula Ordinance allowing chickens and a second option based of the Missoula Ordinance with Staff recommendations.

MISSOULA ORDINANCE

6.07.1010 Regulations concerning keeping of livestock and domestic fowl.

D. Special regulations for urban chickens on a parcel of land that is less than one acre in size. The prohibition to keeping chickens in this section does not apply to the keeping of up to six (6) female chickens while the animals are kept in such a manner that the following standards are complied with:

1. The chickens must be kept on a single-family parcel(s), and chickens may be kept on a parcel(s) under one ownership with more than one dwelling if all residents and the owner consent in writing to allowing the chickens on the property. When chickens are kept on a multi-dwelling parcel(s) the owner of the chickens shall keep a copy of the signed approval document for inspection upon request by animal control personnel.
2. The owner must obtain an annual permit from the City Treasurer. The permit shall be \$15.
3. The chickens shall be provided with a covered, predator-proof chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chickens, designed to be easily accessed, cleaned and maintained by the owners and be at least 2 square feet per chicken in size. The size requirements for the enclosure outlined in 6.07.1010 (A) (1) do not apply. An enclosure may smaller than one half acre in size
4. No chicken house shall be located closer than 20 feet to any residential structure occupied by someone other than the chicken owner, custodian, or keeper.
5. The chickens shall be shut into the chicken house at night, from sunset to sunrise.
6. During daylight hours the adult chickens shall have access to the chicken house and, weather permitting, shall have access to an outdoor enclosure on the subject property, adequately fenced to contain the chickens and to prevent access to the chickens by dogs and other predators.
7. Stored feed must be kept in a rodent- and predator-proof container
8. It is unlawful for the owner, custodian, or keeper of any chicken to allow the animal(s) to be a nuisance to any neighbors, including but not limited to: noxious odors from the animals or their enclosure; and noise of a loud and persistent and habitual nature. Animal Control will determine whether or not a nuisance exists on a case-by-case basis.

(Ord. 3472, 2011)

6.07.1020 Notice of Violation and Order To Take Corrective Action and Citations

A. When Animal Control determines that a violation of the code has occurred, Animal Control may issue written notice to the owner, custodian or keeper, either personally or by certified mail. Such notice shall specify the provision or provisions of this part alleged to have been violated along with a short and plain statement of the facts that constitute the violation. The notice shall include an "order to take corrective action" requiring compliance within a reasonable time as stated in the order.

B. If the owner, custodian, or keeper has failed to comply with the ordinance, Animal Control may issue a citation to the owner, custodian or keeper for failure to comply with any applicable requirement of this section.

(Ord. 3472, 2011)

6.07.1030 Penalty--Fines. An owner, custodian, or keeper of an animal who is found guilty of any provision of this part shall be guilty of a misdemeanor and shall be subject to the penalties provided for in Section 6.07.030 (C).

Failure to comply with a properly issued Notice of Violation and Order to Take Corrective Action shall be counted as a separate offense from a citation issued after the compliance date described in the order.

(Ord. 3472, 2011)

AN ORDINANCE AMENDING THE BILLINGS MONTANA
CITY CODE TO ALLOW A LIMITED NUMBER OF FEMALE
CHICKENS IN RESIDENTIAL AREAS BY AMENDING
SECTIONS 4-401 DEFINITIONS AND 4-303 – CARE,
KEEPING AND SALE OF ANIMALS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY BILLINGS THAT:

Section 1. That the following definitions in section 4-401 of the Billings, Montana, City Code are amended to read as follows:

Animal means to include all livestock, fowl, and any domestic pet, both male and female.

Small animal includes any dog, cat, rabbit, chicken, or domesticated small animal, both male and female.

Section 2. That section 4-303 of the Billings, Montana, City Code is amended to read as follows:

Sec. 4-303. - Rabbitry-and Chickens (Gallus gallus domesticus)

Rabbitry

(a) Whenever the term "rabbitry" is used in this section it shall be deemed to mean any premises or property of any kind or description where more than one female rabbit or hare is kept for purposes of breeding, or where more than one litter of rabbits or hares is kept for purposes of sale.

(b) No person shall keep or maintain a rabbitry on premises controlled by such person.

Chickens (Gallus gallus domesticus)

(c) Up to six (6) chicken hens (female of species) may be kept on a premises subject to the following requirements and subject to all other applicable provisions of this Code:

(1) The chicken hens must be kept on a single-family parcel(s). Chicken hens may be kept on a parcel(s) under one ownership with more than one dwelling if all residents and the owner consent in writing to allowing the chicken hens on the property. When chicken hens are kept on a multi-dwelling parcel(s) the owner of the chicken hens shall keep a copy of the signed approval document for inspection upon request by animal control personnel.

(2) The owner must obtain an annual permit from the City of Billings Animal Control. The fee(s) for this permit will be determined by City Council Resolution and may be periodically adjusted.

(3) The chicken hens shall be provided with a covered, predator-proof chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chicken hens, designed to be easily accessed, cleaned and maintained by the owners and be at least 2 square feet per chicken hen in size.

(4) No chicken house, outdoor chicken enclosure, or chicken hen shall at any time be located closer than 20 feet to any residential structure occupied by someone other than the chicken hen owner, custodian, or keeper.

(5) The chicken hens shall be shut into the chicken house at night, from sunset to sunrise.

(6) During daylight hours the adult chicken hens shall have access to the chicken house and, weather permitting, shall have access to an outdoor enclosure on the subject property, adequately fenced to contain the chicken hens and to prevent access to the chicken hens by predators.

(7) Stored feed must be kept in a rodent- and predator-proof container.

(8) It is unlawful for the owner, custodian, or keeper of any chicken hen to allow the animal(s) to be a nuisance to any neighbors, including but not limited to: noxious odors from the animals or their enclosure and/or noise of a loud and persistent and habitual nature. Animal Control will determine whether or not a nuisance exists on a case-by-case basis.

(9) Enforcement Upon receiving a complaint of a possible violation Animal Control will investigate, determine if a violation exists and when appropriate leave a notice of violation and order to take corrective action with the owner, custodian, or keeper and provide them with written notice of the violations that require correction. Animal Control will revisit the owner's address 10 days or more after the notice of violation is issued. If the owner, custodian, or keeper has failed to comply with the ordinance, Animal Control may issue a citation to the owner, custodian or keeper for failure to comply with any applicable requirement of this section.

(10) When Animal Control determines that a violation of the code has occurred, Animal Control may issue written notice to the owner, custodian or keeper, either personally or by certified mail. Such notice shall specify the provision or provisions of this chapter alleged to have been violated along with a short and plain statement of the facts that constitute the violation. The notice shall include an "order to take corrective action" requiring compliance within a reasonable time as stated in the order.

(11) Failure to comply with a properly issued Notice of Violation and Order to Take Corrective Action shall be counted as a separate offense from a citation issued after the compliance date described in the order. Each day an offense exists shall constitute a separate offense and be a separate municipal infraction.

(d) Persons found to have committed a violation of this section shall be subject to a municipal infraction with civil penalties as specified in section 18-1304.

Section 3. Effective Date. This ordinance shall be effective October 10, 2012.

Section 4. Sunset Date. This ordinance shall be in effect for one (1) calendar year from October 10, 2012. On October 10, 2013, Sections 4-303 and 4-401 BMCC will revert to its original language unless the City Council re-adopts the language herein.

Section 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2012.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2012.

CITY OF BILLINGS

By: _____
Thomas W. Hanel, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

ORDINANCE NO. 12-_____

AN ORDINANCE AMENDING THE BILLINGS MONTANA
CITY CODE TO ALLOW A LIMITED NUMBER OF FEMALE
CHICKENS IN RESIDENTIAL AREAS BY AMENDING
SECTIONS 4-401 DEFINITIONS AND 4-303 – CARE,
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Defining fowl and chicken within the Animal Control Ordinance.

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(2) The owner must obtain an annual permit from the City of Billings Animal Control. The fee(s) for this permit will be determined by City Council Resolution and may be periodically adjusted.

Changes made make specific for Billings and establish permit fees determined by Council Resolution.

(3) The chicken hens shall be provided with a covered, predator-proof chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chicken hens, designed to be easily accessed, cleaned and maintained by the owners and be at least 2 square feet per chicken hen in size.

(4) No chicken house, outdoor chicken enclosure, or chicken hen shall at any time be located closer than 20 feet to any residential structure occupied by someone other than the chicken hen owner, custodian, or keeper.

Wording has been added as our understanding as written would allow chicken owners to allow their chickens to wonder in fenced backyards during daylight hours. Staff felt this defeated the distance requirement.

(5) The chicken hens shall be shut into the chicken house at night, from sunset to sunrise.

All in attendance at the June 12, 2012 Animal Control Board meeting felt it unnecessary to specifically list dogs in this section, feeling predators covered all, so the word dogs was removed from this section.

(6) During daylight hours the adult chicken hens shall have access to the chicken house and, weather permitting, shall have access to an outdoor enclosure on the subject property, adequately fenced to contain the chicken hens and to prevent access to the chicken hens by predators.

(7) Stored feed must be kept in a rodent- and predator-proof container.

(8) It is unlawful for the owner, custodian, or keeper of any chicken hen to allow the animal(s) to be a nuisance to any neighbors, including but not limited to: noxious odors from the animals or their enclosure and/or noise of a loud and persistent and habitual nature. Animal Control will determine whether or not a nuisance exists on a case-by-case basis

(9) Enforcement Upon receiving a complaint of a possible violation Animal Control will investigate, determine if a violation exists and when appropriate leave a notice of violation and order to take corrective action with the owner, custodian, or keeper and provide them with written notice of the violations that require correction. Animal Control will revisit the owner's address 10 days or more after the notice of violation is issued. If the owner, custodian, or keeper has failed to comply with the ordinance, Animal Control may issue a citation to the owner, custodian or keeper for failure to comply with any applicable requirement of this section.

(10) When Animal Control determines that a violation of the code has occurred, Animal Control may issue written notice to the owner, custodian or keeper, either personally or by certified mail. Such notice shall specify the provision or provisions of this chapter alleged to have been violated along with a short and plain statement of the facts that constitute the violation. The notice shall include an "order to take corrective action" requiring compliance within a reasonable time as stated in the order.

(11) Failure to comply with a properly issued Notice of Violation and Order to Take Corrective Action shall be counted as a separate offense from a citation issued after the compliance date described in the order. Each day an offense exists shall constitute a separate offense and be a separate municipal infraction.

(d) Persons found to have committed a violation of this section shall be subject to a municipal infraction with civil penalties as specified in section 18-1304.

Wording changed to make specific to Billings.

Section 3. Effective Date. This ordinance shall be effective October 10, 2012.

Section 4. Sunset Date. This ordinance shall be in effect for one (1) calendar year from October 10, 2012. On October 10, 2013, Sections 4-303 and 4-401 BMCC will revert to its original language unless the City Council re-adopts the language herein.

Section 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2012.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2012.

CITY OF BILLINGS

By: _____
Thomas W. Hanel, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

ORDINANCE NO. 12-_____

AN ORDINANCE AMENDING THE BILLINGS MONTANA CITY CODE
TO ALLOW A LIMITED NUMBER OF FEMALE CHICKENS IN
RESIDENTIAL AREAS BY AMENDING SECTIONS 4-401
DEFINITIONS AND 4-303 – CARE, KEEPING AND SALE OF
ANIMALS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY BILLINGS THAT:

Section 1. That the following definitions in section 4-401 of the Billings, Montana, City Code are amended to read as follows:

Animal means to include all livestock, fowl, and any domestic pet, both male and female.

Small animal includes any dog, cat, rabbit, chicken, or domesticated small animal, both male and female.

Section 2.

That section 4-303 of the Billings Montana City Code is amended so that such section shall read as follows:

Sec. 4-303. - Rabbitry-and Chickens (Female Gallus gallus domesticus)

Rabbitry

(a) Whenever the term "rabbitry" is used in this section it shall be deemed to mean any premises or property of any kind or description where more than one female rabbit or hare is kept for purposes of breeding, or where more than one litter of rabbits or hares is kept for purposes of sale.

(b) No person shall keep or maintain a rabbitry on premises controlled by such person.

Chickens (Female Gallus gallus domesticus)

(c) Up to six (6) chicken hens (female Gallus gallus domesticus) may be kept on a premise subject to the following requirements and subject to all other applicable provisions of this Code:

(1) The chicken hens must be kept on a single-family parcel(s). Chicken hens are prohibited on any multi-dwelling parcel(s).

(2) The owner must obtain an annual permit from the City of Billings Animal Control. The fee(s) for this permit will be determined by City Council Resolution and may be periodically adjusted;

(3) The chicken hens shall be provided with a covered, predator-proof chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chicken hens, designed to be easily accessed, cleaned and maintained by the owners, be at least 2 square feet per chicken hen in size and the coup and enclosure cannot be more than (12) twelve feet at its peak in height.

(4) No chicken house, outdoor chicken enclosure, or chicken hen shall at any time be located closer than 10 feet to any public right-of-way, sidewalk, or neighboring property line other than the chicken owner, custodian, or keeper.

(5) The chicken hens shall be shut into the chicken house at night, from sunset to sunrise.

(6) During daylight hours the adult chicken hens shall have access to the chicken house and, weather permitting, shall have access to an outdoor enclosure on the subject property, adequately fenced to contain the chicken hens and to prevent access to the chicken hens by predators.

(7) Stored feed must be kept in a rodent- and predator-proof container

(8) It is unlawful for the owner, custodian, or keeper of any chicken hen to allow the animal(s) to be a nuisance to any neighbors, including but not limited to: noxious odors from the animals or their enclosure (see Sec. 4-306 Offensive animal waste); and noise of a loud and persistent and habitual nature (see Sec. 4-404 Noisy animals).

(9) No chicken hen(s) shall be allowed to run at large in the city. No owner or keeper shall allow or permit any chicken hen(s) to be at large off the owner's or keeper's property. Any chicken hen(s) found to be running at large in the city or on private property in violation of this section is a public nuisance and shall be impounded in the animal shelter. (see Sec. 4-406 Small animals at large)

(10) No chicken house or chicken enclosure shall be located in a front yard.

(11) No chicken hens shall be slaughtered within view of adjacent property or the public.

(12) Changes to the standards contained in this section shall require any permit holder to comply with any new standard, regulation, or condition and no notice to a permit holder is required prior to enforcement of any new standard beyond that required for adoption of a new or revised ordinance.

(d) Persons found to have committed a violation of this section shall be subject to a municipal infraction with civil penalties as specified in section 18-1304.

Section 3. Effective Date. This ordinance shall be effective _____, 2012.

Section 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2012.

PASSED, ADOPTED and APPROVED on second reading this ____ day of _____, 2012.

CITY OF BILLINGS

By: _____
Thomas W. Hanel, Mayor

ATTEST:

By: _____
Cari Martin, City Clerk

ORDINANCE NO. 12-_____

AN ORDINANCE AMENDING THE BILLINGS MONTANA CITY CODE
TO ALLOW A LIMITED NUMBER OF FEMALE CHICKENS IN
RESIDENTIAL AREAS BY AMENDING SECTIONS 4-401
DEFINITIONS AND 4-303 – CARE, KEEPING AND SALE OF
ANIMALS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY BILLINGS THAT:

Section 1. That the following definitions in section 4-401 of the Billings, Montana, City Code are amended to read as follows:

Animal means to include all livestock, fowl, and any domestic pet, both male and female.

Small animal includes any dog, cat, rabbit, chicken, or domesticated small animal, both male and female.

Provides for definition of fowl and chicken within Billings Animal Code.

Section 2.

That section 4-303 of the Billings Montana City Code is amended so that such section shall read as follows:

Sec. 4-303. - Rabbitry, and Chickens (Female Gallus gallus domesticus)

Rabbitry

(a) Whenever the term "rabbitry" is used in this section it shall be deemed to mean any premises or property of any kind or description where more than one female rabbit or hare is kept for purposes of breeding, or where more than one litter of rabbits or hares is kept for purposes of sale.
(b) No person shall keep or maintain a rabbitry on premises controlled by such person.

Chickens (Female Gallus gallus domesticus)

(c) Up to six (6) chicken hens (female Gallus gallus domesticus) may be kept on a premise subject to the following requirements and subject to all other applicable provisions of this Code:
(1) The chicken hens must be kept on a single-family parcel(s). Chicken hens are prohibited on any multi-dwelling parcel(s).

Staff recommends restrictions to single family parcel(s) eliminating paper nightmare requiring neighbor/landlord permission signatures.

(2) The owner must obtain an annual permit from the City of Billings Animal Control. The fee(s) for this permit will be determined by City Council Resolution and may be periodically adjusted;
(3) The chicken hens shall be provided with a covered, predator-proof chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chicken hens, designed to be easily accessed, cleaned and maintained by the owners, be at least 2 square feet per chicken hen in size and the coup and enclosure cannot be more than (12) twelve feet at its peak in height.

Staff recommendation that a restriction on height of chicken house and enclosure be placed in Ordinance to reduce complaints of plain view, feathers flying into neighboring property, and reducing possibility of noise issues.

(4) No chicken house, outdoor chicken enclosure, or chicken hen shall at any time be located closer than 10 feet to any public right-of-way, sidewalk, or neighboring property line other than the chicken owner, custodian, or keeper.

Staff recommends chicken hens also be included as being required to be kept a minimum of 10' from property line. As Missoula Ordinance is written it could be interpreted as allowing chickens loose in owners backyard during daylight hours increasing chances for contacts with neighboring pets, feathers and waste ending up in are near a neighboring property. Concerns by people with allergies and possible disease transmission warrant this additional restriction.

(5) The chicken hens shall be shut into the chicken house at night, from sunset to sunrise.
(6) During daylight hours the adult chicken hens shall have access to the chicken house and, weather permitting, shall have access to an outdoor enclosure on the subject property, adequately fenced to contain the chicken hens and to prevent access to the chicken hens by predators.
(7) Stored feed must be kept in a rodent- and predator-proof container
(8) It is unlawful for the owner, custodian, or keeper of any chicken hen to allow the animal(s) to be a nuisance to any neighbors, including but not limited to: noxious odors from the animals or their enclosure (see Sec. 4-306 Offensive animal waste); and noise of a loud and persistent and habitual nature (see Sec. 4-404 Noisy animals).

Placed wording in this section specifically listing sections of the current Ordinance that would be used to determine if a violation of these nature is/has occurred.

(9) No chicken hen(s) shall be allowed to run at large in the city. No owner or keeper shall allow or permit any chicken hen(s) to be at large off the owner's or keeper's property. Any chicken hen(s) found to be running at large in the city or on private property in violation of this section is a public nuisance and shall be impounded in the animal shelter. (see Sec. 4-406 Small animals at large)

As it is current Policy for violations of existing Billings Animal Ordinance that an owner be issued a warning for first offense violations of Offensive animal waste and Small Animal at Large, also first complaints of Noisy Animal receive a letter advising them of the complaint an Officer visit on a second complaint within a (3) three month period prior to a Citation being issued we suggest these changes as wording used in the Missoula Ordinance could lead to major changes in policy for all Billings Animal Ordinances and how they are enforced.

(10) No chicken house or chicken enclosure shall be located in a front yard.

Staff recommends that Chickens not be allowed in the front yard of owners in hopes of reducing complaints for such practice.

(11)No chicken hens shall be slaughtered within view of adjacent property or the public.

(12) Changes to the standards contained in this section shall require any permit holder to comply with any new standard, regulation, or condition and no notice to a permit holder is required prior to enforcement of any new standard beyond that required for adoption of a new or revised ordinance.

Sunset date has been removed because of concerns over legality and a concern that a Sunset Date, should there be a major issue requiring changes to this section of the Ordinance, an argument could be made that changes should not be allowed until the end of the Sunset period. Also Grandfathered or not?

(d) Persons found to have committed a violation of this section shall be subject to a municipal infraction with civil penalties as specified in section 18-1304.

Establishes as a municipal infraction under current City Code.

Section 3. Effective Date. This ordinance shall be effective _____, 2012.

Section 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2012.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2012.

CITY OF BILLINGS

By: _____
Thomas W. Hanel, Mayor

ATTEST:

By: _____

RESOLUTION NO. 12-

A RESOLUTION AMENDING RESOLUTION NO.;
ESTABLISING FEES TO BE CHARGED BY THE CITY ANIMAL CONTROL; AND PROVIDING AN
EFFECTIVE DATE.

WHEREAS, Section 4-453 of the Billings, Montana City Code provides that the City Council shall establish from time to time the fees to be charged by Animal Control; and

Whereas, Animal Control fees need to be changed to reflect changes to the Animal Ordinance allowing Urban Chickens within the City limits and requiring a permit; and

Whereas, the City Council has duly considered the matter.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF
BILLINGS, AS FOLLOWS:

1. ANIMAL CONTROL FEES: The fees to be charged by Animal Control are hereby established as follows:

Licenses Registrations:

Duplicates \$ 2.50

Unaltered* Dog/Cat registration for 1 year \$ 30.00

Spayed/neutered license registration for 1 year \$ 7.50

Unaltered* Dog/Cat registration for 3 years \$ 80.00

Spayed/neutered registration for 3 years \$ 15.00

Senior Citizen 65 or older shall receive 1/2 off license registration fees.

Late fee \$ 5.00

*Unaltered = unsprayed/unneutered.

Potentially Dangerous Dog Registration \$100.00 annually
Dangerous Dog Registration \$100.00 annually

Small Animal Permit \$ 30.00 annually plus license
registration fee for each animal

Animal Release Fee \$2.00

Disposal Fee \$30.00

Euthanasia Fee \$35.00

Rabies Submission Fee \$40.00

Veterinarian Clinic Monthly Disposal Fee \$ 150.00

Drug & Paraphernalia Disposal Fee \$ 25.00 per pound
maximum 250.00 per burn

Trap Rental \$ 10.00 per week

Urban Chicken Permit Fee \$25.00

2. TERM OF FEES: Said fees shall continue in full force and effect until changed by the City Council by subsequent resolution.

3. EFFECTIVE DATE: The above resolution shall be effective upon passage and approval.

PASSED by the City Council and APPROVED this , 2012.

CITY OF BILLINGS

By _____
Thomas W. Hanel, Mayor

ATTEST:

By _____
Cari Martin, City Clerk



CITY OF BILLINGS
CHICKEN PERMIT
FEE: \$25.00

OWNER INFORMATION

NAME: _____

ADDRESS: _____ ST: _____ ZIP: _____

PHONE NUMBER: _____ ALT. NUMBER _____

SIGNATURE: _____ DATE: _____

By signing this form, you acknowledge the rules and responsibilities provided to you with this form and will comply with Billings Municipal Code Section 4-303 C. 1-11

Expiration Date: _____ Sold by: _____

This permit is for up to 6 female (hen) chickens on a single parcel located in the City limits.

Enforcement and regulation provided by City Animal Control. If you have questions please contact:
Billings Animal Control
1735 Monad Road
Billings, MT 59101
(406) 657-8226
Monday – Friday 10:00 – 6:00pm

August 7, 2012

Montana Districting and Apportionment Commission
PO Box 201706
Helena MT 59620-1706

Dear Justice Regnier and Commission Members:

Thank you for the 14 public hearings that you conducted around the state and the other opportunities that you have provided for public input. It was a demanding task and schedule, but the outcome will be better and more broadly accepted because you listened to the many people who care deeply about the work that you're doing.

At the Billings session, the Mayor and City Administrator provided verbal testimony. With the unanimous support of the Billings City Council, they supported the Legislative Services prepared "Urban-Rural" Plan because it most closely resembles the Yellowstone County-Billings proposal that the city submitted to you in 2011. Yellowstone County and the City of Laurel added their support for this proposal. Billings believes that this plan respects the community's neighborhoods, reflected by elementary school attendance areas and neighborhood planning areas, while using many of the natural and man-made geographic features as dividing lines between proposed House districts. This letter is a follow-up to the previous testimony and it will address some issues that have not been widely discussed.

The city believes that three (3) plans that the Commission brought to the public hearings meet the mandatory districting criteria. Unfortunately, the "existing" and the "communities" plans do not meet the mandatory criterion "compact and contiguous districts". The proposed Yellowstone County House districts are not compact and they ignore school and neighborhood boundaries. For example, in the proposed "communities" plan, proposed District #52 extends from the downtown to 32nd Street West, a distance of over four (4) miles and encompassing several neighborhoods and school attendance areas. Likewise, proposed District #45 would stretch from the south side's State Avenue to Lake Elmo, which is six (6) miles away. These are not compact districts.

These two (2) plans do not meet Montana statutory requirements. 5-1-115 (2) (d) MCA states that districts should be nearly equal length and width and the average length may not be more than three (3) times the average width. In the two (2) examples used above, their length is eight (8) times and four (4) times their width.

The remaining three (3) plans meet the mandatory criteria, but the "Urban-Rural" Plan best supports the discretionary criteria; keeping communities of interest intact and following political unit and geographic boundaries. Yellowstone County's population is nearly perfect for establishing 15 House districts within its boundary. In the "Urban-Rural" Plan, 14 proposed districts are contained entirely within the County and only Treasure County needs to be added to rural parts of Yellowstone County to complete the 15 districts. The Billings and Laurel city limits and their planning areas are contained within and almost entirely intact in the proposed districts. Ten (10) proposed House Districts are populated with a majority of city residents. With slight over 100,000 residents, Billings has nearly the ideal population for these ten (10) districts. Arterial streets, highways, railroads and the Yellowstone River are consistently used as district boundaries. The surrounding counties are treated similarly by keeping them nearly intact. Carbon, Golden Valley, Musselshell, Stillwater and Treasure Counties are completely intact within districts. Big Horn County is split between two (2) districts in order to assure minority voting rights.

We recognize that the Commission will not adopt any of the five (5) proposed plans in their entirely. You will probably use the best features from each proposed plan in the final statewide plan. The City of Billings urges you to adopt the "Urban-Rural" Plan for this region's portion of the statewide plan.

Sincerely,

Thomas W. Hanel
Mayor



FROM THE DESK OF...

Tina Volek
City Administrator

PO Box 1178
Billings, MT 59103
(406) 657-8430 FAX (406) 657-8390
email: volekc@ci.billings.mt.us

MEMORANDUM

To: Mayor & City Council
Date: Thursday, August 02, 2012
Subject: Human Resources/Legal Review
CC: B. McCandless; B. Brooks; K. Stanton

In 2011, the City Council passed an initiative to have staff investigate the possibility of an audit on Human Resources (HR) functions, including the legal aspects of reviewing contracts, as the result of City personnel lawsuits. Similar studies have been completed in the past on the Police Department by the International Association of Chiefs of Police and on the Building Division of Planning by the International Code Council. Staff initially reported back during the budget process that the first firms contacted for a functional effectiveness study estimated a cost of \$40,000 to \$50,000 per department reviewed, which the Council found unacceptable.

Staff has further investigated departmental audits and found two possibilities that would probably cost \$16,000 to \$20,000 each, which may be more palatable to the Council.

History of Litigation

Montana, with its strong labor heritage, appears to be more litigious than many other states. The media focus on the City's labor litigation also is often more extensive in Billings than it is in major metropolitan areas such as Denver, where 25 or more municipalities may work in close proximity.

Discipline and the resulting grievances are normal in most modern governments that hold their employees accountable for their actions. Billings has, on occasion, handled as many as three or four grievances a month at the staff and labor union level as a result of discipline throughout the organization. Those grievances may go on to arbitration, but rarely rise to the level of a court case.

Attached is a memo from Assistant City Administrator Bruce McCandless that shows, for the most part, that Billings does not have many more cases than the other major cities in Montana on a per employee basis. If the Council wishes further analysis of this issue from the Montana Municipal Interlocal Agency (MMIA), the staff would be glad to request such a study.

It should be pointed out that most of the Billings cases that have involved litigation go back an extended period, or to a time when previous managers did not request review by the City Attorney's Office or the current Human Resources staff. The practice for the past five years has been a team approach that involves both Human Resources and Legal staff review of contracts,

discipline, etc. While no approach is fool-proof, more review ensures a better product. The major cases that came from earlier periods include:

- The firefighters' lawsuit, which goes back to the language of a contract that was approved in the mid-1990s, when none of the current staff was at the City. That case was handled by an outside attorney brought in by the then-City Administrator at the time it was filed.
- The pending police officers' lawsuit, which is based on language from the 2003 bargaining agreement, signed by both parties. As Council Members may remember, a change in the contract language written by the then-Human Resources Director resulted in the questions currently at litigation. There was no Legal review of that contract.
- Litigation involving two separate Police Department cases. The first was handled by an MMIA-appointed attorney. MMIA failed to honor a request by the City Attorney to add counsel to the defense team and the attorney declined a City Attorney request to provide assistance in the case. As Council Members are aware, the City is in discussion with MMIA about the cost-sharing for that case. The second case was a retaliation claim resulting from testimony in the first case. It was settled in court-ordered mediation.
- A Human Rights Bureau decision that granted Communications Center managers the same longevity benefit as Police and Fire managers. This resulted from a long-standing practice that had involved giving the Fire and Police managers the same longevity benefits as bargaining employees. That practice was ended for new hires beginning Jan. 1, 2011, although the existing managers were grandfathered into the benefit.

Potential Review Sources

Attached for the Council's review are two documents. The first is proposal prepared by Associated Employers in Billings, which recently completed a similar study for the Montana Department of Health. The second is a review of the Troy, Michigan, Office of the City Attorney, prepared by the International Municipal Lawyers Association (IMLA) as part of an International City/County Managers' Association on right-sizing Troy's government. The cost of the Associated Employers' study was \$16,000. The cost of the IMLA study was \$20,000, plus expenses, although the larger ICMA study cost Troy \$183,000.

If the Council wishes to pursue these studies, staff will prepare requests for proposals to include the firm and association listed above. Cost of the studies was not budgeted in Fiscal Year 2013, so a transfer from the General Fund Contingency eventually would be necessary to cover the expenses of the reviews, once the cost of the contract is known.



FROM THE DESK OF . . .

Bruce McCandless

Assistant City Administrator

PO Box 1178

Billings, MT 59103

(406) 657-8222 Fax (406) 657-8390

Email: mccandlessb@ci.billings.mt.us

June 21, 2012

TO: Tina Volek, City Administrator

COPY: Brent Brooks, City Attorney
Karla Stanton, Human Resources Director

SUBJECT: MMIA report on Employment Practices Liability (EPLI) cases

Based on a City Council request, you asked me to obtain information from MMIA that might help to answer questions about litigation between Montana cities and their employees. The requested information might be obtained in two ways; an MMIA report on recent EPLI cases and by surveying each Montana city for employer/employee litigation that is not covered by and therefore not reported to the MMIA. An example of the latter would be the Billings firefighter wage/hour case. I requested and MMIA prepared an EPLI report, some of the data are attached and I will attempt to summarize them.

From FY 2004 through FY 2011, Billings had 25 EPLI cases covered by the MMIA. At least two of the cases/complaints involved multiple employees making the same claim, but each employee is counted as a claim in the total number of cases. The two claims are the police officer cases involving officers Hagen, Gauthier, Leonard, et.al and the Communications Center case involving Kindness, Guy, Aman, et. al.¹ I don't know if there are similar circumstances in the other cities. The other five cities reporting EPLI cases had claims as follows:

Butte-Silver Bow	15
Bozeman	6
Great Falls	8
Helena	0
Kalispell	4

Missoula does not participate in the EPLI coverage but MMIA reported one EPLI event because the case involved multiple covered counts.

During the same timeframe, Billings had total incurred losses of \$3,223,869, or an average of \$128,955/case. Incurred losses include defense and judgment/settlement

¹ Neither set of cases shows settlement or other payments that may have occurred

amounts. The Billings average is approximately three (3) times higher than the next highest city average. Two cases account for the high total cost and average. The Feuerstein and Bechtold cases cost \$2,778,319, or 86% of the total. No other Billings case exceeded \$100,000 of incurred cost. Removing the costs of these two cases from the calculations lowers the total to \$445,550 and produces an average of \$19,372/case. No other city had a single case cost that is greater than \$150,000.

The survey of member cities will take place only if we request it. It will be more labor intensive than the computerized case file search that MMIA already conducted and will take longer to obtain the information, analyze it and to prepare a report. Please review the information presented here and in the attachments. If you believe that we need more complete information and that it might be obtained from a city survey, I will relay that request to the MMIA and determine a delivery date.

Butte-Silver Bow

Fiscal Year	Claim Number		Event Date	GC Description	Reserve Amount	Paid Sum	Collection Sum	Incurred Sum
FY02-03	GC2002018924		11/6/2002	EPLI	134,138.73	139,138.73	5,000.00	134,138.73
FY04-05	GC2004021159		4/15/2004	EPLI	6,324.88	6,324.88	0.00	6,324.88
FY04-05	GC2005021862		1/1/2005	EPLI	105,912.54	105,912.54	0.00	105,912.54
FY04-05	GC2005021863		1/1/2005	EPLI	19,277.82	19,277.82	0.00	19,277.82
FY04-05	GC2005023262		1/1/2005	EPLI	25,821.38	32,067.53	6,246.15	25,821.38
FY05-06	GC2004024602		3/3/2004	EPLI	4,700.00	4,700.00	0.00	4,700.00
FY05-06	GC2005022768		6/10/2005	EPLI	71,653.58	71,653.58	0.00	71,653.58
FY05-06	GC2005023753		7/26/2005	EPLI	51,636.09	51,636.09	0.00	51,636.09
FY05-06	GC2006025324		4/11/2006	EPLI	11,470.99	11,470.99	0.00	11,470.99
FY07-08	GC2007026191		8/27/2007	EPLI	5,231.14	5,231.14	0.00	5,231.14
FY07-08	GC2007026247		10/19/2007	EPLI	89,810.67	89,810.67	0.00	89,810.67
FY07-08	GC2007026632		12/3/2007	EPLI	4,122.57	4,122.57	0.00	4,122.57
FY07-08	GC2008026768		1/22/2008	EPLI	16,030.04	16,030.04	0.00	16,030.04
FY10-11	GC2010030792		3/15/2010	EPLI	70,000.00	41,821.44	16.50	70,000.00
FY11-12	GC2011032317		1/1/2011	EPLI	0.00	0.00	0.00	0.00
Total Incurred Sum:		616,130.43						
Total Number of Claims:		15						
Average Incurred Sum/Claim:		41075.362						

City of Billings

Fiscal Year	Claim Number	Claimant Name	Event Date	GC Description	Reserve Amount	Paid Sum	Collection Sum	Incurred Sum
FY03-04	GC2003020315		9/4/2003	EPLI	57,118.03	57,118.03	0.00	57,118.03
FY03-04	GC2003020607		9/8/2003	EPLI	85,187.81	85,187.81	0.00	85,187.81
FY03-04	GC2003020775		12/5/2003	EPLI	20,990.11	20,990.11	0.00	20,990.11
FY05-06	GC2001023800		11/1/2001	EPLI	2,028,319.48	2,028,319.48	0.00	2,028,319.48
FY05-06	GC2005022853		3/15/2005	EPLI	43,146.38	43,146.38	0.00	43,146.38
FY05-06	GC2005022854		3/15/2005	EPLI	33,537.58	33,537.58	0.00	33,537.58
FY05-06	GC2005022855		3/15/2005	EPLI	41,140.23	41,140.23	0.00	41,140.23

FY05-06	GC2005023685		11/10/2005	EPLI	1,813.00	1,813.00	0.00	1,813.00
FY05-06	GC2005023686		11/10/2005	EPLI	1,813.00	1,813.00	0.00	1,813.00
FY05-06	GC2005023729		9/22/2005	EPLI	10,778.20	10,778.20	0.00	10,778.20
FY07-08	GC2001026950		11/1/2001	EPLI	746,510.00	771,499.10	21,499.10	750,000.00
FY08-09	GC2008027603		6/13/2008	EPLI	42,381.36	42,381.36	0.00	42,381.36
FY09-10	GC2009029023		5/15/2009	EPLI	37,120.97	37,120.97	0.00	37,120.97
FY09-10	GC2009029024		5/15/2009	EPLI	0.00	0.00	0.00	0.00
FY09-10	GC2009029025		5/15/2009	EPLI	0.00	0.00	0.00	0.00
FY09-10	GC2009029263		10/20/2009	EPLI	34,636.55	34,636.55	0.00	34,636.55
FY09-10	GC2009029274		10/20/2009	EPLI	0.00	0.00	0.00	0.00
FY09-10	GC2009029320		10/20/2009	EPLI	0.00	0.00	0.00	0.00
FY09-10	GC2009029321		10/20/2009	EPLI	0.00	0.00	0.00	0.00
FY09-10	GC2009029322		10/20/2009	EPLI	0.00	0.00	0.00	0.00
FY09-10	GC2009029351		10/20/2009	EPLI	0.00	0.00	0.00	0.00
FY09-10	GC2009029599		12/7/2009	EPLI	3,804.60	3,804.60	0.00	3,804.60
FY09-10	GC2009029624		7/23/2009	EPLI	25,000.00	2,462.50	0.00	25,000.00
FY10-11	GC2010030315		1/22/2010	EPLI	0.00	0.00	0.00	0.00
FY10-11	GC2010030715		11/13/2010	EPLI	7,081.50	7,081.50	0.00	7,081.50
Total Incurred Sum		3,223,868.80						
Total Number of Claims		25						
Average Incurred Sum/Claim		128954.752						

City of Bozeman

Fiscal Year	Claim Number		Event Date	GC Description	Reserve Amount	Paid Sum	Collection Sum	Incurred Sum
FY03-04	GC2003019797		1/15/2003	EPLI	40,944.58	40,944.58	0.00	40,944.58
FY06-07	GC2006024377		6/28/2006	EPLI	9,996.93	9,996.93	0.00	9,996.93
FY07-08	GC2007025826		5/15/2007	EPLI	1,745.46	1,745.46	0.00	1,745.46
FY07-08	GC2007026564		10/18/2007	EPLI	3,853.84	3,853.84	0.00	3,853.84
FY10-11	GC2010030499		4/13/2010	EPLI	45,925.78	45,925.78	0.00	45,925.78
FY10-11	GC2011031084		1/25/2011	EPLI	1,736.88	1,736.88	0.00	1,736.88
Total Incurred Sum		104,203.47						
Total Number of Claims		6						
Average Incurred Sum/Claim		17367.245						

City of Great Falls

Fiscal Year	Claim Number		Event Date	GC Description	Reserve Amount	Paid Sum	Collection Sum	Incurred Sum
FY02-03	GC2002019401		4/26/2002	EPLI	37,741.36	37,741.36	0.00	37,741.36
FY04-05	GC2004021625		10/26/2004	EPLI	3,503.04	3,503.04	0.00	3,503.04
FY07-08	GC2003026594		3/7/2003	EPLI	5,232.53	5,232.53	0.00	5,232.53
FY07-08	GC2008026753		2/13/2008	EPLI	2,005.96	2,005.96	0.00	2,005.96
FY08-09	GC2008027552		5/21/2008	EPLI	1,121.25	1,121.25	0.00	1,121.25
FY09-10	GC2009029265		12/8/2009	EPLI	0.00	0.00	0.00	0.00
FY09-10	GC2010029607		3/4/2010	EPLI	12,816.22	12,816.22	0.00	12,816.22
FY11-12	GC2010031965		2/1/2010	EPLI	13,442.77	13,442.77	0.00	13,442.77
Total Incurred Sum		75,863.13						
Total Number of Claims		8						
Average Incurred Sum/Claim		9482.89125						

City of Kalispell

Fiscal Year	Claim Number		Event Date	GC Description	Reserve Amount	Paid Sum	Collection Sum	Incurred Sum
FY04-05	GC2004021485		2/18/2004	EPLI	14,480.16	14,480.16	0.00	14,480.16
FY07-08	GC2006026122		7/12/2006	EPLI	83,918.94	84,054.94	136.00	83,918.94
FY07-08	GC2007026269		5/15/2007	EPLI	4,601.50	4,661.50	60.00	4,601.50
FY08-09	GC2008028040		9/12/2008	EPLI	8,660.61	8,660.61	0.00	8,660.61
Total Incurred Sum		111,661.21						
Total Number of Claims		4						
Average Incurred Sum/Claim		27915.3025						

City of Missoula

Fiscal Year	Claim Number		Event Date	GC Description	Reserve Amount	Paid Sum	Collection Sum	Incurred Sum
FY08-09	GC2007027684		7/31/2007	EPLI	129,755.06	129,755.06	0.00	129,755.06
Total Incurred Sum		129,755.06						
Total Number of Claims		1						
Average Incurred Sum/Claim		129755.06						

HR ASSESSMENT

Employment laws and regulations are changing rapidly, given today's legislative environment. A Human Resources Audit is an excellent way to identify your organization's potential liabilities and areas for improvement. During the HR Audit, we have the person(s) responsible for the HR functions complete a questionnaire covering all aspects of human resources. We then interview the person(s) to discuss the issues further (refer to the attached functional questionnaire). The audit consists of the detailed questionnaire indicating full compliance, somewhat in compliance or not in compliance with state and federal law and HR "Best Practices". In addition, the member receives a comprehensive written report that evaluates each area that the Assessment covers.

The HR Assessment helps the organization ensure that government regulations, as well as company policies, are being followed. We also make recommendations for best practices to help the human resources function develop into an even more effective business partner in the company.

One of our experienced HR professionals comes on-site to review the company policies, handbook, and various employment practices to uncover potential problems. We look at payroll and hiring practices to ensure your selection practices are in compliance with relevant state and federal laws. We conduct a random review of your personnel files, performance review documents, and I-9 forms to make certain they could stand up to an audit from government agencies like the Department of Labor or the EEOC.

The HR Audit is focused on the current processes, practices and policies as relates to:

- Pre-Employment/Staffing
- Employment
- Recordkeeping
- Benefits
- Compensation
- Employee Communications Programs
- Affirmative Action/EEOC
- Safety
- Evaluation of HR Staffing- Gap Analysis, Strengths and Weaknesses
- Evaluation of HR Planning, Mission and Goals
- Other Functions as Determined by the Member and AE

The HR Audit is an invaluable resource for any member. The results are provided to you in a comprehensive report, complete with forms and other useful documents to assist you organization in taking the HR function to the next level. If you would like more information, please contact an AE HR professional at 406-248-6178.

Len Stanton
Vice President
Human Resource Services
Associated Employers

HR Assessment/Audit Evaluation Process

Assessment Factors

- **GREEN** = In conformance with legal requirements or with sound HR practice or policy
- **YELLOW** = Policy or program somewhat in conformance with sound HR practice or policy, but needs improvement; OR policy or program in place but not used, disseminated, or consistent
- **RED** = Policy or program in place but somewhat or entirely out of compliance; OR No program or policy in place

Each area is evaluated through on-site interviews and review of policies, procedures, practices and other relevant records and documents.

Pre- Employment/Staffing

RECRUITMENT

- REQUISITION FORM
- INTERNAL JOB POSTING
- EXTERNAL RECRUITMENT PROCESS
- TRACKING RECRUITING SOURCES
- LISTING WITH STATE WORKFORCE DEVELOPMENT (JOB SERVICE) OFFICE
- AUTHORITY TO HIRE

ADA COMPLIANT JOB DESCRIPTIONS

- DETERMINATION OF FLSA EXEMPTION STATUS
- DISSEMINATION TO APPLICANTS/EMPLOYEES
- REVISING/UPDATING
- REVIEW FOR FORMAT/GENERAL CONTENT

EMPLOYMENT APPLICATION FORM

- REVIEW OF FORM
- PRE/POST SELF ID FORMS FOR AAP PURPOSES
- WHO MAY/MUST FILL OUT A FORM
- RETENTION OF APPLICATION MATERIALS

INTERVIEW PROCEDURES, FORMS AND DOCUMENTATION

- INTERVIEW PROCESS
- INTERVIEW QUESTIONNAIRES, CANDIDATE RATING FORMS
- ARE EMPLOYMENT TESTS USED- VALIDATED
- TRAINING FOR SUPERVISORS REGARDING INTERVIEW PROCEDURES AND LAWS
- DOCUMENTATION OF THE INTERVIEW AND SELECTION PROCESS
- REVIEW DOCUMENTATION

REFERENCE CHECKING PROCEDURES, FORMS AND DOCUMENTATION

- FAIR CREDIT REPORTING ACT
- WHO IS RESPONSIBLE FOR OBTAINING REFERENCES
- REFERENCE CHECKING PROCEDURE
- AUTHORIZATION FROM APPLICANT TO CONDUCT REFERENCE CHECKS
- REVIEW DOCUMENTATION
- OTHER BACKGROUND CHECKS
- WHO IS RESPONSIBLE FOR GIVING REFERENCES

EMPLOYMENT OF MINORS

- WORK PERMIT (OBTAINED, REIMBURSED)

- MINIMUM WAGE
- RESTRICTED HOURS AND DUTIES

Employment

NEW HIRE REPORTING

- COMPLETED WITHIN TIME LIMITS
- CONFIRMATION/RECEIPT

NEW HIRE ORIENTATION PROCESS

- DOCUMENTS
- CONTENT OF MEETING
- FOLLOW-UP WITH EMPLOYEES

EMPLOYEE HANDBOOK

- REVIEW OF THE HANDBOOK
- ACKNOWLEDGEMENT RECEIPT

SEXUAL AND OTHER HARASSMENT

- DOCUMENTED COMPLAINT/PROBLEM-SOLVING PROCEDURE
- POLICY AND PROCEDURES
- DISSEMINATION OF POLICY
- HISTORY/INVESTIGATIONS
- TRAINING

DRUG AND ALCOHOL PROGRAM

- POLICY
- TESTING SITUATIONS (PRE-EMPLOYMENT, REASONABLE SUSPISION, RANDOM...)
- REHABILITATION OPTIONS

DISCIPLINARY ACTION

- POLICY AND PROCEDURES
- COUNSELING FORM
- REVIEW COMPLETED DOCUMENTS
- AUTHORITY TO DISCIPLINE, CHANGE EMPLOYEE STATUS AND TERMINATION

TRAINING PROGRAMS AND DOCUMENTATION

Recordkeeping

TYPES OF EMPLOYEE RECORDS AND FILES AND WHERE ARE THEY KEPT

- PERSONNEL RECORDS
- MEDICAL RECORDS
- PAYROLL
- INACTIVE FILES
- HOW LONG ARE PERSONNEL RECORDS KEPT
- WHO IS RESPONSIBLE FOR FILE MAINTENANCE
- WHO HAS ACCESS TO EMPLOYEE FILES
- REVIEW ACTIVE/INACTIVE FILES

REQUIRED STATE AND FEDERAL POSTERS

- WHERE/HOW ARE THEY KEPT
- INSPECT POSTERS

FORM I-9 ADMINISTRATION

- ONE DAY/THREE DAY COMPLETION
- DO ALL REQUIRED EMPLOYEES HAVE COMPLETED FORMS?
- COPIES

- SEPARATE FILING
- INSPECT COMPLETED FORMS

Benefits

COMMUNICATION OF BENEFITS

- INITIAL NOTIFICATION OF BENEFITS
- OPEN ENROLLMENT
- CHANGES
- GROUP INSURANCE WAIVERS
- BENEFIT SUMMARY DOCUMENT

FORMAL PLAN DOCUMENTS

- SUMMARY PLAN DESCRIPTIONS
- ANNUAL REPORTING (FORM 5500)
- SUMMARY ANNUAL REPORT

COBRA

- INITIAL NOTICE
- QUALIFYING EVENT NOTICE

HIPAA

- INITIAL NOTICE
- CERTIFICATE OF CREDITABLE COVERAGE

HIPAA PRIVACY ACT

- ELIGIBILITY
- WRITTEN PLAN IN PLACE
- DESIGNATED PRIVACY OFFICER
- RECORD OF COMMUNICATION TO EMPLOYEES

FMLA

- COMMUNICATION OF THE FMLA POLICY TO EMPLOYEES
- FORMS IN PLACE TO SUPPORT MANDATED STATE AND/OR FEDERAL FMLA LEAVES
- PROCEDURE FOR DESIGNATING AND DOCUMENTING FMLA (ALSO REVIEW RECORDS)
- MANAGEMENT TRAINING ON THE STATE AND/OR FEDERAL FMLA
- MONTANA SPECIFIC MATERNITY LEAVE POLICY- PROCEDURES, DOCUMENTS

Compensation

TIMEKEEPING REQUIREMENTS

- EXEMPT AND NON EXEMPT EMPLOYEES
- MONTANA WAGE AND HOUR EXEMPTION REQUIREMENTS MET

PAY PRACTICES

- DEDUCTIONS IN PAY AND FINAL PAYMENTS
- ARE BONUSES INCLUDED IN THE COMPUTATION OF OVERTIME
- BREAKS/LUNCH PERIODS (LENGTH, PAYMENT)
- UNDER WHAT CIRCUMSTANCES IS OVERTIME PAID
- WORKWEEK DEFINED FOR OVERTIME PURPOSES INCLUDING DEFINITION OF WORK HOURS
- UNDER WHAT CIRCUMSTANCES IS TRAVEL TIME AND TRAINING TIME PAID
- JOBS PAID AT MINIMUM WAGE
- PAYOUT OF ACCRUED TIME OFF (I.E., VACATION, SICK DAYS, PERSONAL) UPON TERMINATION OF EMPLOYMENT IN COMPLIANCE WITH STATE CODE
- TIMELINESS OF LAST PAYCHECK

PERFORMANCE MANAGEMENT AND REVIEW PROCEDURES

- PROCEDURES
- FORMS
- SALARY REVIEWS
- CHECKS AND BALANCES (MGMT SIGNATURE, EMPLOYEE SIGNATURE, AUTHORITY TO CHANGE SALARY)
- SUCCESSION PLANNING

EMPLOYEE VS. INDEPENDENT CONTRACTORS

Affirmative Action Plan, Federal EEO Requirements

EXECUTIVE ORDER 11246 (AFFIRMATIVE ACTION PLAN)

- APPLICANT/NEW HIRE/EMPLOYMENT ACTIVITY/TERMINATION DATA BASE BY EEO JOB CATEGORIES
- REHABILITATION ACT
- VETERANS ACT
- EEO TAGLINE ON EMPLOYMENT ADVERTISEMENTS

MANDATORY FILINGS

- EEO-1 REPORT
- VETS 100 REPORT

Safety

SAFETY PROGRAM

- TRAINING
- SAFETY COMMITTEE

HAZARDOUS MATERIALS COMMUNICATION PROGRAM (HAZCOM)

- WRITTEN PROGRAM
- TRAINING
- MSDS

BLOOD-BORNE PATHOGENS COMPLIANCE

- WRITTEN PROGRAM
- TRAINING
- FIRST RESPONDERS/FIRST AID TRAINING
- FIRST AID KITS

WORKER'S COMPENSATION AND ON-THE-JOB INJURIES/ILLNESSES

- REPORTING ON-THE-JOB INJURIES AND ILLNESSES
- INCIDENT REPORTS
- RECORD KEEPING
- NOTIFICATION TO STATE
- WRITTEN RELEASE FOR RETURN TO WORK
- OSHA LOG- CURRENT AND PRIOR 3 YEAR LOGS/POSTING

EMERGENCY EVACUATION PLAN

- WRITTEN PROGRAM
- TRAINING
- DISASTER RECOVERY PROGRAM

Additional Evaluation

EMPLOYEE COMMUNICATIONS PROGRAMS

EMPLOYEE TRAINING PROGRAMS

DO THE HR POLICIES AND PROCEDURES SUPPORT THE ORGANIZATION IN ACHIEVING ITS GOALS?

EVALUATION OF MISSION STATEMENT- DOES IT TIE INTO AND SUPPORT THE ORGANIZATION'S OVERALL MISSION

CURRENT ROLE OF HR IN THE ORGANIZATION

DOES HR HAVE THE RESOURCES TO ACHIEVE ITS MISSION AND GOALS (GAP ANALYSIS)

FUTURE VISION OF HR FUNCTION WITHIN THE ORGANIZATION

FUTURE VISION OF ORGANIZATION WITHIN THE ORGANIZATION

HUMAN RESOURCE NEEDS ASSESSMENT EVALUATION CHECKLIST

Information To Be Given To Consultant At The Time Of On-Site Review

- List of current employees, including name, current position title, date of incumbency, date of hire, race, sex, date of birth, exempt/non-exempt status, disability status, and current salary. (Payroll spreadsheet without actual compensation shown is sufficient)
- List of employees who have requested any type of leave of absence during the last 2 years including name, sex, race, disability status, date of birth, date of hire, type of leave requested and disposition. Include paperwork associated with 2-3 leaves including at least one Family and Medical Leave (if applicable). Include paperwork associated with at least one denied leave (if applicable).
- List of employees who have received discipline beyond the "verbal warning" stage for the last year including name, sex, race, disability status, date of birth, date of hire, policy infraction and disciplinary action. Include paperwork associated with 3-4 written disciplinary actions.
- If you have had any Sexual Harassment or Discrimination claims or investigations completed in the last 3 years, please provide a copy of the file for review.
- List of terminated employees in the last 12 months and access to their files
- Reference check documentation for 3 different individuals chosen to reflect a variety of circumstances (positive, negative, exempt, non-exempt)
- Copies** of any policies, procedures, forms and memos related to employment practices. This includes but is not limited to:
 - Mission/Vision Statements
 - Organizational Chart
 - Employment Application
 - Affirmative Action Voluntary Self-Identification Forms (Pre-hire and Post-hire)
 - Pre-employment screening tests, if used
 - Interview Questionnaire
 - Reference Check Forms and Authorization
 - Background check process, forms, FCRA documents, applicant release form
 - Employment Offer Letter
 - New hire/applicant process
 - Internal postings and external ad's
 - Documentation with Job service, recruiters, etc.
 - Recruiting tracking system
 - New hire requisition/authorization process
 - Applicant rejection letters

- Employee Handbook (with Acknowledgment Form)
 - Union contracts
 - Orientation Packet (include all forms given to a new employee)
 - Employee training records
 - Performance Appraisal Form
 - Disciplinary Action Form
 - Internal Grievance/Problem solving process (unless in the handbook)
 - Drug & Alcohol testing policy/procedure (if applicable)
 - COBRA Notices and Forms; sample letter
 - HIPAA Documents (Certificate of Creditable Coverage, Privacy Plan)
 - FMLA Documents (leave request forms, medical certification form, written policy and procedures)
 - Benefits: employee notification documentation; Copy of your plan documents
- 20 active personnel files chosen to reflect a variety of groups (i.e., length of employment, exempt/non-exempt, management, etc.), including corresponding confidential/medical files. Additional files may be requested during the on-site visit.
- 10 inactive personnel files from the last year, including corresponding confidential/medical files
- Medical/Workers Compensation files; return to work policy
- Job Descriptions for every position
- Current Affirmative Action Plan (if applicable)
- EEO-1 Reports for the last three (3) years.
 - for employers with 100 or more employees in the entire enterprise, or
 - for private employers who:
 - 1) have 50 or more employees, and
 - 2) are not exempt as provided by 41 CFR 60-1.5 and
 - a) are a prime government contractor or first-tier subcontractor and have a contract, subcontract or purchase order amounting to \$50,000 or more, or
 - b) serve as a depository of government funds in any amount or are a financial institution that acts as an issuing and paying agent for U.S. Savings Bonds and Notes.)
- Vets-100 Reports for the last three (3) years (If applicable)
 - For federal contractors and subcontractors with contracts or subcontracts for the furnishing of supplies and services or the use of real or personal property for \$25,000 prior to December 1, 2003 or \$100,000 after December 1, 2003. Services include but are not limited to: utility, construction, transportation, research, insurance, and fund depository.
- I-9 forms for every employee

- Pay ranges and/or compensation/salary structure
- Policy and Procedure Manual
- 2-3 employment advertisements preferably from different publications
- OSHA logs for the current and last year. Include corresponding paperwork for 3 different incidents recorded on the log.
- Access to state and federal employment law postings
- Material Safety Data Sheets (MSDS) Manual
- Safety committee minutes and evacuation plan
- Written Safety Plan/manual
- First Aid/CPR responder; training program & documents
- Fire prevention program
- Hazard Communication policy and training documents
- Blood-Borne Pathogens program and training documents
- Disaster Recovery Plan

Depending on the scope and latitude of individual and specific Assessments, additional material and information may be requested.

Office of the City Attorney

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, §1.31
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 PROSECUTIONS³		
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 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.

ENDNOTES

¹ Using 2080 hours for 1 FTE.

² The City Attorney position is unique in the sense that unlike other department heads who report to the City Manager, the City Attorney reports to the Council. This is not a unique arrangement. In Michigan, the Council appoints the City Attorney in most municipalities. Many cities adopt this structure as a method to impose a framework of checks and balances on both the manager and the attorney.

³ IMLA understands that in Michigan, Troy is somewhat unique from the comparable cities in that it prosecutes its cases in a county court. This means that the City gets only a portion of the revenues generated as fines from its cases. The cases the City Attorney prosecutes are ordinance violations, but, in some cases, these violations are charges that could be brought as violations of state law. If brought as a violation of state law, the county prosecutor would handle the prosecution; any revenues from fines or forfeitures would be the County's and the city would not be entitled to a share of those revenues.

⁴ Although the survey was directed to IMLA members, a few non-members participated in the survey and their responses are included in these results.

⁵ There were actually 70 responses for this population range, but five did not include their law department budget in their response, so they were eliminated for purposes of determining this average.

⁶ IMLA's study did not ask specifically about legal secretaries, but asked for other. The most frequent answer for "other" was legal secretary. Others included risk managers, administrative assistants, clerical support and receptionists.

⁷ Using the city attorney's budget and dividing the budget by 12,480 (6.0 FTE * 2080) produces an hourly rate of \$83.03. IMLA used 6.0 FTEs because, if privatized, the City would be billed for paralegal and attorney time and a blended rate is likely to yield a lower rate than calculating different rates for the attorneys and paralegals. In other words, this rate is likely lower than that available on the market. It does not include costs of maintaining the department that may not be included in the budget, such as lease rates or benefits, such as retirement costs. Using 2080 is also debatable as the number does not take into consideration vacation time and administrative time. Using 1600 hours (a reduction of 12 weeks) multiplied by 6.0 FTEs when divided into the budget yields a rate of \$107.94. This rate is still appreciably lower than the \$135 per hour costs of defense that MMRMA would bill.

⁸ The City Attorney calculates that the office spent approximately 900 hours handling these cases in the past year. At a rate of \$83.03 times 900 hours, the result is as reflected in the table. At \$107.94 per hour the amount is \$97,146.

⁹ The total cost of defense is divided by the six cases handled by the office resulting in an average per case expense. At \$107.94 per hour the average cost of defense per case is \$16,191.

¹⁰ This figure is year-to-date for calendar year 2010 to October. For calendar year 2009 for the same period, the number was 79.

¹¹ This figure is year-to-date for calendar year 2010 to October. For calendar year 2009 for the same period, the number was 105.

¹² Not only is this assumption counterintuitive, it counters the trend in law enforcement; i.e., the more police on the street, the fewer violent crimes.

¹³ USA Today, "Cutbacks force police to curtail calls for some crimes," August 25, 2010, http://www.usatoday.com/news/nation/2010-08-25-1Anresponsecops25_ST_N.htm (last visited Nov. 21, 2010)

¹⁴ By doing so, the City will lose any revenue attributable to these cases.

¹⁵ The relationship between cities and counties varies from state to state but, in general, a city is formed to provide services to a more densely populated area that the people demand and that the county cannot or will not provide. Generally, counties are considered "top down" political entities and cities "bottom up," to recognize the distinction in how they are formed; i.e., the county by the state and the city by the residents. As counties have urbanized and their authority to act like cities have increased, residents may question whether they need a city any longer. That debate escalates as the city reduces its services.

¹⁶ The city will likely need outside pension counsel to address some of these issues. The City Attorney can help identify areas of risk and legal issues that need further review.

¹⁷ <http://ehscenter.bna.com/pic2/ehs.nsf/id/BNAP-87YECT?OpenDocument> (last visited December 2, 2010) The suit was recently dismissed.

¹⁸ "Wall of Water' Traps motorists on Maryland road" <http://bit.ly/gIvt0F> (last visited December 2, 2010).

¹⁹ WSSC Copper Pipe Pinhole Leak Investigation. http://www.wssc.dst.md.us/copperpipe/letters/investigation_fs.pdf (last visited December 2, 2010).

²⁰ "Lead-contaminated water in DC homes." <http://bit.ly/eICOKy> (last visited December 2, 2010).

²¹ Outsourcing Permitting Services seems to be an excellent decision. IMLA searched for cases involving the company that might reflect increased liability and could find none. By outsourcing this function, the city gains the talent available from the staff of the company that can provide a broader range of expertise than the city might be expected to have available to it through in-house staffing. More significantly, as the city's Zucker report reflected, the city was losing money on permitting services and this change turns that around. IMLA recommends the City consider establishing permitting services as an enterprise fund if it has not already done so and charge back to it various operating services that benefit the fund, such as the City Manager, HR, IT and City Attorney's office.

²² *Richardson v. McKnight*, 521 U.S. 399, 117 S.Ct. 2100 (U.S.Tenn., 1997). (Supreme Court concludes that a person working in a private jail acts under color of law for purposes of §1983 liability, but cannot avail himself of immunity.)

²³ Costs of processing ESI for e-discovery will vary depending on volume, time constraints, how automated is the review process, what types of files are being analyzed, reviewed, copied and produced, the likelihood that privileged or other sensitive data is intermixed with disclosable data, and hourly charges for in-house staff or outsourced vendor. Imputed costs for software license and maintenance agreements should also be factored in per project-hour. These costs can average \$1250/GB (See: Process ESI In-House for < \$400 per GB « eDiscoveryHD, <http://ediscoveryhd.com/2010/02/10/taking-ediscovery-processing-in-house/> (last visited Dec. 15, 2010) (this is a sales pitch but has some good analysis)). When more expert review becomes warranted, the costs can average \$10,000/GB including expert e-discovery consultants. (See: Managing Electronic Documents Under New E-Discovery Rules | Levenfeld Pearlstein, LLC, <http://www.lplaw.com/publications/datapoints/managing-electronic-documents-under-new-e-discovery-rules> (last visited Dec. 15, 2010). "Even the best lawyer will never be as good as a forensic expert when it comes to obtaining, analyzing and reconstructing electronically stored information. Such expertise does not come cheap (a rule of thumb is \$10,000 per gigabyte), but it is now a necessary expense that must be factored into every litigation budget."). One IMLA member reports exceeding \$1 million in e-discovery costs alone in a construction dispute.

²⁴ Some states require that metadata be retained as part of their public records laws and the developing law on discovery requires that metadata be retrieved to adequately respond to a discovery request. Copy machines, cell phones and many other types of equipment store information that must be searched in response to a discovery request.

²⁵ Litigation holds also present difficult problems for the attorney and IT staff as all records regarding contemplated litigation must be preserved and disclosed as part of discovery. This can include multi-mailbox searches and requires the city to implement procedures to ensure that records are not improperly deleted. What follows is a link to an article discussing the issue. <http://bit.ly/g9lXp> (last visited November 30, 2010).

²⁶ Information regarding insurance for the City of Troy was provided by Richard Cooper-rider, Risk Manager. Mr. Cooperrider also provided a thorough and clear description of the City's insurance program and the benefits provided to that program by in-house counsel in the City of Troy law department. Information regarding other cities has been requested from Mike Ellis of MMRMA by IMLA and through the City Manager by ICMA. Mr. Ellis provided detailed information regarding the cost of defense, but was unable to provide the insurance costs for MMRMA members. Insurance costs have been provided by the City Attorneys for the respective cities unless otherwise noted.

²⁷ Troy's budget includes \$45,000 for insurance deductibles and \$45,000 for outside counsel.

²⁸ The East Lansing legal department budget is \$507,810 for FY 2010. It is broken down into \$440,810 for general retainer work, \$20,000 for our labor attorney on a separate retainer and \$47,000 for enforcement of the city housing code, which is primarily in district court. Our hourly rates are \$116.00 per hour for general retainer work, \$105 per hour for district court litigation and \$135 per hour for litigation in circuit court and all other courts and tribunals. Pre-trials, motions and evidentiary hearings in district court on police matters when handled by clerks are billed at \$66.50 per hour.

²⁹ The city's gross premium for all coverages is \$148,000 per year. The city is self insured up to \$50K. The policy includes property, excess commercial auto, excess commercial general liability, excess workers comp. and EandO as well as law enforcement liability. The City's Budget indicates that it purchases commercial insurance for its general liability risk.

³⁰ From the Farmington Hills Budget for General Liability and Contents. Farmington Hills also identifies an expenditure category for "Professional and Contractual" that may include additional legal services as that category is defined to include: "PROFESSIONAL and CONTRACTUAL expenditures relating to services rendered to the City of (sic) external providers of legal services, auditing and architectural services, as well as other private contractors providing telephone service, utilities, insurance and printing."

³¹ From City of Livonia Budget for liability insurance.

³² Livonia's Law Department handled 372 Michigan Tax Tribunal cases and 38 general civil cases.

³³ Livonia's Law Department staff drafts resolutions for all regular Council meetings.

³⁴ Southfield reports that it expends in the "six figures" for insurance defense and about "\$200,000" on legal fees for assessment appeals that come out of the assessor's budget.

³⁵ Includes all documents reviewed by Law Department attorneys in Livonia.

³⁶ City Council meetings only.

³⁷ A Westlaw search for each city in the 6th Circuit, Michigan Court of Appeals and Supreme Court revealed decisions on appeals in different cases in the numbers indicated. If the court considered requests for rehearing or petitions to appeal or for certiorari in the same case the case was only counted once.

³⁸ One of these was a major case in the 6th Circuit involving the recovery of insurance. It appears to have been handled by outside counsel different from the city attorney.

³⁹ The salary at which an equal number of salaries exceed as salaries that are below it as reported to BLS.

⁴⁰ The average of all lawyer annual wages as reported to the BLS.

⁴¹ A self-employed attorney, without any overhead; i.e., no office, no books, no legal research tools, no expenses and no staff would need to charge about \$73.00 per hour for 2000 billable hours to earn this salary and pay 15.3% FICA self insurance taxes.

⁴² A recent article in *Florida Today*, "City Attorney Pay Variable," Nov. 21, 2010, references Melbourne City Attorney Paul Gougeleman, to say, "the going rate for an outside municipal attorney currently is \$175 to \$200 an hour, with attorneys in certain specialties like labor law charging \$300 to \$400 an hour." <http://bit.ly/9HQYPO> (last visited Nov. 21, 2010). While the Florida legal services market may not be the same as Michigan's, Florida's economy is similarly depressed and Council will need to consider how long it can expect to benefit from rates below \$150 an hour for general municipal law services.

⁴³ In most communities, a city can set up and establish an in-house law office for less than \$250,000 with one full-time attorney and a support person. Generally, the cost to increase in-house staff will not be as high on a per capita basis. Nevertheless, the city will still need to rely on outside counsel for certain matters. Indeed, even the largest cities spend substantial sums on outside counsel services even while they spend substantial sums for their in-house services.

⁴⁴ Cities should not make this change lightly as they lose the historical perspective that a longtime relationship provides. If a city decides to bring the work in-house, it can be well served by allowing the transition to take a year or longer and pay extra to have the advantage of its outside counsel's historical perspective.

⁴⁵ The Council must take into consideration the extent to which the current economic conditions affect rates that may be quoted in response to an RFP. As the economy improves, the city can expect that legal fees will rise. Unless the city protects itself against a likely increase, any potential savings can be lost quickly.

⁴⁶ In Troy's case, the City Attorney is one of fewer than 100 people in the country to have distinguished themselves by becoming an IMLA Fellow. IMLA Fellows include both in-house as well as outside counsel who devote at least 40 percent of their time to a local government law practice. This distinction comes only after a rigorous examination that includes presentation of articles for publication and passing an examination on local government law issues. In addition, the current City Attorney enjoys an outstanding reputation among her peers in Michigan where she is recognized as one of the outstanding municipal lawyers in the state. Indeed, in the course of preparing this report, virtually every person I spoke with gave unsolicited praise to the City Attorney and the law department. Thus, at least in the area of local government law, one cannot easily conclude that the city will improve the quality of its service.

⁴⁷ Of course, it may not be able to recover the full value of its loss as it will likely need to hire counsel to pursue the claim.

⁴⁸ "Virginia Town Spends \$70K To Stop Sex Shop from Opening," <http://bit.ly/bDB6J0> (last visited November, 22, 2010); "Legal Fees May Continue Climbing in Mountain Park; Small City Has Already Spent \$1.5 Million Fighting Developers," <http://www.cbsatlanta.com/news/25597781/detail.html> (this article reports that 60% of the city's \$800,000 budget for FY 10 is dedicated to legal fees)(last visited November 22, 2010); "City spends \$630K to fight Tohono O'odham off-reservation casino" <http://64.38.12.138/IndianGaming/2010/022485.asp> (last visited November 22, 2010); "Excessive force cases draining Fall River legal department account" <http://bit.ly/1SKFgB> (last visited November 30, 2010).

⁴⁹ Albeit anecdotal, in my experience in almost 30 years as the chief legal officer for local governments, whenever the government brought work in-house, it found that many issues having significant potential liability to the government had not been addressed because the issues had not been raised with outside counsel. These issues included questions that were not asked because of the cost to the agency budget and issues that were concealed. They ranged from arcane tax issues such as income tax liability for employer-provided vehicles to contracts, arrangements or agreements that were "off the books." Over this time, discussions with other chief legal officers from around the country confirm this problem.

⁵⁰ Excerpted from the NAFCU Compliance Blog. http://nafcucomplianceblog.typepad.com/nafcu_weblog/2010/12/insert-here-this-and-that.html (last visited Dec. 20, 2010.)

⁵¹ This problem can be solved by locating outside counsel in the government offices.

⁵² In the *Florida Today* article referenced above, the article reports that Mr. Gougeleman noted that "there are advantages for the city to have a city attorney on staff, based in city hall. Not only can it be cheaper to pay an attorney a set salary, rather than an hourly rate of \$150 or more, but the attorney typically is more accessible by being in the same building as other department heads, and more acclimated to the details about a city's operations." The article reports that Gougeleman is a full-time city attorney for Melbourne and the part-time city attorney for Melbourne Beach and Indialantic. <http://bit.ly/9HQYPO> (last visited Nov. 21, 2010).

⁵³ There are firms that primarily represent municipal clients to cut down on the likelihood that these conflicts will occur.

⁵⁴ As mentioned, this issue has not been fully resolved. The Council will want to discuss with counsel possible ways to avoid this increased cost. One possible solution, if the Charter allows, could be to appoint a firm, not an individual, as City Attorney.

⁵⁵ IMLA participated in a successful administrative challenge to this IRS interpretation in an audit that had determined that a city attorney in Henderson, Texas, was an employee based on this provision, but the issue has not been settled and IMLA knows of other cities where the IRS has raised this issue.

⁵⁶ Obviously, outside counsel can be used and are used in other jurisdictions. The issue that delegation raises involves §3401(c), of the Internal Revenue Code and whether a person designated "city attorney" or "assistant city attorney" can be an independent contractor under the code, or must be treated as an employee. If the latter, Troy could continue to have responsibility for the employer's portion of the FICA tax, if the IRS position on this matter is ultimately upheld.

⁵⁷ A risk manager can give a much better analysis of this topic, but for these purposes, this elementary description can prove helpful.

⁵⁸ As another example of determining the cost of defending tort claims, the Sterling Heights budget includes a budget for the defense of claims and estimates that 12 claims will cost it \$550,000 in FY11. This is an average of about \$45,000 per claim. As with any budget, these are simply projections and the costs may vary as might the number of claims.

⁵⁹ Letter from Mike Ellis to IMLA dated January 3, 2011.

⁶⁰ Does the preceding argue for using a law firm with broad skills that can be brought to bear when necessary and paying according to the need, and not trying to retain in-house capabilities on a wide variety of skills? That question focuses on whether the city should outsource all legal services. When considering partial outsourcing, the issue changes from whether the city can gain efficiencies by outsourcing all of the legal services to whether it gains efficiencies in outsourcing a part. As part of that analysis, the city can expect to lose efficiency in outsourcing only a part of the service because the office's ability to handle other matters by concentrating on only a few will decline.

⁶¹ In Montgomery County, Maryland, the cost of collection has never exceeded 10 percent since implementation of its in-house debt collection program. Also see: Thompson and Bernstein "Things for Show, Things for Dough and Things to Know: Performance Measures." Presented at IMLA Mid Year Seminar 2001 and available through IMLA.

⁶² This work is being funded out of grants and the General Fund receives charge backs for these services. These and other projects that support the capital budget should be funded in the capital budget by transfers from projects in that fund to the General Fund.

⁶³ On the other hand, the City Attorney reports significant increases in prosecutions, which may implicate the extent to which the City Attorney can downsize and handle the workload.

⁶⁴ The city already has several enterprise funds. It can establish others - permitting and other fee driven functions are often set up as enterprise funds. Using other revenue sources can also better reflect the City Attorney's work in collection of fines, costs, debts and other recoveries, work for enterprise funds and the capital fund. Sterling Heights may be a good model for maximizing the city's use of enterprise and other funds.

USING THE PBB BUDGET ALLOCATION TOOL

1. Start Excel
2. Click “Open file”
3. Find and click CD or DVD drive, usually Drive E
4. Double click on “Citywide model 6-1-12.2”
5. When the file opens, look at the ribbon immediately below the “Home” tab menu; it should say “Security Warning Macros have been disabled.”
6. Click “Options” button
7. Select “Enable this content” and click OK

File is ready to use

Button labels:

“Every City Program” = all programs vs. community programs vs. governance programs. Community programs are services offered to external customers. Governance programs are services consumed by internal customers (other departments of internal city operations).

“City-wide” = all Funds vs. individual Funds vs. Custom Fund #1 (filter).

“All Departments” = all departments vs. individual departments.

“Total Estimated Budget” = total budget vs. portion funded by general government resources vs. portion funded by program revenues.

Programs:

Listed, by quartile, at the bottom of the page/sheet.

Filter options:

Tab at bottom of page

“Custom Fund Menu #1” allows user to select one or more Funds, usually to see combinations of funds such as Water and Wastewater, Aviation and Transit, Streets, Gas Tax and Storm sewer, General and Public Safety, etc.

“Custom Look” allows user to select the basic program attributes, community results and governance results or combinations, values assigned to them and gradations of values. Example: low score/measure of mandated service and low reliance on city for the program.

Select the filters that you want to use; must turn the filter “on.” Click the tab at the bottom of the sheet to return to Prioritization Driven Budget. Budget totals are adjusted per the selected filters.

“Control - Z”

Lists programs according to the selected filters, by quartile.

Macros must be enabled in order for this function to work correctly.



**The Center for
Priority Based
Budgeting**

*"Leading Organizations to
Fiscal Health and Wellness"*

Guide to Resource Allocation Diagnostic Tool

June 2012

SOFTWARE LICENSE: The Center for Priority Based Budgeting's "Resource Allocation Diagnostic Tool" contains data which is proprietary software protected by copyright to the Center. An organization is granted a non-exclusive, non-transferable license to use the specialized software and software models but cannot distribute, disclose or otherwise share the software or these models with any other entity, individual, agency or private firm without the prior consent of the Center for Priority Based Budgeting.

How to Save and Use the Resource Allocation Diagnostic Tool

Download and Save File

- Click Download or Open File
- Save it as “Excel Macro Enabled Workbook”
- Open file - look for a message about “Do you want to enable macros?”
- Click “Yes” and save again
- OR you see “Security Warning” at the top of the screen – It will say “Macros have been disabled” and “Options”
- Select “Options” and select the option “Enable this content” and “Okay”
- **Each time you open the Tool, it will be necessary to Enable Macros**

Main Page and Drop Down Options

The main page is the “Prioritization Driven Budget” page. This is the control panel of the model, in a sense. From here you’ll be able to create various spending arrays and also generate specific program information. There are three main drop-down menus at the top of the “Prioritization Driven Budget” page as outlined below:

1. Program Type

The first drop-down menu allows you to choose between programs by type of program:

- Community-Oriented Programs
- Governance Programs
- City-wide Programs

The model is defaulted to “Every City Program” for all programs.

2. Prioritization Perspective By Specific Fund(s)

The second drop-down menu, you can choose to look at ALL Funds – City-wide View, the General Fund, or one of many Special Revenue or Enterprise Funds. To Use the “Custom Menu #1” feature, select this drop down option, then go to the Filters tab and select the Funds you would like to combine to view at once.

The model is defaulted to “City-wide” for all funds.

3. Choose Department

The third drop-down menu contains the City’s various departments – go ahead and select from the various departments to see how their spending arrays look.

The model is defaulted to “All Departments” for all departments.

4. Use of Resources

The fourth drop-down menu will eventually give you the ability to differentiate between General Government resources, and specific Program Revenue, allowing you to pull out program revenues to view only those remaining resources that fund a particular program, or department. Options are described below:

- Total Estimated Budget – this includes direct and indirect costs for programs
- Portion Funded by General Government Resources – this allows you to see all resources allocated from non-program revenue sources
- Portion Funded by Program Revenue – this allows you to see all resources allocated from program revenues
- Direct Costs – this is all direct costs associated with a specific program
- Costs Allocated – this accounts for administrative costs that are allocated to specific Community-Oriented and Governance programs

Program Revenues are revenues specifically generated to pay for the cost of providing a program. If the program or service was discontinued, the City would no longer collect these revenues. To see more detailed information about programs which generate program revenues, to support some or all of the program cost, see “Guide to Using Filters, on page 18.

The model is defaulted to “Direct Costs” for all resources.

[Create Reports - Generate List of Programs with Control Z](#)

Beneath the graph, select any cell and hold down the “Control” button, and the “Z” button simultaneously to view a list of the programs. All programs included in that view will appear in Quartile Order alphabetized by Department Name. **NOTE: If the Control Z function is not working, check to ensure that the Macros have been enabled in the file.** The program data can be cut and pasted into a new Excel file to save as a separate report, for example, “Programs Mandated by Federal or State or County Governments.xls”.

[Using Filters](#)

Go to the “Filter Options” page of the model and begin to play with how those options filter the information back on the “Prioritization Driven Budget” page. For instance, let’s say you wanted to see only the programs that scored a “4” for the **mandated** category, and those were the only programs you wanted to isolate.

- Select “Equal to” in the drop-down that lets you select from “Equal to / Greater than / and Less than,” then select “4” from the drop-down that lets you select from any of the possible scores.
- Select “Yes” in the drop down that asks whether you want that filter turned on or off
- Check the “Prioritization Driven Budget” page for the new view and select Control Z to generate the list of programs.

The model is defaulted to All Filters Off. **Please see “Guidance for Using Filtering Functions of Diagnostic Tool” on page 18 for additional guidance using FILTERS.**

Explanation of Basic Attributes Scores

Programs were evaluated relative to ***Basic Program Attributes***, which are additional characteristics of programs that could increase their overall relevance. Those attributes selected by the City of Cincinnati to assist in the Program Prioritization Scoring process are:

- **Mandated to Provide Program** — Programs that are mandated by another level of government (*i.e. federal, state or county*) will receive a higher score for this attribute compared to programs that are mandated solely by the City or have no mandate whatsoever. The grading criterion established to score programs, on a **0 to 4** scale is as follows:
 - **4** = Program is mandated by Federal, State or County government legislation.
 - **3** = Program is mandated by City Charter or other incorporation documents **OR** is required in order to be in compliance with regulatory agency standards
 - **2** = Program is required by a City ordinance, resolution or policy **OR** is required to fulfill an executed franchise or contractual agreement.
 - **1** = Program is considered an established best practice from an affiliated professional organization and is required to meet published standards
 - **0** = No requirement or mandate exists.
- **Level of Demand for Program** — Programs that benefit or serve a larger segment of the City's residents, businesses or visitors will receive a higher score for this attribute compared to programs that benefit or serve only a small segment of these populations. The grading criteria established to score programs on a **0 to 4** scale is as follows:
 - **4** = Program benefits/serves the ENTIRE community
 - **3** = Program benefits/serves a SUBSTANTIAL portion of the community
 - **2** = Program benefits/serves a SIGNIFICANT portion of the community
 - **1** = Program benefits/serves SOME portion of the community
 - **0** = Program benefits/serves only a SMALL portion of the community
- **Cost Recovery of Program** — Programs that demonstrate the ability “*pay for themselves*” through user fees, intergovernmental grants or other specifically dedicated revenues will receive a higher score for this attribute than programs that generate limited or no funding to cover their cost. The grading criterion established to score programs, on a **0 to 4** scale is as follows:
 - **4** = Fees generated cover 75% to 100% of the cost to provide the program
 - **3** = Fees generated cover 50% to 74% of the cost to provide the program
 - **2** = Fees generated cover 25% to 49% of the cost to provide the program
 - **1** = Fees generated cover 1% to 24% of the cost to provide the program
 - **0** = No fees are generated that cover the cost to provide the program

- **Reliance on City to Provide Program** — Programs for which residents and businesses can look only to the City to obtain the service will receive a higher score for this attribute compared to programs that may be similarly obtained from another intergovernmental agency or a private business. The grading criterion established to score programs, on a **0 to 4** scale is as follows:
 - **4** = City is the sole provider of the service
 - **3** = Program is offered only by another governmental or non-profit/civic agency
 - **2** = Program is offered by only one other private business in the immediate area
 - **1** = Program is offered by other private businesses, but none are located within the City
 - **0** = Program is offered by several other private businesses located within the City

Explanation of Community Programs Scores

One of the most critical steps in implementing the **Prioritization Process** is the *Scoring of Programs*. In this step, each department was responsible for reviewing all programs and services identified in their program inventories and then scoring each individual program relative to the City's five stated Results. Those Results for the City of Cincinnati are:

- **Commerce and Jobs**
- **Inclusive, Thriving and Livable Community**
- **Safe Community**
- **Sustainable Built and Natural Environment**
- **Well-Planned and Developed Infrastructure**

The objective of the program scoring process is to gain a better understanding of two main concepts:

- **The first concept in the program scoring process is gaining an understanding of how each of the programs offered impacts the individual Results that the City exists to achieve.**
- The scoring process helps identify how each of the individual programs and services offered by the City influences or impacts the ability to achieve any or all of its five stated Results.
- There are some programs that may not have any kind of influence in achieving these Results. There will also be programs that may assist the City in achieving only one of the stated Results. There may also be programs and services that are able to influence the achievement of several or even all of the City's Results.
- As each department evaluated their individual programs, they must first determine if there is any connection between each single program and its ability to achieve any or all of the City's identified Results.
- There is no limitation in this process as to the number of Results that a program might influence – if there is a connection between the program and its ability to achieve several or all of the Results, then the department is allowed to evaluate that program against as many of the Results as possible where this association can be clearly justified and explained.
- Once the first concept is understood and a connection between the program and one or more of the City's stated Results has been made, **then the second concept in the program scoring process must be considered – what degree of impact does the individual program have on the associated Result(s) for which the connection has been identified.**
- Programs may certainly impact the achievement of a particular Result, but understanding the degree of that influence - whether minor in nature or conversely very significant in nature – is a crucial role of the department in completing their individual Program Prioritization Scorecard.

Departments received a program scorecard (an *example of which is included in these instructions*) that lists only the programs and services offered as shown on their individual

program inventory listing. The department scored each program using a “**0-4**” rating system against the City’s five stated Community Results and also against the four Basic Attributes that have been defined to also assist the City in differentiating one program against another.

In scoring the programs against the stated Results, the department applies the two concepts outlined previously – **does the program influence the City’s ability to achieve each of the Results and, if it is determined the program does influence the achievement of a particular Result, to what degree does it impact the successful accomplishment of that Result.**

Using a “**0-4**” scale, with “**0**” meaning that there is no degree of impact since there is no influence on the Result and “**4**” meaning that the department strongly believes it would be extremely difficult, if not impossible, for the City of Cincinnati to achieve the overall Result if this program were not offered, the department assigns a score for each program associated with each of the five Results.

The degree of impact for programs lessens as a score of “**3**”, “**2**” or “**1**” is assigned, meaning that a program scored with a smaller number still is seen as influencing the achievement of a particular Result but to a lesser degree – i.e. a score of “**1**” communicates that while the program influences a particular Result, the City could most likely achieve that overall Result even if the program did not exist.

For every program and service offered by the City, the program scoring process helps clarify the relative influence that programs have on the Results that the City exists to achieve – it will help to more clearly understand programs that are highly influential relative to Results, as well as programs that have a lesser degree of influence.

The grading criterion established to score programs in order to determine their degrees of impact are as follows - on a scale of **0 to 4** points:

- **4** = program has an essential or critical role in achieving the Result (*i.e. the City of Cincinnati most likely could not achieve this overall Result without the existence of this program*)
- **3** = program has a strong influence on achieving the Result
- **2** = program has some degree of influence on achieving the Result
- **1** = program has some influence, though minimal, on achieving the Result
- **0** = program has no influence on achieving the Result

Sample questions that a department should ask as they consider scoring their programs include:

- What impact does the program have on residents, relative to the Result under consideration?
 - If the program has a high degree of influence on the lives the City residents, specific to the Result under consideration, then the program might deserve a score of "3" or "4".
 - If the program impacts the lives of residents to a minor extent, specific to the Result under consideration, but there's certainly an impact, then the program might deserve a score of "1" or "2".
- If the program were no longer provided, would the impact on the City's ability to achieve the Result under consideration be highly significant or less significant?
 - If the absence of the program would greatly compromise the City's ability to meet the Result under consideration, then the program might deserve a score of "3" or "4".
 - If the absence of the program would not have much of an impact on the City's ability to achieve the Result under consideration, but some impact would be felt, then the program might deserve a score of "1" or "2".
- Does the program influence any of the "sub-results" relative to the Result under consideration, one of the sub-results, or many or all of the sub-results?
 - If the program has a high degree of influence on one of the sub-results relative to the overall Result under consideration, and it would be extremely difficult for the City to achieve this sub-result if the program didn't exist, then the program might deserve a score of "3" or "4".
 - If the program has a moderate degree of influence of most or all of the sub-results relative to the overall Result under consideration, then the program might deserve a score of "3" or even possibly "4".
 - If the program has a moderate degree of influence on only one of the sub-results relative to the overall Result under consideration, then the program might more appropriately deserve a score of "2" or possibly "3".

Explanation of Governance Programs Scores

One of the most critical steps in implementing the **Prioritization Process** is the *Scoring of Programs*. In this step, each department that offers services internally was responsible for reviewing all programs and services identified in their program inventories and then scoring each individual program relative to the City's seven "**Governance**" Results. Those **Governance** Results for the City of Cincinnati are:

- Regulatory Compliance – provides assurance of regulatory and policy compliance to minimize and mitigate risk
- Timely and Accurate Analysis – support decision making with timely and accurate short-term and long-range analysis, focusing on long-term solutions that benefit the community
- Trust and Transparency – instills trust and fosters transparency by demonstrating accountability, responsiveness, integrity and innovation while modeling and promoting an atmosphere of civility, cooperation and open-mindedness
- Protect, Manage and Invest in Resources – protects, manages and invests in its financial, human, physical and technology resources
- Efficient, Well-Trained, Productive Workforce – maintains and develops an efficient, well-trained and productive workforce
- Partnerships and Emerging Leaders – advances City interests through collaborative partnerships and through fostering and supporting emerging community leaders
- Timely and Effective Communication – ensures timely and effective two-way communication with residents and businesses, provides equal access to information and encourages input from the community

The objective of the program scoring process is to gain a better understanding of two main concepts:

- **The first concept in the program scoring process is gaining a clear understanding of how each of the programs offered impacts the individual Governance Results that the City departments providing internally focused services exist to achieve.**
- The scoring process helps identify how each of the individual programs and services offered by the City influences or impacts the ability to achieve any or all of the six stated Governance-related Results identified on the scorecard.
- There are some programs that may not have any type of influence in trying to achieve these Results. There will also be those programs that may assist the City in achieving only one of the stated Results.
- There may also be programs and services that are able to influence the achievement of several or even all of the City's **Governance** Results.

- As each department evaluates their individual programs, they must first determine if there is any connection between that program and its ability to achieve any or all of the City's identified Governance-related Results.
- There is no limitation in this process as to the number of Results that a program might influence – if there is a connection between the program and its ability to achieve several or all of the Results, then the department is allowed to evaluate that program against as many of the Results as possible where this association can be clearly justified and explained.
- Once the first concept is understood and a connection between the program and one or more of the City's stated **Governance** Results has been made, then **the second concept in the program scoring process must be considered – what degree of impact does the individual program have on the associated Result(s) for which the connection has been identified.**
- Programs may certainly impact the achievement of a particular Result, but understanding the degree of that influence - whether minor in nature or conversely very significant in nature – is a crucial role of the department in completing their individual Program Prioritization Scorecard.

Departments received a program scorecard (an *example of which is included in these instructions*) which lists only the programs and services offered as shown on their individual program inventory listing. The department is then responsible for scoring each program using a “0-4” rating system against the City's **Governance** Results and also against the four Basic Attributes that have been defined to also assist the City in differentiating one program against another.

In scoring the programs against the **Governance** Results, the department applies the two concepts outlined previously – how does the program influence the City's ability to achieve each of the Results and, if it is determined the program does influence the achievement of that Result, to what **degree** does it impact the successful accomplishment of the Result.

Using a “0-4” scale, with “0” meaning that there is no degree of impact since there is no influence on the Result and “4” meaning that the department strongly believes it would be extremely difficult, if not impossible, for the City to achieve the overall Result if this program were not offered, the department assigns a score for each program associated with each of the stated **Governance** Results.

The degree of impact for programs lessens as a score of “3”, “2” or “1” is assigned, meaning that a program scored with a smaller number still is seen as influencing the achievement of a particular Result but to a lesser degree – i.e. a score of “1” communicates that while the program influences a particular Result, the City could still most likely achieve that overall Result even if the program did not exist.

For every program and service offered by the City, the program scoring process helps clarify the relative influence that programs have on the Results that the City exists to achieve – it will help to more clearly understand programs that are highly influential relative to Results, as well as programs that have a lesser degree of influence.

The grading criterion established to score programs in order to determine their degrees of impact are as follows - on a scale of **0 to 4** points:

- **4** = program has an essential or critical role in achieving the Result (*i.e. the City of Cincinnati most likely could not achieve this overall Result without the existence of this program*)
- **3** = program has a strong influence on achieving the Result
- **2** = program has some degree of influence on achieving the Result
- **1** = program has some influence, though minimal, on achieving the Result
- **0** = program has no influence on achieving the Result

The kinds of questions that a department should ask as they consider scoring their programs include:

- What impact does the program have on residents, Elected Officials, City Administration and/or City staff, relative to the Governance Result under consideration?
 - If the program has a high degree of influence on the ability for these groups to govern, manage and support the City organization, specific to the Result under consideration, then the program might deserve a score of "3" or "4".
 - If the program impacts the ability to govern, manage or support the City organization only to a minor extent, specific to the Result under consideration, but there's certainly an impact, then the program might deserve a score of "1" or "2".
- If the program were no longer provided, would the impact on the ability to achieve the Governance Result under consideration be highly significant or less significant?
 - If the absence of the program would greatly compromise the City's ability to meet the Result under consideration, then the program might deserve a score of "3" or "4".
 - If the absence of the program would not have much of an impact on the City's ability to achieve the Result under consideration, but some impact would be felt, then the program might deserve a score of "1" or "2".

Guidance for Using Filtering Functions of Diagnostic Tool

The model is defaulted to All Filters Off. The total amount on the main page for all programs is \$972,694,182. If at any time, you are trying to see all programs and the total is not \$972,694,182, check to make sure all filters are turned off.

Starting position for the “**Tool**” – all drop-down boxes set on:

- *Program Type: “Every City Program”*
- *Prioritization Perspective: “City-wide”*
- *Chose Department: “All Departments”*
- *Use of Resources: “Total Estimated Budget”*
- *Filters Options (Tab 2): All filters switched to “No”*

GENERAL RESOURCE ALLOCATION QUESTIONS:

- *Does the City offer programs that are, when compared against all other programs, relatively of lesser relevance than other more highly relevant programs?*
 - Review programs in Quartile 3 and Quartile 4
 - Drop down boxes allow filtering by individual Accounting Fund and/or City Department. Also can filter by just Community-oriented programs and Governance programs
- *Does it appear that the City is allocating its resources to its more highly relevant programs?*
 - Compare “spending profile” at a City-wide, Accounting Fund or Department level
- *Because of their low relevance to the Community’s results, should the City consider whether it is “in business” to deliver Quartile 3 and Quartile 4 programs?*
- *Use of Resources: “Portion Funded by Program Revenues”*
 - What portion of the City’s budget is funded by “program revenues”, i.e. revenues collected from the end user or funding agency to offset the cost of offering the program?
 - Are Quartile 3 and Quartile 4 programs funded 100% by program revenues? If not, should the City consider charging full cost for these programs?
- *Use of Resources: “Portion Funded by General Government Revenues”*
 - How many of the City’s programs are funded by “general government revenues”, i.e. revenues collected from taxes or other revenue sources for which the City can decide what programs are to be funded?
 - If appropriate, should the City consider charging a full or partial fee for the less relevant Quartile 3 and Quartile 4 programs?

BASIC ATTRIBUTE FILTERS

- *Mandated: Set Filter - Equal to “4”*
 - What is the City required to do by a higher level of government (Federal, State, County)?
 - For Quartile 3 and Quartile 4 programs, what exactly does the mandate require? Is the City potentially “**over-delivering**” the program based on what statute or legislation actually requires?
 - Of these mandates, what is the cost to the City of “unfunded” mandates? (set drop down Use of Resources: “**Portion Funded by General Government Revenues**”)
- *Mandated: Set Filter - Equal to “3”*
 - What is the City required to do by Charter **OR**
 - What is the City required to do in order to meet regulatory compliance requirements from another governmental agency because it has CHOSEN to offer a service?
 - For Quartile 3 and Quartile 4 programs, should the City continue to offer general services that are of lower importance but require funding to meet regulatory requirements?
- *Mandated: Set Filter - Less than “3”*
 - What programs are being offered because of “self-imposed” mandates (*i.e. City Ordinances, City Code, City Policies, City Procedures, Industry Best Practices*)
 - Should the City consider changing the self-imposed mandate for those programs that are not helping it achieve its identified results?
- *Level of Demand: Set Filter - Less than “2”*
 - What programs are being offered that are not serving or benefiting a large portion of the community?
 - Should the smaller constituency be asked to share the cost burden of these programs to a higher degree?
- *Reliance on the City: Set Filter: Equal to “4”*
 - What programs does the City offer for which there are no other service providers, either in the public sector or the private sector?
 - Should the City consider providing a lower level or minimal level of service for those programs that are not highly relevant to the City’s results? Should the City consider charging a fee for these lower relevance programs if appropriate?
- *Reliance on the City: Set Filter: Equal to “3”*
 - Are there other public sector (*governmental organizations/agencies; civic groups; non-profit organizations, etc.*) that offer programs that are similar to those offered by the City?
 - Should the City consider partnering with these agencies or transferring service delivery to these agencies?

- Should the City subsidize these public sector agencies to ensure accessibility for vulnerable segments of the community?

Reliance on the City: Set Filter: Less than “3”

- Are there other private businesses that offer programs that are similar to those offered by the City?
- Understanding that private businesses do not offer their programs for free, should the City consider charging a fee to the end user for these services, especially those that are of lower relevance to the City?
- Should the City consider “getting out” of or privatizing these programs that potentially are in direct competition with private business?
- Should the City consider outsourcing these services where it is more cost effective for a private business to provide the program on behalf of the City?
- *Reliance on the City: Set Filter: Less than “3” combined with*
- *Mandated: Set Filter - Less than “3”*
 - Are there programs offered by the City that it is not required to do (at best a “self-imposed” mandate”) AND there are private businesses that offer a similar program AND for which the City is not collecting a fee (*set drop down Use of Resources: “Portion Funded by General Government Revenues”*)?
 - For those programs that also are not achieving the Community’s identified results, should the City continue to offer those programs at all, regardless of its fiscal condition?

RESULT FILTERS

- *Any individual Result: Set Filter - Great than “2”*
 - What are the programs offered by the City that are considered to be highly important in helping the City achieve the Community’s identified results
- *All individual Result: Set Filter – Less than “3”*
 - Are there any programs offered by the City that do not contribute to its achieving ANY of the Community’s identified results? If so, should the City consider other alternatives including eliminating these services altogether?

COUNCIL INITIATIVES
APPROVED SINCE FEBRUARY 7, 2011

Date	Sponsor/Initiative	Action	Resolved	Assigned To
7/25/05	COUNCILMEMBER MCDERMOTT: Moved to direct staff to draft a policy establishing guidelines for selling city-owned property regardless of how the city acquired the land. APPROVED.	Updated ordinance presented at 8/16/10 work session. City Attorney's office has updated the current City Ordinance and will place on one of the August 27 Council agenda.	In Progress.	Dave Mumford/ Brenda Beckett/ Airport/PRPL
12/11/06	COUNCILMEMBER STEVENS: Moved to direct Staff to prepare a report on the feasibility and costs of establishing a city-wide volunteer program and schedule the report for a future Work Session. Councilmember Ulledalen amended the motion to have the City Administrator poll the department heads about where volunteers might be appropriate. APPROVED.	Council recommendation is not to expand.	Completed.	Tina Volek Rich St. John
02/12/07	COUNCILMEMBER BREWSTER: Moved to direct Staff to begin buying right-of-way (ROW) for the Inner Belt Loop to be completed in 5 years, and beginning with the next budget cycle. APPROVED.	Negotiating with property owners.	In Progress.	Dave Mumford
04/09/07	COUNCILMEMBER ULLEDALEN: Moved to direct Staff to develop Zoning code amendments that allow better governance of corrections, rehabilitation and treatment facilities. APPROVED	On April 9, 2012 Council approved changes to the zoning code that limits correctional in the S. 27 th Street Corridor and Controlled Industrial Districts.	Completed.	Candi Beaudry
8/27/07	COUNCILMEMBER VEIS: Moved to direct staff to research the feasibility of selling Lampman Park and using the funds for the Lampman Strip Park. APPROVED.	Disposal criteria were brought to a work session. Park Board subcommittee on park land disposal held first formal meeting 2/16/12. The subcommittee in conjunction with staff is currently meeting bi-monthly to evaluate Lampman Park and other properties to determine their sale ability.	In Progress.	Michael Whitaker

Date	Sponsor/Initiative	Action	Resolved	Assigned To
06/09/08	COUNCILMEMBER RUEGAMER: Moved to direct Parks and Rec staff to check the feasibility of 1) selling naming rights for small, unnamed parks; 2) implementing fees for folf and/or folf tournaments; and 3) selling memorials in City parks, seconded by Councilmember Stevens. APPROVED.	1) RFP for naming rights discussed at 12/5/11 work session. 2) Folf tournaments set up by club, city doesn't collect fees. 3) Donation brochure developed for 8/8/11 Swords Park dedication.	Completed.	Mike Whitaker
9/22/08	MAYOR TUSSING: Moved to direct staff to look into the pros and cons of annexing Phipps Park and Riverfront Park into the City, seconded by Councilmember Clark. APPROVED.	Phipps Park has been added to the "red area" on the Limits of Annexation Map. PRPL and Planning will move forward with the annexation later this year.	In Progress.	Mike Whitaker, Candi Beaudry & Brent Brooks
02/23/09	COUNCILMEMBER VEIS: Moved to begin the formal process of approving the amendments to the Forfeiture of Office Ordinance, seconded by Councilmember Clark. On a voice vote, the motion was APPROVED.	Proposed ordinance and staff memo sent to Council. Waiting further instructions from Council.	In Progress.	Brent Brooks
04/13/09	COUNCILMEMBER GAGHEN: Moved to direct staff to explore the license process for liquidation/going out-of-business sales, seconded by Councilmember Astle. APPROVED.	Ad Hoc Council subcommittee is revising ordinance. Next meeting set for August 6, 2012.	In Progress.	Tina Volek Brent Brooks
08/10/09	COUNCILMEMBER MCCALL: Moved to direct staff to research the possibility of partnering with local groups to maintain parks, seconded by Councilmember Pitman. APPROVED.	Working with legal to review liability exposure of volunteers operating park equipment.	In Progress.	Mike Whitaker
01/11/10	COUNCILMEMBER MCFADDEN: Moved to direct staff to invite representatives of Representative Rehberg, Senator Tester, Senator Baucus and Montana Department of Environmental Quality to a future meeting to discuss the new wastewater regulations, seconded by Councilmember Ulledalen. APPROVED.	Discussing program with congressional staff.	In Progress.	Tina Volek
12/20/10	COUNCILMEMBER ULLEDALEN: Moved to direct staff to clarify the ordinances regarding light illuminations, noise and signage. He also asked that staff look into adjusting existing Plan Development Agreements regarding setbacks relative to encroaching in residential areas, seconded by Councilmember McCall. APPROVED.	On June 11, 2012 Council approved changes to the zoning code adding and amending existing development standards to reduce the impacts of commercial development on adjacent resident – referred to as "Neighborhood Manners".	Completed.	Candi Beaudry

Date	Sponsor/Initiative	Action	Resolved	Assigned To
1/03/11	COUNCILMEMBER ULLEDALEN: Moved that the annexation policy include references to geological factors that made development undesirable and include mandatory insurance or deed restrictions, seconded by Councilmember Ronquillo. APPROVED.	Because the Annexation Policy is non-regulatory, staff recommends that references to geologic conditions be made in Annexation Agreements or Subdivision Improvement Agreements. Planning will work with Legal to determine appropriate enforcement measures.	In Progress.	Candi Beaudry
1/24/11	COUNCILMEMBER MCFADDEN: Moved to direct staff to investigate and return to the council with recommendations that would modify the city bid award process to create an advantage for local businesses and contractors, seconded by Councilmember Pitman. APPROVED.	Staff previously met with Administrator and discussed options and polled other MT cities. Memo with recommendations will be prepared for 9/17/12 work session.	In Progress.	Brent Brooks
7/25/11	COUNCIL MEMBER ULLEDALEN: Referenced the city lawsuits and moved to have staff bring back ideas to the council for some kind of an audit or evaluation from someone local or from the International City Managers Association on the HR Functions, including the legal aspects of reviewing contracts, seconded by Councilmember Astle. APPROVED.	Discussion set for 8/16/12 work session.	In Progress.	Tina Volek
7/25/11	COUNCILMEMBER PITMAN: Moved to revisit siding on outbuildings and bring it to a work session, seconded by Councilmember Ronquillo. APPROVED.	On April 9, 2012 Council approved changes to the zoning code that allows vertical siding on accessory buildings when the principal structure also has vertical siding.	Completed.	Candi Beaudry
9/12/11	COUNCILMEMBER ULLEDALEN: Moved to ask Planning's and Public Works' opinions on amending the Complete Streets Initiative with the following: Amend the Complete Streets Policy to make it clear that it excluded MDOT-funded projects making it clear it only applied to city-funded projects and amend the Complete Streets Policy to have the exceptions come back to the council for a decision and not be left on staff's shoulders, seconded by Councilmember McCall. APPROVED.	Amendments to be drafted by the Complete Streets Policy Committee in 2012.	In Progress.	Candi Beaudry Dave Mumford

Date	Sponsor/Initiative	Action	Resolved	Assigned To
9/12/11	COUNCILMEMBER PITMAN: Moved to add Zoning 27-210(i)(9) regarding vertical siding to a future regular meeting agenda, seconded by Councilmember Cimmino. APPROVED.	On April 9, 2012 Council approved changes to the zoning code that allows vertical siding on accessory buildings when the principal structure also has vertical siding.	Completed.	Candi Beaudry
12/12/11	COUNCILMEMBER CLARK: Moved to direct staff to bring forth a fifth requirement that a city employee could not serve on a committee that directly advised the department he/she served with, seconded by Councilmember Astle. APPROVED.		In Progress.	Brent Brooks Tina Volek
1/3/12	COUNCILMEMBER ULLEDALEN: Moved that staff and realtors work together to get some guidance so they were on the same page and staff look at specific city policies relative to park dedication for things that worked, did not work, and if there were things that needed addressed. Seconded by Mayor Hanel. APPROVED.	Assigned to DPARB 1/25/12.	In Progress.	Tina Volek Mike Whitaker
1/23/12	COUNCILMEMBER RONQUILLO: Moved to have the new councilmembers brought up to date at a work session on the parking issues and the covering of the parking meters, Seconded by Councilmember Pitman. APPROVED.	Report presented on May 14 and trial extended to August 15.	In Progress.	Bruce McCandless Chris Mallow
2/13/12	COUNCILMEMBER ULLEDALEN: Moved to direct staff and the Commission to begin the process of changing the City Emergency Medical Services Commission into a Countywide Emergency Services Commission, seconded by Councilmember McCall. APPROVED.	County ER agencies are not interested in another committee, but existing private/public agencies may suffice. Discussion at 9/17/12 work session.	In Progress.	Tina Volek Paul Dextrus Brent Brooks
2/27/12	COUNCILMEMBER MCCALL: Moved to direct the City Administrator to have staff research on how other communities were handling the issues associated with mobile vendors, seconded by Councilmember Astle. APPROVED.			Tina Volek
3/26/12	COUNCILMEMBER ULLEDALEN: Have staff present at a work session reasonable guidelines on urban chickens based on Missoula and Bozeman's urban chicken ordinances, seconded by Councilmember Crouch. APPROVED.	This initiative has been superseded by the May 14th initiative.	Completed.	Candi Beaudry
3/26/12	COUNCILMEMBER CROUCH: Moved that council provide a letter to the Public Service Commission in support of Leo Barsanti regarding N W E charges, seconded by Councilmember McFadden. APPROVED.	PSC denied Barsanti's request.	Completed.	

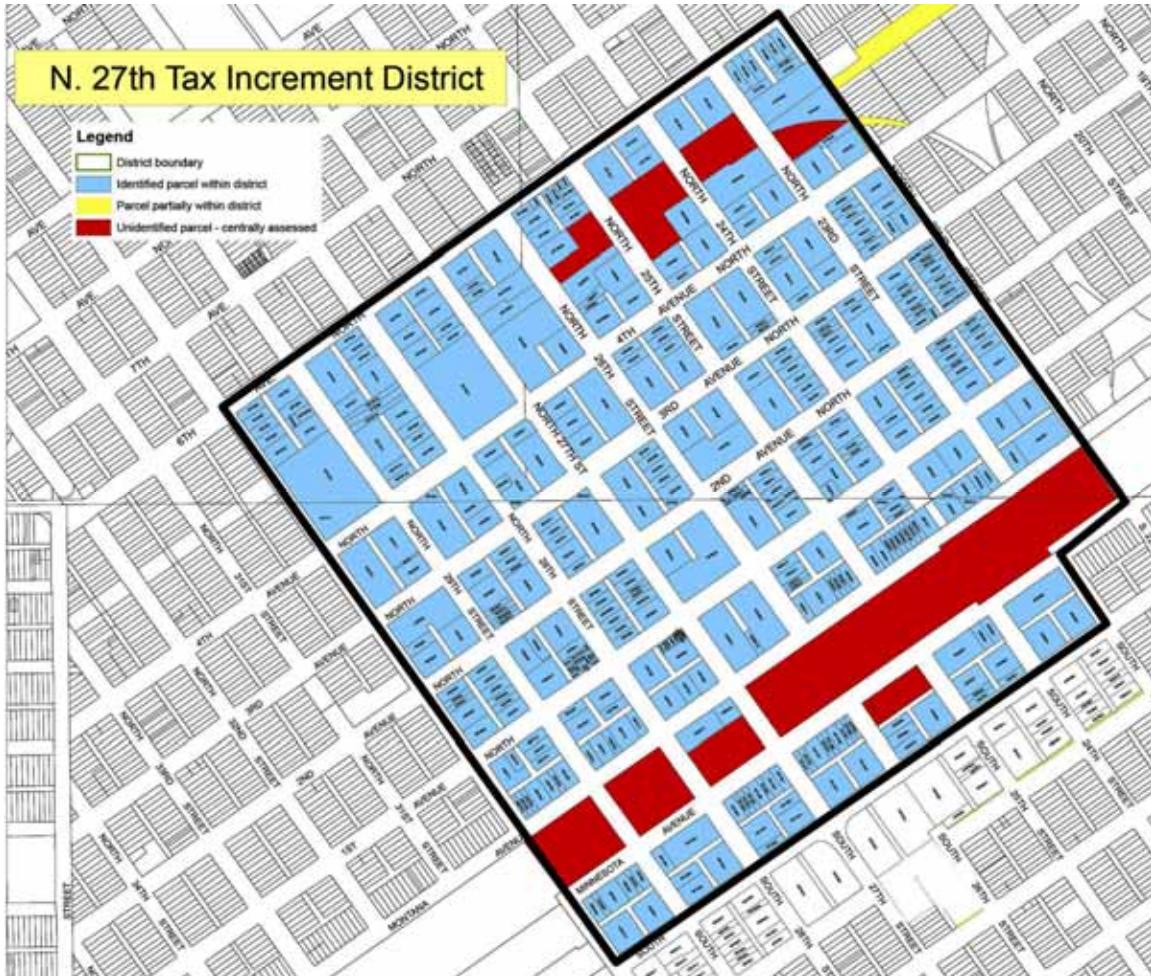
Date	Sponsor/Initiative	Action	Resolved	Assigned To
3/26/12	COUNCILMEMBER RONQUILLO: Moved to have staff come back with a new ordinance allowing chickens in backyards for a one-year trial basis, requiring a course on how to raise chickens, and requiring the issuance of a city permit to raise chickens, seconded by Councilmember McFadden. APPROVED.	This initiative has been superseded by the May 14 th initiative.	In Progress.	Candi Beaudry
4/23/12	COUNCILMEMBER MCCALL: Moved to direct staff to prepare testimony and appropriate printed material that supports the Montana Districting and Apportionment Commission's Urban-Rural Plan, seconded by Councilmember Ulledalen. APPROVED.	Statement prepared, approved by Council and delivered to Commission on May 15.	Completed.	McCandless
5/14/12	COUNCILMEMBER ULLEDALEN: Moved to direct the Parking Advisory Board to explore alternate groups other than the City to manage the Parking Division, seconded by Councilmember Pitman. APPROVED.	Report presented to City Council on July 16 th .	In Progress.	McCandless
5/14/12	COUNCILMEMBER BIRD: Moved to direct staff to bring back an urban chicken ordinance based on Missoula's City Code, seconded by Councilmember McFadden. APPROVED.	Animal Control will be bringing two (2) proposed ordinances to Council on August 27 to permit urban chickens with restriction in the city. One is based on the Missoula City Code.	In Progress.	Candi Beaudry
6/11/12	COUNCILMEMBER MCCALL: Moved to direct Ms. Volek to request staff to come back within 90 days with a summary of the studies that had occurred and recommendations that had been made, including the recommendation of the Technical Advisory Committee, so Council could look at what options they had using some of the existing information to move forward, seconded by Councilmember Cimmino. APPROVED.	An implementation plan to mitigate the impacts of increased rail activity is in the process of being developed by Planning and Public Works.	In Progress.	Candi Beaudry
6/25/12	COUNCILMEMBER ASTLE: Moved to have the SID Revolving Loan Fund money placed in the Council Contingency Fund to be considered after July 1, 2012, in the new budget, seconded by Councilmember McCall. APPROVED.	Added to budget adoption Exhibit A approved 7/23/12	Completed.	Pat Weber

Date	Sponsor/Initiative	Action	Resolved	Assigned To



Annual Report of the Downtown Billings
Partnership, Inc.
FY 2012, ending June 30, 2012

*Contract Services: Assist the City of Billings with the Implementation of
The Urban Renewal Plan of the Expanded N. 27th St. TIFD (Fund 203)*



Montana Code Annotated 2011, 7-15-4237. Annual Report. The Urban Renewal Law states that an “Agency authorized to transact business and exercise powers” is required by this section of the Code to file an annual report with the governing body on or before September 30 of each year, regarding activities for the preceding fiscal year. The City of Billings contracts with the Downtown Billings Partnership (DBP) to advise the City and implement the Council approved Urban Renewal Plan of the N. 27th St. TIFD. The DBP does NOT have the authority, nor the powers, that are allowed under the MCA regarding an Urban Renewal Agency. Therefore, the following report will not be a complete financial report of Fund 203 (the N. 27th St. District) of

2815 2nd Ave. N – Billings, MT 59101 – (406) 294-5060 – www.downtownbillings.com

the City of Billings nor will it list all of the assets and liabilities as of the end of the preceding fiscal year (FY 2012). That information can be found in the Fund 203 section of the official City of Billings budget. This report will focus on the parts of the Urban Renewal Plan directly implemented by the DBP and account for budget funds allocated to those parts of the plan under DBP supervision and paid directly by the Finance Department of the City of Billings.

DOWNTOWN BILLINGS PARTNERSHIP, Inc. Board of Directors FY 2012
As of June 30, 2012

Officers/Executive Committee

- **President – Matt Robertson**
- **Vice President – Jock West**
- **Immediate Past President – Steve Wahrlich**
- **Secretary – Jeremiah Young**
- **Treasurer - Steve Tostenrud**

BOARD OF DIRECTORS

Michael Gray – BID
mgray@gng.net - 294-8113

Don Olsen - PAB
dono@o2architects.net
• 259-7123

Joni Harman - at-Large Member
(6/30/2013) – joni.harman@gmail.com – 690-2002

Matt Robertson – DBA
mrobertson@businessprop.com - 671-1158

Steve Arveschoug - Big Sky EDA
stevea@bigskyeda.org - 869-8401

Tina Volek - City of Billings
VolekC@ci.billings.mt.us - 657-8430

Connie Wardell – Billings Public Schools
cwardell@usadig.com – 855-5160

**Jim Reno - Yellowstone County
Commission**
jreno@co.yellowstone.mt.us - 256-2701

**Jock West – at Large Member
(06/30/2014)**
jock@jockbwestlaw.com - 252-3858

**Kim Olsen - Downtown Prop. Own. Assn.,
Inc.** kimo@o2architects.net - 259-7123

**Vacant - at Large Member
(6/30/2014)**

**Jeremy Morgret - at Large Member
(6/30/2012)** – Jmorgret@stocmanbank.com
- 655-2722

**Steve Tostenrud - at Large Member
BANKING (6/30/2012)**
Steve.Tostenrud@fib.com

**Jeremiah Young - at Large Member
(6/30/2013)**
rockegear@gmail.com • 256-5585

**On Hold - at Large Member (6/30/2013)
(Nelson)**

Board Alternates

Lisa Harmon - BID and/or DBA
lharmon@downtownbillings.com -
294-5060

Greta Besch Moen - Billings Public Schools
gbesch@gmail.com

Ex-Officio & Affiliates – non-voting

Lloyd Mickelson - Library & BCP
mickelson@3dnorth.com

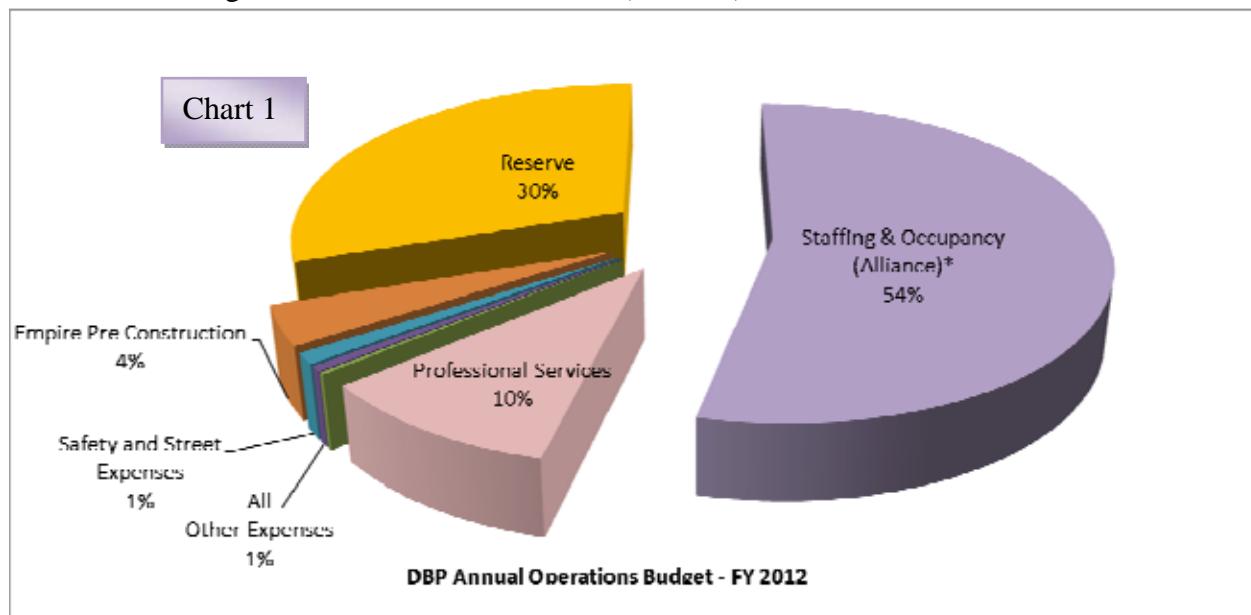
Don Olsen - Urban Design
dono@o2architects.net - 259-7123

Pending – Council Appointee

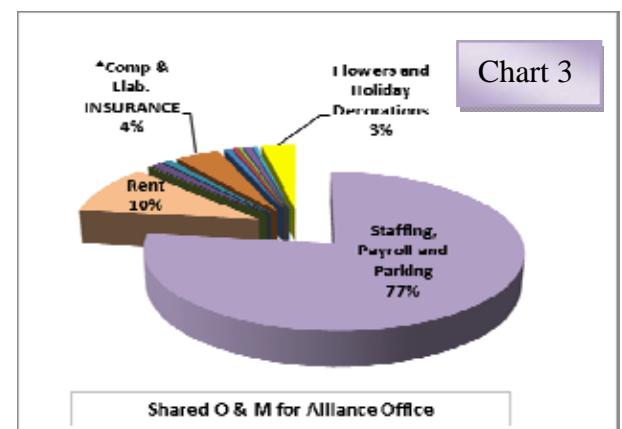
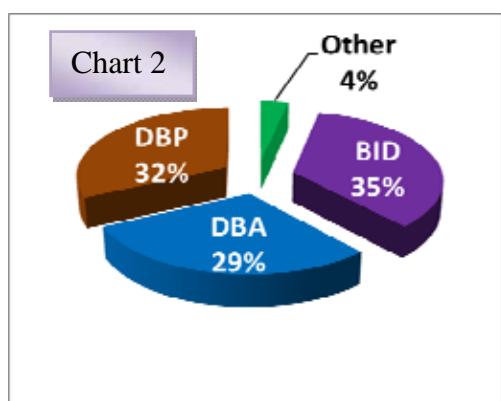
Steve Wahrlich – Immediate Past President
sw@bwclocktowerinn.com - 259-551

Fiscal Year Urban Renewal Projects Supervised by the DBP via Fund 203 in FY 2012

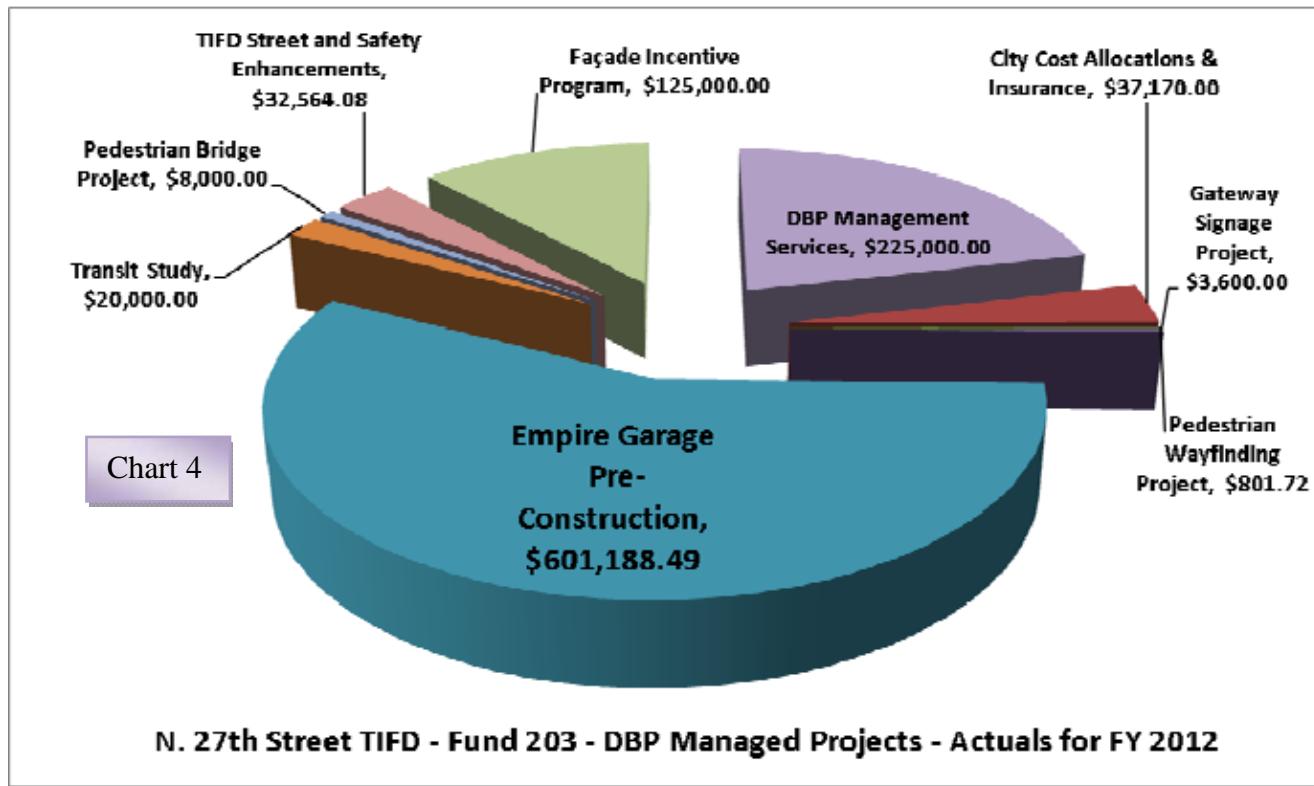
- ✓ The annual agreement between the DBP and the City for management services - \$225,000.00 (*Chart 1*)



- The DBP contributes roughly 1/3 (*Chart 2*) of the cost of the total operations (*Chart 3*) of the Downtown Billings Alliance. The Alliance is comprised of the DBP, the Downtown Billings Association (DBA) and the Downtown Business Improvement District (BID).



- For Fiscal Year 2012, the DBP project expenditures, including City Cost Allocations and Management Services Fees detailed above, totaled \$1,053,324.29. Excluding the DBP Management and City Cost Allocations, the total expended on Urban Renewal Projects was \$791,154.29. (See Chart 4)



In Summary, In FY 2012 the DBP set forth the foundation for continued taxable value growth in the N. 27th Street District. The DBP Board of Directors, as part of the Downtown Alliance, continues to explore and evaluate potential public/private development projects. They strongly support selling TIFD Bonds to finance the construction of the Empire Parking Garage and will work with the City and OAC Services, Inc. to design and build a new and exciting public asset on Montana Avenue. Related to that project is the proposed amendment to the Urban Renewal Plan to include a Retail Recruitment and Retention program.

The DBP continues to work with the City on two Development Agreements approved by the Billings City Council. The Stockman Bank Project is now complete and reimbursements for qualified urban renewable expenditures (\$630,000) have been allocated and will be funded as Fund 203 grows in the coming years. The Northern Hotel Project is near completion and should be submitting (beginning in FY 2013) for the start of their qualified reimbursements (up to \$2,981,646 – subject to review by the Development Committee, the DBP Board, and City of Billings Finance).

COMMUNITY INVESTMENT PLAN
City of Billings
City Council & Staff Strategic Priorities
8/6/12

HONEST, RESPONSIVE GOVERNMENT

GOAL: Striving to be a principle-centered organization that promotes responsibility, accountability, trust and open accessible government

Priorities:

- Create a comprehensive "Communications Plan"
 - Understand and develop the "electronic democracy"
 - Develop a highly interactive web site
 - Explore new media options and new audiences
 - Hold ongoing and regular community conversations that explore specific issues (while "inviting the stranger")
 - Better utilize existing media - TV, web, social networking sites, newspaper to share information and increase understanding.
 - More accessibility and transparency
 - Explore options for a public information function (cost neutral)
 - Create a friendlier environment for public access
 - Change room set up for Work Sessions
 - Change protocol to make process less intimidating
 - Plan to take Work Sessions out to different wards

Results:

- Communications Plan, including PIO option, presented 8/1/11. No additional Council comment received. Recommend redistributing for new Council Member review and then adding to future work session for final determination on Oct. 1, 2012
 - Web site continuously being updated
 - Staff is investigating on-line, commercial programs that provide forums for public comment/questions/suggestions on issues. Suggest Council review at Oct. 1, 2012, work session
 - Community Conversations held June and November 2011; new sessions scheduled for September 2013
 - Work sessions relocated to Council Chamber for television viewing ease. Work sessions in wards are difficult for cable channel to cover
 - Comments added to end of each work session item to encourage public participation; ex-parte notebook at business sessions and on-line agenda items and Friday packets provide information to residents

COMPREHENSIVE, ORDERLY GROWTH

GOAL: Careful consideration and management of the process of Community growth

Priorities:

- Infill
- Annexation
- Proactive Zoning
- Roads
 - Inner Belt Loop
- Modeling Future Income
- Careful crafting of the "Community Investment Plan"
- Identify future community & regional parks and recreational facilities, locations

Results:

- Infill policy adopted 12/19/11
- Revised annexation policy adopted 5/23/11
- Zoning amendments to meet Council initiatives, State legislative changes and community needs are being forwarded to Council for action; work session scheduled 2/21/12
- Inner Belt Loop divided into two phases; redesign underway
- Preliminary Priority Based Budgeting material presented to Council in June 2012.
Monthly review meetings to begin 8/6/12
- Community survey held in July 2012, followed by Community Conversations in September 2012
- Park land dedication or payment in lieu of dedication remains a requirement for developers under State law. Per Council initiative, DPARB is working on local park requirements. Staff is working with Board of Realtors to determine interest in amending state land dedication requirements. With adoption 12/19/11 of Parks Maintenance District, City focus has shifted to improving existing facilities; Parks, Recreation & Cemetery Board subcommittee is looking at disposal of unused park land; efforts to acquire Federal funding for additional park land acquisition were unsuccessful

TRANSPORTATION LINKAGES

GOAL: Development of a comprehensive, multi-modal transportation system

Priorities:

- Continuously evaluate Public Transportation funding, ridership and routes for efficiencies and alternatives
- Collaboration and celebration of successes

- Multi-modal and "complete streets"
- Enforcement and Safety
- Balance of limited resources and priorities
- Multi-use trail development and connectivity

Results:

- Preliminary circulator bus route for downtown is complete and is being reviewed by downtown groups. Bus routes reviewed every February, however, 2009 Transit study resulted in routes being balanced and redesigned; so requests for new service could be accommodated only with reductions in other segments
- Swords Park 2-mile trail addition celebrated with December 2011 opening
- Billings Area Bikeway & Trail Master Plan Policy adopted 8/8/11, although references to complete streets were removed
- Trail Asset Management Plan that involved City Parks & Recreation, Chamber of Commerce & private partners was approved by Policy Coordinating Council in June 2011
- 2011 CTEP plan adopted 2/13/12

PRESERVATION OF RESOURCES

GOAL: Preservation of Billings' abundant resources

Priorities:

- Learn from "like cities" with effective plans (Fargo, Rapid City, Sioux City, especially in parks and trails)
- Trail development, maintenance and connectivity
- Options for a "city wide special park district"
- Finalization of a viable plan for the Library

Results:

- Billings Area Bikeway & Trail Master Plan Policy adopted 8/8/11
- Trail Asset Management Plan that involved City Parks & Recreation, Chamber of Commerce & private partners was approved by Policy Coordinating Council in June 2011
- Citywide Park Maintenance District approved 12/19/11
- \$16 million Library construction bond approved November 2011

ECONOMIC DEVELOPMENT

GOAL: Economic vitality that fosters community partnerships, and ensures a strong and efficient infrastructure

Priorities:

- Continue work with and support the vision, mission and work of community partners i.e., Big Sky EDA/EDC, Chamber of Commerce and others
- Ensure appropriate, full municipal costs are charged for services:
 - Street maintenance fees
 - Park fees
 - In fill fees

Results:

- Third joint leadership meeting held in July with Chamber, BSEDA and Downtown Billings Partnership
- Quarterly meetings held with County Commissioners and City of Laurel, as well as with School District No. 2 Board, in 2011 and 2012
- Fees for street maintenance, arterial snow removal and PAVER program were increased 6/27/11 to improve services
- Other fees, including Parks and Planning fees, are reviewed annually and slight increases are recommended each year as needed to keep up with increasing costs

INVOLVED, UNITED COMMUNITY

GOAL: Community-wide investment in visioning and planning for the future

Priorities:

- Be a city that finds ways to solve old and new problems
- Celebrate our successes/changes in tone
- Careful crafting of the "Community Investment Plan"
 - Broad ownership
 - "Make it work" is not good enough anymore
 - Embrace learning in public
 - Create environments where diversity and differences result in positive, creative solutions

Results:

- Community Conversations held June and November 2011, scheduled again for September 2012
- Community survey completed July 2012, with Billings being first city in nation to use survey questions to validate Priority Based Budgeting work
- Year-end review of City's significant achievements of past eight years received coverage



TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: BILL COCHRAN, LIBRARY DIRECTOR *BC*
RE: QUARTERLY REPORT ON NEW LIBRARY PROJECT
MEETING DATE: AUGUST 6, 2012

- All site preparation work, including re-routing of utilities around the new building site and demolition of the former Underriner Motors building, is complete. I would like to thank City Engineer Debi Meling and Staff Engineer Chris Hertz for their exceptional work managing this project to completion on time and within budget.
- The overexcavation to remove bentonite from the site and replace it with suitable soil to support the building is complete. Don Olsen, of O2 Architects, managed this project to successful completion prior to the June 28 groundbreaking.
- The general obligation bonds to fund the project were sold almost immediately, with \$2,655,000 sold locally, before they were offered to institutional markets. I would like to thank Finance Director Pat Weber for securing the favorable rate of 2.83% for the City.
- The Parmly Billings Library Foundation has already made its first of 10 annual payments of \$300,000 to pay its \$3,000,000 commitment to the project. I would like to thank the Foundation for the active role it has played in making this project possible.
- The building permit for the project was issued July 25.
- Jackson Contractor Group will install its project trailer on site the week of August 6.
- A pre-construction meeting is scheduled for August 9.
- Jackson Contractor Group expects its equipment to be on site the week of August 13 and will hold a charrette with subcontractors on August 15.
- The Library Building Design Committee, in collaboration with the U.S. Department of Commerce Broadband Opportunity Program and the Bill and Melinda Gates Foundation, is sponsoring iLibrary, an open community discussion about information technology in the new library building. It will be held Saturday, September 15, from 9:00 a.m. to 4:00 p.m. in the Great Room of the Health Sciences Building at City College of MSU-Billings. Questions and RSVP at: ilibraryworkshop@gmail.com.
- The design team will present a furniture plan to the Library Building Design Committee and at a public reception to be scheduled in late October or early November.
- Staff is preparing a plan for the move from the current to the new library building.

Attached is a current report on the project budget.

**New Library
Project Budget**

	<u>Donor</u>	<u>Bonds</u>	<u>Reserves</u>	<u>Total Costs</u>
<u>Site Preparation</u>				
Demolition			185,280	185,280
Utility relocation			432,840	432,840
Entry/parking redesign			21,170	21,170
Interfund transfers/Misc.			43,828	<u>43,828</u>
Site Preparation Total				<u>683,118</u>
<u>Architect & Professional Services</u>	2,000,000			2,000,000
<u>Construction</u>				
Overexcavation/Quality Assurance		630,782		630,782
Low bid		15,073,900		15,073,900
Alternate #1		11,300		11,300
Alternate #2		86,600		86,600
Alternate #4		87,100		87,100
Owner's Representative			209,410	209,410
Constructability Review			19,963	19,963
Builder's Risk Insurance			22,927	<u>22,927</u>
Construction Total				<u>16,141,982</u>
<u>Furnishings, Furniture, Equip.</u>				
FF&E to be bid		410,318		410,318
			693,067	<u>693,067</u>
FF&E Total				<u>1,103,385</u>
TOTAL	<u>2,000,000</u>	<u>16,300,000</u>	<u>1,628,484</u>	<u>19,928,485</u>