



**AGENDA**  
**Committee on Ways and Means**  
**Friday, September 25, 2020 @ 8:30 a.m.**

<https://us02web.zoom.us/j/84745102107>; ID: 847 4510 2107; Dial In: (312) 626 6799  
email comments prior to the meeting to [sherrie.boak@lansingmi.gov](mailto:sherrie.boak@lansingmi.gov)

**UPDATED 9/22/2020**

Councilmember Wood, Chair  
Councilmember Spadafore, Vice Chair  
Council Member Jackson, Member

**1. Call to Order**

**2. Approval of Minutes**

- September 11 , 2020

**3. Public Comment on Agenda Items**

**4. Discussion/Action:**

- A.) UPDATE – RFP on External Auditing Firm (Finance Director)
- B.) DISCUSSION – CSO & Finance Director Update on Outside Counsel Expenses
- C.) DISCUSSION – City Retiree Healthcare

**5. Other**

**6. Adjourn**

With Executive Order 2020-4, Governor Whitmer declared a statewide State of Emergency due to the spread of the novel coronavirus (COVID-19). To mitigate the spread of COVID-19 and to provide essential protections to vulnerable Michiganders and this State's health care system and other critical infrastructure, it is crucial that all Michiganders take steps to-limit in-person contact, particularly in the context of large groups. Therefore, the above meetings will be conducted via audio/video conference.

The meetings are being held electronically in accordance with the Open Meetings Act in an effort to protect the health and safety of the public. Members of the public wishing to participate in the meeting may do so by logging into or calling into the meetings using the website or phone number above, and meeting ID provided. Michigan Executive Order 2020-154 provides temporary authorization of remote participation in public meetings and hearings.

Persons with disabilities who need an accommodation to fully participate in these meetings should contact the City Council Office at 517-483-4177 (TTY 711) 24 hour notice may be needed for certain accommodations. An attempt will be made to grant all reasonable accommodation requests.

DRAFT



**MINUTES**  
**Committee on Ways and Means Special Meeting**  
**Friday, September 11, 2020 @ 8:30 a.m.**

**CALL TO ORDER**

The meeting was called to order at 8:30 a.m.

**Members Present via audio/video**

Council Member Carol Wood, Chair  
Council Member Peter Spadafore, Vice Chairperson  
Council Member Brian T Jackson, Member- unexcused

**OTHERS PRESENT**

Sherrie Boak, City Council Office Manager  
Jim Smiertka, City Attorney  
Lisa Hagen, Assistant City Attorney

Council Member Spadafore asked the OCA to provide an opinion on if the Council rules and/or Charter address absences or unexcused absences from Committee meetings without a request for recusal or it only applies to Council meetings. Mr. Smiertka stated he would research the question and Council Member Spadafore stated he could provide the response in email if he chooses.

**Minutes**

MOTION BY COUNCIL MEMBER SPADAFORE TO APPROVE THE MINUTES FROM AUGUST 28, 2020 AS PRESENTED. ROLL CALL VOTE, MOTION CARRIED 2-0.

**Public Comment**

No public present at this time.

Council Member Wood stated at 8:46 a.m. the Committee will pause the meeting for a moment of silence for 911 remembrance.

**Discussion/Action**

**DISCUSSION- Fiscal Year 2021/2022 Budget Priorities**

Council Member Wood turned the discussion over to Council Member Spadafore. Council Member Spadafore looked for a reexamination on how the Information Technology budgets are allocated. Mr. Smiertka added that the Committee should look at other departments as well. Council Member Wood added to the discussion that there are also expenses with rentals such as

DRAFT

vehicles, costs for street lights, etc. Council Member Spadafore added to the discussion his question as to why it would cost approximately \$8,000 per employee for Information Technology, he then presented his suggested budget priority:

Encourage the Administration to focus in on budget allocations and centralize the fees and costs associated with items such as Information Technology, utilities, etc.

The Committee was encouraged with this task because it would create transparency and an understanding of the budget when departments have to set their costs annually for their budget proposals.

Council Member Wood proposed a budget priority asking for language that would recommend the Chief Strategy Officer provide reporting on short and long term resolution for revenues and expenses. Council Member Spadafore concurred with the recommendation.

Council Member Wood asked that the Finance Director be invited to the next meeting to discuss the progress on the RFP Council was told went out for a new auditing firm.

Mr. Smiertka updated the Committee on their request at the last meeting for a report on outside counsel expenses. He stated the OCA would be reviewing it today and then sharing with Finance. He then responded to the earlier request on unexcused absence from Committee meetings, he noted there is a provision on forfeiture of office.

8:46 a.m. Moment of Silence

Mr. Smiertka continued his explanation of Charter 3-204 that spoke to attendance at meetings, that could address compel the appearance of absent members. He added that it could also allow for an ordinance that would require attendance leading to forfeiture of office. He offered to continued researching into the Charter and the Council rules. Council Member Spadafore asked for research on the recourse of unexcused absence.

**Other**

**ADJOURN**

Adjourned at 8:50 a.m.

Submitted by,

Sherrie Boak, Council Office Manager

Lansing City Council

Approved by the Committee on \_\_\_\_\_

INTENTIONALLY BLANK



**REPORT OF THE LAW DEPARTMENT TO THE CITY COUNCIL WAYS AND MEANS COMMITTEE  
REGARDING EXPENDITURES FOR LEGAL COUNSEL, AUDITORS, AND EXPERTS DURING THE PERIOD  
SEPTEMBER 1, 2019 THROUGH AUGUST 31, 2020**

**I. INTRODUCTION**

Set forth below is a summary of outside legal counsel, auditors, legal experts, and litigation-related expenditures for the period September 1, 2019, through August 31, 2020, (the “Reporting Period”), engaged by the City Attorney’s Office (OCA) for civil litigation and investigative services. Although Department staff prosecute criminal and civil infraction violations in four courtrooms on a weekly basis and perform the other functions referenced in this report, that function is totally performed internally and is not the subject of this report.

During the Reporting Period, the number of civil cases actively handled or supervised by OCA staff attorneys amounted to 36 in state and federal courts, including appellate courts. 22 of these cases were handled in-house (8 now closed); 11 were managed by outside counsel (3 now closed); and 3 involved joint representation by OCA attorney staff together with outside counsel. The decision whether to handle a case in-house or refer it to outside counsel involves an exercise of professional judgment as to the complexity of the case; the existence of City personnel, such as police officers, as individual defendants; potential conflicts of interest; and loss exposure to an extent that a City insurance carrier has a particular law firm preference.

You may note from the data in this report that there is a reduction in the amount expended for outside counsel during the Reporting Period from what has been reportedly expended in years prior to July 2016 and, as a percentage of the budget, OCA is below the national average. It is suggested that this is a direct result of OCA operations and the addition and development of talented staff commencing in July, 2016.

**II. LEGAL COUNSEL LITIGATION EXPENDITURES DURING THE REPORTING PERIOD**

<u>ATTORNEY</u>	<u>SERVICE/LAWSUIT DESCRIPTION</u>	<u>DATE OPENED/CLOSED</u>	<u>AMOUNT</u>
Clark Hill	COL v. Spartan Internet – breach of contract regarding Holmes Street School	06/13/18 - present	\$1,232.50
Foster Swift	Deanna Ray, et al. v. COL – class action lawsuit for sewer backups/flooding into residences	11/06/13 – 10/11/19	\$4,270.00
	Samantha Burwell/Estate of Phillips v. COL, a jail death case that has been appealed by Plaintiff to United States Court of Appeals for the 6 <sup>th</sup> Circuit	09/08/17 - present	\$53,534.87

	COL v. Starr Indemnity – insurance coverage related to Ray v. COL	07/01/16 – 07/13/20	\$15,947.10
Frederick Baker	Block 100 v. COL – Defense for former Mayor Bernero	03/14/18 - present	\$1,462.05
Plunkett Cooney	Block 100 v. COL – contract dispute re: parking dispute with Radisson Hotel	03/14/18 - present	\$40,750.94
	Charles Funk v. COL – federal labor law action by former police officer; appeal has been moved in-house	06/07/17 - present	\$2,688.00
	Gardner – re: Code Compliance policy and practice; federal case; appealed twice	08/28/12 - present	\$18,405.00
	Hill – re: Code Compliance policy and practice	03/25/12 - present	\$20,067.00
	Henry Lee Holsey – re: Code Compliance policy and practice; consolidated with Gardner federal case; appealed twice	06/14/12 – 12/26/19	\$1,743.00
	Michael C. Lynn v. COL – federal Labor law action by current firefighter	01/18/19 - present	\$35,760.36
	Estate of Spalding v. COL – in custody death at the county jail	07/24/18 - present	\$77,534.90
	Trevino and HyrdoWorld, LLC v. COL – Code compliance policy and practice; initially filed in Circuit Court, appealed to MI Court of Appeals, re-filed in federal court	05/25/16 – 08/28/20	\$18,165.64
Secrest Wardle	Estate of Spalding v. COL – in custody death at the county jail	07/24/18 - present	\$35,030.25

**Outside Legal Counsel Litigation Expenditures      \$326,591.61**

III. A. OUTSIDE ATTORNEY NON-LITIGATION TRANSACTIONAL EXPENSES

<u>ENTITY/PERSON</u>	<u>DESCRIPTION</u>	<u>DATE OPENED/CLOSED</u>	<u>AMOUNT</u>
AML Group	Retirement Boards	NOT LITIGATION	\$25,515.00
Foster Swift	Defined Contribution Plan	NOT LITIGATION	\$15,192.50
	Paulson Street	NOT LITIGATION	\$2,676.90
	Pension Plan	NOT LITIGATION	\$2,341.00
Miller Canfield	Corner Parcel Property Interests	NOT LITIGATION	\$533.00
	General	NOT LITIGATION	\$3,183.00
	Insurance Coverage Dispute	NOT LITIGATION	\$22,392.00
	IRS Issues	NOT LITIGATION	\$17,216.33
	Radisson Hotel	NOT LITIGATION	\$47,831.40
	River Front I	NOT LITIGATION	\$30,800.96
Plunkett Cooney	Former ACA Issue	NOT LITIGATION	\$18.50
Varnum	Cell Tower Lease	NOT LITIGATION	\$2,148.50

**III A. Outside Attorney Non-Litigation Transactional Expenses** **\$169,849.09**

B. AUDITORS, LEGAL EXPERTS FOR TRANSACTIONAL MATTERS INCLUDING ECONOMIC DEVELOPMENT MATTERS WITH BOARDS AND AUTHORITIES AND FOR VARIOUS CITY DEPARTMENTS, AND TRANSCRIPTS

Crawford & Winiarski	Burwell/Estate of Spalding v COL, Expert re: damages	09/08/17 – Present	\$972.50
Howard Shifman	General Labor – Collective Bargaining, Contracts, Negotiations and Legal Opinions	NOT LITIGATION	132,441.72
Macomb/Carroll Court Reporting & Video	Transcripts in Estate of Spalding v COL, and Lynn v COL	07/24/18 – Present; 01/18/19 – Present	\$9,024.20
Peter Dunlap	Estate of Spalding v COL, Mediator	07/24/18 – Present	\$1,215.00

Plante Moran	Forensic, Tax & Finance Dept. Issues	NOT LITIGATION	\$165,290.00
Teresa Bingman	Consultant re: Use of Force and LPD Policies	NOT LITIGATION	\$63,000.00
Timothy Eklin	Estate of Spalding v COL, Expert Witness	07/24/18 – Present	\$5,124.50
U.S. Legal Support	Transcript in Gardner	08/28/12 – Present	\$360.83
<b>III B. Total Auditors, Legal Experts, Transactional Matters</b>			<b>\$377,428.75</b>

IV. COMPARISON OF OUTSIDE COUNSEL LITIGATION AND TRANSACTIONAL EXPENDITURES FOR THE REPORTING PERIOD WITH HISTORICAL PERIODS PRIOR TO JULY 2016, PER CITY AUDITOR REPORTS\*\*

<u>2019/20</u>	<u>2013/14</u>	<u>2012/13</u>	<u>2011/12</u>	<u>2010/11</u>	<u>2008/12</u>
496,440	523,603	745,613	1,072,641	1,111,761	3,205,074*

\*Average per year during 2008/12 equals 801,269

\*\*Includes filing fees, transcript fees, and experts

BENCHMARKING WITH INDUSTRY AVERAGES

REGULARITY AND QUALITY OF LEGAL SERVICES REQUESTED

According to the 2014 Altman Weil, Inc. Chief Legal Officers Survey, \* the time allotted by Chief Legal Officers was reported as follows:

- Advising executives 32.3%
- Practicing law 25.2%
- Management of legal services 22.7%
- Other management duties 17.3%
- Other (corporate governance; Risk management; compliance; etc.) 2.5%

In addition, an analysis of the Office of the City Attorney reveal a regular, not sporadic, flow of quality requests for legal services in the other major areas of:

- Contract review, interpretation, and drafting
- Real property issues
- Freedom of Information Act requests
- Claims for and against the City
- External legal process
- Corporate governance

- Labor contract matters
- Corporate Compliance
- Human resources issues
- Opinions requested by executives, oral and written
- Outside counsel management
- Internal management
- Criminal prosecution
- City Council meetings
- Boards and Authorities
- Tax issues
- Ethics
- Code enforcement
- Worker's Compensation

**BALANCE OF IN-HOUSE COUNSEL AND OUTSIDE COUNSEL SERVICES**

From a review of the detail on the use of outside counsel, it appears the processes are in place to adequately monitor the activities of outside counsel. Outside counsel has historically been utilized for a variety of corporate matters, such as, litigation for and against the City, including City personnel, environmental; administrative law; pension, litigation; regulatory; and labor and employment.

The Altman Weil Survey, which should only be used as a starting point, reports that allocations for outside counsel are usually 50.3% of a corporate legal services budget. Data for the City indicates expenditures for outside legal counsel at 21.9% of the FY 20/21 OCA budget assuming all outside legal counsel expenditures noted in this report were included in the current OCA budget.

\* 2014 Altman Weil, Inc., Chief Legal Officer Survey; [www.altmanweil.com/CLO2014](http://www.altmanweil.com/CLO2014)

**SUMMARY AND CONCLUSIONS**

It should be noted that starting in July of 2016, OCA began the rebuilding of internal legal staff. It is submitted that the chart in Part IV demonstrates the quality and capabilities of the staff of OCA; and the reliance on the use of outside counsel should continue to be reduced, dependent, of course, on the ebb and flow of lawsuits.

Respectfully Submitted



James D. Smiertka, City Attorney