



July 7, 2006

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Daniel Singer

Hon. Rodney S. Melville, Presiding Judge  
Santa Barbara County Superior Court  
312-C East Cook Street  
P.O. Box 5369  
Santa Maria, California 93456-5369

RE: Response to Grand Jury Report on Legal Services in Santa  
Barbara County

Dear Judge Melville:

The City of Goleta would like to commend the Grand Jury on the thorough and comprehensive report that has been prepared examining legal service costs throughout the County of Santa Barbara. With regard to this report, entitled "Legal Services in Santa Barbara" (the "Report"), the City of Goleta responds to all findings and recommendations collectively as follows:

Legal services, particularly in a relatively new city, are vital to the organizational well-being and development of City structures. The City of Goleta, incorporated on February 1, 2002, is a City of about 30,000 residents. The City has faced remarkable challenges and opportunities over its first four years in existence and its progress as a viable governmental entity is a source of great pride to the community and to its elected leaders.

**Goleta – Special Legal Needs for a Start-up City**

From the beginning, the City of Goleta has attempted to recruit recognized experts to provide guidance with regard to all aspects of municipal endeavor. Prior to incorporation, the proponents of the new City enlisted the assistance of Burke, Williams & Sorensen ("BWS"), a 70 year old Los Angeles law firm that specializes in public law, to shepherd them through the incorporation process and to assist in negotiations with the County of Santa Barbara. BWS was selected primarily because of the reputation it had developed relating to incorporation of such new cities as Laguna Woods, Mission Viejo, Dana Point, Buellton, Camarillo, Santa Clarita, and Temecula among others.

It was also selected because of its recognized expertise in providing City Attorney services to cities throughout California. The proponents of incorporation, four of whom became members of the new City Council and remain on that Council today, worked with attorneys from BWS for more than a year prior to the successful incorporation vote in November of 2001. After the election, recognizing that time was short and that a great deal of legal work needed to be completed, the Council-elect retained BWS to prepare all necessary documents, ordinances, resolutions and agendas for the first City Council meeting to be held on February 1, 2002, the effective date of incorporation.

After the effective date of incorporation, the City continued to retain the services of BWS as interim City Attorney and, after more than six months of working with BWS in that capacity, the City Council determined that the services that had been provided were excellent, timely and reasonable in cost, thus the firm was made the permanent City Attorney. As noted in the report, the City of Goleta was able to secure the services of Burke, Williams & Sorensen, LLP, on a competitive rate basis.

Virtually all of the issues of concern to the City presented unique legal challenges beginning in the very first few months of the City's existence. The need for competent and experienced professional legal advisors was therefore paramount. The airport expansion issue, the Oly Chadmar Sandpiper residential development project, preservation of the City's mobile home rent control ordinance, preserving the Ellwood Mesa through a complex acquisition and land swap, and issues relating to various franchise agreements previously held by the County were some of the issues that confronted our new City from day one. All of these issues relate directly to establishing the City's right to control community land use decisions. The costs during the first three years of incorporation reflect that extraordinary situation.

It should be noted that the Ellwood Mesa land acquisition and land swap transaction was notable because it did not result in litigation. The Report intimates that the Ellwood Mesa transaction was part of the litigation that the City has experienced. That is simply not the case. In fact, the success of the City in shepherding the transaction to completion was recognized as an extraordinary accomplishment by the League of California Cities resulting in the City receiving the 2005 Helen Putnam Award. This is a huge accomplishment for a City that has been in existence for less than five years.

### **Responsiveness to Grand Jury Requests**

With regard to the response of the City of Goleta's attorneys to the Grand Jury request for information, we would note that the Report demonstrates clearly that Goleta responded with full and valuable information as to the costs of legal services, how those costs are allocated among matters and the cumulative costs incurred since incorporation. No other city appears to have provided so comprehensive a presentation of costs.

With regard to the confidentiality of legal bills, we believe that our attorneys have correctly limited the release of such information. The public is certainly entitled to know what public money is being spent where. The level of disclosure by the City of Goleta to the Grand Jury is evidence of our commitment to that principle. Our attorneys report to us during our annual budget and mid-year budget process, explaining such costs by function and by matter, as the Grand Jury is aware.

### **Preventive Legal Services**

One issue that was stated in the report is of concern to the City of Goleta. The Grand Jury was concerned that the City was “seeking legal cover beyond reason” and that somehow Goleta was over-using its City Attorney resources. Nothing could be further from the truth. The City has acted prudently in involving its attorneys up-front in matters that pose legal risk in order to avoid unnecessary litigation. It has been the philosophy of the City that it is better to avoid legal pitfalls than to correct them. Particularly with regard to sensitive personnel issues, as well as Brown Act and conflict of interest issues, obtaining proper advice before action is taken is critical in our view. We believe that is an appropriate and responsible position for the City to take.

We also note that the Grand Jury has reported legal charges incurred by the City of Goleta from incorporation through the present, a four and one-half year period showing a total cost for that entire time frame. Setting forth this information in this way implies that the total cost for that period is somehow disproportionately high. As no other jurisdiction was reviewed in this manner, there is no basis for comparison. All other jurisdictions were evaluated solely on their costs for the 2004-2005 fiscal year. We are, however, pleased that the Grand Jury has presented the full picture in the Report as it highlights the peaking of legal costs in 2003-2004 and the consistent reduction of those costs since then.

### **Attendance of Legal Counsel at Public Meetings**

With regard to the attendance of legal counsel at meetings of various City agencies, we are a bit confused by the Grand Jury’s remarks. We have legal counsel from our contract law firm in attendance at meetings of the City Council and the Redevelopment Agency which are usually held either concurrently or consecutively on the same day. We also have legal counsel available at meetings of our Planning Agency. Our extensive work and numerous public meetings relating to the adoption of our new General Plan have required the presence of legal counsel to respond to complex and sophisticated questions posed by counsel for the development community. In our experience, no other jurisdiction would consider having similar meetings without legal counsel present. It is the norm in order to expedite the business of the City and avoid unnecessary legal costs.

Our Design Review Board on occasion requests legal assistance on difficult matters, particularly where appeals are involved.

City Council, Redevelopment, Planning Agency and DRB meetings all are subject to the Brown Act and other rules, regulations and laws affecting legislative and quasi judicial actions of legislative bodies in California. Because of this we believe, like most other cities, that it is prudent to have legal counsel present to field questions and concerns as they arise to assure that the meeting is conducted and decisions are made in accord with California law.

## **Review of Legal Services and Billings**

We note that the Report states that the “City Administrator and Deputy City Administrator claim that the staff role in reviewing legal services is limited to totaling the amounts charged for claimed services and asserted that the review function rested with the City Council.” This is a clear misstatement of our process. The City Manager (we do not have a City Administrator) is responsible for reviewing all bills received and verifying their accuracy. The Assistant City Manager has a similar role. If there is a question about a particular entry, it is taken up with the City Attorney and resolved. While the Council approves all City budgets and disbursements, they do not review legal bills nor do they review the bills of other professionals retained by the City. That function rests with the City Manager and his designees.

## **Specific Billing Issues**

With regard to disbursements advanced by our law firm for various costs associated with litigation, we are somewhat perplexed by the Grand Jury’s comment. Our attorneys charge the actual cost of the disbursements. In this regard, the Report references a comment with respect to the Sandpiper residential project litigation, but we have been unable to determine what that comment is or where it appears.

With regard to word processing charges, we are not familiar with what this entails for in-house attorneys or other contract law firms. We can confirm, however, that other than extraordinary document production costs, our attorneys do not charge for routine preparation of documents, memoranda, correspondence and the like. Most attorneys prepare their own documents directly.

## **Retainer Issues**

We also note, with regard to the billing structure that has been set up for our legal services, we are billed on what is called a “blended” rate for attorney services. Regular public agency rates charged by Burke, Williams & Sorensen, LLP range from about \$185 for new attorneys to \$275 for seasoned partners. The City of Goleta negotiated an arrangement where charges for all associates are billed at \$205 and charges for all partners, including the City Attorney, are billed at \$225. Given the nature of the work that is done for the City we believe this arrangement best serves the needs of the City rather than a retainer system.

Our attorneys, though headquartered in Southern California, do not bill for travel time to or from the City.

### **Requests for Proposal for Specific Legal Services**

The Report recommends that cities extend requests for proposals to retain counsel to handle “routine, repetitive matters.” We are unaware of any routine or repetitive legal matters that arise in our City. While we do refer basic personal and property liability issues to our insurance pool, JPIA, as they arise, when a specific matter reaches the point of needing legal attention, our contract attorneys are usually well aware of the circumstances and issues as well as risks facing the City. Issuing an RFP at that point for attorneys unfamiliar with the situation to take it on seems counterproductive on its face. That is a major reason why we have chosen to retain a large law firm with broad experience and specialized staffing in municipal law.

### **Capping Legal Fees**

With regard to the idea of capping legal fees for litigation costs, we would simply point out that when a public agency is a defendant, it does not necessarily control where litigation goes or how costly it may become. Rather than imposing a cap on fees, we believe the better approach is to have regular updates from our attorneys on matters that are pending, both as to the progress of the litigation itself and as to its cost. Where settlement can be achieved in a manner that serves the best interests of the people, we are more than willing to consider a settlement option and we expect our legal counsel to work at developing settlement opportunities.

It should also be noted that the private sector has no constraints with regard to the legal costs that may be incurred in a challenge against the City. Private development interests retain attorneys whose hourly rates are frequently double that paid by governmental entities to public agency attorneys. If a public agency is to be well represented, it must retain legal counsel with expertise and skills commensurate with the need. Quality legal services, as the Report concludes, are not inexpensive.

### **Legal Fees Today**

The Report provides extensive data with regard to the cost of legal services within Santa Barbara County. On a per capita basis among cities in Santa Barbara County, the average cost per resident, based upon the numbers budgeted for 2004-2005 show the following:

<u>CITY</u>	<u>COST PER CAPITA</u>
Guadalupe	\$65
Buellton	\$34
Carpinteria	\$25
Goleta	\$23

City of Santa Barbara	\$22
Lompoc	\$17
County of Santa Barbara	\$15
Santa Maria	\$13
Solvang	\$ 9

Given the relative sizes of the cities shown above and the resultant costs per capita, it is clear that legal service needs vary according to events and that projecting a particular cost per capita may not relate to actual needs in any given year. In the same light, tying legal services to a percentage of a city's budget is also an unrealistic approach. Just as the cost of public employees is seldom materially affected by the population of community, so the need for legal services and its attendant costs is far more dependent upon events than it is upon general financial structures.

In addition, we are pleased to report, that, as anticipated, legal fees for the City of Goleta have been showing a consistent downward trend as specific legal issues are resolved. At the present time, we are in the final stages of completing two major pieces of litigation, *Oly Chadmar Sandpiper Partners v. City of Goleta* and *Guggenheim v. City of Goleta*. Our legal fees for 2005-2006 will be approximately \$630,000 instead of the nearly \$700,000 budgeted. We cannot predict the future, of course, and there may be new lawsuits on the horizon that will alter this picture. Nevertheless, the consistent trend for regular non-litigation work has been a reduction over time. As the City develops more corporate history, we anticipate that the need for basic legal services will be further reduced.

Thank you again for the care and effort you have put into the Report. To the extent that it promotes transparency in local government, it is a service to the taxpayers and the community alike.

Respectfully submitted,

Jonny Wallis  
Mayor

C: Goleta City Councilmembers  
Santa Barbara County Civil Grand Jury  
Santa Barbara County Board of Supervisors