

Performance Audit

**DEPARTMENT
OF LAW**

Report by the
Office of City Controller

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INTRODUCTION

This performance audit of the Department of Law was conducted pursuant to section 404(c) of the Pittsburgh Home Rule Charter. This is the Controller's first performance audit of the Law Department. This audit examines the Law Department's organizational structure and internal processes and procedures, the use of outside counsel and the costs of judgments and settlements in actions against the City.

OVERVIEW

The Law Department provided the following description of its duties and practice groups:

The City of Pittsburgh Department of Law is responsible for the legal affairs of the City of Pittsburgh. The City Solicitor heads the Department of Law and acts as attorney for the City as a municipal corporation, for the Mayor, for City Council, and for any City unit of government unless otherwise provided for pursuant to the City of Pittsburgh Home Rule Charter.

Attorneys represent the City of Pittsburgh on affirmative and defensive civil litigation, legislative and legal issues, and code enforcement proceedings. In addition to litigation, attorneys assist in the drafting and review of City legislation; prepare all contracts to which the City of Pittsburgh or any of its units is a party and provide legal counsel to City officials on a wide range of issues. The Department of Law handles an active case load of over 2,000 lawsuits and legal matters each year.

The Department of Law is made up of the following practice groups:

Labor & Employment Group:

The Labor & Employment Group represents the City as an employer of over 3,000 workers. The Group handles a variety of matters including collective bargaining with the City's nine represented bargaining units; defending the City against represented employee grievances and in arbitrations; defending the City against claims of First Amendment retaliation; gender, race, age, and disability discrimination; and civil service issues.

Litigation Group:

The Litigation Group represents the City of Pittsburgh, including its elected officials and employees, in various legal proceedings before courts and administrative tribunals. They can appear in defense of their clients or in a prosecutorial role to enforce laws adopted to promote public health and safety and to enhance the City of Pittsburgh's quality of life. The practice areas of the Litigation Group are General, Federal, Tort and Appeals respectively.

- **General Litigation:** Attorneys litigate on behalf of the City to obtain compliance with laws and regulations adopted to promote public health and safety, and to enhance the City of Pittsburgh's quality of life. These attorneys pursue property owners who fail to comply with the City's building codes; defend challenges to the City's Zoning Code; and initiate condemnation proceedings for the demolition of abandoned property, including the attachment of liens to recover the cost of these demolitions. Attorneys also appear in cases involving contractual disputes where the City of Pittsburgh or any of its Departments or Bureaus is a party, as well as pursuing other violations of City ordinances, including violations of tax, vending, peddling codes and illegal reselling of event tickets.
- **Federal Litigation:** Attorneys defend the City, its elected officials and employees, in lawsuits filed in the United States District Court for the Western District of Pennsylvania, where the opposing party contends: a City ordinance violates rights guaranteed by the United States Constitution; a police officer, in the performance of his or her duties, and/or the Bureau of Police policies (as to how best to secure public safety) violated an individual's or group's civil rights; a City of Pittsburgh elected official or employee engaged in an act of discrimination based upon age, gender, physical disability or race or in an act of retaliation; or the City of Pittsburgh failed to comply with a federal statute like the Fair Labor Standards Act or the Employment Retirement Income Security Act.
- **Tort Litigation:** Attorneys defend claims where a person alleges he/she has sustained bodily injury or property damage as a result of an action or omission of a City of Pittsburgh elected official or employee. These cases include a wide range of issues, including, but not limited to, questions of carelessness, breach of a legal duty, foreseeability and governmental & qualified immunity. Illustrative examples include slips, trips and falls upon City of Pittsburgh property and incidents involving the operation of City of Pittsburgh motor vehicles.
- **Appeals:** Attorneys appear in state and federal appellate courts and are responsible for those appeals that arise from cases litigated by attorneys in the General, Federal and Tort Litigation practice areas, respectively.

Municipal Group:

The Municipal Group serves as corporate counsel for and advises the Mayor, Council, other elected officials, City departments and certain City Boards and Commissions on a wide range of municipal law issues covering state and federal law, contracts, bankruptcy, real estate, liability, regulatory and administrative agency matters. Additionally, the attorneys prepare legal documents and client memoranda, review and/or assist in drafting City legislation upon request, and review all contracts to which the City of Pittsburgh or any of its units is a party.

Real Estate Group:

The Real Estate Group processes all legal transactions related to the acquisition/sale and resale of properties acquired by the City through the Treasurer's Sale process for delinquent real estate taxes via the Court of Common Pleas of Allegheny County. The Real Estate Group prepares deeds, files actions to quiet title, assists taxpayers with redemption of properties, and advises the Department of Finance on Treasurer's Sales issues and problems.

Tax Group:

The Tax Group advises and represents the various components of City government, including the Mayor, City Council, Department of Finance and the City Treasurer in reference to legal issues and litigation involving the various taxes levied by the City. The Tax Group assists in drafting tax legislation for submission to Council and represents the City in real estate tax assessment and exemption appeals.

Zoning, Planning & Environmental Group:

The Zoning, Planning & Environmental Group advises the Mayor, City Council and the Department of City Planning on matters pertaining to the Pittsburgh Zoning Code and Title XI (Historic Preservation) of the City Code; serves as counsel to the Zoning Board of Adjustment, Planning Commission and Historic Review Commission; and participates in legal proceedings in which the aforementioned clients and the City are interested parties. Additionally, the attorneys provide general advice and counsel to City departments on environmental law issues. In addition to the above practice groups, the Department of Law process all claims made against the City for property damage.

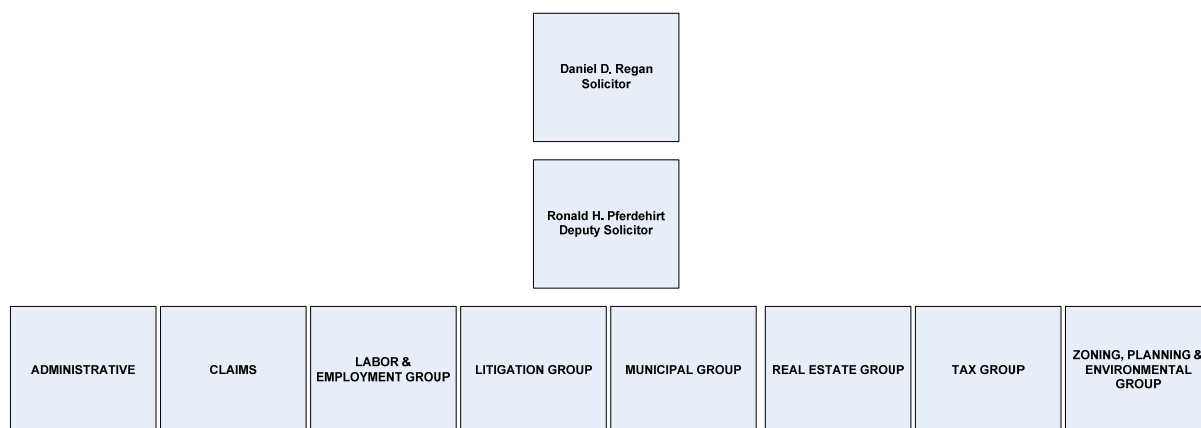
Claims Group:

The Claims Group reviews and investigates all claims alleging personal injury and/or property damage involving the City's real property or vehicles operated by City of Pittsburgh employees, and processes all reimbursement claims for property owners in the City of Pittsburgh alleging damage to their sidewalks from City tree roots. The Claims Administrator works closely with the relevant departments involved in a claim to gather all available information in order to make a final determination whether to approve or deny a claim. The Claims Group also provides monthly and quarterly reports to City Council regarding the number of claims filed and paid during the relevant time period, as required by the City of Pittsburgh Code of Ordinances. The Claims Group is also responsible for gathering and submitting appropriate information to the Commonwealth of Pennsylvania, Bureau of Motor Vehicles on an annual basis in order for the City to maintain its self-insurance certificate in relation to the operation of its motor vehicles. Finally, the Department of Law staff supports in the administration of the Department.

Administration:

The Administration of the Department of Law consists of administrative assistants, paralegals, legal secretaries, receptionists and file room attendants. The staff manages the daily operations of the Department and performs its record keeping function.

LAW DEPARTMENT ORGANIZATIONAL CHART



Operating Budget and Staff

The Law Department had 28 budgeted positions in 2011, 30 in 2010 and 29 in 2009. In 2010, a vacant legal secretary position was filled. In 2011 the positions of an assistant solicitor assigned to City Council and one general staff assistant solicitor were eliminated.

The 2011 budgeted positions for Law are City Solicitor, Deputy Solicitor, Associate Solicitor (2), Assistant Solicitor (10), Quality of Life Assistant Solicitor, Risk Management Assistant Solicitor, Paralegal (2), Real Estate Technician (3), Administrative Assistant (2), Claims Administrator, Legal Secretary (5) and Clerk. There are also 15,000 hours allocated to part-time Law Clerks/Interns and 1,040 hours for a part-time Associate Solicitor.

At the time the audit was performed, the positions filled in 2011 were City Solicitor, Deputy Solicitor, Associate Solicitor, Assistant Solicitor (14), Paralegal, Real Estate Technician (4), Administrative Assistant, Claims Administrator, Legal Secretary (5), Clerk, and Law Clerk (6). (See "Budgetary Account" in the Findings and Recommendations Section on page nine -9-)

The City Solicitor is an 'at will' position appointed by the Mayor and requires the approval of City Council per City Code Chapter 209.

CityLaw Software

The Law Department uses CityLaw software as its primary database system. The software is a product of Cycom Data Systems of Kentucky. There was a major CityLaw upgrade performed in 2008 at the cost of \$50,000, and Cycom has an annual maintenance contract capped at \$15,000 per year.

There are several modules that can be purchased to satisfy different needs. The following are the modules used by Law:

The Records (file) Management Module organizes information about the physical location of case files, assignments, and contracts to give easy access to every subject that is entered into the system.

The Litigation Case Management Module tracks and monitors lawsuits from filing to judgment or settlement, organizes case calendars and gives access to case status.

The Liability Claims Management Module supports local government claims processing. It maintains key dates, response deadlines and lists a calendar of activities. The Liability Claims and Litigation modules are integrated so that information can be accessed through both.

The Labor Management Module is similar to the Litigation and Claims Management Modules in that it files and organizes events involving labor grievances and hearings.

The Advisory Assignment Management Module tracks requests for legal services submitted by client departments or generated within the law department. Included is the tracking of contracts, opinions, ordinances, and other general advisory services.

Mandated Duties

The Law Department serves as counsel to the City's elected officials, departments, and several boards. It also has duties mandated by the Home Rule Charter and City Code.

The Home Rule Charter (HRC) states in Article 213:

“The city solicitor shall:

- a. act as attorney for the City as a municipal corporation, for council, and for any city unit of government, except when council or a unit of government authorized to do so by this charter chooses to use its own counsel;
- b. prepare all contracts to which the City or any of its units is a party; and,
- c. audit, in connection with the election of the controller, the preliminary account of campaign contributions and expenses required by section 802 of this charter, to publish the results of the audit, and to inform the proper authorities of any violation of law revealed by the audit.”

The HRC adds in Article 324 “Codification of Ordinances” that:

“Within two years after the effective date of this charter, the city solicitor shall review all general ordinances of the City and submit recommendations to council for change or repeal. The city solicitor shall also submit a proposed city code to council for adoption based on the review and recommendations. Following adoption of the code, council shall, with the assistance of the city solicitor, classify all proposed ordinances for inclusion in the code.”

Other Law Department duties mandated by the City Code are:

- Supervise all City Code changes [City Code Chapter 101.06 (a) (2)]
- Execute all contracts bid and managed through PENNDOT's Engineering & Construction Management System [City Code Chapter 161.13 (b) (7)]
- Investigate and authorize settlement for all claims not exceeding \$2,500 against the City upon approval of the City Controller. [City Code Chapter 163.01-.02 (a)(b)]
- Authorize settlement for all claims over \$2,500 upon the approval of City Council. [City Code Chapter 163.03]
- Initiate smoke pollution control suits [City Code Chapter 617.99 (e)]
- Process and approve Freedom of Information request for employee e-mail and database files [City Code Chapter 691.01]

METHODOLOGY

The auditors interviewed an Associate Solicitor and exchanged questions by e-mail with the City Solicitor. The auditors met with the Administrative Assistant to discuss the Law Department's software capabilities and were given a CityLaw presentation.

The Law Department's mandates and responsibilities were taken from the Home Rule Charter and City Code.

The Law Department provided case databases that showed the activity and status of its Litigation, Claims and Labor actions that were either opened or closed during the audit period. A Cause Codes Listing helped the auditors identify the case type, e.g., personal injury: slip & fall-City property, civil rights-illegal search, etc.

Contracts with outside counsel were examined, as were Ordinances and Resolutions involving the Law Department's settlement, litigation, and business costs.

The City Controller's "Budget to Actual" general ledger reports and City Budget documents for the years 2009-2011 were examined, as were the Controller's Office On Base database for additional contract costs and information.

A survey of other cities' law departments was undertaken, using information available on the internet to compare the budget and duties of Pittsburgh's Law Department to the law departments of other municipalities with equivalent population.

SCOPE

The auditors examined the Law Department's activities commencing on January 1st, 2009, and ending on June 30th of 2011.

OBJECTIVES

- 1.** To examine the organization and routine tasks of the Law Department and compare them to those of Law Departments of comparably sized cities.
- 2.** To examine the use of private legal counsel contracted to complement the Law Department.
- 3.** To examine the judgments and settlements against the City.
- 4.** To examine the City's claims, litigation, grievance and arbitration cases.
- 5.** To examine the interaction of the Law Department with the other departments of the City.
- 6.** To make recommendations for improvement.

FINDINGS AND RECOMMENDATIONS

Budgetary Account

The Law Department's budgeted expenses against its actual expenses for 2009-10 (2011 is not included as it is a partial fiscal year) are shown on Table #1 below:

Table #1 – Law Department Budgeted To Actual Expenses 2009-10

Account	Staff	Salary	CE & Training	Supplies & Equipment	Misc. Services	Total
Budget - 2010	30	\$1,636,760	\$17,000	\$54,733	\$572,639	\$2,281,132
<i>Actual - 2010</i>	30	<i>\$1,500,595</i>	<i>\$15,747</i>	<i>\$46,680</i>	<i>\$521,243</i>	<i>\$2,084,265</i>
Budget - 2009	29	\$1,634,173	\$17,000	\$54,733	\$412,639	\$2,118,545
<i>Actual - 2009</i>	29	<i>\$1,445,100</i>	<i>\$12,880</i>	<i>\$45,224</i>	<i>\$255,960</i>	<i>\$1,759,164</i>

Source: Controllers "General Fund Budget To Actual" Reports 2009-10

Finding: The Law Department has operated within its approved budget from 2009-10, spending 91% of its budgeted General Fund allocations in 2010 and 83% in 2009.

According to the Law Department's Administrative Assistant, there is an annual turnover of 5-7 law clerks, as well as a non-paid student from City High and a number of interns.

Finding: The Law Department, because of temporary staff turnover, used 36 employees to fill 29 budgeted positions in 2009 and 39 employees to fill 30 budgeted positions in 2010.

Staff Development Programs

Attorneys are required to earn 12 credits yearly to meet the requirements established by the Supreme Court of Pennsylvania Continuing Legal Education Board. Law has a \$17,000 Education & Training line item account as part of its 2009, 2010, and 2011 departmental budgets to assist its attorneys fulfilling their Continuing Legal Education (CLE) requirements.

Law spent \$15,747 on education in 2010 and \$12,880 in 2009, the two full budget years of the audit scope.

In addition to reimbursing attorneys for CLE credits, the Law Department instituted quarterly staff development programs for attorneys and staff in 2010. All administrative staff members are required to attend a Quarterly Continuing Staff Education (CSE) session which is arranged and scheduled by the Law Department. The topics cover the administrative filing and paperwork requirements of the County, State and Federal court systems.

All associate attorneys are required to meet for the Quarterly Attorney Meeting. At this session, a staff attorney gives a presentation on a topic in his/her area of legal expertise. The

meeting provides an opportunity for attorneys to be updated on City legal issues, familiarize themselves with issues outside their specialty and to network among themselves.

During the summer, Law sponsors a Lunch & Learn Program which features local judges and attorneys speaking about their legal experiences in an informal setting. Law clerks and externs are required to attend and associate attorneys are invited to the sessions, although not required to attend.

Finding: The Law Department adequately supports the professional development of its administrative and legal staff by providing reimbursements for outside continuing legal education classes and sponsoring in-house training sessions.

Advice, Legislation Drafting and Code Review

A City “client” (the Mayor’s Office, City Council, or a department manager) may request Law to provide a legal opinion of an issue at any time. The request is entered in the Law Department’s CityLaw system when it is received and an electronic tracking trail is created from receipt of the request to its reply.

City attorneys in the municipal group draft or review initial resolutions when requested. Generally, these resolutions deal with professional service agreements, lease agreements, project agreements/licenses, and easements. Law is also responsible for submitting resolutions that involve the approval of settlements and for resolutions that directly affect Law Department operations.

The Law Department is not involved in the drafting of other resolutions such as line-item resolutions, encumbrances, treasurer’s sales and resolutions prepared and submitted by outside entities. For example, the Urban Redevelopment Authority’s drafting is not reviewed unless requested.

Law routinely examines all ordinances (which become part of City Code) for constitutionality, statutory issues, or any other potential legal flaw after passage.

Finding: The Law Department reviews all ordinances for legality. However, Law is not formally involved in the initial presentation of legislation or required to give a legal opinion unless requested to do so by the Administration or by City Council.

RECOMMENDATION NO. 1:

The Law Department should become more proactive and routinely review legislation prior to its introduction in City Council to determine its legality and identify any legal issues that the legislation may raise.

Board and Commission Representation

Law offers a variety of legal assistance to boards and commissions (“agencies”). Some agencies, such as the Citizen Police Review Board, are permitted by the Charter/City Code to hire its own solicitor at its option. Most boards and commissions depend on the Law Department for legal guidance.

Generally, Law Department attorneys will provide legal advice regarding the review of pertinent issues, the drafting of contracts and/or resolutions upon the agency’s request.

Law’s attorneys may attend hearings upon request of the agency. Attendance may also be based on an attorney’s decision to monitor issues of special interest to Law or the City, if that issue is known in advance. As applicable, Law Department attorneys are also involved if an appeal is made of an administrative decision of the agency.

Finding: The Law Department does not assist City agencies, boards and commissions on a routine basis, but assists as requested.

RECOMMENDATION NO. 2:

The Law Department should initiate a routine examination of all board and commission proceedings prior to the hearing date through the agency’s agenda. This should ensure that Law is aware of and can proactively deal with issues that could potentially affect the City.

Agency and Commission Decision Reviews

Certain agency decisions such as zoning changes, conditional use requests and appeals made by the Planning Commission and Zoning Board of Adjustment require a hearing and confirmation by City Council. Once an agency decision is made, Council must hold a hearing to affirm or deny the decision within 90 days. The Council hearing must be scheduled within 45 days of the agency decision date.

After a decision is made, the agency or commission puts together a case paperwork packet and sends it to the Law Department for its review. After its review, Law then sends the packet to the Office of Management and Budget (OMB). OMB submits the packet to the City Clerk to schedule the decision for Council action.

Finding: There are several potential areas for mishaps in the current agency decision review process. The use of mixed paper and electronic notification has led to delays in timely departmental review and scheduling of the required Council hearing.

A 45-day time clock begins as soon as the agency decision is made. Information must then be handled by four to five different City government offices before the required Council hearing is scheduled. The two offices with Code responsibilities, Law and City Council, mark the beginning and end of the paperwork process when they should both be involved from the start.

The Clerk's Office receives the board decision electronically, but the supporting documentation is sent in a separate hard copy packet and may not arrive at the same time as the electronic documents. If any paperwork is missing from the hard copy packet, the Clerk's Office will request the information before scheduling a hearing date for City Council.

The Law Department and the City both routinely use electronic documents. The City is in the process of advancing its software system switching to Google software applications and its document cloud. Federal Courts require that Law's case paperwork be forwarded to it as PDF files. CityLaw allows documents to transfer easily into PDF's in order to adhere to Federal government standards. However, the bulk of the Planning Commission's documentation package consists of hard copy.

Finding: The Planning Commission documentation support package is hard copy while its cover letter and notification is electronic. Delay or loss of the document package in the past has created problems in timely scheduling required City Council hearings. This could, as happened in 2010, lead to a judicial ruling on a sensitive zoning issue after City Council twice failed to hold a public hearing because of paperwork problems, ceding local control to the courts.

RECOMMENDATION NO. 3:

The process of preparing documentation electronically should be extended to the City's commissions, boards and agencies. A complete electronic packet should be presented to the Law department to facilitate the decision review process and should be copied to Council so it can tentatively schedule a public hearing.

Contract Preparation And Review

Standard boilerplate contracts for grants, professional services, construction and supplies/equipment were originally prepared by and are updated by the Law Department. These template documents are revised as needed by contract administrators from various City Departments, although the changes generally just require a change of vendor name, compensation amounts, dates, etc.

Departmental contract administrators will contact Law if there are any questions regarding revisions to the standard language in the boilerplate contract by either the City or the contracting party. Generally, the attorneys in the Municipal Group are assigned to assist the departments with contract issues.

The Law Department drafts contracts for specific projects with the assistance of the department requesting the contract. The attorneys also review contract drafts prepared by outside parties such as other government agencies, vendors and consultants and propose revisions and/or addendums that protect the City's interests.

Contract Review Process

When a City contract is awarded, the contract undergoes a review process that begins with the awarding department. Four (4) copies of the contract are sent to Law.

The reviewing attorney ensures that all applicable City Code contract requirements have been fulfilled and that all other terms are legally acceptable to the City. If not, the reviewing attorney will consult with the department or contract clients and will renegotiate the terms to bring them into compliance/acceptance.

Once the terms are accepted by both parties, the reviewing attorney initials each copy of the contract. The City Solicitor then signs off, and the contract is forwarded to Office of Management and Budget (OMB).

OMB verifies the proper budget account and availability of funds. The contract is sent to the Controller's Office, which checks for City Council's approval (every contract requires an authorizing resolution), procedural compliance, proper form and that the correct budget accounts are charged and funded. When the City Controller signs off on the contract, a copy is distributed to the other three participating departments.

Finding: The contract review protocol now in place appears sufficient to ensure that City contracts are legally enforceable, properly authorized, and fully budgeted.

Claims, Litigation and Labor Case Data Analysis

The auditors used CityLaw data to determine claim type and source, cause of action, outcome and cost to the City of claims, litigation and labor cases filed against the City. The amounts of monies paid out as litigation settlements (discussed below) also include monies paid by the City as court awards or judgments. Data from City Council arbitration invoice approvals was used to help determine the number of arbitration hearings held during the audit scope period.

Finding: Claims data appeared complete and up to date. Two employees are responsible for entering all claim module data while data input into other modules is done by multiple persons.

Finding: Some closing dates were missing from cases in the litigation module along with other minor entry omissions.

Finding: Labor module case data (grievances and arbitrations) had some missing disposition descriptions, codes and dates. The auditors were unable to track all grievances through arbitration or other resolution.

RECOMMENDATION NO. 4:

Similar to the claims data, no more than two employees should be responsible for inputting all information into labor case files to keep information current and accurate. Law should establish a process to ensure all cases are closed out electronically once a final disposition is reached.

Claims Made Against The City

The Law Department investigates all claims for personal injury and property damages made against the City to determine the claim's validity. Pennsylvania's Municipal Tort Liability Act (42 Pa.C.S. § 8542) limits the City's liability to the following eight areas of negligent conduct: 1) Vehicles, 2) Care, custody or control of property, 3) Real property, 4) Trees, traffic controls and street lights, 5) Utility service facilities, 6) Streets, 7) Sidewalks, and 8) Care, custody or control of animals.

A potential claimant contacts the Law Claims Division either by telephone, in person, or by using a PDF form available on the Law Department website to initiate the claim procedure. After the claimant's name, address, and daytime phone number are registered, a "Report of Claim" form is mailed to them.

Finding: The claims process begins with a paper-to-computer entry. An entirely electronic system for the claims process would provide a timelier and more efficient entry system into the CityLaw system.

RECOMMENDATION NO. 5:

The Law Department should make its entire claims report process available electronically.

Law's Claims Secretary enters the data into the CityLaw system under the Litigation Claims Management module and assigns a claim number to the file. An acknowledgement letter to the claimant is generated which provides the claim number, the date received and the date of the incident.

A report is made and an evaluation is entered into the CityLaw system that provides a description of the allegations, a summarization of the relevant information, and the alleged damages.

Finding: In the past, the Claims Secretary ran a check for required departmental responses to claims on a monthly basis. Due to staffing changes in the section, the backlog is now checked only as time permits.

RECOMMENDATION NO. 6:

The Law Department should investigate the CityLaw software capability to automatically red flag outstanding departmental reports 45 days after the original request for the report has been made.

The Claims Administrator (CA) reviews the case and makes a determination of liability, based on a checklist that weighs several factors. The file with the report is given to the Claims Secretary, who sends a final disposition letter to the claimant and/or counsel notifying them of the CA's decision.

If liability is admitted and the damage amount is agreed upon by both parties, the claim is settled and the process ends there. If liability is denied or the amount of damages is disputed, the claim can result in a lawsuit and taken to court.

The Law Department is required to provide City Council with monthly and quarterly financial expenditure reports of the claims paid. On the first of every month the CA generates the financial reports from City Law summarizing the activities of the Claims Division.

Claim Awards < \$50:

Claims under \$50 are reviewed by the Law Department and granted according to their validity.

Finding: Small claims represent an immaterial amount of total claims and costs, resulting in under \$200 in total settlements during the audit period.

Claim Awards \$50 < \$2,500:

For approved claims under \$2,500, the secretary generates a Controller's Letter and appropriate Departmental Invoice for signature. Once this is completed she will return the entire file to the Administrator to sign the Controller's letter. A quality check of the payment amount should be made at this time by the Claims Administrator. After the CA signs the letter, the file is sent to a paralegal, who will forward it to the Solicitor for his signature. It will then be processed for payment by the Controller's Office.

Claim Awards > \$2,500:

Any claims approved for payment in excess of \$2,500 must be taken to the Solicitor for final approval. The file is then given to the Claims Secretary, who conducts a judgment check and generates an approval letter to be sent to the claimant.

Any claims in excess of \$2,500 must be approved by City Council prior to payment. The Claims Administrator will draft a Settlement Letter and prepare a Legislative Summary Form for City Council. Once completed, the file is returned to the Claims Secretary who forwards it to the Solicitor for review and signature. Upon approval of the letter by the Solicitor, the Claims Secretary will schedule the award for legislative discussion.

The CA will attend the discussion before City Council along with the Director(s) of the department involved in the claim to answer any questions council members may have relating to the claim. After the discussion, council will vote on the settlement.

If approved, the Law Department receives the final signed and authorized resolution, generally within 2-3 weeks. The Claims Secretary will generate a departmental invoice, have it approved, and forward it on to the Controller's Office.

Once the check has been issued by the Controller's Office, the Law Department receives notification of the date and check number issued. This information is entered by the Claims Secretary and is then filed in storage for four years.

Finding: Law follows the claims procedures as outlined by the Pittsburgh City Code.

Claims By Department

Table #2: Claims Filed Against The City By Department Between 1/1/2009 – 6/30/2011

Department	Claims	Paid	Open	Settlement	Avg. Pay Out
Bureau of Building Inspection	39	4	9	\$ 6,500.00	\$ 1,625.00
Bureau of Fire	57	51	2	\$ 41,490.72	\$ 813.54
Bureau of Police	142	73	27	\$ 58,347.44	\$ 799.28
Environmental Services	121	87	14	\$ 47,790.25	\$ 549.31
Emergency Medical Services	36	24	6	\$ 17,121.83	\$ 713.41
Forestry	261	203	34	\$ 161,366.32	\$ 794.91
Miscellaneous	53	5	16	\$ 2,158.20	\$ 431.64
Parks and Recreation	18	6	5	\$ 1,727.00	\$ 287.83
Public Works	460	214	50	\$ 129,546.90	\$ 605.36
Tow Pound	22	13	4	\$ 12,936.74	\$ 995.13
Total	1209	680	167	\$ 478,985.40	\$ 704.39

Source: CityLaw claims database

Finding: The City Public Works and Public Safety Departments accounted for 95% of the claims filed against the City between January 1, 2009 and June 30, 2011.

Finding: The division with the highest total dollar amount paid by the City was Forestry with \$161,366 or 34% of the total amount paid. Most of the claims filed against Forestry were due to sidewalk damage from tree roots.

Finding: The highest average cost paid per claim was the Bureau of Fire Department with an average cost per claim of \$728. Most of the claims filed were due to vehicular damage.

Claims By Type

Table #3: Claims Filed Against The City By Type Between 1/1/2009 – 6/30/2011

Cause	Claims	Paid	Open	Settlement	Avg. Pay Out
Care/Custody/Control	26	13	6	\$ 11,821.12	\$ 909.32
Damaged Vehicles	425	323	55	\$ 240,112.81	\$ 743.38
Miscellaneous	34	3	11	\$ 3,010.00	\$ 1,003.33
Missing Property	50	38	6	\$ 3,973.88	\$ 104.58
Pot Hole	149	43	12	\$ 14,938.83	\$ 347.41
Property Damage/Injury	118	38	22	\$ 32,446.47	\$ 853.85
Sidewalk/Tree Damage	264	203	34	\$ 161,826.32	\$ 797.17
Slip and Fall	86	2	14	\$ 626.46	\$ 313.23
Street Maintenance	33	4	3	\$ 2,879.58	\$ 719.90
Towing	24	13	4	\$ 7,349.93	\$ 565.38
Total	1209	680	167	\$ 478,985.40	\$ 704.39

Source: CityLaw claims database

Finding: The City averaged 480 claims filed per year during the audit period. Overall, 56% of the claims were validated and paid. The average annual settlement amount was \$191,594, with an average individual settlement of \$704.39. The denied claims were 36% of the total filed, and the remainder are pending resolution.

Finding: The most claims paid were for damaged vehicles, with 323 successful claims averaging \$748 paid per claim. Tree-caused damage followed, with 203 successful claims at an average individual settlement of \$797.17.

Finding: Vehicular damage was the highest single cost item to the City, amounting to \$240,113, or 50% of the total amount paid in claims. Tree-caused damage was next, with \$161,826 in claim settlements, representing 34% of the total settlement amount paid.

Finding: Vehicular and tree-caused damage accounted for 77% of the successful claims filed against the City and 84% of the total amount paid for claim settlements.

Finding: All litigation settlements and awards and claim settlements are paid from the General Fund. The City is self-insured, and Pittsburgh does not carry any indemnity insurance coverage to help pay the cost of any unexpectedly large settlement claims.

RECOMMENDATION NO. 7:

The City's risk-management officer should examine the development of training programs to reduce vehicular accidents and tree-related damage, the two major causes of claims and suits filed against the City.

Litigation

Litigation is defined by Black's Law Dictionary as "a lawsuit, or a contest in a court of law for the purpose of enforcing a right or seeking a remedy." Claims can proceed to litigation while other complaints such as civil rights violations can be initiated as litigation.

In an effort to avoid a timely and expensive trial, both parties usually try to come to an agreement outside of court. If an agreement between the plaintiff and defendant cannot be met, a second option is to take matters through arbitration where a third unrelated party helps make a compromise. If no agreement can be reached, the plaintiff files a complaint in court against the defendant (City of Pittsburgh). The case is then taken to court to be decided upon by a judge or jury.

Often, the costliest litigation cases filed against the City involve Federal Civil Rights violations. Federal civil rights are the rights that belong to an individual by virtue of citizenship, especially the fundamental freedoms and privileges guaranteed by the 13th and 14th Amendments to the U.S. Constitution and by subsequent acts of Congress, including civil liberties, due process, equal protection of the laws, and freedom from discrimination. Civil rights actions against the City often allege discrimination issues or violation of constitutional rights by police.

Civil Rights actions filed in Federal Court under 42 USC Section 1983 allows the recovery of plaintiff attorney fees and expenses from the City if the plaintiff prevails. These actions may result in more money being paid for legal fees than was awarded to the plaintiff.

Finding: There were forty (40) Civil Rights actions filed against the City during the audit period. Seventeen (17) were successfully litigated against the City and resulted in awards to the plaintiffs that totaled \$4,959,679.27. These seventeen (17) claims represent 83% of the entire litigation settlement amount. The bulk of the money paid out by the City went toward a \$3,775,000 settlement awarded in late 2009 for a due process/cruel & unusual punishment violation. (See Table #4 on page twenty)

Finding: Of the forty (40) Civil Rights suits filed against the City between January 1, 2009 and June 30, 2011, twenty-four (24) named the Bureau of Police as the defendant. During that span, ten (10) of the Police cases were decided in the plaintiffs' favor, costing the City \$4,284,782.01 along with court-related expenses of \$20,645.58.

Finding: The Bureau of Police was named in 60% of the civil rights cases filed against the City. Because of the large settlement of 2009, those cases resulted in 86% of the total amount paid to successful civil rights plaintiffs and 71% of the total amount paid in overall litigation settlements and awards.

Finding: In late 2009, the plaintiff and attorneys in one civil rights suit against the Bureau of Police were awarded a judgement of \$3,775,000. This award represents 63% of the total litigation settlement amount of the audit period of January 1st, 2009 to June 30th, 2011.

Finding: At least four (4) civil rights suits were filed in 2010-11 that alleged misconduct by off-duty police officers.

RECOMMENDATION NO. 8:

The City should continue its efforts to train police personnel to perform to a high standard of professional conduct while both on and off duty to help prevent potential civil rights violations.

Table #4: Litigation Filed Against The City By Category 1/1/2009-6/30/2011

Cause	Filed	Expense	Settled	Settlement/Award
Unknown	22	\$ 2,561.91	1	\$ 6,366.72
Civil Rights	40	\$ 25,645.26	17	\$ 4,959,679.27
Employment Related	7	\$ 1,871.98	4	\$ 165,405.72
Slip & Fall	42	\$ 18,117.80	15	\$ 112,670.68
Property Damage/Personal Injury	18	\$ 17,520.34	4	\$ 60,017.16
City Vehicle/Auto Accident	8	\$ 42,599.84	5	\$ 316,666.63
Street Design/Maintenance	3	\$ 16,449.03	2	\$ 240,000.00
Permit/License	1	\$ -	0	\$ -
Municipal Claims	202	\$ 32,680.86	0	\$ -
Tax	20	\$ 1,115.35	0	\$ -
Land Use	29	\$ 3,487.82	2	\$ 24,034.33
Contracts	4	\$ 404.50	2	\$ 59,921.84
Municipal Statutory Appeals	341	\$ 604.35	1	\$ 59,950.81
Real Estate	15	\$ 2,237.65	0	\$ -
Labor	20	\$ 5,147.45	0	\$ -
Total	772	\$ 170,444.14	53	\$ 6,004,713.16

Source: CityLaw litigation database

Finding: During the audit scope period, 70% of the City’s litigation cases filed were municipal claims or statutory appeals, which involve real estate transactions such as liens. Of the remaining categories, civil rights, employment disputes, “slip and falls” and land use issues were the major areas of litigation.

Finding: Accidents involving City vehicles, street issues, employment disputes and “slip and falls” accounted for \$843,743.03 or 14% of the total amount paid.

Finding: The CityLaw database contains information that could, if properly organized (see “Claims, Litigation and Labor Case Data Analysis” on page fourteen) be used as an effective analytical management tool by City administrators.

RECOMMENDATION NO. 9:

Information in CityLaw can be organized and manipulated into a variety of useful categories. It would be to the City’s benefit for Law to prepare and distribute liability reports for each City department. Departmental liability reports could be used as an analytic tool for both risk and management purposes.

Table #5: Litigation Filed Against The City By Department Between 1/1/2009 – 6/30/2011

Department	Filed	Expense	Settled	Settlement/Award
Bureau of Building Inspection	483	\$ 34,063.97	4	\$ 99,033.32
Finance	34	\$ 3,422.50	0	\$ -
Environmental Services	16	\$ 5,004.39	2	\$ 100,085.53
Law Department	13	\$ 180.50	0	\$ -
Public Safety	25	\$ -	0	\$ -
Fire/EMS	17	\$ 2,831.55	4	\$ 156,292.12
Police	51	\$ 61,644.00	15	\$ 4,399,995.61
Public Works	45	\$ 40,101.91	20	\$ 569,349.37
Administrative/Elected	41	\$ 10,368.85	7	\$ 679,940.08
Unknown	47	\$ 12,826.39	1	\$ 17.13
Total	772	\$ 170,444.06	53	\$ 6,004,713.16

Source: CityLaw litigation database

Finding: The Bureau of Building Inspection is involved in 62% of City litigation cases primarily because of its duties such as filing property liens and enforcing demolition orders. Other City departments that are also somewhat regularly named in litigation are the Bureau of Police (7% of the cases filed), the Public Works Operations Division (6%), Administrative/Elected Offices (5%) and the Finance Department (4%).

Finding: Police Bureau settlements, because of civil rights cases, totaled nearly \$4.4 million or 71% of the total. The Administrative/Elected Offices (11%) and Public Works (9%) followed. This finding adds weight to Recommendation #8 on page twenty to continually educate police officers on how to avoid civil right conflicts.

Budget to Actual Settlements

The Law Department projects an annual cost estimate for claims and settlements, which is shown in the Citywide Non-Departmental section of Pittsburgh’s budget document under accounting subclass 170, titled “Judgments.”

Finding: In 2010-09, the budgeted amount for judgments was \$1,750,000 per year, or \$3.5M for the period, with actual payments of \$2,659,829. To reflect a large civil rights settlement of \$3,775,000 reached in late 2009 that will be paid over a three-year period, the budgeted amount for judgments increased to \$2,998,333 in 2011 and remained the same in 2012.

Table #6: City Budgeted Legal Payments vs. Actual Payments 2006-2010

Year	Budgeted	Actual	% Bud to Act
2010	\$1,750,000	\$1,728,834	98.79%
2009	\$1,750,000	\$930,995	53.20%
2008	\$1,589,000	\$1,545,758	97.28%
2007	\$1,959,745	\$932,681	47.59%
2006	\$1,602,495	\$1,291,306	80.58%
Total	\$8,651,240	\$6,429,574	74.32%
Avg/year	\$1,730,248	\$1,285,915	74.32%

Source: City Controller “General Fund Actual To Budget” reports 2006-10

Labor Negotiations, Grievances & Arbitration

The Law Department represents the City in its in-house labor dealings, and has contracts with a pair of outside legal firms to assist in negotiations with various unions.

Labor disputes are decided in hearings before the Pennsylvania Labor Relations Board, the Equal Employment Opportunity Commission, the Pennsylvania Human Relations Commission, the Pittsburgh Commission on Human Relations, labor arbitrators and unemployment compensation referees.

Contracts with the various City collective bargaining units spell out the steps used to resolve employee grievances against management decisions.

An employee/union can file a grievance to challenge an employer’s treatment towards an employee. Grievances are handled outside of the courts. Examples of situations where grievances are often filed can include, but are not limited to: wages, hours, working conditions, or job security. The initial step in resolving a dispute is to file a grievance. A grievance can be defined as a complaint filed with or by a union to challenge an employee’s treatment.

If both parties agree to an amicable grievance solution, then the process ends. If the employee/union receives a negative ruling to their grievance from the City, they have the option to file for arbitration, a remedy for settling grievances that have exhausted all administrative steps. Pennsylvania's Act 111 of 1968 guarantees public safety (fire and police) workers binding arbitration in exchange for giving up the right to strike. The Act also requires that all costs of arbitration be paid by the municipality.

An arbitration-eligible dispute is submitted to a neutral person or group for a decision from a list of qualified hearing officers provided by the state.

Table #7: Labor Cases Filed Against the City 1/1/2009-6/30/2011

Labor Cases Filed				
Year	Arbitration	Grievance	Unknown	Total
2009	9	18	5	32
2010	22	38	8	68
2011	15	42	0	57
Total	46	98	13	157

Source: Law Department’s CityLaw database

Table #8: Labor Case Outcomes 1/1/2009-6/30/2011

Labor Decisions						
Type	City favor	Union favor	Settled	W/D	Pend/na	Total
Grievance	17	5	10	6	60	98
Arbitration	20	14	4	4	4	46
Unknown						13
Total	37	19	14	10	64	157

Source: Law Department’s CityLaw database

Finding: Approximately half of the labor grievances (47%) filed against the City advanced to arbitration.

Finding: Of the 80 cases settled during the audit period, the City prevailed in 37 (46%), the Union prevailed in 19 (24%), 14 (18%) were amicably settled, and 10 (13%) were withdrawn. A large number of remaining cases (64, or 44%) are pending, primarily because many of the cases filed in 2011 were not settled as of 6/30/2011. Additionally, thirteen decisions could not be determined from the data presented.

Finding: The Law Department spent \$42,593.93 on arbitrator fees to defend against the filings. It paid out \$51,238.43 in awards. However, it should be noted that many awards are non-monetary, involving time and benefit restoration, or resulted in back pay, which is taken from the departmental payroll account and not charged to Law.

**Table #9: Labor Cases By Dept.
1/1/2009-6/30/2011**

Labor Cases By Dep't	
Dep't	Cases Filed
Public Works	53
Police	29
EMS	22
Fire	12
Pub. Safety	7
En. Services	7
Parks	6
BBI	3
CIS	2
Personnel	2
Finance	1
Law	1
Dep't N/A	12
Total	157

Source: Law Department's CityLaw database

**Table # 10: Labor Filings By Cause
1/1/2009-6/30/2011**

Labor Case Complaints	
Cause	Total
Discipline	59
Pay Dispute	39
Discrim.	21
Contract	22
Other/Misc	16
Total	157

Source: Law Department's CityLaw database

Finding: Disciplinary actions accounted for 38% of the grievance/arbitration proceedings and pay disagreements represented 25% of the labor disputes.

Finding: The bulk of filings are made by members of the Public Works and Public Safety departments, which represent over 2,000 rank-and-file employees. Public Safety employees were responsible for 48% of the cases filed while Public Works employees filed 41 % of the cases.

It should also be noted that Law defended cases heard by the Human Relations Commission, the Equal Opportunity Review Commission and the Civil Service Commission. Law won denials or dismissals in four cases, reached a settlement once and had the complainant withdraw once for cases involving those agencies during the audit period.

Outside Counsel

The use of outside counsel by municipal law departments to complement or supplement its legal practice in specialized fields is not uncommon. The City Law Department characterizes its outside counsel as “professional services expert legal consultants.” According to Law, outside counsel was used for the following areas of expertise in 2009-2011:

- Zoning and Land Use, Second Amendment litigation, Labor & Employment Negotiations and Litigation, Cable Franchise Agreements, Medical Expertise and Tax. (2009)
- Zoning and Land Use, Labor & Employment Negotiations and Litigation (2 firms), Professional Liability Insurance, Eminent Domain Litigation, First Amendment Litigation, Municipal, Environment, Cable Franchise Agreements. (2010)
- Zoning and Land Use (2011).

The auditors used the City OnBase system to identify supplemental increases to the Professional Services Expert Legal Consultants in addition to information provided by the Law Department.

Finding: The most costly area for outside counsel is Labor & Employment Negotiations and Litigation.

Finding: Firm A’s original contract term of 1-1-09 to 12-31-09 was extended for two additional years. Finding the original “sum of \$75,000 was no longer sufficient” for additional needed services, Firm A’s \$75,000 compensation was supplemented with each contract extension. Compensation was increased by \$150,000 through 12-31-10 and by \$65,000 through 12-31-11. Total compensation for the three year contract was \$290,000.

Finding: Another employment and labor consultant, Firm B, had its 2010 contract amount of \$20,000 raised by an additional \$38,685.42 for a total contract cost of \$58,685.42.

Table #11: Law Payments to Outside Counsel 2009-2011

Outside Counsel 2009-2011:	
Area of Expertise:	Paid:
Civil Rights Violations	\$ 26,203.45
Cable TV	\$ 100,000.00
Tax	\$ 34,386.55
Zoning/Land Use	\$ 132,675.97
Labor & Employment	\$ 283,685.42
Medical/Liability	\$ 38,054.56
Total	\$ 615,005.95

Information taken from the City Controller’s Contract section and City Council invoices

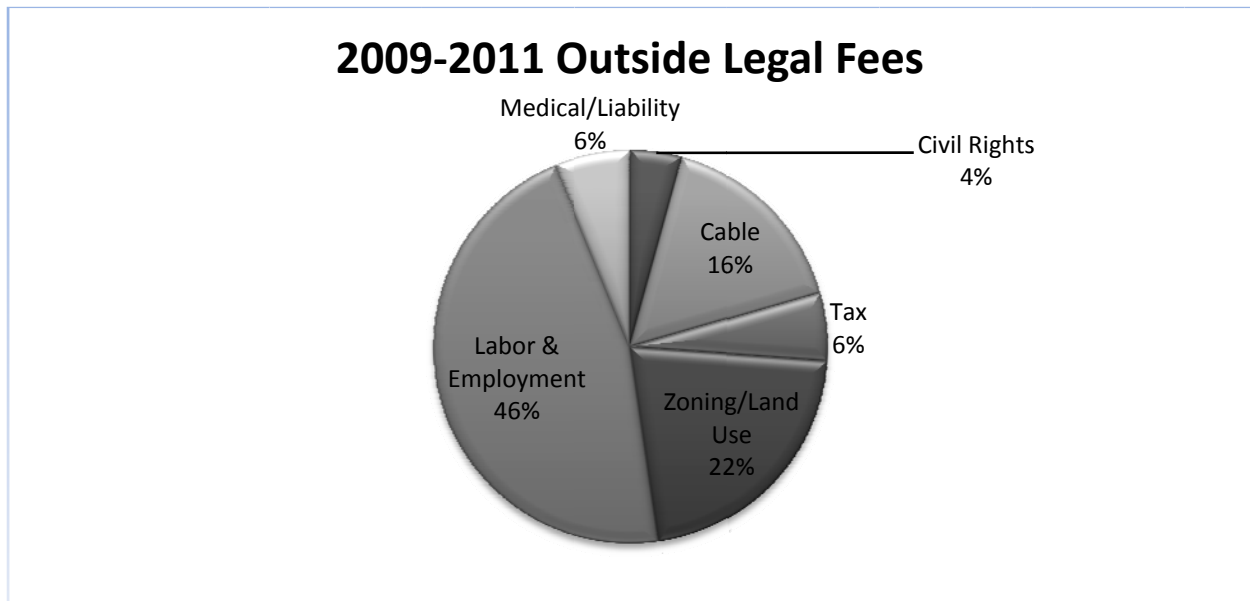
Finding: The highest outside consultant expenditures in during the audit period were for labor and employment counselors, which received \$283,685.42. Zoning and land use contractors were next at \$132,675.97 and cable franchising advisors following at \$100,000.

Finding: As Chart #1 on the following page illustrates, Law spends 46% of its outside counsel fees for labor-related expertise.

RECOMMENDATION NO. 10:

Law should determine the cost/benefit of addition staffing for the Labor section. The section deals with day-to-day, ongoing legal issues and that area of law consumes nearly half of the Law Department’s budget for outside counsel.

Chart #1: Percentage of Legal Fees Paid To Outside Counsel By Area of Expertise



It should be noted that not all outside counsel is used by Law. Workman’s Compensation, City Cable, the Civilian Review Board and the Human Relations Commission are represented by outside counsel. The contracts for this additional representation totaled \$1,811,233.78 during the audit period and are paid for by the user departments.

Invoicing Compliance

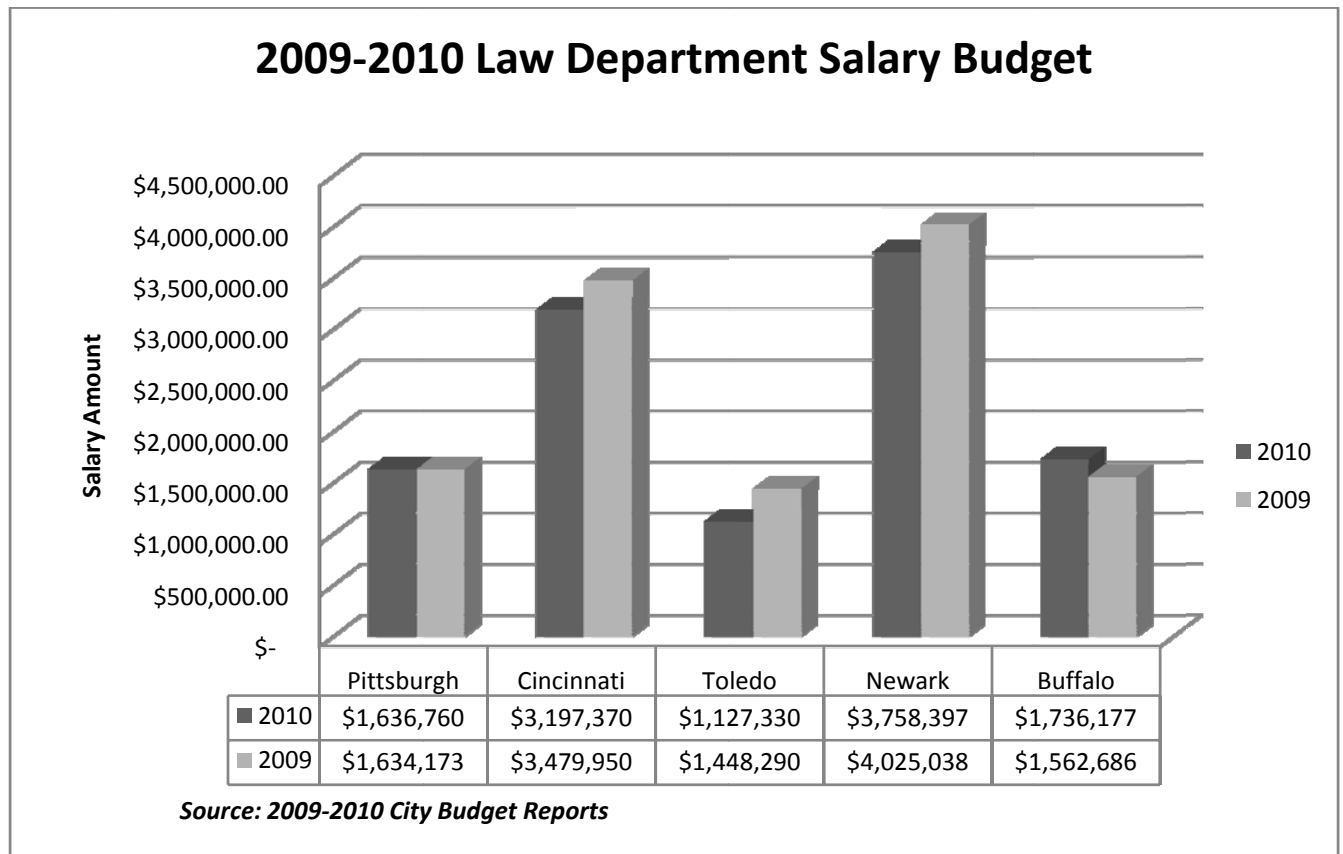
Most City legal service contracts contain the following boilerplate ‘method of payment’ language: “Payment of said fee shall be made upon completion of said professional services in a manner satisfactory to City and after receipt and approval by City of a certified invoice, itemizing the services performed and the rates charged for such service”. The auditors examined invoices submitted for the 2010 cable franchise and employment/labor contracts for compliance with contract “method of payment” requirements.

Finding: Invoices supplied by both law firms complied with contract requirements for itemizing services performed and the rates charged for the services.

Survey Of Other Municipal Law Departments

A web-based survey of cities comparable to Pittsburgh was conducted to determine the City’s position in budget, personnel, and service presentation. The annual budget reports as posted on the internet were used as the source documents in examining other cities’ Law Departments. The cities were chosen on the basis of comparable population bases and a northeastern location.

Chart #2: 2009-10 Budgets of Selected Municipal Law Departments



Finding: After reviewing the websites of various comparable municipalities, the five Law departments selected provided approximately the same level of legal services (see table #12 on the following page) for their cities. Pittsburgh does so with fewer staff members and a lower budget than Cincinnati and Newark and an equivalent amount of resources as used by Buffalo.

Pittsburgh also utilizes the service of outside counsel (See “Outside Counsel” on page twenty-three) that increases the amount spent on legal costs by 50% to roughly \$2,400,000 per year. (The amount spent by other cities on outside counsel was not available.)

Table #12: Tasks Performed By Various Municipal Law Departments

TASK	PGH	BUFF	CINCY	NEWARK	TOLEDO
represent City in suits	√	√	√	√	√
prep/review contracts, legislation	√	√	√	√	√
general advisory capacity	√	√	√	√	√
regulatory/environmental review	√		√		√
planning/zoning review	√		√		√
cable/telecom	√				√
damage claim resolutions	√	√	√	√	√
tax law review	√	√	√	√	√
general real estate matters	√	√	√	√	
labor relations/contracts	√	√	√	√	√
workman’s compensation				√	
school board representation	BOE	√	√		
police representation	√	√		√	
economic development	√	√	√		√
housing court prosecution	BBI	√	√		
real estate assessment review	√	√			
misdemeanor prosecution	County		√	√	√
ethics, public records, FOI, open meetings	√		√	√	
outside work allowed					√
authorities, boards	partial				√

Source: Internet departmental descriptions

In Pittsburgh, legal representation for the school board is provided by the Board of Education, misdemeanor cases are prosecuted by the Allegheny County District Attorney Office, and other specialized services are augmented by outside counsel.

May 10, 2012

To the Honorables: Mayor Luke Ravenstahl and
Members of Pittsburgh City Council:

The Office of City Controller is pleased to present this Performance Audit of the *City Department of Law* conducted pursuant to the Controller's powers under Section 404(c) of the Pittsburgh Home Rule Charter. This audit examines the Law Department's organizational structure and internal processes and procedures, the use of outside counsel and the costs of judgments and settlements in actions against the City.

EXECUTIVE SUMMARY

The Department of Law is responsible for the legal affairs of the City of Pittsburgh. The City Solicitor heads the Department and acts as attorney for the City as a municipal corporation, for the Mayor, for City Council, and for any City unit of government unless otherwise provided for pursuant to the Pittsburgh Home Rule Charter.

Department attorneys and contracted attorneys represent the City on affirmative and defensive civil litigation, legislative and legal issues, and code enforcement proceedings. Attorneys also assist in the drafting and review of City legislation; prepare all contracts to which the City or any of its units is a party and provide legal counsel to City officials on a wide range of issues.

Findings and Recommendations

Budget & Staffing

Finding: The Law Department has operated within its approved budget from 2009-10, spending 91% of its budgeted General Fund allocations in 2010 and 83% in 2009.

Finding: The Law Department, because of temporary staff turnover, used 36 employees to fill 29 budgeted positions in 2009 and 39 employees to fill 30 budgeted positions in 2010.

Staff Development Programs

Finding: The Law Department adequately supports the professional development of its administrative and legal staff by providing reimbursements for outside continuing legal education classes and sponsoring in-house training sessions.

Advice, Legislation Drafting and Code Review

Finding: The Law Department reviews all ordinances for legality. However, Law is not formally involved in the initial presentation of legislation or required to give a legal opinion unless requested to do so by the Administration or by City Council.

RECOMMENDATION NO.1:

The Law Department should become more proactive and routinely review legislation prior to its introduction in City Council to determine its legality and identify any legal issues that may raise.

Board and Commission Representation

Finding: The Law Department does not assist City agencies, boards and commissions on a routine basis, but assists as requested.

RECOMMENDATION NO.2:

The Law Department should initiate a routine examination of all board and commission proceedings prior to the hearing date through the agency's agenda. This should ensure that Law is aware of and can proactively deal with issues that could potentially affect the City.

Agency and Commission Decision Reviews

Finding: There are several potential areas for mishaps in the current agency decision review process. The use of mixed paper and electronic notification has led to delays in timely departmental review and scheduling of the required Council hearing.

Finding: A 45-day time clock begins as soon as the agency decision is made. Information must then be handled by four to five different City government offices before the required Council

hearing is scheduled. The two offices with Code responsibilities, Law and City Council, mark the beginning and end of the paperwork process when they should both be involved from the start.

Finding: The Planning Commission documentation support package is hard copy while its cover letter and notification is electronic. Delay or loss of the document package in the past has created problems in timely scheduling required City Council hearings. This could, as happened in 2010, lead to a judicial ruling on a sensitive zoning issue after City Council twice failed to hold a public hearing because of paperwork problems, ceding local control to the courts.

RECOMMENDATION NO. 3:

The process of preparing documentation electronically should be extended to all City commissions, boards and agencies. A complete electronic packet should be presented to the Law department to facilitate the decision review process and should be copied to Council so it can tentatively schedule a public hearing.

Contract Preparation And Review

Finding: The Law Department drafts contracts for specific projects with the assistance of the department requesting the contract. Attorneys also review contract drafts prepared by outside parties such as other government agencies, vendors and consultants and propose revisions and/or addendums that protect the City's interests.

Contract Review Process

Finding: The contract review protocol now in place appears sufficient to ensure that City contracts are legally enforceable, properly authorized, and fully budgeted.

Claims, Litigation and Labor Case Data Analysis

The auditors used CityLaw data to determine claim type and source, cause of action, outcome and cost to the City of claims, litigation and labor cases filed against the City. Data from City Council arbitration invoice approvals was used to help determine the number of arbitration hearings held during the audit scope period.

Finding: Claims data appeared complete and up to date. Two employees are responsible for entering all claim module data while data input into other modules is done by multiple persons.

Finding: Some closing dates were missing from cases in the litigation module along with other minor entry omissions.

Finding: Labor module case data (grievances and arbitrations) had some missing disposition descriptions, codes and dates. The auditors were unable to track all grievances through arbitration or other resolution.

RECOMMENDATION NO.4:

Similar to the claims data, no more than two employees should be responsible for inputting all information into labor case files to keep information current and accurate. Law should establish a process to ensure all cases are closed out electronically once a final disposition is reached.

Claims Made Against The City

The Law Department investigates all claims for personal injury and property damages made against the City to determine the claim's validity.

Finding: The claims process begins with a paper-to-computer entry. An entirely electronic system for the claims process would provide a timelier and more efficient entry system into the CityLaw system.

RECOMMENDATION NO.5:

The Law Department should make its entire claims report process available electronically.

A report is made and an evaluation is entered into the CityLaw system that provides a description of the allegations, a summarization of the relevant information and the alleged damages.

Finding: In the past, the Claims Secretary ran a check for required departmental responses to claims on a monthly basis. Due to staffing changes in the section, the backlog is now checked only as time permits.

RECOMMENDATION NO. 6:

The Law Department should investigate the CityLaw software capability to automatically red flag outstanding departmental reports 45 days after the original request for the report has been made.

Claim Awards:

Claims under \$50 are reviewed by the Law Department and granted according to their validity.

Finding: Small claims represent an immaterial amount of total claims and costs, resulting in under \$200 in total settlements during the audit period.

For approved claims under \$2,500, the secretary generates a Controller's Letter and appropriate Departmental Invoice for signature. Any claims approved for payment in excess of \$2,500 must be taken to the Solicitor for final approval and then approved by City Council.

Finding: Law follows the claims procedures as outlined by the Pittsburgh City Code.

ClaimsBy Department

Finding: The City Public Works and Public Safety Departments accounted for 95% of the claims filed against the City between January 1, 2009 and June 30, 2011.

Finding: The division with the highest total dollar amount paid by the City was Forestry with \$161,366 or 34% of the total amount paid. Most of the claims filed against Forestry were due to sidewalk damage from tree roots.

Finding: The highest average cost paid per claim was the Bureau of Fire Department with an average cost per claim of \$728. Most of the claims filed were due to vehicular damage.

Claims By Type

Finding: The City averaged 480 claims filed per year during the audit period. Overall, 56% of the claims were validated and paid. The average annual settlement amount was \$191,594, with an average individual settlement of \$704.39. The denied claims were 36% of the total filed, and the remainder are pending resolution.

Finding: The most claims paid were for damaged vehicles, with 323 successful claims averaging \$748 paid per claim. Tree-caused damage followed, with 203 successful claims at an average individual settlement of \$797.17.

Finding: Vehicular damage was the highest single cost item to the City, amounting to \$240,113, or 50% of the total amount paid in claims. Tree-caused damage was next, with \$161,826 in claim settlements, representing 34% of the total settlement amount paid.

Finding: Vehicular and tree-caused damage accounted for 77% of the successful claims filed against the City and 84% of the total amount paid for claim settlements.

Finding: All litigation settlements and awards and claim settlements are paid from the General Fund. The City is self-insured, and does not carry any indemnity insurance coverage to help pay the cost of any unexpectedly large settlement claims.

RECOMMENDATION NO.7:

The City Risk-Management Officer should examine the development of training programs to reduce vehicular accidents and tree-related damage, the two major causes of claims and suits filed against the City.

Litigation

Litigation is defined by Black's Law Dictionary as "a lawsuit, or a contest in a court of law for the purpose of enforcing a right or seeking a remedy." Claims can proceed to litigation while other complaints such as civil rights violations can be initiated as litigation.

Often, the costliest litigation cases filed against the City involve Federal Civil Rights violations. Civil Rights actions filed in Federal Court under 42 USC Section 1983 allows the recovery of plaintiff attorney fees and expenses from the City if the plaintiff prevails. These actions may result in more money being paid for legal fees than was awarded to the plaintiff.

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Finding: At least four (4) Civil Rights suits were filed in 2010-11 alleging misconduct by off-duty police officers.

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The City should continue its efforts to train police personnel to perform to a high standard of professional conduct while both on and off duty to help prevent potential civil rights violations.

Finding: During the audit scope period, 70% of the City's litigation cases filed were municipal claims or statutory appeals, which involve real estate transactions such as liens. Of the remaining categories, civil rights, employment disputes, "slip and falls" and land use issues were the major areas of litigation.

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RECOMMENDATION NO. 9:

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Budget to Actual Settlement Amounts

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Finding: Approximately half of the labor grievances (47%) filed against the City advanced to arbitration.

Finding: Of the 80 cases settled during the audit period, the City prevailed in 37 (46%), the Union prevailed in 19 (24%), 14 (18%) were amicably settled, and 10 (13%) were withdrawn. A large number of remaining cases (64, or 44%) are pending, primarily because many of the cases filed in 2011 were not settled as of 6/30/2011. Additionally, thirteen decisions could not be determined from the data presented.

Finding: The Law Department spent \$42,593.93 on arbitrator fees to defend against the filings and paid out \$51,238.43 in awards. However, it should be noted that many awards are non-monetary, involving time and benefit restoration, or resulted in back pay, which is taken from the departmental payroll account and not charged to Law.

Finding: Disciplinary actions accounted for 38% of the grievance/arbitration proceedings and pay disagreements represented 25% of the labor disputes.

Finding: The bulk of filings are made by members of the Public Works and Public Safety departments, which represent over 2,000 rank-and-file employees. Public Safety employees were responsible for 48% of the cases filed while Public Works employees filed 41 % of the cases.

Law also defended cases heard by the Human Relations Commission, the Equal Opportunity Review Commission and the Civil Service Commission. Law won denials or dismissals in four cases, reached a settlement once and had the complainant withdraw once for cases involving those agencies during the audit period.

Outside Counsel

The use of outside counsel by municipal law departments to complement or supplement its legal practice in specialized fields is not uncommon. According to Law, outside counsel was used for the following areas of expertise in 2009-2011:

- Zoning and Land Use, Second Amendment litigation, Labor & Employment Negotiations and Litigation, Cable Franchise Agreements, Medical Expertise and Tax. (2009)
- Zoning and Land Use, Labor & Employment Negotiations and Litigation (2 firms), Professional Liability Insurance, Eminent Domain Litigation, First Amendment Litigation, Municipal, Environment, Cable Franchise Agreements. (2010)
- Zoning and Land Use (2011).

Finding: The most costly area for outside counsel is Labor & Employment Negotiations and Litigation.

Finding: Firm A's original contract term of 1-1-09 to 12-31-09 was extended for two additional years. Finding the original "sum of \$75,000 was no longer sufficient" for additional needed services, Firm A's \$75,000 compensation was supplemented with each contract extension. Compensation was increased by \$150,000 through 12-31-10 and by \$65,000 through 12-31-11. Total compensation for the three year contract was \$290,000.

Finding: Another employment and labor consultant, Firm B, had its 2010 contract amount of \$20,000 raised by an additional \$38,685.42 for a total contract cost of \$58,685.42.

Finding: The highest outside consultant expenditures in during the audit period were for labor and employment counselors, which received \$283,685.42. Zoning and land use contractors were next at \$132,675.97 and cable franchising advisors following at \$100,000.

Finding: As Chart #1 on the following page illustrates, Law spends 46% of its outside counsel fees for labor-related expertise.

RECOMMENDATION NO.10:

Law should determine the cost/benefit of additional staffing for its Labor section. The section deals with day-to-day, ongoing legal issues and that area of law consumes nearly half of the Law Department's budget for outside counsel.

Invoicing Compliance

Most City legal service contracts contain the following boilerplate 'method of payment' language: "Payment of said fee shall be made upon completion of said professional services in a

manner satisfactory to City and after receipt and approval by City of a certified invoice, itemizing the services performed and the rates charged for such service”.

Finding: Invoices submitted to Law by outside law firms complied with contract requirements for itemizing services performed and the rates charged for the services.

Survey Of Other Municipal Law Departments

A web-based survey of cities comparable to Pittsburgh was conducted to determine the City’s position in budget, personnel, and service presentation.

Finding: The five municipal Law Departments selected for comparison provided approximately the same level of legal services. Pittsburgh does so with fewer staff members and a lower budget than Cincinnati and Newark and an equivalent amount of resources as used by Buffalo.

We are pleased that the City Law Department agrees with many of our audit recommendations.

Sincerely,

Michael E. Lamb
City Controller