



Performance Audit

Department of Law

Report by the
Office of City Controller

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AUDITEE RESPONSE



MICHAEL E. LAMB

CITY CONTROLLER

First Floor City-County Building • 414 Grant Street • Pittsburgh, Pennsylvania 15219

December 9, 2019

The Honorable William Peduto, Mayor of Pittsburgh
and Members of Pittsburgh City Council

Dear Mayor Peduto and Members of City Council:

The Office of the City Controller is pleased to present this performance audit of the **Department of Law** conducted pursuant to the Controller's powers under Section 404(b) of the Pittsburgh Home Rule Charter. Our procedures were conducted in accordance with applicable government auditing standards and are limited to our objectives, scope, and methodology sections of this report.

EXECUTIVE SUMMARY

The Department of Law is responsible for legal affairs involving the City of Pittsburgh. The solicitor and assistant solicitors represent the City in all civil litigation, legislative and legal issues, and code enforcement proceedings. In addition to litigation, solicitors assist with preparing all contracts for city departments, providing legal counsel to city officials, and reviewing legislation for City Council when asked. This audit assesses the cost effectiveness and efficiency of the Law Department in its daily responsibilities.

Software

To better track and analyze legal cases filed against the City, the Law Department utilizes the case management software CityLaw. This software digitally organizes and manages all legal cases and has been in use since the mid-1990s. The department has had a longstanding contract with Cycom Data Systems to provide and maintain CityLaw.

The use of CityLaw has been plagued by frequent system crashes, slow performance, user interface limitations, and other errors stemming from a backlog of system upgrades and unclear support maintenance terms of agreement. At the time of this audit's completion, the department has been actively seeking to put its case management system up for the competitive bidding process.

Claims

The Law Department investigates all claims for personal injury and property damages filed 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.

Analysis showed that in both 2016 and 2017 the same three divisions of the Department of Public Works had the most claims filed against them. They are Forestry, General DPW, and Environmental Services.

Litigation

For 2016 and 2017 combined, the number of cases filed is more than the number of cases awarded. The only exception is in forestry where the number of cases filed and the number of cases awarded are equal. This is due to the City's sidewalk reimbursement program, which reimburses homeowners \$8.08 per square foot if their sidewalk or curb is damaged by a City tree.

For the audit period of 2016 and 2017, the Department of Public Safety had the highest number of litigation cases filed against them with sixty-eight (68) cases. The Department also accounted for the highest amount of litigation judgments awarded against the City with twenty-four (24) cases for a total of \$1,231,410.54.

Judgements and Settlements

Judgements and settlements are two distinct things. A settlement is an agreement of both parties to the lawsuit. Judgements happen in a courtroom through either a decision by a judge or jury.

A total of 19 Civil Rights actions were filed during the audit period of January 1, 2016 through December 31, 2017, 11 filed in 2016 and 8 in 2017. Those cases did not necessarily result in a judgment or a settlement. All 19 Civil Rights suits named the Bureau of Police as the defendant.

In 2016, there were no civil judgements against the City but \$161,000.00 in settlements. In 2017, there were 2 judgments for \$340,000 including attorney fees. There were 2 Settlements in 2017: one for False Arrest in the amount of \$10,000 and another for Other Civil Rights in the amount of \$5,000.

Contract Review

In 2016, the department created an internal online portal called ATLAS to expedite and streamline the contract review process for city departments. Since that time, departments' voluntary use of ATLAS has waned. Mandatory use of ATLAS and better overall awareness of the tool would be an important step toward making the contract review process more efficient.

Professional Services

Because of the time sensitivity of urgent legal matters, the Law Department is exempt from the Home Rule Charter's competitive bidding requirements when selecting outside legal counsel for litigation. While this exemption is necessary, a formal oversight and review process for outside counsel selection using industry best practices should be put in place. This would avoid conflicts of interest and ensure that any awarded vendors are selected on the basis of merit and would help to contain costs.

Department Comparisons

The auditors found that compared to municipal legal departments in cities of similar population, the Law Department handles a commensurable caseload on a relatively smaller budget. Emerging from Act 47 budget restraints, the Office of Management & Budget should consider expanding the number of solicitors and support staff in the Law Department to reduce reliance on outside counsel and to expand the City's institutional legal expertise.

Our findings and recommendations are discussed in detail starting on page 6. We believe our recommendations will improve cost effectiveness and efficiency.

We would like to thank the Department of Law and its staff for their cooperation and assistance.

Sincerely,

A handwritten signature in blue ink that reads "Michael E. Lamb". The signature is fluid and cursive, with the first name being the most prominent.

Michael E. Lamb
City Controller

INTRODUCTION

This performance audit of the Department of Law was conducted pursuant to 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 against the City.

Two prior Law Department audits have been completed by the City Controller's Office. The first performance audit, conducted in 1984, focused on the examination of contract and agreement review, claims investigation, and municipal lien filings. The second performance audit, released in 2012, examined 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 City's Law Department is responsible for all the legal affairs for the City of Pittsburgh. The city solicitor heads the Law Department and acts on behalf of the City, the Mayor, City Council, and other governmental agencies or bodies as provided for pursuant to the City of Pittsburgh's Home Rule Charter.

The solicitor and assistant solicitors represent the City of Pittsburgh regarding all civil litigation, legislative and legal issues, and code enforcement proceedings. In addition to litigation, solicitors assist in the drafting and review of city legislation, which includes preparing all contracts for the City of Pittsburgh and providing legal counsel to city officials.

Organization

The Law Department is divided into eight general service areas or divisions as follows: Litigation, General Municipal, Labor and Employment, Tax, Real Estate, Zoning, Claims, and Open Records Officer.

Litigation

The litigation division represents the City in claims and litigation. This includes representing the City at all levels of court: common pleas, commonwealth, and federal. The primary areas of law involved in these actions are torts, civil rights, employment, taxation, environmental, and construction. The Litigation division also represents the City as a plaintiff in matters such as non-payment of amounts owed the City or for collection as the result of damage to City property.

General Municipal

The general municipal division includes functions such as reviewing the constitutionality of ordinances, review of all city contracts, real estate questions, bankruptcy claims, environmental matters (non-litigation), and other proceedings before regulatory agencies. This division responds directly to all City departments, bureaus, other units of government and City Council for advice and counsel on a wide variety of municipal issues when needed.

Labor and Employment

The labor and employment division is responsible for all labor negotiations and contract administration for the nine collective bargaining units representing city employees. It also handles employee grievances and arbitrations filed against the City and is responsible for all employment legal issues.

Tax

The tax division is responsible for counseling the Department of Finance on issues relating to city taxation and may represent the City in suits involving matters of taxation. The tax division also represents the City in assessment hearings.

Real Estate

The real estate division processes all real estate transactions through the courts for properties taken at treasurer's sales for delinquent real estate taxes. It also handles title problems regarding city real estate and work with taxpayers' redemption of property in returning property to the tax rolls.

Zoning

The zoning division advises the Department of City Planning and responds to the Zoning Board of Adjustment as required by the code. This division also participates in certain zoning proceedings deemed of vital interest to the City.

Claims

The claims division investigates and determines the validity of various claims filed against the City.

Open Records Officer

The open records officer is responsible for providing access of requested City records to the public at large while complying with the Pennsylvania Right-to-Know Law.

Organizational Structure

FIGURE 1
2016 and 2017 Organizational Chart



Source: 2016 and 2017 City Budget

Operating Budget and Staff

The city solicitor is an “at will” position appointed by the Mayor and requires the approval of City Council per City Code Ordinance Article 2, Section 212.

The Law Department had 30 full-time and 1 part-time budgeted positions in 2016 and 29 full-time and 1 part-time budgeted positions in 2017.

In 2016, budgeted positions were: chief legal officer and city solicitor (1), deputy solicitor (1), associate solicitor (2), administrative assistant (2), paralegal (1), claims administrator (1), legal secretary (4), real estate technician (3), clerk (1), assistant solicitor (14), and investigator (.5). The investigator’s time was allocated as 50% of their time to the Law Department and 50% to the Ethics Board. There are also 15,000 hours allocated to part-time law clerks/interns. The department had two unfilled positions at the end of 2016.

In 2017, budgeted positions were: chief legal officer and city solicitor (1), deputy solicitor (1), associate solicitor (3), administrative assistant (2), paralegal (1), claims administrator (1), legal secretary (4), clerk (1), assistant solicitor (14), record specialist (1), and investigator (.5). The investigator’s time was allocated as 50% of their time to the Law Department, and 50% to the Ethics Board. There are also 16,000 hours allocated to part-time law clerks/interns and 1,500 hours for a part-time legal secretary. The department lost 1 legal secretary and 3 real estate technicians but gained 1 associate solicitor and 1 record specialist. All budgeted positions were filled by the end of 2017.

The position of city solicitor was vacated after the initial audit meeting in March 2018, the position is now held by the former deputy solicitor.

The Law Department's budget for 2016 was \$5,619,896 of which 41% or \$2,299,781 was allocated for judgements and 20% or \$1,118,030 for professional and technical services. Based on anticipated litigation costs, the annual budget was increased to \$2,936,781 for judgements. The department finished \$1,197,379 below the final 2016 budget.

The 2017 budget was \$4,884,177 of which 33% or \$1,600,000 of the annual budget was allocated for judgements and 15% or \$747,472 for professional and technical services. A reduction of 15% in judgement budget allocations in the 2017 department budget was due to anticipated decrease in awards against the City. Throughout the year, the budget was increased \$112,602 for professional and technical services. The department finished the year \$883,851 below the final 2017 budget.

The Law department utilized previous year's budget and outstanding caseload to estimate and determine the future expense of judgements and related professional and technical services expense.

OBJECTIVES

1. Examine the use and selection of outside legal counsel contracted to complement the Law Department
2. Examine City Code of Ordinances, approved budget, and organizational chart
3. Examine the City's claims and litigation cases
4. Make recommendations for improvement.

SCOPE

The scope of this performance audit included the Law Department's activities commencing on January 1, 2016 through December 31, 2017. For outside counsel expenditures, the scope includes data commencing on January 1, 2013 through December 31, 2017.

METHODOLOGY

The auditors met with the deputy solicitor and former city solicitor to discuss preliminary objectives and get an overview of the Law Department functions and job duties.

The auditors also met the claims administrator and was given a demonstration of CityLaw, the case management software system. Litigation Module training presentation was emailed to the auditors for review. An assistant city solicitor gave the auditors a full demo of ATLAS and the internal contract approval process.

The auditors met with the assistant director of operations from Department of Innovation and Performance (I&P) to discuss technical questions relating to the action and functionality of the current case management software system, CityLaw. It was developed and is currently maintained by the vendor CyCom Data Systems.

The Law Department provided the following documents in PDF files for 2016 and 2017: claims by department, outside counsel contractors list, litigation by department, and civil-rights related litigation and related expenses. The auditors converted all PDFs to Excel spreadsheets for analysis.

The auditors received the following documents from the Law Department for 2016 and 2017: Law Department attorney assignment charts and the status of the City Controller's 2012 Law Department performance audit report recommendations.

The auditors conducted a teleconference with the CEO of CyCom to understand the details of CityLaw, the status of past and current contracts, and any anticipated upgrades.

The Law Department's mandates and responsibilities were taken from the Home Rule Charter and City Code. The organizational charts and budgeted information were taken from the 2016 and 2017 city budgets.

The auditors used OnBase and Open Book Pittsburgh to examine and analyze outside counsel contracts, as well as contract history for the department's case management system.

The auditors researched and compared outside counsel policies for other state and municipal governments. They also researched industry best practices for municipal law offices.

FINDINGS AND RECOMMENDATIONS

Implementation Status of Past Audit Recommendations

The City Controller's last performance audit of the Law Department in 2012 made ten (10) recommendations for improvement. The deputy solicitor provided the auditors with an update on the status of these recommendations. The following *2012 recommendations are italicized*, followed by the update status as provided by the Law Department.

Recommendation #1: The Law Department should become more proactive and routinely review legislation prior to introduction in City Council to determine legality and identify any legal issues that may arise.

Status: We cannot require our clients to come to us for legal advice although the prior city solicitor did recommend that it would be prudent policy to have the Law Department review all proposed ordinances prior to passage. This policy would require concurrence from City Council. At current staffing levels, it would be difficult for the Law Department to review all proposed resolutions as well; however, we are always available for review of any legislation upon request and to make recommendations regarding legality or other legal issues

Recommendation #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 and can proactively deal with issues that could potentially affect the City.

Status: The Law Department has begun and will continue to review board and commission by-laws and protocols to ensure compliance with the Charter, Code, and Local Agency Law. We also answer legal questions on a case-by-case basis to assist our clients in the conduct of hearings and appear at meetings upon request. Although current attorney staffing would not necessarily permit us to preview all agendas for ALL board and commission proceedings prior to hearings, during 2020, the Law Department will work to assess whether it should begin to review agendas with board/commission staff liaisons on a standing basis for specified boards/commissions.

Recommendation # 3: The process of preparing documentation electronically should be extended to all city commissions, boards, and agencies. A complete electronic package 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.

Status: Currently our involvement with city commissions and boards is generally limited to the provision of legal advice upon request.

Recommendation #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.

Status: Two persons are currently responsible. Will be requiring quarterly reviews of open files to make sure dispositions are up-to-date.

Recommendation #5: *The Law Department should make its claims reports process available electronically.*

Status: The City's Law Department website does explain the claims process and includes forms to use and a FAQ section. Assuming the recommendation relates to forms being submitted online, the Law Department is willing to explore this option; however, we would likely have to continue to also allow hard copies to ensure those claimants without computer access can file accordingly. The claims administrator has indicated that over 50% of claimants request hard copies of forms.

Recommendation #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.*

Status: CityLaw currently does not currently automatically sync with Outlook. We have made a request with our vendor and the Department of Innovation and Performance to fix this. Additionally, we are exploring the possibility of acquiring an updated document management system with additional functionality. The City Solicitor has also sent an email to Directors (2019) to get a list of updated contacts to aid with investigations.

Recommendation #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.*

Status: The Law Department does not currently have an attorney or other staff person assigned to be a risk-management officer. If that position is added, we can provide legal advice regarding the development of such training programs expeditiously.

Recommendation #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.*

Status: The Law Department currently assists with certain training of police personnel and is in the process of working with the Bureau's training academy to determine the need for additional training on a wide variety of matters, some training to be provided in-house by the Law Department and some to be provided by outside experts.

Recommendation #9: *Information in CityLaw can be organized and manipulated into a variety of useful categories. It would benefit the Law Department to prepare and distribute liability reports for each city department. These reports could be used as an analytical tool for both risk and management purposes.*

Status: The Law Department will aim to begin providing copies of monthly Council reports to all Departments.

Recommendation #10: *The Law Department 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 council.*

Status: The City currently dedicates four attorneys to staff the Labor group. As internal experience increases in-house, particularly with respect to collective bargaining, the need for outside counsel is decreasing accordingly.

Home Rule Charter 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 of the City of Pittsburgh, such as the following:

Article 2, Section 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.

Article 3, Section 324 - Codification of Ordinances:

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.

Case Management and Record Retention

Physical and Digital Record Storage

The Law Department does not have a formal policy for the retention of physical records. The informal policy is to keep everything, which includes records and documents going back over 100 years. Physical records that are no longer relevant to open cases are sent to the City's data storage center to be archived. City Ordinance No. 19 (2012) expressly prohibits all city departments from destroying any records until an archive plan (or record retention schedule) is put into place. The informal policy will be upheld until the City adopts a record retention policy.

Finding: The Law Department does not have a written, internal record retention policy and is currently working in conjunction with the City Clerk's Records Management Advisory Commission to develop one.

CityLaw

To better track and analyze legal cases filed against the City, the Law Department utilizes the case management software CityLaw. This software digitally organizes and manages all legal cases and has been in use since the mid-1990s. The software is developed and maintained by Cycom Data Systems of Kentucky with a maintenance and upgrade cost of \$11,124 in 2016 and \$11,364 in 2017.

The following CityLaw modules were in use by the Law Department during the scope of the audit and demonstrates the software's organization:

The **Records Management Module** organizes information about the physical location of case files, assignments, and contracts to give easy access to files and notes 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, including the tracking of contracts, opinions, ordinances, and other general advisory services.

Photo 1
Screenshot of CityLaw Claims Module

The screenshot displays the 'Litigation' module interface within the 'CityLaw for Windows' application. The window features a standard menu bar (File, Options, Tools, Window, Help) and a toolbar with various icons. The main workspace is divided into several sections:

- Navigation Tabs:** Basic (selected), Description, Evaluation, Notes, Equipment, Keywords, File Mgmt.
- Form Fields:**
 - Title:** A text input field.
 - File #:** A text input field.
 - Attorney:** A dropdown menu.
 - Team:** A dropdown menu.
 - Staff:** A dropdown menu.
 - OS Counsel:** A dropdown menu.
 - Para:** A dropdown menu.
 - Dept:** A dropdown menu.
 - Acct:** A dropdown menu.
 - Short Desc:** A text input field.
 - Type:** A dropdown menu with 'D' selected.
 - Cause:** A dropdown menu with '0101' selected.
 - Cat:** A dropdown menu with 'R' selected.
 - Subject:** A dropdown menu with 'N' selected.
 - Status:** A dropdown menu with 'Open' selected.
 - Disposition:** A dropdown menu with '//' selected.
 - Cross Ref:** A dropdown menu with 'Multiple Matters' selected.
 - Court:** A dropdown menu with 'USDC' selected.
 - Open Dt:** A date picker with '01/05/2015' selected.
 - Incident:** A dropdown menu.
 - Filed:** A dropdown menu.
 - Served:** A dropdown menu.
 - Assigned:** A dropdown menu.
 - Review:** A dropdown menu.
 - Date:** A date picker.
- Bottom Bar:** A row of buttons: New, Search, Print, Reports, Utility, Help, Close, and a 'browse' button.

Source: Law Department CityLaw Training PowerPoint - Litigation Module

CityLaw is a desktop based client, meaning that the program is installed locally on individual computers, and all of its data resides on local servers maintained by the Department of I&P. Updates are sent directly from the vendor's servers. I&P maintains a dedicated, standalone Structured Query Language (SQL) enterprise server to house the data retrieved by CityLaw. SQL is a standard computer language for relational database management and data manipulation. Current security protocols greatly restrict internal and external user access to the CityLaw SQL enterprise server.

Finding: As a case management system, CityLaw serves the department's needs relatively well in these ways: the user interface is clear, maintenance costs are inexpensive, and there is no limit on the number of users allowed access, or how many users can access the software at the same time. It also streamlines work and improves overall efficiency.

Each individual case, and the attorneys working on a case, can be tracked from filing to disposition, which includes references to work that is still in progress or completed. A filed case is completely self-contained and has all associated documents attached, decreasing the likelihood of lost data. The various modules provide enough flexibility so that each practice group is working with fields that apply only to their casework, and user access to modules can be customized for each user.

CityLaw differs from other general legal case management systems in that it is designed with municipal government in mind. The Liability Claims Management module, for example, organizes claims made against the City and provides tools that assist with risk management and timely completion of tasks. Similarly, the Time Accounting monitors activity throughout the software and calculates charge rates based on time worked.

Current Drawbacks

The main drawback of the version of CityLaw in use by the department is its tendency to slow down when uploading or accessing large files, or crashing altogether. The auditors observed this firsthand when being given a demonstration of the system. While a great deal of records have accumulated on the program over time, I&P confirmed that storage is not to blame for speed or reliability issues. The City has recently implemented storage upgrades, which has increased capacity significantly.

Finding: The Law Department program CityLaw has a tendency to slow down and crash when uploading large files or opening new modules. Performance issues are causing a decrease in Department efficiency.

In the current version, CityLaw is lacking the functionality to fully support the needs of the Law Department. Because the version used by the department is desktop based, transmitting large files that they often handle becomes increasingly difficult. Files must be sent in their entirety across a wired network, which takes considerable time. This version is also not remotely accessible given that it exists and runs on the physical computer, as opposed to a web-based version. One advantage of a web-based version is that it is remotely accessible.

In addition, the software's email integration was lost when the City moved to Gmail as its email client. While the City has since returned to Microsoft Outlook, the integration feature has not been accessible. According to I&P, returning this functionality should be fairly simple. I&P

maintains the SQL enterprise server and installs program updates as needed. However, I&P only handles backend maintenance, and none of its employees have access to CityLaw. I&P is able to assist Cycom with any upgrades or technical support, and recommends that Law work with their newly assigned business relations manager within I&P to coordinate the request, as well as any other technical needs.

In 2019, Cycom assessed that the City's version of CityLaw was five upgrades behind for the desktop version, resulting in accumulated problems. The Law Department is working with the Office of Management & Budget (OMB) to update the agreement with Cycom to make upgrades automatic.

CityLaw Upgrades

The auditors spoke with the president of Cycom, who explained that the desktop based version of CityLaw is a legacy system that Cycom has been encouraging the City to phase out. The replacement is a web-based version, which could potentially solve many user issues currently in the Law Department such as slow speed and crashing.

The new version would allow data processing to take place on a remote server rather than locally. Web-based clients also have drawbacks, especially in their reliance on a network connection; losing that connection means losing access to the program. However, this upgrade would include a much more intuitive user interface, a customizable dashboard, resizable windows, remote access from home or the courtroom, and overall greater functionality.

According to Cycom, a beta web-based version was installed in the Law Department to test its functionality, but has not yet been made available to all users. At the time of this audit, I&P and Cycom were in ongoing talks to arrange the transition to the web-based version. It should be advised that the current web version runs on Silverlight, a media format being decommissioned by Microsoft in 2021. Cycom is producing a "CityLaw 2.0", which will run on HTML5 and is scheduled to be ready by the end of 2019 for long term support. This upgrade will be available and necessary to the Law Department if remaining with CityLaw. All computers in the department meet the minimum workstation requirements needed to upgrade to this version.

Finding: An upgraded, web-based version of CityLaw is produced by Cycom and can potentially resolve many of the Law Department's issues related to functionality and experience.

RECOMMENDATION 1:

The Law Department administration should compile a list of requirements needed for an optimal legal case management system that meets all of its needs. As they migrate to the web-based version of CityLaw, the administration should determine if the new version meets those needs and if it would eliminate the problems dealt with in the past. If not, a Request for Proposal (RFP) should be issued to implement a new IT solution.

Finding: A major benefit of the current contract with Cycom is that it includes any upgrades at no additional cost to the City.

Cycom described a somewhat onerous contract approval process with the City, which must be renewed each year and requires several quarters of waiting for payment after services have already been rendered. However, the company expressed willingness to a multiyear contract at a fixed rate price and a new support maintenance agreement. Given the City's longstanding relationship with the company, and reasonable price currently paid for services, this might be a favorable scenario for both parties.

RECOMMENDATION 2:

If Law Department administration retains Cycom as a vendor, they should work with I&P, Cycom, and procurement in OMB to draft a multi-year contract that includes an updated and detailed support maintenance agreement with a fixed rate cost. An updated contract should require system upgrades to be made available at minimal cost.

Additional CityLaw Issues

With a database of documents that has accumulated over time, these technical problems have also made it difficult to conduct general and keyword searches without system slowdowns or crashes. The office can currently scan and upload documents, but saving to the shared drive is an inefficient practice when dealing with large amounts of information. I&P has recommended the addition of a document management system to aid in CityLaw's search functionality. Other city departments currently use OnBase as a document management system.

Finding: The Law Department does not have a document management system as part of CityLaw. All files are stored on a shared drive and/or paper files.

While CityLaw's document management functionality encompasses much of the department's workload, a system like OnBase would go even further, giving them the ability to scan, upload, archive, and search for any physical files they encounter. In addition, OnBase fully integrates with CityLaw. Closed cases could be archived onto OnBase and later launched in CityLaw if ever revisited. The City's current version of OnBase does not have the storage capacity that the Law Department's needs.

RECOMMENDATION 3:

Law Department administration should work with OMB and I&P to issue an RFP for a document management system that would allow them to upload, organize, search, and access the physical records they handle. It should have the ability to fully integrate with their case management system.

Claims

The Law Department investigates all claims for personal injury and property damages filed 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.

Claims Process

To initiate the claims process, an individual must first submit a "Report of Claim Form" to the Law Department. This can be done by calling the Claims Division or the 311 Call Center to obtain the form, appear in person to fill one out, or downloading it from the Law Department's website. The online claim form does not have an electronic submission option, so the form can only be mailed or dropped off in person.

Finding: The department does not have an option to file claims electronically. Claim forms can be emailed but no automated system was available to accept claim forms during the audit period.

RECOMMENDATION 4:

The Law Department administration should work with I&P to explore ways to allow claims against the City to be submitted electronically. An electronic system for filing claims would provide a timelier and more secure means of claim submission.

The claims form asks for relevant detailed information regarding the claimant's incident including the date and time the incident occurred, a detailed description of what happened and contact information for any witnesses. It also has specific sections for claims dealing with sidewalk damage, property damage other than vehicle and vehicle damage.

Sidewalk Damage

If the claim involves sidewalk damage resulting from city-maintained tree roots, the City's Forestry Division must be notified and a sidewalk permit must be obtained by the claimant before repairs are made. A copy of the permit and repair bill for the sidewalk replacement must accompany the claim form. A statement of whether the claimant has a policy of applicable property damage insurance coverage must also be given. In addition, Pennsylvania State Law 42 requires insurance information such as name of insurance carrier and policy number to be provided on the claim form.

Property Damage Other Than Vehicle

If the claim involves property damage other than a vehicle, two estimates of repair or copies of invoices for the item(s) must be submitted with the claim form. The City is liable to pay the fair market value of repair costs.

Vehicle Damage

If the claim involves vehicle damage, a section detailing the make, model, year and other general vehicle information must be filled out. Two repair estimates must be obtained and submitted with the claim form. A copy of the declaration page of the insurance policy, stating the deductible, must accompany the claim form. It should be noted that the City is only liable for paying fair market value. In addition, Pennsylvania State Law 42 requires insurance information such as name of insurance carrier and policy number to be provided.

City Code Related to Claims

The City Code of Ordinances Sec. 163.03 states: "the City Solicitor shall be authorized to settle all claims not in excess of two thousand five hundred dollars (\$2,500.00), upon approval of the City Controller". Council shall be authorized to approve all claims in excess of two thousand, five hundred dollars (\$2,500.00).

The sole exception of claims presented under Sec.417.02. A - City Tree Root Sidewalk Damage Claims and Compensation, which the City Solicitor will be authorized to settle without Council approval. The conditions are outlined below:

(a) In the event that a tree that has been installed by the City and/or the installation has been otherwise sanctioned by the City, and should cause damage to the sidewalk and/or curb, the abutting property owner may file a claim for damages with the City's Department of Law in accordance with Department of Law procedures.

(b) Upon verification of the claim, the City Solicitor shall provide compensation to the abutting property owner(s) [at] eight dollars (\$8.00) per square foot.

(1) Compensation for claims provided by this ordinance is not retroactive to claims received by the Law Department prior to the effective date of the ordinance. The effective date of this amendment is January 1, 2015.

(c) Every four (4) years, beginning on January 1, 2015, the City Solicitor shall adjust the amount of compensation provided for sidewalk damage claims based upon the United States Department of Labor's Bureau of Labor Statistics, Consumer Price Index ("CPI") for Pittsburgh. The percentage of increase/decrease in the Pittsburgh CPI shall be the percent of the increase/decrease in compensation provided.

(d) The City Solicitor shall provide notice to the City Clerk of any adjustment made to the amount provided for sidewalk damage claims. The City Clerk shall present said communication from the City Solicitor to the Council to be read, received and filed.

Processing Filed Claims

Once a claim form is submitted, the claims administrator enters the data from the form into the CityLaw system under the Litigation Claims Management module and assigns a claim number to the file. An acknowledgement letter is generated which provides the claim number, the date received and the date of the incident; a copy of which is mailed to the claimant.

There are only two staff members that investigate claims: the claims administrator and an administrative assistant. A review of each claim is conducted to decide whether liability to the city exists based on certain legal requirements. Then the claims administrator sends the final disposition letter to the claimant, and/or their counsel, notifying them of the claims administrator'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 be escalated to litigation (see section titled "Litigation").

City Council Approval

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 claims administrator generates the financial reports from CityLaw summarizing the activities of the Claims Division.

The City has three methods for addressing filed claims: 1) "small claims", 2) Claims less than or equal to \$2,500, and 3) claims over \$2,500 and are outlined below.

Small Claims

It should be noted that some "small claims" are monetarily insignificant and are not investigated because the cost of investigating would exceed the amount requested. Examples are the discarded/damaged refuse can or "missing items" claims. Missing items or property represent an immaterial amount. All other claims are investigated, regardless of the dollar amount.

For the years 2016 and 2017 there were a combined total of twenty-five (25) small claims costing the city \$1,348.74 in payouts. This is an average of \$53.95 per claim. Of these, eighteen (18) or 72% were under \$50 totaling \$409.49 in payouts. Seven (7) or 28% were over \$50 but under \$250 totaling \$939.25.

Claims less than or equal to \$2,500

For approved claims under \$2,500, the solicitor's secretary generates a Controller's letter and appropriate departmental invoice for signature. Once this is completed, the solicitor's secretary will return the entire file to the claims administrator to verify the payment amount and forwards it to the solicitor to sign. It will then be processed for payment by the Controller's Office through the standard accounts payable departmental invoice process.

Since May 2015, the departmental invoices no longer require a signature on claims under \$2,500. The solicitor approves these claims online via the city's JD Edwards financial software system. JD Edwards Enterprise One software is the City's cloud-based Enterprise Resource Planning (ERP) financial system used to manage all accounting records.

Claims over \$2,500

Any claims in excess of \$2,500 must get final approval from both the solicitor and City Council before authorizing 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 solicitor's secretary who forwards it to the solicitor for review and signature. Upon approval of the letter by the solicitor, the solicitor's secretary will schedule the award for legislative discussion. Once approved, the file is then given to the claims administrator, who verifies payment and generates an approval letter to be sent to the claimant.

The claims administrator attends the City Council meeting along with the director(s) of the department(s) involved in the claim to answer any questions relating to the claim. After the meeting, council will vote on the settlement. If approved, the Law Department receives the final signed and authorized resolution, generally within 2-3 weeks. The solicitor's secretary will generate a departmental invoice, have it approved, and forward it on to the Controller's Office for payment. Once the check has been issued by the Controller's Office, the Law Department receives notification of the date and check number.

Timeliness of Investigations

The timeline for processing claims varies and depends on the timeliness of the department in question responding to the Claims Division's requests for documents and information. Some claims are opened, investigated and completed in the same day. Others are more complex and require information from multiple departments causing delays by weeks or even months to complete.

According to Law Department personnel, most delays are due to incomplete information provided by the claimants either on the claim form or failing to provide supporting damage and insurance information. According to Law's website, the process typically takes approximately 8-10 weeks to process claims.

The claims secretary's duties were eliminated in May 2015 due to a need to re-assign support staff. Most of the secretarial duties for claims are now handled by the claims administrator, except for processing of payments for approved claims.

The Law Department's webpage provides a "Claims Frequently Asked Questions" section to guide claimants through the claims process. It was noted here that the Law Department does not use an insurance carrier or a third-party administrator to process claims. The City is self-insured and according to Law Department personnel it would be more costly to hire an insurance carrier than the cost of the City's annual claims paid out.

Claims by Department

The Law Department tracks the number of claims made against each department. This helps them understand where the City is most vulnerable for liability and can help organize risk mitigation policies to avoid future claims. The auditors received the City's claims filed by department for 2016 and 2017.

The auditors kept the departmental claims information in these reports in the original form and department names that were provided to the auditors by the Law department. For example, the reports show BBI, the Bureau of Building Inspection, and not the current department titled PLI, or Permits, Licenses and Inspections. BBI was reorganized and renamed Permits, Licenses and Inspections in 2014. In 2017, some areas of public works were moved into a newly created department called Department of Mobility & Infrastructure (DOMI). In addition, the Department of Public Works' claims are shown by the various divisions within the department.

Finding: The Law Department's case management system should be updated to provide accurate department information to reflect name changes and new departments or divisions.

RECOMMENDATION 5:

The Law Department administration should update and properly code cases to reflect name changes and new departments or divisions. Until this transition is complete, dual titled department names should be used.

Table 1 shows all 2016 claims filed against the City by department from the highest percentage of claims filed to the lowest and the total amount paid out.

In 2016, there were 397 claims filed against the City, 236 claims were paid totaling \$197,502. The Forestry Department, with 30.48% claims filed and 38.56% claims paid, ranks at the top of all city departments. Parks and Recreation, Parking Authority and Engineering & Construction only had 0.25% claims filed which were the smallest percentage in 2016.

In 2016, the Department of Public Works (Forestry \$107,225, General \$15,727, and Environmental Services \$18,793) accounted for 256 or 64.48% filed claims totaling \$141,679 in claims paid out. The Forestry division had the most claims filed and the highest dollar amount paid out by the City with \$107,226 or 54.29%.

It should be noted that the sidewalk reimbursement program is under the Forestry division. The City will pay for sidewalk and curb repairs if the damage is caused by a City tree. The program reimburses the homeowner at \$8.08 a square foot.

Finding: Law Department personnel stated that the Permits, Licenses and Inspections Department (PLI) no longer informs homeowners about the City's sidewalk reimbursement program when issuing sidewalk citations.

TABLE 1
2016 Claims Filed Against the City by Department
Highest to Lowest

DEPARTMENT with Division	# of Claims Filed	# of Claims Paid	Total Paid
Public Works - Forestry	121 (30.48%)	91 (38.56%)	\$107,225
Public Works - General	88 (22.17%)	32 (13.56%)	\$15,727
Public Works - Division of Environmental Services (ES)	47 (11.84%)	42 (17.80%)	\$18,793
Public Safety - Bureau of Police	45 (11.34%)	30 (12.71%)	\$23,858
Public Safety-Emergency Medical Service (EMS)	30 (7.56%)	22 (9.32%)	\$13,835
Public Safety - Bureau of Fire	23 (5.79%)	17 (7.20%)	\$13,268
Public Safety-Bureau of Building Inspect (BBI)*	18 (4.53%)	0	\$0
Public Works - Division of Signs	6 (1.51%)	1 (0.42%)	\$796
Pittsburgh Water and Sewer Authority (PWSA)	5 (1.26%)	0	\$0
Finance - Three Taxing Bodies (TTB)	2 (0.50%)	0	\$0
Engineering & Construction	1 (0.25%)	0	\$0
Parking Authority (PA)	1 (0.25%)	0	\$0
Parks and Recreation (P&R)	1 (0.25%)	1 (0.42%)	\$4,000
Unknown	7 (1.76%)	0	\$0
Other	1 (0.25%)	0	\$0
Blank	1 (0.25%)	0	\$0
TOTALS	397	236	\$197,502

Source: CityLaw Claims Database

*This department was renamed Permits, Licenses, and Inspections (PLI) in 2014.

Defining Unknown, Other and Blank

When the claimant does not provide the Law Department enough information to determine what department the claim would fall under, the claim is designated as “unknown”, or sometimes left blank. For example, if a claimant states that they fell, but does not give details of the location, place or how they were injured, the Law Department does not know which department would be responsible. If a claimant states property damage occurred from a landslide, but the adjacent property is privately owned, it would be opened under “Other”; because no City department would be responsible due to it being private property. Or, if a claimant states their vehicle was damaged by a city vehicle but does not explain how it happened. The Law Department will leave the cause description blank until more details are known.

Table 2 shows all 2017 claims filed against the City by department from the highest percentage of claims filed to the lowest and the total amount paid out.

TABLE 2
2017 Claims Filed Against the City by Department
Highest to Lowest

DEPARTMENT with Division	# of Claims Filed	# of Claims Paid	Total Paid
Public Works - General	123 (30.15%)	32 (16.49%)	\$15,761
Public Works FORESTRY	84 (20.59%)	53 (27.32%)	\$95,416
Public Works - Division of Environmental Services (ES)	54 (13.24%)	39 (20.10%)	\$29,227
Public Safety - Bureau of Police	43 (10.54%)	19 (9.79%)	\$11,804
Public Safety-Emergency Medical Service (EMS)	32 (7.84%)	26 (13.40%)	\$23,406
Public Safety - Bureau of Fire	26 (6.37%)	20 (10.31%)	\$14,718
Public Safety-Bureau of Building Inspection* (BBI)	10 (2.45%)	0	\$0
Public Works - Division of Signs	6 (1.47%)	0	\$0
Public Safety	5 (1.23%)	2 (1.03%)	\$1,156
Finance - Division of Real Estate (FD)	2 (0.49%)	2 (1.03%)	\$600
Engineering & Construction (EC)	1 (0.25%)	0	\$0
Mayor's Office (MO)	1 (0.25%)	1 (0.52%)	\$238
Parking Authority (PA)	1 (0.25%)	0	\$0
Parks and Recreation - City Zoo	1 (0.25%)	0	\$0
Public Works - Parks Maintenance (PM)	1 (0.25%)	0	\$0
Sports & Exhibition Authority (SEA)	1 (0.25%)	0	\$0
Pittsburgh Water and Sewer Authority (PWSA)	1 (0.25%)	0	\$0
Unknown	11 (2.70%)	0	\$0
Other	4 (0.98%)	0	\$0
Blank	1 (0.25%)	0	\$0
TOTALS	408	194	\$192,326

Source: CityLaw claims database

*This department was renamed Permits, Licenses, and Inspections (PLI) in 2014.

Finding: The same three divisions of the Department of Public Works, Forestry, General, and Environmental Services had the most claims filed against them in both 2016 and 2017.

As Table 2 shows for 2017, there were 408 claims filed, with 194 claims paid totaling \$192,326. Public Works General ranked at the top amongst all departments with 30.15% claims filed and accounted for 16.49% of the claims paid. The following departments have the smallest claims filed percentage (0.25%): Engineering & Construction, Mayor's Office, Parking Authority, Parks and Recreation – City Zoo, Parks Maintenance, Sports & Exhibition Authority, and the Pittsburgh Water and Sewer Authority.

In 2017, the department of Public Works (including General \$15,761, Forestry \$95,416, Environmental Services \$29,227) accounted for 63.97% of the claims filed against the City, totaling \$140,404.00 in claims paid. Public Works was the highest department for claims filed and paid in both 2016 and 2017.

Public Works Forestry had the highest dollar amount of claims paid with \$95,416 or 49.61%. Forestry ranked first among all City departments in both 2016 and 2017 with the highest dollar amount paid out in claims.

Tracking Claim Trends

In attempts to reduce the City's exposure to claims, the claims administrator and the city solicitor review monthly claim reports and analyze claim trends. When a pattern occurs or a reasonable solution is present, the claims administrator will notify the director of the offending City department(s) to make preventative changes or upgrades. In addition, the claims administrator attends all internal Occupational Safety meetings to identify other potential hazards to City employees and citizens.

Finding: The claims administrator takes preventative measures to reduce the City's legal exposure to claims.

Claims by Category

2016 Claims

The City had a total of 397 claims filed in 2016 with 236, or 59.45%, of the claims paid. The total settlement amount was \$197,501. Most 2016 claims filed against the City were for vehicle damage.

In 2016, sidewalk damage claims were the highest cost category to the City, totaling \$101,902 paid. City vehicle damage was the second highest with \$78,158 in claim settlements representing 39.57%.

Table 3 summarizes all 2016 claims filed by category and displays the categories from the highest percentage of claims filed to the lowest percentage.

TABLE 3
2016 Claims Filed Against the City by Category
Highest to Lowest

DESCRIPTION	Claims		Total Paid
	Filed	Paid	
City Vehicle	137 (34.51%)	104 (44.07%)	\$78,158 (39.57%)
Sidewalk Damage	92 (23.17%)	83 (34.17%)	\$101,902 (51.60%)
Slip & Fall	39 (9.82%)	0	\$0
Pothole	26 (6.55%)	10 (4.24%)	\$3,207 (1.62%)
Trees	24 (6.05%)	7 (2.97%)	\$3,638 (1.84%)
Property Damage/Personal Injury General	21 (5.29%)	2 (0.85%)	\$546 (0.28%)
Care/custody/control of personal property	19 (4.79%)	14 (5.93%)	\$8,141 (4.12%)
Missing Property	15 (3.78%)	13 (5.51%)	\$734 (0.37%)
Land/Drainage/Ditch Maintenance	5 (1.26%)	0	\$0
Street Maintenance	6 (1.51%)	0	\$0
Auto Accident-General	3 (0.76%)	1 (0.42%)	\$250 (0.13%)
Official Bus-Related Prop. Damage/Personal Injury	3 (0.76%)	2 (0.85%)	\$925 (0.47%)
Other Property Damage/Personal Injury	3 (0.76%)	0	\$0
Barricades (sawhorses)	1 (0.25%)	0	\$0
Care/custody/control of animals	1 (0.25%)	0	\$0
City Equipment	1 (0.25%)	0	\$0
Miscellaneous	1 (0.25%)	0	\$0
TOTALS	397	236	\$197,501

Source: CityLaw claims database

2017 Claims

Table 4 summarizes all 2017 claims filed by category from the highest percentage of claims filed to the lowest percentage. The total amount spent for the year was \$192,327.

TABLE 4
2017 Claims Filed Against the City by Category
Highest to Lowest

DESCRIPTION	Claims		Total Paid
	Filed	Paid	
City Vehicle	149 (36.52%)	97 (50.0%)	\$80,993 (42.11%)
Sidewalk Damage	61 (14.95%)	47 (24.23%)	\$90,623 (47.12%)
Pothole	46 (11.27%)	14 (7.22%)	\$5,261 (2.74%)
Slip & Fall	32 (7.84%)	0	\$0
Trees	24 (5.88%)	7 (3.61%)	\$5,293 (2.75%)
Care/custody/control of personal property	19 (4.66%)	11 (5.67%)	\$6,714 (3.49%)
Street Maintenance	16 (3.92%)	1 (0.52%)	\$370 (0.19%)
Missing Property	14 (3.43%)	13 (6.70%)	\$854 (0.44%)
Property Damage/Personal Injury General	12 (2.94%)	3 (1.55%)	\$559 (0.29%)
Auto Accident-General	4 (0.98%)	0	\$0
Land/Drainage/Ditch Maintenance	4 (0.98%)	0	\$0
Barricades	3 (0.74%)	0	\$0
Other Property Damage/Personal Injury	3 (0.74%)	0	\$0
Care/custody/control of animals	2 (0.49%)	0	\$0
Civil Rights-General	2 (0.49%)	0	\$0
Miscellaneous	2 (0.49%)	0	\$0
Signal/Traffic Maintenance	2 (0.49%)	0	\$0
City Equipment	1 (0.25%)	0	\$0
City Real Estate	1 (0.25%)	0	\$0
Construction	1 (0.25%)	0	\$0
Employment Related-General	1 (0.25%)	0	\$0
False Arrest/Imprisonment	1 (0.25%)	0	\$0
Illegal Tow	1 (0.25%)	0	\$0
Official Bus-Related Prop. Damage/Personal Injury	1 (0.25%)	1 (0.52%)	\$1,660 (0.86%)
Towing Related-General	1 (0.25%)	0	\$0
TOTALS	408	194	\$192,327

Source: CityLaw claims database

In 2017, the category of city vehicle had the most claims filed with 149 or 36.52% and paid out \$80,993 or 42.11% representing the 2nd highest expense category. Sidewalk damage claims had the second highest filed claims with 61 representing 14.95% and paid out the most totaling \$90,623 or 47.12% in expense. The categories of city vehicle and sidewalk damage continue to be the top two claims filed and the highest pay outs in 2017, as well as in 2016.

Table 5 compares the number of claims filed against the City and the number of claims paid out in 2016 and 2017.

TABLE 5
Claims Filed against the City
2016 vs 2017

YEAR	2016	2017	Percentage Difference
Claims Filed	397	408	2.77%
Claims Paid	236	194	-17.80%
TOTALS PAID	\$197,502	\$192,326	-2.62%

Source: CityLaw

The claims filed in 2017 increased by 2.77% from 2016, but claims paid decreased by 17.8% or \$5,176. The total paid amount decreased by 2.62% for the same time frame.

Litigation

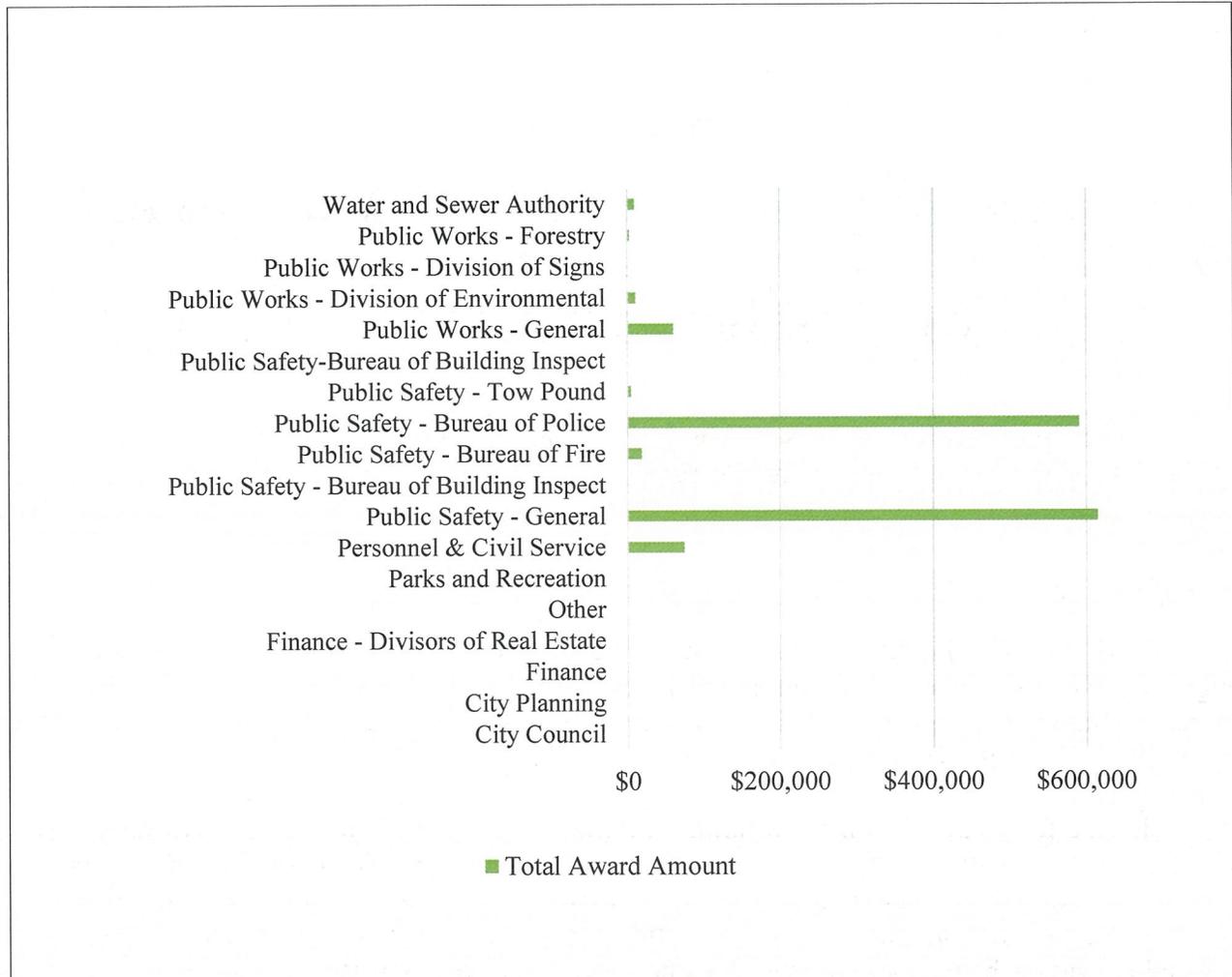
If a claim is not settled, it may proceed to the litigation process. Claims can proceed to litigation if fault is rejected. Other complaints, such as civil rights violations, usually start their process as litigation. Litigation is defined by *Black's Law Dictionary* as “a lawsuit, or a contest in a court of law for the purpose of enforcing a right or seeking a remedy”.

In an effort to avoid a time consuming and expensive trial, both parties may attempt 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. Arbitration is defined by *Black's Law Dictionary* as “the investigation and determination of a matter or matters of difference between contending parties, by one or more unofficial persons, chosen by the parties, and called “arbitrators,” or “referees”. If no agreement can be reached, the plaintiff files a complaint in court against the defendant. The case is then taken to court to be decided upon by a judge and/or jury.

Litigation Totals

Figure 2 shows the combined litigation settlements for 2016 and 2017 by City department.

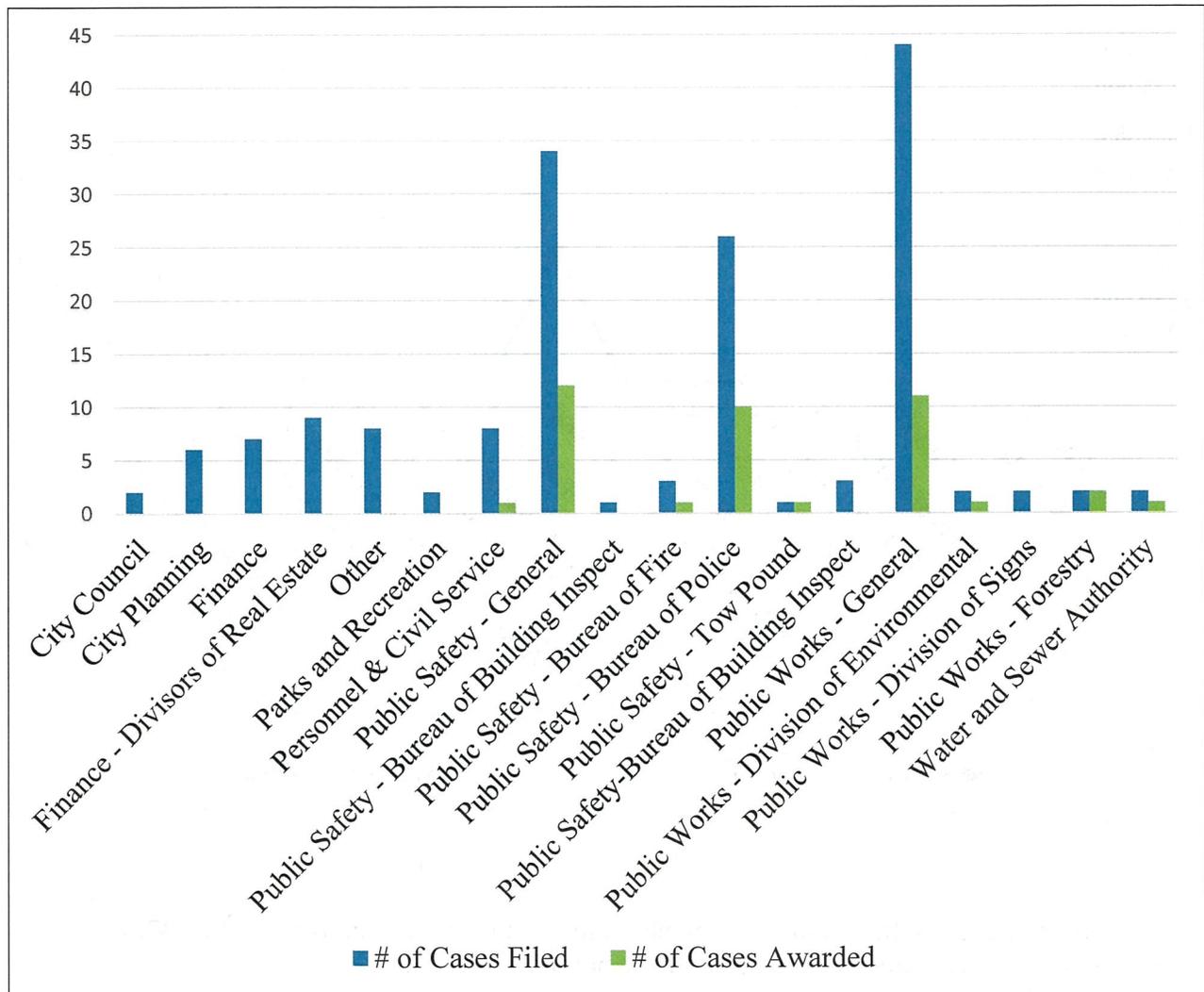
FIGURE 2
2016 - 2017 City Litigation Payouts per Department



Source: JD Edwards

Figure 3 shows the 2016 - 2017 combined number of cases filed versus the number of cases awarded.

FIGURE 3
2016 - 2017 City Litigation Cases by Department

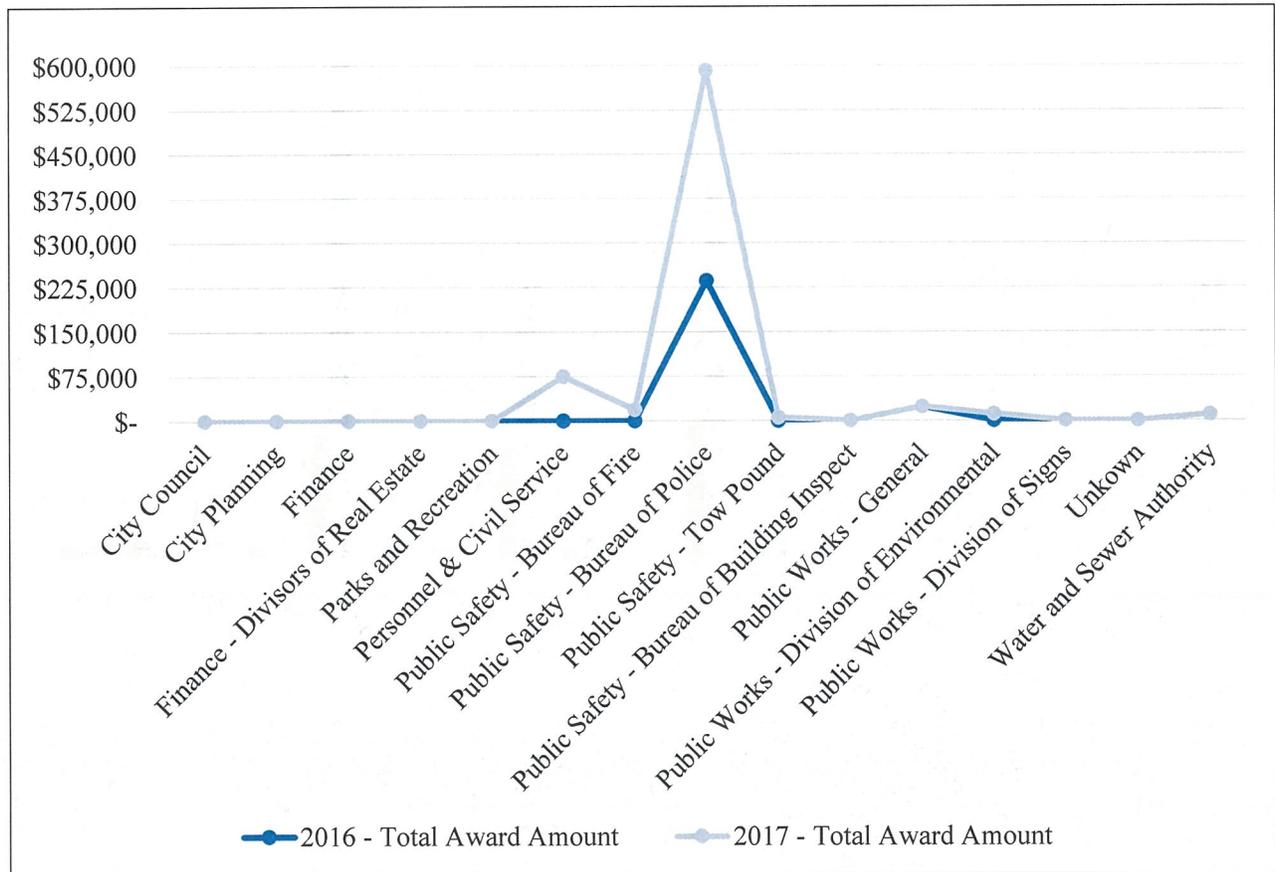


Source: JD Edwards

Finding: For 2016 and 2017 combined, the number of cases filed is more that the number of cases awarded. The only exception is in forestry where the number of cases filed and the number of cases awarded are equal.

Figure 4 shows the comparison of 2016 and 2017 litigations by City department.

FIGURE 4
2016 - 2017 Litigation Award Comparison



Source: JD Edwards

Table 6 lists 2016 litigations settlements from the highest amount paid to the lowest. Departments, bureaus or divisions not listed have nothing awarded.

TABLE 6
2016 City Litigation Awards - Highest to Lowest

DEPARTMENT	TOTAL AWARD AMOUNT
Public Safety - Bureau of Police	\$236,514.00
Public Works - General	\$23,350.00
Water and Sewer Authority	\$10,000.00
Public Works - Forestry	\$3,000.00
TOTALS	\$272,864.00

Source: JD Edwards

Table 7 lists 2017 litigations settlements from the highest amount paid to the lowest. Departments, bureaus or divisions not listed have nothing awarded.

TABLE 7
2017 City Litigation Awards - Highest to Lowest

DEPARTMENT	TOTAL AWARD AMOUNT
Public Safety - Bureau of Police	\$355,000.00
Personnel & Civil Service	\$75,000.00
Public Safety - Bureau of Fire	\$19,000.00
Public Works - Division of Environmental	\$11,000.00
Public Safety - Tow Pound	\$5,191.27
TOTALS	\$465,191.27

Source: JD Edwards

For the audit period of 2016 and 2017, the Department of Public Safety had the highest number of litigation cases filed against them with sixty-eight (68) cases. The Department also accounted for the highest amount of litigation judgments awarded against the City with twenty-four (24) cases for a total of \$1,231,410.54.

Finding: For the audit period, the Department of Public Safety had twenty-four (24) or 35% of judgements awarded of the sixty-eight (68) cases filed.

Law Department’s budget for 2016 and 2017 was \$5,619,896 and \$4,884,177 respectively. This totals \$10,504,073. The judgements against the Department of Public Safety accounted for 11.7% of the Law Department’s entire budget for the audit period.

The Department of Public Works had fifty (50) cases filed. This was the second highest number of cases filed during the audit period. Fourteen (14) cases were awarded judgements, for a total of \$74,700.00.

The Department of Personnel and Civil Service had less cases files with a total of eight (8) cases. Only one (1) case was awarded a judgement for \$75,000.

Civil Rights Litigation

Federal Civil Rights are the rights that belong to an individual by virtue of citizenship, especially the fundamental freedoms and privileges guaranteed by the 14th Amendment to the U.S. Constitution and by subsequent acts of Congress; both include: civil liberties, due process, equal protection of the laws, and freedom from discrimination. Lawsuits are also brought by individuals claiming employment discrimination. Those claims are generally brought under Title VII or the Pennsylvania Human Relations Act (PaHRA).

Discrimination actions and 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.

Alternative Dispute Resolution

ADR, or alternative dispute resolution refers to a "procedure for settling a dispute by means other than litigation, such as arbitration or mediation" as defined by *Black's Law Dictionary*. Local Civil Rule of Court 16.2 requires parties involved in all civil actions (except social security cases and cases that involve prisoners) to agree upon a form of ADR (Alternative Dispute Resolution) as part of the litigation process. Early Neutral Evaluation (ENE) and Mediation, are the customary forms of ADR most commonly utilized by the City. Before a case filed against the City goes further, it must first go through the ADR process selected by the parties.

Judgements and Settlements

Judgements and settlements are two distinct things. A settlement is an agreement by both parties to the lawsuit that resolves their dispute prior to trial and usually for a monetary amount. In settlements, the City does not admit liability or fault.

Judgements happen in a courtroom through either a decision by a judge or jury. With a judgement the plaintiff has won the case and the City, as the defendant, has lost. Judgements cost the City money for the award as well as for the plaintiff's attorney fees.

A total of 19 Civil Rights actions were filed during the audit period of January 1, 2016 through December 31, 2017, but those cases did not necessarily result in a judgment or a settlement. All 19 Civil Rights suits named the Bureau of Police as the defendant. There were 11 Civil Rights actions filed in 2016 and 8 filed in 2017.

In 2016, there were no civil judgements against the City but there were 5 settlements; one (1) was for Excessive Force in the amount of \$2,500.00. The other 4 were for False Arrest totaling \$158,500. The total cost of 2016 settlements were \$161,000.00.

In 2017, there were 2 judgments both related to Excessive Force. Their totals, including attorney fee awards amounted to \$340,000. There were 2 settlements in 2017. One for False Arrest in the amount of \$10,000 and another for Other Civil Rights in the amount of \$5,000.

Table 8 shows the 2016 and 2017 civil rights litigation for judgements and settlements.

TABLE 8
2016 - 2017 City Civil Rights Litigation
Bureau of Police, Department of Public Safety

Cause Description	# of Cases Files	2016 – 11 filed		2017 – 8 filed		TOTALS
		Settlements	Judgements	Settlements	Judgements	
Civil Rights - General	2		0			0
Excessive Force	7	1			2	\$342,500
		\$2,500			\$340,000	
False Arrest/ Imprisonment	6	4		1		\$168,500
		\$158,500		\$10,000		
Free Speech/ Religious	1					0
Illegal search	1					0
Other Civil Rights	2			1		\$5,000
				\$5,000		
TOTALS	19	\$161,000		\$15,000	\$340,000	9 \$516,000

Source: Law Department

Table 8 shows that from January 1, 2016 to December 31, 2017 there were 9 Civil Rights cases litigated resulting in payments to the plaintiffs totaling \$516,000. In addition to the \$516,000 in judgements and settlements, the City also incurred court-related expenses of \$121,583.55 making the total cost of litigation judgements and expenses \$637,583.55 for the audit period.

The total of \$516,000.00 in Civil Rights related judgements for 2016 and 2017 accounted for 80% of all City litigation judgements.

Department Training

The Law Department previously held trainings for City departments to help educate and implement best practices to reduce legal exposure to the City. The “Learning the Law” trainings are now provided to department directors and new supervisors when requested with the exception of the Bureau of Police. The Police Training Academy has implemented the legal training and is a requirement for graduation or promotion. The Academy has also gone above state-issued standards and implemented additional “Use of Force” trainings to increase awareness and reduce legal exposure to the City.

Disposition Codes

When litigation cases are closed, Law Department staff assign a disposition code in the CityLaw software. According to a Law Department staff member, disposition codes are assigned to case with priority to judgements against the City resulting in claim or litigation awards.

Available codes in CityLaw are as follows:

TABLE 9

AVAILABLE DISPOSITION CODES	
# = UnCoded	N = No Cause
A = Affirmed	O = Overturned
B = Notice of Right to Sue Issued	P = For the Plaintiff
C = Finding of Discrimination	R = Probable Cause
D = For the Defendant	S = Finding of no discrimination
F = Affirmed, in part	W = Withdrawn
G = Granted	X = Dismissed
H = Consolidated with another case	Y = Settled
I = Discharged	Z = Remanded to local agency
J= Discontinued without prejudice	AA = Terminated via Court Records (for inactivity)
M = Denied	

Source: CityLaw

However, CityLaw has the limitation of only allowing one disposition code to be applied per case, though multiple decisions may apply. This can be problematic if a case has had multiple decisions over the lifetime of the case including claims settlements and dismissals. By only having one disposition code applied, the database does not accurately reflect all actions for reporting or searching purposes. In example, a case with five actions could have four actions dismissed and one settled. The paid action would be coded to Y=settled and reports from CityLaw would not show the four X=Dismissed actions.

Finding: CityLaw allows for the assignment of only one disposition code per case, even if multiple codes apply.

RECOMMENDATION 6:

The Law Department administration should consider the ability to assign multiple dispositions codes when CityLaw is reviewed for renewal, upgrade, or replacement. This will allow for the Law department to generate more accurate reports based on multiple case outcomes.

Professional Services

The selection and award of professional services, including outside council, is outlined in the City’s Code of Ordinances. Under Section 161.02A, the Code outlines the requirements for the award of professional service agreements under a competitive process.

Exemptions to the competitive process are allowed under special circumstances, if approved by written waiver from the City Solicitor. These circumstances include:

- Emergency professional service contracts as defined herein
- Sole source professional service contracts as defined herein
- Contracts requiring compliance with terms and conditions of a court order, government grant or governmental order
- Contracts for expert witnesses or consultants associated with anticipated or pending litigation; and
- Intergovernmental agreements

As written, the Code grants excessive authority to the Solicitor to choose its own professional service vendors, which is at odds with the City's otherwise strong oversight procedures for contract selection.

Finding: The current City Code of Ordinances allows the city solicitor to award the Law Department's professional service agreements without the same level of oversight other City departments are required to pass.

Oversight of the selection of professional service agreements exists within all other city departments except the Law Department. Oversight provides accountability to ensure tax dollars are being spent in an effective, merit-based way. The Law Department's awarding of professional service contracts without any oversight is at odds with that goal.

RECOMMENDATION 7:

City Council should amend the Code of Ordinances to create internal controls that would provide oversight of the Law Department's professional service agreements and other purchases. For example, the Code could be amended to include review by Office of Management and Budget (OMB) or the City Controller's office.

According to Law Department personnel the Office of Management and Budget (OMB) has been working with the department to update Section 161.01A.

Citywide Contract Approval Process

When a contract is ready to be awarded for a department, the terms must be presented to the Law Department so it can be drafted and ready for signatures. 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 the terms into compliance. 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 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, procedural compliance, proper format and that the correct budget accounts are funded. When the City Controller signs off on the

contract, a copy is distributed to the requesting department, OMB, the Law Department, and the awarded vendor.

This multi-step process involves a considerable volume of documentation that, in the past, created an uneven and time-consuming process. Without a centralized template, relevant materials and information needed to draft contracts would be submitted via email or physical copy to the Law Department in piecemeal. To resolve this problem, a contract approval template called ATLAS was created and implemented in June 2016 by an assistant solicitor.

Finding: An assistant solicitor created an online contract intake template called ATLAS so contract documentation from other departments could be submitted all together.

ATLAS

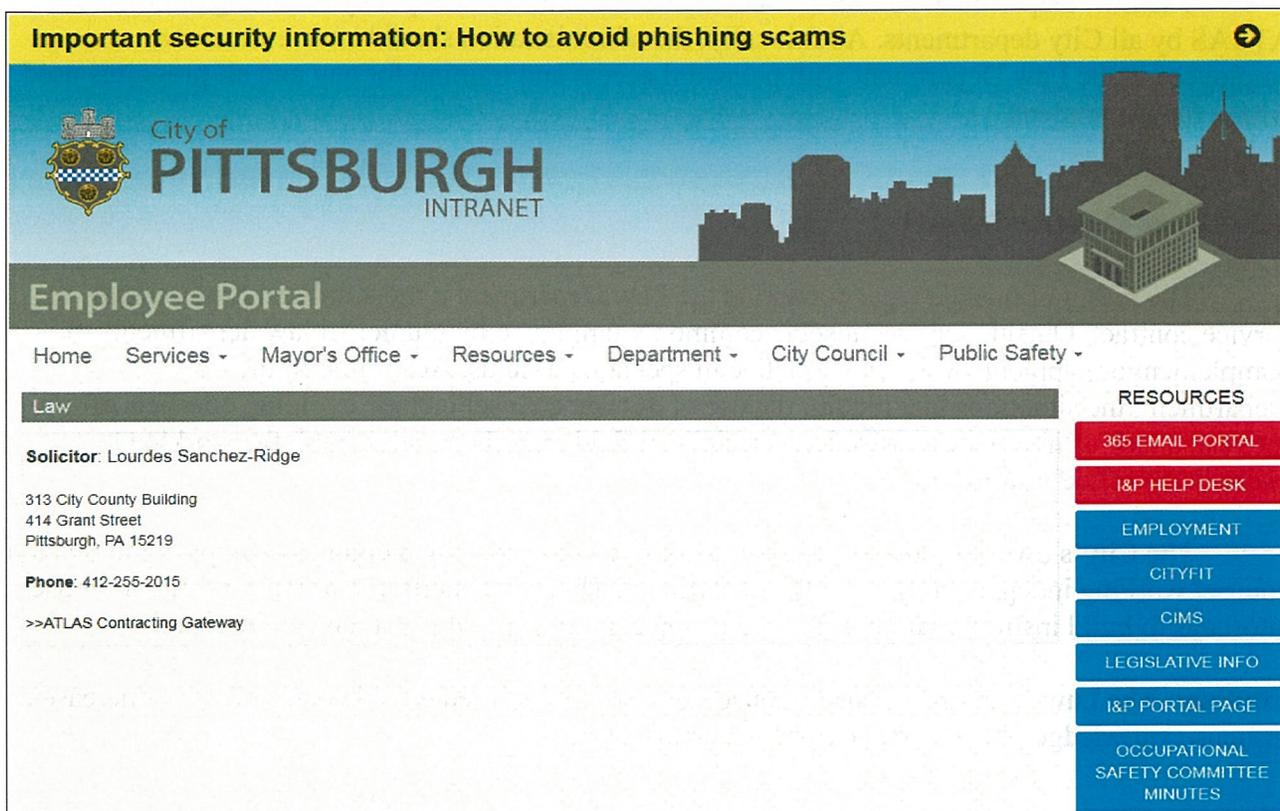
The Law Department has centralized the contract review process for all city departments by using an internal program called ATLAS. The program is hosted and provided by Typeform at a monthly professional user subscription fee of \$30 per month. Typeform is an online software service company that specializes in online form-building and hosted surveys. ATLAS uses the Typeform platform to provide City department's internal access to a decision tree system that guides users through the approval process of outside service contracts. Departments can access ATLAS under the Law department's page on the employee portal.

Photo 2 is a screenshot of the ATLAS link for city employees and examples of user prompts within ATLAS. Employees can access it by selecting the Law Department under the "Departments" header, and clicking on "ATLAS Contracting Gateway".

RECOMMENDATION 8:

The Law Department administration should work with the Department of Innovation and Performance (I&P) to better highlight the ATLAS portal or move it under the "Resources" column. The administration should also create and share informational materials with city departments to raise awareness of the tool to improve its usage.

Photo 2
Screenshot of ATLAS Link on Employee Portal



Source: City of Pittsburgh's Intranet

An assistant solicitor monitors the email requests generated by the program and directs them to the appropriate assistant solicitor or solicitor based on their area of legal practice. In 2017, a total of fifty-five contracts were submitted through ATLAS. Based on conversations with staff members, this system accomplished its goal of organizing the intake process.

Finding: ATLAS greatly streamlined the contract process approval for City departments by centralizing materials through one online portal.

Despite its efficiency, use of the tool is not mandated by policy. According to the assistant solicitor, the use of ATLAS in other departments has decreased since its initial creation. This has resulted in information not being submitted consistently which delays the creation of contracts.

Additionally, the assistant solicitor is the only individual who has access to or familiarity with the Typeform account. While its management requires very little time and can be done remotely, having multiple users would ensure that there is no loss of service in the case of an unexpected emergency or vacancy by the assistant solicitor.

Finding: There is currently no policy requiring city departments to use ATLAS and no one but one assistant solicitor who knows its password management procedures for future maintenance.

RECOMMENDATION 9:

The Law Department administration should make an official policy requiring the use of ATLAS by all City departments. Additionally, the administration should have at least two employees in the Law Department with password access and training for any and all programs used within the department.

Selection of Outside Counsel

The hiring of outside legal counsel is the Law Department's most utilized professional service contract. Outside legal counsel is commonly employed by municipal law departments to complement or supplement its legal practice in specialized fields. According to the Law Department, the situations that require the use of outside counsel include avoiding conflicts of interest, a lack of internal expertise in a specialized field, or, when anticipated, the workload exceeds the office's capabilities.

The City's own in-house attorneys collaborate with hired legal counsel as opposed to outside counsel working independently from the department. This is a benefit in that it allows the in-house attorneys to build institutional knowledge on subject matter they did not have beforehand.

Finding: The Law Department has in-house staff work with hired outside counsel. This increases in-house knowledge of the hired counsel's area of law.

RECOMMENDATION 10:

Law Department administration should have in-house attorneys continue to work closely with outside counsel vendors on cases to build skills and specialized legal knowledge that could be of use to the department in the future.

As referenced earlier, Section 161.02A(c) of the City Code of Ordinances includes outside legal counsel among the professional services agreements exempt from the City's standard competitive bidding process. One reason for this is time sensitivity; litigation often requires prompt action, and subjecting outside counsel to the competitive bidding process each time would restrict the City's ability to effectively defend itself in court.

Contracts with these vendors begin with a standard template, but language and terms are adjusted in each case. The City attorney who is assigned to a case will receive and review invoices from the vendor to ensure compliance with contract terms. That attorney will verify and sign off on the service and send the invoice to the secretary who files it and the City Controller's Office who pays it. It is then maintained by a separate staff member.

As a matter of procedure, the solicitor generally has full discretion to select outside counsel vendors. As explained by the city's outgoing solicitor, this determination is based on a broad consideration of factors, including a past relationship between the City and the vendor, and

consultation with the solicitor's professional legal network. In some cases, like civil rights litigation, the department will seek the advice of appropriate advocacy organizations.

Finding: There are no official policies to ensure that the selection of outside counsel meets merit-based criteria, avoids conflicts of interest, or verifiably controls costs.

While nothing was found to suggest past outside counsel vendors were selected improperly, formal policy to oversee the process could prevent possible conflicts of interest or the opportunity for collusion with vendors in the future. In the absence of competitive bidding, merit based oversight would ensure the department is using impartial judgment and the most effective use of taxpayer dollars.

The auditors referenced Altman Weil's "Best Practices of City and County Civil Law Offices" (*Report to Legal Management*, February 2002) as a source of best practices for the planning and selection of outside legal counsel in city law offices. It recommends the following:

- A clear policy and objective criteria for identifying those matters best handled in-house and those handled by outside lawyers and law firms;
- A competitive process, including selection criteria for awarding legal matters to firms providing the most cost-effective services;
- Deployment of an outside counsel "convergence" program (i.e., designation of preferred providers in exchange for large discounts); and
- Portfolio referral/bid process for routine, high-volume matters.

Aspects of the competitive bidding process can still be used in the selection of outside counsel to take advantage of competition between vendors and guarantee the best price for services. A Request for Qualifications (RFQ), for example, could help the department compile and maintain a list of local attorneys and firms with their specializations available for consultation when that help is needed.

The auditors found that cities such as Portland, Oregon and Austin, Texas have made this a regular practice. The Comptroller's Office of New Jersey has also recommended to its local government units the use of a competitive and public contracting process.

RECOMMENDATION 11:

The Law Department administration should draft and adopt an official policy concerning the selection of outside legal counsel based on industry best practices. This should include a list of subject matter areas that can be done in-house vs. those where outside counsel is better sought.

RECOMMENDATION 12:

The Law Department administration should make and save a list of all past outside counsel vendors who have contracted with the City. That list should note the vendor's area(s) of specialization as well as total expenses incurred by the City, both in fees paid to the vendor and any payouts as a result of litigation the vendor worked on.

RECOMMENDATION 13:

The Law Department administration should use the competitive bidding process in routine legal matters wherever possible, and work to promote a continually expanding pool of vendors and specialties.

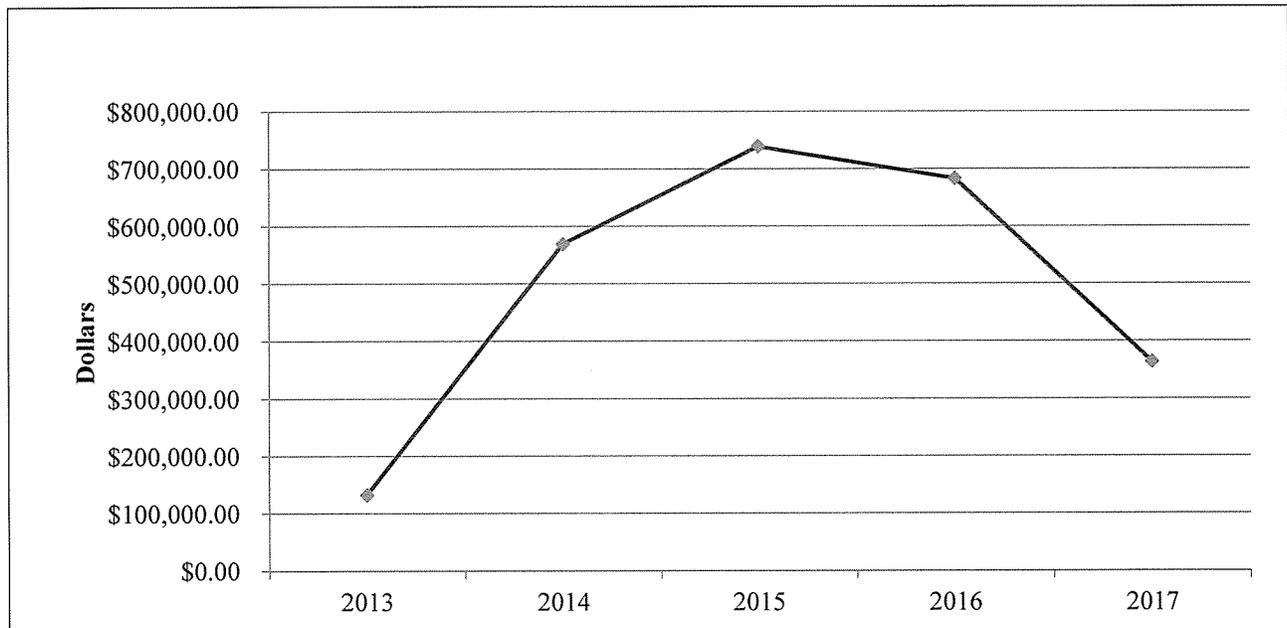
When not possible, a formal selection committee should be established composed of the solicitor and several other senior employees who would independently and privately score qualifying vendors on merit based criteria and provide written comments. Members of the selection committee should sign a “Non-Conflict of Interest Form” like the one used by another City department such as OMB. Evaluations, the names of evaluation committee members, and signed “Non-Conflict of Interest” forms should be kept on record for future inquiries and audits.

Cost of Outside Counsel

The auditors used OnBase and OpenBook Pittsburgh to retrieve and analyze contracts with outside counsel vendors. The Law Department provided the auditors spreadsheets from CityLaw outlining fees paid to outside counsel and disposition outcomes for the audit scope period and three preceding years. The scope was expanded because the auditors believed that the two year scope did not adequately illustrate the full evolution of rising costs associated with outside counsel since the department’s last audit.

Figure 5 shows the outside counsel expenditures for 2013 to 2017.

**FIGURE 5
2013-2017 Outside Counsel Expenditures**



Source: City of Pittsburgh Law Department

Finding: Expenditures on outside counsel increased substantially from 2013 to 2015, but dropped slightly in 2016 and more substantially in 2017.

The Law Department attributes this increase in spending, in part, due to individual cases requiring extensive outside counsel. For instance, the case of Freedom Unlimited, Inc. v. City of Pittsburgh alleges under the False Claims Act that the City improperly used Community Development Block Grant (CDBG) funds for approximately eight years up through 2014. This is a specialized area of law that involves potentially large penalties, which is why outside counsel was sought.

Table 10 lists the outside counsel contracts and hourly rates that were paid in 2016 and 2017.

TABLE 10
2016 - 2017 Hourly Rates for Outside Counsel Contracts Active

VENDOR	Contract Date	Contract Hourly Rate
Thomas, Thomas & Hafer, LLP	09/28/15	\$195.00
McGrail & Associates, LLC	11/25/15	\$175.00*
Cohen & Grigsby, PC	02/12/16	\$285.00
Burns White LLC	07/21/16	\$215.00
Curtin & Heefner, LLP	11/10/16	\$175.00
Campbell Durrant Beatty Palombo & Miller, PC	11/16/16	\$195.00
AquaLaw PLC	04/03/17	\$310.00*
AVERAGE		\$221.43

Source: CityLaw

*For contracts that included more than one hourly rate, an average was taken.

Outside Counsel Contract Terms

The auditors asked for the types of payment terms associated with outside counsel contracts. Law staff stated that outside counsel is mostly paid by the hourly fee that is in the signed contract. Examples of any type of payment associated with outside counsel contracts were requested.

Finding: The Law Department could not find any examples of payment arrangements to outside counsel vendors that were not billed at an hourly rate.

While hourly billing is the predominant fee arrangement in the legal industry, it also has many drawbacks. The American Bar Association’s “ABA Commission on Billable Hours Report” (2002) lists: a lack of cost predictability; disincentive for efficient use of time or cost control by the client; penalization for an efficient and productive counsel; a disincentive for communication between the lawyer and client; failure to discourage excessive layering of work and duplication; and itemized bills that report mechanical functions rather than measures of progress or success. This pits the client’s interests against the counsel’s interests rather than aligning them. For this reason, the ABA lists “any compensation system that rigidly ties compensation to billable hours a worst practice, because it elevates hours over all.”

Examples of Alternative Payment Arrangements

The ABA promotes the use of a number of alternatives, including fixed/flat fees, discounted rates, blended billing, contingent fees, or a hybrid model. A brief description of these other payment alternatives follows.

- Fixed/Flat Fees – Vendor charges a predefined amount for completion of service
- Discounted Rates – Vendor offers a discount on the typical hourly rate because of relationship with client, volume of work, or other factors
- Blended Billing – Variation of hourly billing, where one rate is charged regardless of who is completing the work
- Contingent Fees – Contract clearly states desired result, and part or entirety of fees are tied to success of that work
- Hybrid Model – Any combination of features of the above models and/or standard hourly billing

While a “not to exceed” provision is written into contracts as a way of preventing runaway costs, they are regularly amended by City Council to provide additional funding for outside counsel. Utilizing these listed alternative models could significantly control the cost of outside counsel expenses and encourage more effective counsel.

It would also decrease attorneys’ time spent reviewing invoices line by line for compliance, freeing up time that could be devoted to legal matters. Because of attorney-client privilege and City Council’s need to approve outside counsel bills, attorneys, rather than support staff, must be the ones to fulfill that role in order to speak in that forum without waiving privilege.

RECOMMENDATION 14:

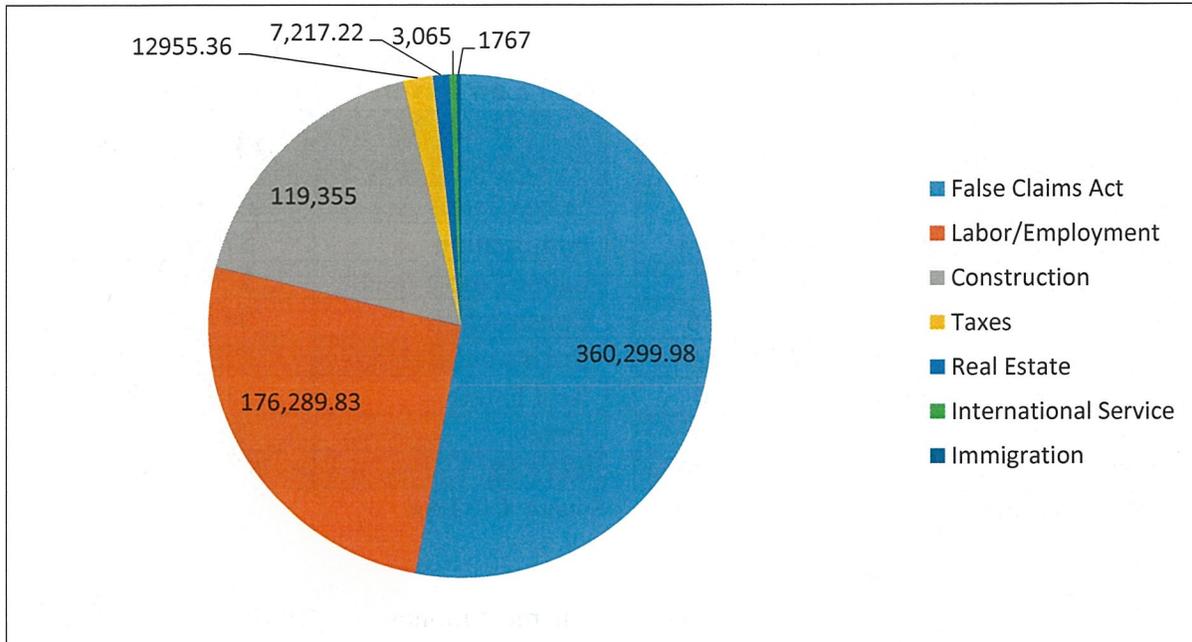
The Law Department administration should require outside counsel vendors to share alternative fee arrangements offered to other clients and encourage the use of alternative fee arrangements during contract negotiations.

RECOMMENDATION 15:

Law Department administration should develop a formal system for evaluating the work of outside counsel. It should be used to consider whether future contracts for specialized work should be made with the same vendor.

Figures 6 and 7 detail outside counsel expenditures from 2016 and 2017 by area of expertise.

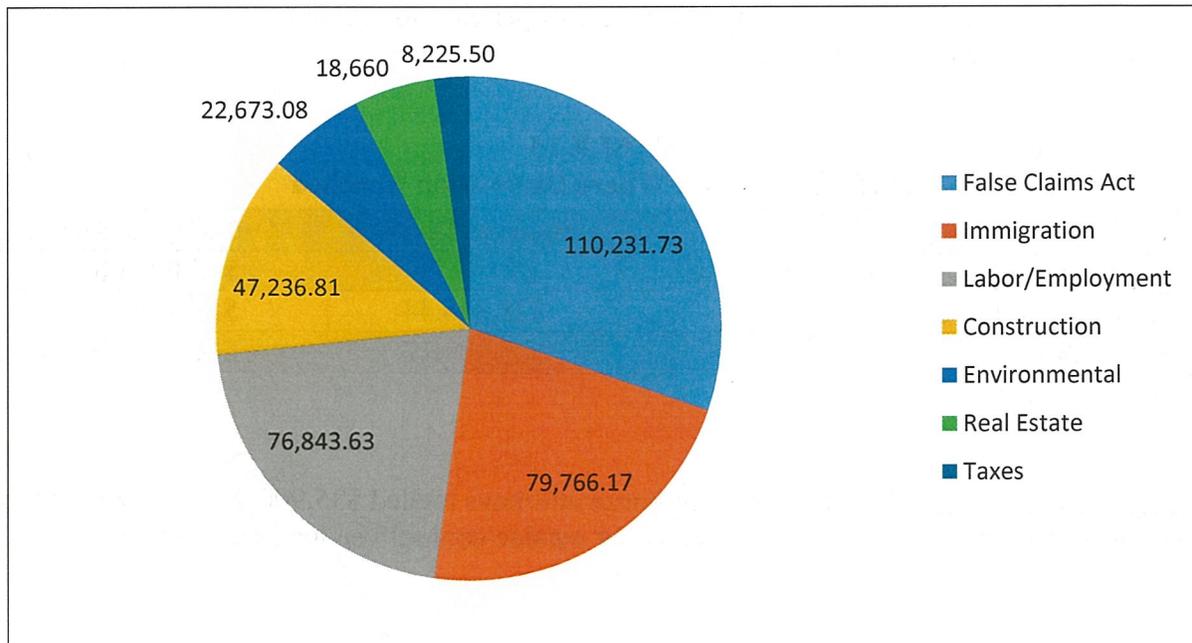
FIGURE 6
2016 Outside Counsel Expenditures by Area of Expertise



Source: CityLaw

In 2016, the most money spent on outside counsel was spent for defense under the False Claims Act. The same holds true in 2017, defense of the false claims act required the most money in paying outside counsel.

FIGURE 7
2017 Outside Counsel Expenditures by Area of Expertise



Source: CityLaw

For 2016 and 2017, the actual dollar amount spent can be found in Tables 11 and 12. These tables show the money spent for outside counsel by area of expertise.

TABLE 11
2016 Law Payments to Outside Counsel

AREA OF EXPERTISE	FEES PAID
False Claims Act	\$360,299.98
Labor/Employment	\$176,289.83
Construction	\$119,355
Taxes	\$12,955.36
Real Estate	\$7,217.22
International Service	\$3,065.00
Immigration	\$1,767.00
TOTAL	\$680,949.39

Source: CityLaw

TABLE 12
2017 Law Payments to Outside Counsel

AREA OF EXPERTISE	FEES PAID
False Claims Act	\$110,231.73
Immigration	\$79,766.17
Labor/Employment	\$76,843.63
Construction	\$47,236.81
Environmental	\$22,673.08
Real Estate	\$18,660.00
Taxes	\$8,225.50
TOTAL	\$363,636.92

Source: CityLaw

Again, defending the False Claims Act cost the most money in 2016 and 2017, \$360,299.98 and \$110,231.73 respectively. The tables also show that in 2017 the Law Department paid out a little over half in outside counsel fees as compared to 2016. In 2017 the Law Department spent 53% as much as in 2016.

Disposition Costs

Disposition costs pay outs with a court's final determination. Table 13 shows the average disposition dollar amount per case and the average cost per case for 2016 and 2017 for both the litigation division and outside counsel.

TABLE 13
2016 - 2017 Cases Where Disposition Reached

	Litigation Division	Outside Counsel
Average Disposition Amount Per Case	\$7,053.78	\$15,000.00
Average Cost Per Case	\$28,846.44	\$51,775.75
TOTALS	\$35,900.22	\$66,775.75

Source: CityLaw

Finding: On average, cases worked on by in-house attorneys totaled \$35,900.22, or 53.8% of the cost of cases worked versus those conducted on by outside counsel vendors, \$66,775.75.

Comparison In-House Attorneys vs. Outside counsel

Individuals working for the City receive more compensation than just a salary; city employees receive a variety of additional benefits. These benefits include: health, vision and dental. Every employee is different in benefit usage and cost. Factors depend on family size and whether or not additional benefits are purchased. However there is a basic cost the City spends. In order to have a fair representation of costs per city employee, any analysis must include the addition of benefit costs.

The auditors asked the City's Human Resources Department (HR) for an estimate as to how much it costs the City to provide employee benefits a year. HR gave specific benefit costs per employee. Using this information for the required analysis would have been too burdensome to calculate in a timely manner. Rather, the auditors used the Bureau of Labor Statistics' (BLS) estimate. The BLS December 2017 report on median benefit rates for state and local government employees is 31.7%. The following analysis was calculated using 31.7% of an individual's salary added to their base salary. This shows the entire costs associated with hiring an employee.

Table 14 shows the total cost of in-house litigation and average hourly cost per Law Department employees for 2016 and 2017. The employees chosen for this analysis were the city solicitor, deputy solicitor, assistant solicitors, and associate solicitors budgeted positions and their salaries.

TABLE 14
2016 - 2017 Average Hourly Cost per Law Department Solicitor

YEAR	Total Cost of Solicitor Salaries	Estimated Cost of Solicitor Benefits*	Number of Solicitors on Payroll	Average Hourly Cost**
2016	\$1,309,204.00	\$415,017.67	18	\$46.05
2017	\$1,399,157.00	\$443,532.77	19	\$46.62
AVERAGE	-	-	-	\$46.34

Source: CityLaw

*Estimates are based on the Bureau of Labor Statistics' December 2017 report on median benefit rates for state and local government employees, 31.7% of salary.

**Average hourly cost was calculated by taking the annual sum of solicitor salaries and benefits, divided by the total number of solicitors, then dividing by a standard work year of 2,080 hours.

For outside counsel contracts active in 2016-2017, the average hourly rate paid was \$221.43 an hour. Including all employees on payroll, the Law Department staff was paid an hourly rate of \$46.34 an hour during the same period, or 20.9% of the amount paid to outside counsel vendors.

Finding: The hourly rate for hiring outside counsel runs 4.78 times higher than the hourly rate for the Law Department's own employees.

Finding: The largest outside counsel expense during the scope of this audit was for representation in *Freedom Unlimited, Inc. v. City of Pittsburgh*, which involves allegations against the City under the False Claims Act.

Labor and employment is a consistent outside counsel expense that typically aligns with years in which the city engages in extensive collective bargaining with various employee unions. This is a specialized area of law in which the department would benefit from handling in house. The department notes that in-house attorneys work directly with outside counsel vendors on these matters and are gradually participating more in the collective bargaining process as institutional knowledge builds.

Because Pittsburgh left state financial oversight under Act 47 in 2018 and the restrictions on collective bargaining that came with it, future negotiations with employee unions are expected to become more time and resource intensive. The law firm of Campbell, Durrant, Beatty, Palombo & Miller, P.C. has represented the City in collective bargaining matters during that time, and Law Department attorneys have worked alongside the firm to build labor law knowledge.

RECOMMENDATION 16:

The Law Department administration should set a goal of significantly reducing outside counsel costs related to labor and employment, if not becoming fully self-sufficient in that division. Because union negotiations are expected to become more demanding, expanding the department's labor and employment division should be a top priority in future budget decisions.

Of the five cases during the scope of the audit worked on by outside counsel in which a disposition was reached, only one (1) resulted in a monetary sum judgement (an 80% success rate), compared to ninety-four cases worked on by in-house attorneys, with twenty resulting in a monetary sum (a 78.7% success rate). Because of the relatively small number of outside counsel cases during this scope, a larger sample is needed to definitively determine cost effectiveness. Still, the hourly rate of in-house attorneys ran at an estimated 15.9% of the cost of outside counsel with a similar success rate. With expenses on outside counsel costing approximately 19-36% of the salary budget, it would certainly be preferable to take on more cases within the department whenever possible.

To ensure trial attorneys' full effectiveness during a case, the solicitor sets pre-trial requirements to provide pertinent information, meetings with a group leader to ask questions as needed, and monthly meetings to discuss cases and strategy. It is also the current solicitor's intention to perform yearly evaluations of attorneys. Effectiveness of an outside counsel vendor is left to the solicitor's discretion. The ABA recommends evidence-based evaluations of outside counsel performance and outcomes, and provides reasons for avoiding future contracts with poorly performing vendors. A formal outside counsel evaluation form is also offered by Practical Law's "Working Effectively with Outside Counsel Checklist" (2016).

RECOMMENDATION 17:

To inform future contract decisions, the department should perform an assessment addressing a vendor’s effectiveness after they have completed duties outlined in their contract. It should include qualitative and quantitative benchmarks based on ABA recommendations.

Staffing Comparison

The auditors researched legal departments of other cities comparable to Pittsburgh in population. Table 15 compares the salary budgets of 5 similar size cities using Pittsburgh as a baseline.

TABLE 15
2017 Comparing Legal Department Salary Budgets of Cities
of Similar Population and Size of Pittsburgh

City	Legal Department Salary Budget	Share of Pittsburgh Law Department Salary Budget
Pittsburgh, PA	\$1,925,336	100%
Cincinnati, OH	\$4,628,870	240%
Toledo, OH	\$2,310,411	120%
St. Louis, MO	\$4,346,996	226%
Buffalo, NY	\$2,355,880	122%
Newark, NJ	\$3,348,996	174%

Source: Public municipal budgets found on comparable city websites

Finding: Compared to municipalities with population of a similar size, Pittsburgh’s Law Department accomplishes a comparable workload on a smaller budget.

“Best Practices of City and County Civil Law Offices” (*Report to Legal Management, February 2002*) recommends lean management and support staff among attorneys, but strong paralegal support of at least 1:4 per attorney to increase productivity. The Law Department currently only employs one paralegal, though the claims administrator and administrative assistant share related paralegal duties.

Based on these best practices and the budgeted attorney staffing levels for 2017, at least 4.75 paralegals (or support staff with similar duties) are suggested to effectively handle the department’s caseload. This level of staffing would allow each of the department’s existing legal divisions to be assigned at least one paralegal, shifting administrative duties away from attorneys.

For comparison, hiring an additional four support staff would amount to just 54% of the fees paid to outside counsel during 2017. While the department proposed a 2019 budget that included an additional paralegal, OMB denied their request. Based on observations of, and conversations with the current Law administrative staff, their effectiveness would be best maximized by support in claims investigations. This would free up time devoted to matters such as risk management in other departments, allowing the City to take a more proactive role in avoiding lawsuits, as opposed to a reactive role through case settlements.

Annual spending on outside counsel regularly runs in the range of 19-36% of the Law Department's own budget with hourly rates that run nearly 5 times higher than what is paid to in-house employees, yet produces similar outcomes in litigation. And despite the considerable workload undertaken by the department, its budget is smaller than any legal departments with cities of similar size examined.

RECOMMENDATION 18:

As a long-term goal, Law Department administration and OMB should begin expanding in-house staffing to meet the City's legal needs. While the City's past budgetary limitations under Act 47 warranted greater reliance on outside counsel, its current and projected fiscal situation affirms the need for more internal investment, particularly in the labor division.

As a start, the Law Department should propose a budget that includes the hiring of a full support staff including claims investigators and an e-discovery specialist to assist with the duties of the claims administrator. OMB should approve the request. This could be offset by a combination of less reliance on outside counsel and various cost control measures, including alternative fee arrangements and the hiring of additional in-house attorneys.

AUDITEE RESPONSE



CITY OF PITTSBURGH

Department of Law

William Peduto
Mayor

Yvonne S. Hilton
Chief Legal Officer and City Solicitor

November 21, 2019

The Honorable Michael E. Lamb, City Controller
Office of City Controller
1st Floor, City-County Building
414 Grant Street
Pittsburgh, PA 15219

Re: Response to 2019 Performance Audit Department of Law

CITY CONTROLLER'S OFFICE

2019 NOV 21 PM 3:21

RECEIVED

Dear Controller Lamb:

Thank you for providing me with the opportunity to respond to the 2019 Performance Audit of the Law Department performed by your office. The Law Department appreciates the time and efforts of Gloria Novak, Bette Puharic, Chen Liu, Mark Ptak, and the rest of your staff in completing such a thorough and thoughtful review.

We have carefully considered all of your recommendations in preparing this response. Below we have set forth your list of eighteen (18) recommendations and our reply to each one. Our response is designated as falling within one of the following categories: AGREED, AGREED-IN-PRINCIPLE, DISAGREED or NOTED. Where appropriate, we have also added additional comments.

RECOMMENDATION 1:

The Law Department administration should compile a list of requirements needed for an optimal legal case management system that meets all of its needs. As they migrate to the web-based version of CityLaw, the administration should determine if the new version meets those needs and if it would eliminate the problems dealt with in the past. If not, a Request for Proposal (RFP) should be issued to implement a new IT solution.

AGREED. The current case management system used by the City was procured in the early 1990s. In order to meet the critical needs of the Law Department in terms of both functionality and reliability, we have requested funding for an updated case management system and have been working with the Department of Innovation & Performance (I & P) and the Office of Management and Budget (OMB) to draft an RFP to be released imminently.

RECOMMENDATION 2:

If Law Department administration retains Cycom as a vendor, they should work with I&P, Cycom, and procurement in OMB to draft a multi-year contract that includes an updated and detailed support maintenance agreement with a fixed rate cost. An updated contract should require system upgrades to be made available at minimal cost.

NOTED. The Law Department is working with OMB to issue a new RFP for an updated case management system.

RECOMMENDATION 3:

Law Department administration should work with OMB and I&P to issue an RFP for a document management system that would allow them to upload, organize, search, and access the physical records they handle. It should have the ability to fully integrate with their case management system.

AGREED. Although sometimes referred to as a case management system, the requirements for a new document management system must also include the ability to upload, organize, search, and access non-litigation case related documents, including contracts, claims information, memoranda, labor and employment records and other internal files. As the Law Department provides confidential advice and holds privileged documents, integration with any City-wide applications would have to be carefully reviewed to ensure separation from general access documents.

RECOMMENDATION 4:

The Law Department administration should work with I&P to explore ways to allow claims against the City to be submitted electronically. An electronic system for filing claims would provide a timelier and more secure means of claim submission.

AGREED-IN-PRINCIPAL/DISAGREE IN PART. The Law Department already includes its claims form online on the Law Department web page and is certainly open to consideration of receiving claims electronically, although hard copies of support documentation may still be required to be submitted depending on the claim, which could instead lead to an increase in processing times. As noted in the Law Department's response to the 2012 audit for a similar recommendation at that time, based on previously attempted implementations, there have been concerns in the past that an electronic filing requirement would actually decrease efficiency and effectiveness. Moreover, (and as noted in our status update for 2012 Recommendation #5 herein) as the majority of claimants who call for claims-related information still request hard copies of claims forms and because not all residents have ready access to computers, we would be concerned if that was the only method of claims submission.

RECOMMENDATION 5:

The Law Department administration should update and properly code cases to reflect name changes and new departments or divisions. Until this transition is complete, dual titled department names should be used.

NOTED. When a new case management system is implemented, the Law Department intends to ensure that all department and division name changes and restructurings will be duly noted. At present, references to divisions do remain accurate within CityLaw.

RECOMMENDATION 6:

The Law Department administration should consider the ability to assign multiple dispositions codes when CityLaw is reviewed for renewal, upgrade, or replacement. This will allow for the Law department to generate more accurate reports based on multiple case outcomes.

AGREED.

RECOMMENDATION 7:

City Council should amend the Code of Ordinances to create internal controls that would provide oversight of the Law Department's professional service agreements and other purchases. For example, the Code could be amended to include review by Office of Management and Budget (OMB) or the City Controller's office.

NOTED/DISAGREE IN PART. Although the decision to amend the Code rests with City Council, which may decide to impose additional strictures, the Law Department's purchases, like other departments, are already and should remain subject to Chapter 161, which regulates procurement through competitive bidding, where required, for commodities and non-professional services and through RFPs, where required, for professional services. Additionally, the Law Department does work with OMB to release RFPs (e.g. the upcoming one for a new case management system.) There is a notable and sometimes necessary exemption in Section 161.02A(c) for the procurement of experts and consultants needed for anticipated or pending litigation. Often, there is not enough time to complete a full competitive process in such circumstances. Further, having an expert witness under a long-term retainer contract with the City could suggest excessive bias to a jury or other decision-maker, be a conflict of interest, or result in not having the right expertise available at the time needed.

RECOMMENDATION 8:

The Law Department administration should work with the Department of Innovation and Performance (I&P) to better highlight the ATLAS portal or move it under the "Resources" column. The administration should also create and share informational materials with city departments to raise awareness of the tool to improve its usage.

AGREED. The Law Department will plan to work with I&P in 2020 to ensure more user-friendly access to and awareness of ATLAS. Along that vein, we will also plan to circulate a memo to Department/Bureau directors as a reminder of basics involved with using ATLAS and will offer training sessions to anyone interested.

RECOMMENDATION 9:

The Law Department administration should make an official policy requiring the use of ATLAS by all City departments. Additionally, the administration should have at least two employees in the Law Department with password access and training for any and all programs used within the department.

AGREED. Although we have already requested that Departments/Bureaus use ATLAS when submitting requests for assistance in drafting professional services agreements, we will reiterate that the policy is to use ATLAS for submission of materials to assist the Law Department in preparing these agreements. We will also ensure that a second person has access to and can train on the use of the application.

RECOMMENDATION 10:

Law Department administration should have in-house attorneys continue to work closely with outside counsel vendors on cases to build skills and specialized legal knowledge that could be of use to the department in the future.

AGREED. Currently, our in-house attorneys already work with outside counsel in order to learn from the expertise of seasoned professionals in very specialized areas. Over the past few years, such coordination has occurred with subject matter areas including construction litigation, False Claims Act litigation, collective bargaining/labor negotiations, and tax ordinance/regulation review.

RECOMMENDATION 11:

The Law Department administration should draft and adopt an official policy concerning the selection of outside legal counsel based on industry best practices. This should include a list of subject matter areas that can be done in-house vs. those where outside counsel is better sought.

AGREED-IN-PRINCIPAL. The Law Department will work on a policy in 2020 for retaining outside counsel in line with best industry practices. While we can explore including a list of subject matter areas, the need for outside counsel is often quite case/project specific. For example, even in subject areas where we have in-house expertise, such as civil rights or employment law, there are circumstances where a conflict of interest may occur such that we cannot represent both our employees and the City of Pittsburgh.

RECOMMENDATION 12:

The Law Department administration should make and save a list of all past outside counsel vendors who have contracted with the City. That list should note the vendor's area(s) of specialization as well as total expenses incurred by the City, both in fees paid to the vendor and any payouts as a result of litigation the vendor worked on.

AGREED-IN-PRINCIPAL. In conjunction with developing a policy for retaining outside counsel in 2020, the Law Department will review a history of outside counsel selected over the past 5 years, including fees paid and final outcomes.

RECOMMENDATION 13:

The Law Department administration should use the competitive bidding process in routine legal matters wherever possible, and work to promote a continually expanding pool of vendors and specialties. When not possible, a formal selection committee should be established composed of the solicitor and several other senior employees who would independently and privately score

qualifying vendors on merit based criteria and provide written comments. Members of the selection committee should sign a “Non-Conflict of Interest Form” like the one used by another City department such as OMB. Evaluations, the names of evaluation committee members, and signed “Non-Conflict of Interest” forms should be kept on record for future inquiries and audits.

AGREED-IN-PRINCIPAL. The Law Department will continue to comply with required procurement practices. We will include a review of the internal competitive selection process in conjunction with our developing a policy for retaining outside counsel in 2020 to address transparency in the selection process.

RECOMMENDATION 14:

The Law Department administration should require outside counsel vendors to share alternative fee arrangements offered to other clients and encourage the use of alternative fee

AGREED-IN-PRINCIPAL. We will review requirements regarding the request for alternative fee arrangement when developing a policy for retaining outside counsel in 2020.

RECOMMENDATION 15:

Law Department administration should develop a formal system for evaluating the work of outside counsel. It should be used to consider whether future contracts for specialized work should be made with the same vendor.

AGREED. We will review requirements for evaluating outside counsel performance when developing a policy for retaining outside counsel in 2020.

RECOMMENDATION 16:

The Law Department administration should set a goal of significantly reducing outside counsel costs related to labor and employment, if not becoming fully self-sufficient in that division. Because union negotiations are expected to become more demanding, expanding the department’s labor and employment division should be a top priority in future budget decisions.

NOTED. As noted in our status response to 2012 Recommendation #10, the City currently dedicates four attorneys to staff the Labor and Employment Group. The volume and scope of the work, ranging from the handling of grievances, arbitrations, commission proceedings and lawsuits to providing daily compliance advice has required the Law Department to engage outside counsel, particularly during collective bargaining negotiation years. However, as internal experiences increases in-house, particularly with respect to collective bargaining, the need for outside counsel is decreasing accordingly.

RECOMMENDATION 17:

To inform future contract decisions, the department should perform an assessment addressing a vendor’s effectiveness after they have completed duties outlined in their contract. It should include qualitative and quantitative benchmarks based on ABA recommendations.

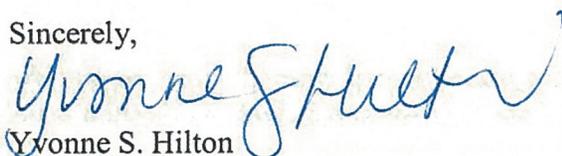
AGREED. We will review requirements for evaluating outside counsel effectiveness when developing a policy for retaining outside counsel in 2020.

RECOMMENDATION 18:

As a long-term goal, Law Department administration and OMB should begin expanding in-house staffing to meet the City's legal needs. While the City's past budgetary limitations under Act 47 warranted greater reliance on outside counsel, its current and projected fiscal situation affirms the need for more internal investment, particularly in the labor division.

AGREED. As the audit highlights in its Finding re: Staffing Comparison section, the City of Pittsburgh Law Department's budget is smaller than any of the similarly-sized city legal departments examined by the auditors. Further, the audit notes that we are performing a "comparable workload on a smaller budget." This is due to the incredibly hard work of in-house attorneys and staff. The proposed Operating Budget for 2020 includes two additional attorneys and one additional legal secretary, which is an important step in the direction suggested. We will take a careful look at the current composition of staff during the first half of 2020 and make additional staffing requests for the 2021 budget as deemed necessary to enable the Law Department to continue providing efficient and effective legal services for the City of Pittsburgh.

Sincerely,



Yvonne S. Hilton

City Solicitor and Chief Legal Officer