

Amended
CITY OF STURGEON BAY
FINANCE/PURCHASING & BUILDING COMMITTEE
TUESDAY DECEMBER 29, 2020
Council Chambers, City Hall - 421 Michigan Street
4:00pm

1. Roll call.
2. Adoption of agenda.
3. Public comment on agenda items and other issues related to finance & purchasing.
4. Consideration of: Purchase two 2021 Ford Explorer Police Vehicles.
5. Consideration of: Memo of Understanding between the City and Bay Shipbuilding/Fincantieri
Re: Beautification of 3rd Avenue.
6. Consideration of: Annexation Agreement with Fox Valley Storage for Wilke Property.
7. ***Consideration of: RFP for City Attorney.***
8. Review bills.
9. Adjourn.

NOTE: DEVIATION FROM THE AGENDA ORDER SHOWN MAY OCCUR.

Notice is hereby given that a majority of the City Committees may be present at this meeting to gather information about a subject over which they have decision-making responsibility. If a quorum of a Committee, does attend, this may constitute a meeting of the aforementioned Committee and is noticed as such, although no formal action will be taken at this meeting.

Posted:
Date: 12/23/20
Time: 1:30 pm
By: LS

Finance/Purchasing & Building Committee Members:
Helen Bacon, Chair
Seth Wiederanders, Vice Chair
Dan Williams



Josh Van Lieshout
City Administrator

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Memorandum

To: Finance Committee
From: Josh Van Lieshout
Re: Soliciting proposals for City Attorney
Date: September 4, 2020

Alder Reeths has requested the Finance Committee consider issuing a request for proposals for the services of City Attorney, as I understand her concerns, they center on the cost of general legal services. This request has been placed on the agenda of the Finance Committee, in 2018 this effort was run through the Personnel Committee. In advising Alder Reeths after Tuesday's Council meeting, I had forgotten that the matter came in front of the Personnel Committee in 2018. Ultimately appointments to the office of City Attorney is up to the Common Council.

In the fall of 2018, the City of Sturgeon Bay issued a similar solicitation (attached). Ultimately two firms responded to the RFP, the City selected the firm of Davis & Kuelthau. In advance of the decision to issue a request for proposals, a brief cost analysis was performed against the cost of hiring an attorney on staff. At that time it was determined to be economically advantageous to continue with attorney-client type of relationship.

The City currently maintains relationships with a number of different attorneys and law firms for different purposes. For general counsel and to serve as City Attorney, the Common Council appointed Jim Kalny and the Davis and Kuelthau firm. Attorney Kalny aids with contract review, ordinance drafts and revisions, general legal opinions. Labor matters regarding labor contract negotiation, discipline and similar issues are handled through Buelow Vetter. Debt issuance, and tax compliance is handled principally with Rebecca Speckhard at Quarles, and finally, prosecutorial and local civil code enforcement services are conducted locally by Jon Pinkert, Pinkert Law Firm.

The process of selecting and retaining legal counsel is time intensive and deserves careful consideration, as there are a number of factors to consider that go beyond rates. To aid the discussion, I have included the prior analysis, request for proposals and interview questions.

Options

Proceed, refer to the Personnel Committee, or take no action on the request. Should the Committee choose to proceed, it might serve the discussion better if the previous analysis included a review of where those general legal expenses are occurring, as I suspect most are related to TID 4 and SBHSF. As the sublease with SBHSF comes to conclusion, I expect our legal fees will also diminish.

To: Mayor Birmingham and the Common Council

From: Josh Van Lieshout, City Administrator

Date: August 30, 2018

Re: Evaluation of contracted and staff attorney costs

There are many aspects to consider when evaluating the creation of a new staff position, especially that of City Attorney. Like any research project, we start with the relevant municipal code to determine if there are matters of local law to consider. Below are excerpts from the City of Sturgeon Bay Municipal Code that speak to the appointment of the City Attorney.

1.05 - City attorney.

- (1) *Appointment.* The city attorney shall be appointed by the city council, shall take office May 1 and shall thereafter hold office for an indefinite term, subject to § 17.12(1)(c) and (d), Wis. Stats., relating to the removal and suspension of city officers.
- (2) *Duties.* The person so appointed to the office of city attorney shall have the following duties:
 - (a) Conduct all the law business in which the city is interested.
 - (b) When requested by city officers, give written legal opinions, which shall be filed with the clerk-treasurer.
 - (c) Draft all city ordinances, bonds and other legal instruments as may be required by city officers.
 - (d) Examine the tax and assessment rolls and other tax proceedings and advise the proper city officers in regard thereto.
 - (e) When authorized by ordinance or resolution, defend actions brought against any officer or employee of the city or of any board or commission thereof growing out of acts done in the course of his/her employment or out of any alleged breach of his/her duty as such officer or employee, excepting actions brought to determine the right of such officer or employee to hold or retain his/her office or position and excepting also actions brought by the city against any officer or employee thereof.
 - (f) Render legal assistance to the common council, fire and police commission, mayor, city administrator, clerk-treasurer, director of municipal services/city engineer, assessor, chief of police, chief of fire department and alderpersons of the city.
 - (g) Perform such other acts as may be required by statute.

(Code 1992, § 1.05)

State Law reference— City attorney generally, § 62.09(12), Wis. Stats.

31.08 - Charter Ordinance No. 8, an ordinance amending the Charter of the City of Sturgeon Bay relating to the selection and tenure of the city attorney.

The Common Council of the City of Sturgeon Bay do ordain as follows:

Section 1. The City of Sturgeon Bay, Wisconsin, hereby elects pursuant to §§ 62.09(3)(b)6, 62.09(5)(b) and 66.01, Wis. Stats., that the method of filling the office of city attorney, the tenure and the duties thereof shall be as hereinafter provided.

Section 2. The city attorney shall hereafter be appointed by the common council, shall take office on May 1 of 1954 and shall thereafter hold office for an indefinite term subject to § 17.12(1)(c) and (d), Wis. Stats., relating to the removal and suspension of city officers.

Section 3. The person so appointed to the office of city attorney shall have the following duties: conduct all the law business in which the city is interested; keep a docket of all actions in courts of record to which the city is a party, in which shall be entered in brief all steps taken and which shall be open to inspection at all reasonable hours; shall, when requested by city officers, give written legal opinions which shall be filed with the clerk; shall draft all city ordinances, bonds and other legal instruments as may be required by city officers; shall examine the tax and assessment rolls and other tax proceedings and advise the proper city officers in regard thereto; shall, when authorized by ordinance or resolution, defend actions brought against any officer or employee of the city or of any board or commission thereof, growing out of acts done in the course of his/her employment, or out of any alleged breach of his/her duty as such officer or employee, excepting actions brought to determine the right of such officer or employee to hold or retain his/her office or position, and excepting also actions brought by such city against any officer or employee thereof; shall render legal assistance to the Sturgeon Bay Utilities Commission, the school board, board of health, board of police and fire commissioners, the mayor, clerk-treasurer, engineer, assessor, chief of police, chief of fire department and aldermen and supervisors of said city; shall do and perform such other acts as may be required by statute.

Section 4. This ordinance shall be deemed to be an amendment to the Charter of the City of Sturgeon Bay and §§ 62.09(3)(b)6 and 62.09(5)(a) and (b), Wis. Stats., being a part of the General Charter Law of the City of Sturgeon Bay, Wisconsin, shall not apply.

Section 5. This is a Charter Ordinance and shall take effect 60 days after its passage and publication unless within such 60-day period a referendum petition as provided by § 66.01, Wis. Stats., shall be filed, in which event this ordinance shall not take effect until it shall have been submitted to a referendum vote of the electors and approved by a majority of the electors voting thereon.

Adopted December 15, 1953.

There are provisions for the position of city attorney in the state statutes as well. Chapter 62.09 Wis. Stats. Establishes the position of City Attorney as an officer of the City.

62.09 Officers.

(12) Attorney.

(a) The attorney shall conduct all the law business in which the city is interested.

(c) The attorney shall when requested by city officers give written legal opinions, which shall be filed with the clerk.

(d) The attorney shall draft ordinances, bonds and other instruments as may be required by city officers.

- (e) The attorney shall examine the tax and assessment rolls and other tax proceedings, and advise the proper city officers in regard thereto.
- (f) The attorney may appoint an assistant, who shall have power to perform the attorney's duties and for whose acts the attorney shall be responsible to the city. Such assistant shall receive no compensation from the city, unless previously provided by ordinance.
- (g) The council may employ and compensate special counsel to assist in or take charge of any matter in which the city is interested.

In Wisconsin it is very common for communities to hire an attorney in private practice to serve and execute the duties of City Attorney. Like other professions, legal services are highly specialized and this certainly true in the public sector. It is not uncommon for a community to have a city attorney on staff but still rely on experts in certain matters when needed.

It can reasonably be assumed that the City would make use of specialized attorneys for matters like tax, debt issuance, environmental, prosecution, and in some cases land use. It would also be reasonable to expect a municipal attorney to have sufficient knowledge and experience in contracts, real estate, and basic labor law. For this reason, I combined our annual general and specialized labor legal expenses, but excluded specialized fees for environmental and tax and debt issuance services from this analysis. Defense costs, because they are largely paid for by the City's insurer, are excluded as well.

In examining the cost to hire a staff municipal attorney, it is best to use a range for a salary, as like any profession, qualified attorneys will have varying degrees of expertise and experience that would likely be factored into the negotiated salary.

In establishing a range for salary, I relied on Door County's recently completed wage and salary study which defined a low and high end for both an assistant corporation counsel and corporation counsel. The range used below is the expected mid-point average of both positions.

	Low	High	Ave.
Salary Range	85,104	106,518	95,811
Health & Dental	24,510	24,510	24,510
Retirement & FICA	12,085	15,125.56	13,605
Total Personnel	121,699	146,154	133,926

Health and dental costs assume a family plan for each. Retirement and FICA is based on standard required contribution rates.

Hard costs such as salary and fringe benefits are certainly major items to consider, but there are other costs as well that would have to be born by the City entirely, rather than split amongst other customers, those expenses include training to maintain licensure, professional memberships (national, state and local bar fees), research and technology needs. These costs are represented in the table below.

Other Professional Expenses	
Prof. Assoc. Membership	1,500
Prof. Dev. & Travel	4,500
Computer / Software	3,000
Total	9,000

It could be expected that the cost of a staff municipal attorney be approximately \$143,000.

Like engineers attorneys are licensed by states, not all attorneys are eligible to practice law in all states or courts, consider federal court, or enforcement actions that may need to be taken out of state, such as docketing, filing liens, etc. Additional expenses for these types of infrequent but sometimes necessary.

In reviewing the regular general fund expenses for general legal services and labor law, the City of Sturgeon Bay between 2014 and 2017 spent on average \$46,178.

General Fund Legal Expenses					
	2014	2015	2016	2017	Average
General	49,541	42,831	34,656	37,019	41,012
Labor	2,182	4,176	8,890	5,416	5,166
Total	51,723	47,007	43,546	42,435	46,178

Consideration of rates and how those may impact the decision of the Common Council. The Pinkert Firm was charging the City a rate of \$145/hr. Reviewing our current legal rates, the City can expect to pay a rate between \$200 and \$270 per hour for experienced municipal counsel. Using the rate of \$145/hour, the City used an estimated average 283 hours of general legal services. Using 283 hours of legal service at \$200 per hour reveals an estimated cost of \$56,600, at the upper end of the range, we can expect a cost of \$76,500.

**CITY OF STURGEON BAY
REQUEST FOR
PROPOSALS FOR LEGAL
SERVICES**

I. STATEMENT OF PURPOSE

The City of Sturgeon Bay invites attorneys qualified to practice law in the state of Wisconsin to submit a proposal to provide general legal services for the City.

This RFP and the interview process will be operated by the City of Sturgeon Bay Personnel Committee, subject to approval by the Common Council.

II. GENERAL INFORMATION

The City of Sturgeon Bay is located in Door County and is in need of legal services as a result of the Common Council choosing to seek requests for proposals. The City of Sturgeon Bay has an estimated population of 9,310 and is served by a Mayor and seven Council members. The City of Sturgeon Bay has a complement of professional staff, working in the areas clerk, human resources, finance, engineering, community development, municipal services and administrator.

III. SERVICES TO BE PROVIDED

- A. Provide general legal counsel for the City(s), the Mayor and Common Council(s) and other department heads and officials of the City. When requested by authorized personnel, the attorney shall give written legal opinions, which are to be filed with the City Clerk.
- B. Function as legal advisor to all Departments of the City government and represent the City in legal matters as requested.
- C. Draft ordinances, resolutions, contracts, and other documents as may be required by the City.
- D. Represent the City and advise the Board of Review during meetings.
- E. Apprise City officials as needed about changing laws and other legal matters that may be of interest and/or concern to the City.
- F. Render oral advice to the City Council and City Staff.
- G. Assist as necessary in the processing of insurance claims and coordinate with the various insurance carriers and defense counsel as required.
- I. Attend meetings of the City bodies as requested.
- J. Provide storage of existing files.

Legal services will be primarily limited to general inquiries and support.

IV. PROPOSAL REQUIREMENTS

Submittals should include responses to each of the following items. Include other information as appropriate to address the services the City can expect from the attorney.

- A. Profile and history of yourself and your firm including attorneys in the firm and a list of the principals. Indicate the attorney(s) who will be responsible for work performed for the City.
- B. A listing of all current and past municipal government clients including the name and telephone number of the client contact.
- C. Current fee schedule. Indicate whether the fee schedule varies for different types of legal work or by attorney. Be sure to include travel fees as well.

V. EVALUATION CRITERIA

Submittals will be evaluated based on the following criteria:

- A. Qualifications and experience of the attorney and/or firm in working with municipal government.
- B. Experience and availability of staff assigned to serve the City.
- C. Scope and cost of services.
- D. References.

VI. TERMS AND CONDITIONS

- A. The City reserves the right to accept or reject any or all proposals. The City reserves the right to award a contract to the next most qualified attorney/firm if the successful attorney/firm does not execute a contract within forty-five (45) days after award of the proposal.
- B. The City reserves the right to request clarification of the information submitted and to request additional information of one or more applicants.
- C. The attorney's/firm's proposal must be received at the address below by 4:30 p.m. on December 1, 2018:

City of Sturgeon Bay
Attn: Josh Van Lieshout, Administrator
421 Michigan Street
Sturgeon Bay, Wisconsin 54235

- D. All questions regarding this request for proposals should be addressed to Josh Van Lieshout, City Administrator, at (920) 746-6905 or jvanlieshout@sturgeonbaywi.org

TENTATIVE SELECTION SCHEDULE

The following tentative schedule will be followed for selection of an attorney:

- A. November 1, 2018-RFP advertised and mailed to attorneys
- B. December 1, 2108 -Proposals due
- C. December 3-7, 2018 -Selection of firms for interviews and scheduling
- D. December 10-14, 2018 -Interviews with selected attorneys/firms by Personnel Committee
- E. January 2, 2018 –Common Council reviews recommendation for appointment.
- F. January 3, 2019 - Term of appointment commences

City of Sturgeon Bay

Interview questions for City Attorney

January 7, 2018

1. Tell us about yourself and your firm, and why you are interested in serving as City Attorney?
2. You have served a wide variety of communities, what do you believe are the most important issues facing a City Attorney?
3. Responsive, thorough, and concise legal advice is an important aspect of a good city attorney. The ability to communicate and respond to issues via phone, email and in person in a timely manner is expected. How do you plan on being responsive and thorough in meeting the legal needs of the City of Sturgeon Bay?
4. When giving advice, how do you balance the need for accuracy with speed?
5. How do you keep your municipal clients apprised of changes in the law that may impact their municipality?
6. Who handles your correspondence? Do you type your own letters? Agreements, etc.?

7. Attorney's must regularly attend seminars for the purposes of meeting Continuing Legal Education requirements. Tell us about some seminars that you have recently attended.
8. From time to time a city attorney will find themselves at odds with a council member or staff member with regard to legal advice that is being rendered. Tell us how you have navigated or negotiated your way through this situation?
9. During your career, has an elective body ever chosen to proceed on a matter that is in conflict with oral or written advice you have given? How did you respond?
10. The Common Council is about to decide a significant matter that has drawn the attention of the media and public. The Mayor has asked you to be in attendance at their next Council meeting, however a conflict on your schedule develops. How did you respond? What did you do?
11. A Council member calls you asking for advice on a City matter, you give them an oral answer over the telephone. At the next meeting the Mayor calls you and tells you that you were quoted by this Council member and is surprised that the quotation is in conflict with other advice that has been rendered. How do you respond to the Mayor? How do you respond to the Council member?

12. The Mayor, City Administrator, and Community Development director ask you to review a draft development agreement. The Council President is in love with it, the agreement and ideas behind it are absolutely horrible. What do you do?
13. The City of Sturgeon Bay is fortunate to be served with a very experienced and knowledgeable management team. In serving as City Attorney, how might you use their expertise? How do you see yourself interacting with other professional staff?
14. This RFP did not request labor relations or human resources services. However from time to time simple issues arise, would you be willing to render general oral advice on such matters?
15. The City of Sturgeon Bay has four tax increment finance districts. Please share your experience in working on tax increment district issues.
 - a. Developing a TID Plan?
 - b. Creating development agreements?
 - c. Working on City-Developer loans?
 - d. Real estate transactions?
16. A significant amount of City regulation involves property (nuisances, subdivision rules, zoning, boards of appeals, etc.) Tell me about your experience working in these areas.

17. As budgets remain static and public demands for services continue to grow, municipalities are relying more and more on intergovernmental agreements to fulfill community needs. Tell us about intergovernmental agreements you have worked on, success and failures.

a. What in your opinion has made some succeed and others fail?

b. What role should the City Attorney have in negotiating these agreements?

18. Tell me about your experience drafting ordinances that may be enforced by a police or fire department. What experience do you have that will help address the concerns of law enforcement and an elective body?

19. The City of Sturgeon Bay does not often find itself prosecuting zoning or other land use violations. How have you worked with professional staff who are unaccustomed to assembling a case? Professional staff who have never testified?

20. Municipal codes are sometimes ambiguous; tell me about a time you had to referee an ambiguity in a code? Do you have a default perspective (ie. Interpret in favor a land owner, favor the city etc.)?

21. While this RFP does not include prosecution services, tell me about your experience working on civil prosecution, working with prosecutors?

22. How often do you participate in a trial? Have you practiced before the Door County Circuit Court?
23. You have worked in the public sector for many years and in many communities and have developed broad network of connections. How might you use those connections to help the City of Sturgeon Bay?
24. Davis Kuelthau is a large firm with many clients and many resources and a significantly higher hourly rate than the other firm being interviewed. Why should the City of Sturgeon Bay hire D/K? What things can D/K do to control cost and provide adequate service?
25. Vande Castle Law is a small firm, with six attorneys. In reviewing your client list, you serve a number of towns, special boards and commissions as well as special counsel to larger municipalities. Does your firm have the resources to serve a community of this size?
26. What questions do you have for us? What question should be have asked that we haven't?