



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 18-100, Version: 1

Introduce, waive reading, and set for adoption on February 13, 2018, an ordinance amending the County Code by: 1) adding Chapter 2.21 to set forth more specifically the role and duties of the County Counsel and the Office of the County Counsel; 2) amending Chapter 2.32 to authorize the District Attorney, Public Defender, and County Counsel to engage independent contractors for expert, legal, and other services where the aggregate cost does not exceed \$100,000 if certain budgetary conditions are met, and clarifying the exceptions to the County Purchasing Agent's authority to engage independent contractors, specifically excepting contracts for legal services and certain other specified types of services; and 3) amending Chapter 5.16 to clarify the process of filing claims, the settlement of claims and litigation, and the procurement of insurance. (CORRECTED ATTACHMENT SUBMITTED VIA SUPPLEMENTAL)

RECOMMENDATION:

It is recommended that the Board of Supervisors introduce, waive reading, and set for adoption on February 13, 2018, an ordinance amending the County Code by: 1) adding Chapter 2.21 to set forth more specifically the role and duties of the County Counsel and the Office of the County Counsel; 2) amending Chapter 2.32 to authorize the District Attorney, Public Defender, and County Counsel to engage independent contractors for expert, legal, and other services where the aggregate cost does not exceed \$100,000 if certain budgetary conditions are met, and clarifying the exceptions to the County Purchasing Agent's authority to engage independent contractors, specifically excepting contracts for legal services and certain other specified types of services; and 3) amending Chapter 5.16 to clarify the process of filing claims, the settlement of claims and litigation, and the procurement of insurance.

SUMMARY:

Consistent with state law, the County has chosen to employ the services of a County Counsel rather than rely on the services of the District Attorney for legal advice and civil litigation. Every County in California does the same. The County Code has never been updated to specifically set forth the duties of the County Counsel as set forth in state law and as designated by the Board of Supervisors from time-to-time, and it is appropriate to do so at this time.

In addition, the Board of Supervisors recently determined that the Risk Management functions of the County will remain in the County Counsel's Office, with direction to strengthen the claims handling process and insurance procurement. It is appropriate that the County Code be updated to more specifically set forth those responsibilities, including the processing of claims and lawsuits, settlement authority and binding for insurance.

Finally, it is also appropriate for the County Code to be updated to address the contracting authority of the legal departments of the County (County Counsel, District Attorney, and Public Defender) in order that they may timely procure necessary legal and expert services in furtherance of their respective responsibilities.

DISCUSSION:

State law historically provided that a county receive legal services from the District Attorney (in addition to the duties of that office as the public prosecutor). Government Code section 27640 authorizes the Board of Supervisors to appoint a County Counsel, and section 27642 authorizes the County Counsel to discharge the

duties of the District Attorney except for those as the public prosecutor. The County long ago chose to appoint a County Counsel in lieu of the District Attorney but the County Code has never been updated to specifically set forth the duties and responsibilities of the County Counsel, as the Code does for other officers of the County. Accordingly, the County Counsel recommends that the Board adopt an ordinance amending the County Code to specifically provide for those duties and responsibilities, including those of the Risk Manager for the County.

In addition, and following a report on certain issues by the Auditor - Controller, the Board of Supervisors determined to keep the Risk Management functions of the County within the County Counsel's Office, and authorized the County Counsel to make organizational changes in furtherance of that directive. The County Counsel therefore recommends that the Board amend the County Code to specifically provide for the exercise of risk management functions for the County, and the processing, consideration, and settlement of claims and lawsuits against the County. The recommendations include, consistent with state law, that the County Counsel, with the approval of the CAO for general liability claims and lawsuits, and the Human Resources Directors for Workers' Compensation claims and lawsuits, have settlement authority up to fifty thousand dollars (\$50,000). Utilizing a conjunctive approval process (County Counsel, and CAO and HR Director) ensures internal control over claim and litigation settlement. In addition, the authorization to contract for insurance has never been formally delegated and therefore the authority to bind and enter insurance contracts was not clear. The proposed code amendments create the flexibility needed to timely bind coverage and legal authority enter contracts.

Finally, the conduct of litigation, whether civil by the County Counsel, prosecutorial by the District Attorney, or defense by the Public Defender, often requires the immediate, necessary and confidential retention of legal and expert services, or other associated expenses, that cannot await the normal process of securing such services and associated expenses through the County Purchasing Agent. The County Code has provided for such exceptions to the contracting process, but those sections are not particularly clear on the subject. Therefore, the County Counsel recommends amending the County Code to more clearly provide for the contracting authority of those departments (County Counsel, District Attorney and Public Defender) in order to provide for the timely, necessary and confidential provision of services allowing those County officers to discharge their responsibilities.

OTHER AGENCY INVOLVEMENT:

The CAO concurs in the recommendation.

FINANCING:

This action has no financial impact not otherwise incurred by the County.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

These actions will help ensure the timely provision of necessary legal services to the County, including those of County Counsel, District Attorney and Public Defender.

Mark a check to the related Board of Supervisors Strategic Initiatives

☐ Economic Development

☒ Administration

☐ Health & Human Services

☐ Infrastructure

☒ Public Safety

Prepared by:

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Approved by:

Charles J. McKee
County Counsel

enclosures: Attachment A - draft ordinance
Attachment B - underline/~~strikeout~~