



## Legislation Text

---

**File #:** 16-391, **Version:** 1

---

*Report Prepared by: Kelly C. Fincher, Chief Deputy City Attorney*

**SUBJECT:** Consideration of Retention of Berliner Cohen, LLP for Interim City Attorney and Interim Legal Services

### REPORT IN BRIEF

It is requested that the City Council authorize the retention of the law firm Berliner Cohen, LLP to provide Interim City Attorney Services, including the appointment of Jolie Houston as Interim City Attorney.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving an Agreement for Interim Legal Services for Interim City Attorney Services with Berliner Cohen, LLP, with Jolie Houston being appointed as the Interim City Attorney; and,
- B. Authorizing the Finance Officer to make the appropriate budget adjustments.

### ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Provide direction on specific revisions to the Agreement; or,
- 3. Request additional information; or,
- 4. Continue the matter to a certain date; or,
- 5. Decline to take action.

### AUTHORITY

Charter of the City of Merced, Sections 603 and 1105

### CITY COUNCIL PRIORITIES

N/A

### DISCUSSION

The City Attorney's position is currently vacant and the City is in the process of filling that position by a recruitment conducted by the City's Support Services Department. It is anticipated that the recruitment process will take between four to six months to complete and that a new City Attorney will be in place within six months. In addition, the City Attorney's Office recently had a sudden departure of another attorney who served in the position of Senior Deputy City Attorney. The City has not

commenced a recruitment to fill the Senior Deputy position and likely will not do so until a City Attorney is selected by the City Council and he or she begins his/her employment with the City.

There is currently only one attorney in the City Attorney's Office who is greatly supported by two very experienced support staff members; a paralegal and a legal secretary. However, due to the important role that the City Attorney's Office has within the structure of the City and given the current work load of the office, additional legal assistance is needed until a City Attorney is selected to ensure that the City's legal work gets completed in a timely manner.

The presented Agreement is for interim legal services to be performed by the law firm, Berliner Cohen, LLP. Berliner Cohen is a San Jose based law firm that has a local office in Merced. This Agreement entails the following arrangement: (1) the appointment of Jolie Houston to serve as Interim City Attorney; (2) the staffing of the City Attorney's Office with either partner or a senior associate from Berliner Cohen's Merced office two days a week for eight hours a day (16 hours a week); and, (3) the performance of legal services as assigned. Pursuant to the Agreement, all Berliner Cohen attorneys working under the Agreement are limited to an aggregate total of 100 hours per month unless advanced authorization from the City is obtained to exceed the 100 hour per month limit. The retainer amount is \$29,000 a month. Any hours worked over the 100 hour monthly limit will be paid by the City at an hourly rate only if Berliner Cohen obtains advanced authorization from the City to exceed the 100 hour monthly limit. The Agreement can be terminated at any time by the City, with or without cause. This retainer agreement is inclusive of travel time and travel costs incurred by the attorneys performing services pursuant to the Agreement.

Ms. Houston is a very experienced municipal law attorney who practices in the areas of land use and public law. She currently serves as the City Attorney for the City of Los Altos and is the Assistant City Attorney for the City of Gilroy. She is a partner at Berliner Cohen and has worked for the firm since 1998. Ms. Houston also worked as a Deputy City Attorney for the City of Santa Clara for four years. If approved, she will serve as Interim City Attorney and will be present at all City Council meetings to advise the City Council. She will also be available to the City Council and City Manager's Office to provide advice or perform work as needed. As indicated above, the Agreement calls for the staffing of the City Attorney's Office with two attorneys from Berliner Cohen's Merced Office. These attorneys work and live locally. This will provide the City Attorney's Office with experienced attorneys to assist with the day to day legal work performed by the City Attorney's Office. Additionally, having local attorneys who are familiar with our City and the services we provide to our residents will be a great benefit to the City Attorney's Office and the City.

## **ATTACHMENTS**

1. Agreement for Interim Legal Services