



**SOLANO COUNTY GRAND JURY**  
2017-2018

**FUNCTIONAL ANALYSIS**  
**CITY ATTORNEY POSITION**

# **Functional Analysis City Attorney Position**

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## **I. SUMMARY**

The 2017-2018 Solano County Grand Jury (SCGJ) conducted an informational investigation to examine the functions, duties and responsibilities of the city attorney's offices within the seven cities of Solano County. The scope focused on identifying the cities contracting (outsource) the service versus engaging an in-house attorney (city employee) and analyzing the cost effectiveness/benefit of both scenarios.

In the complicated and complex environment of local California governance, cities need proficient legal advisors. Whether contract or in-house, city attorneys are a necessary fixture. The Grand Jury's overview comparing an outsource model vs. an in-house city attorney found the cities have different approaches with significantly different financial impacts.

In Solano County, how a city chooses to organize its legal department, given the need for accessing highly specialized legal knowledge, varies. The decision often takes into account a community's size, financial position, history and the complexity of the issues it faces on a daily basis. Cost is a constant concern and cities must make the best cost effective decision for the city, not necessarily the cheapest. This analysis should be an ongoing process with periodic reviews undertaken to determine if an in-house, outsourced, or a combination (hybrid) system will be best suited for the city. The Grand Jury's research determined there is no real standard or one-size-fits all approach. All configurations have merits and drawbacks. Municipalities must decide on the options best suited for them.

Based on information gathered by the Grand Jury, it became apparent the cost for defending lawsuits varied depending upon the nature of the action filed against the city. Defense of these lawsuits may result in a major expense. Officials must feel confident the guidance/solution from their city attorney will be practical, resourceful and accomplish the city's goals and objectives. Internal oversight should determine the reason(s) why legal issues occur and conclude what action could have been taken to prevent them. Implementation of appropriate preventative controls and oversight can avoid costly legal actions going forward.

## **II. INTRODUCTION**

The city attorney plays an important role in California and can be either appointed or elected. Government Code section 36505 allows city councils to appoint city attorneys. In most general law cities<sup>1</sup> the city council appoints the city attorney. Charter cities<sup>2</sup> can enact a provision in the

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<sup>1</sup> A general law city is a municipality that is limited to governmental structures and powers specifically granted by state law.

charter requiring the appointment or election of the city attorney. There are only a few California cities that have an elected city attorney, none in Solano County.

The city attorney's office serves as the legal advisor and legal representative to the city council, city officials, departments and commissions in conducting city business. The office provides a wide assortment of services to the city, such as representing the city in litigation, preparing ordinances and resolutions, and reviewing and preparing contracts.

There are a number of approaches for providing legal services. They include contracting (outsource) the service, engaging an in-house attorney (city employee) or a hybrid where a single fulltime city attorney is hired to provide general legal services, oversee legal functions and outsource specialized expertise on an as needed basis.

### III. METHODOLOGY

Techniques used in deriving facts included:

- Interviewed city representative(s) from:
  - Dixon, Fairfield, and Vallejo
- Reviewed *transparentcalifornia.com* for compensation figures (salary and benefits) for in-house City Attorneys for 2012-2016
- Reviewed city attorney's position descriptions and duties
- Reviewed Government Code:
  - sections 41801 - 41805
  - sections 34100 - 34102
  - §36505
- Examined all seven Solano County city websites for information regarding the City Attorney
- Examined listings of legal actions filed by or against the cities during Fiscal Year Ending (FYE) 2016-2017
- Examined all General Ledger income and expense detail reports for FYE 2016 and 2017 for all Solano County cities
- Analyzed grand total of expenditures for all legal related expenses across all funds, departments, and accounts from the seven cities

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<sup>2</sup> In the United States, a charter city is a city in which the governing system is defined by the city's own charter document rather than by general law.

**IV. STATEMENT OF FACTS**

**A. City Attorneys in Solano County**

The City Attorney provides a vital function to all municipal departments. The function of a City Attorney’s Office is to provide meaningful, ethical advice, effective legal representation, and other legal services in order to attain the City’s goals without undue risk.

The role a city attorney plays in a city organization is impacted by whether the city attorney is a full-time employee with or without in-house staff, or a contract attorney from a law firm. In either case, city attorneys do not provide legal services to individual residents.

When it comes to city attorneys, the seven Solano County cities have different approaches for their legal departments/services with significantly different financial impacts. Cost is a constant concern when it comes to a city attorney’s office. Benicia, Vacaville, and Vallejo have in-house legal departments where the City Attorney and staff are city employees. Generally, cities with larger populations or charters have a city attorney as a full-time employee, although small cities may also choose this relationship.

In these in-house arrangements, the city attorney may also have a deputy city attorney and in addition to paying employee salaries, the city provides benefits, an office, membership to professional associations, continuing legal education, supplies, staff and secretarial assistance. The size and makeup of these offices vary; the 2017 Full Time Equivalent (FTE) department staffing was 2.75 in Benicia, 4.0 in Vacaville, and 11.0 in Vallejo.

Cities that have in-house legal services have a fixed cost (a large portion of the cost is comprised of salary and benefits), while cities that opt for outside counsel have a variable cost. Fixed costs are due regardless of usage while variable costs are paid only when used. It is incumbent upon the cities to look at the demand for services to find the most suitable option.

The following table reflects a five-year comparison of in-house salary and benefits for the City Attorney position.

Table 1 – In-House City Attorney Salary & Benefits Data

<b>City</b>	<b>FYE 2012</b>	<b>FYE 2013</b>	<b>FYE 2014</b>	<b>FYE 2015</b>	<b>FYE 2016</b>
Benicia	\$266,830	\$254,451	\$265,266	\$265,266	\$292,170
Vacaville	\$283,313	\$302,756	\$326,567	\$351,581	\$398,747
Vallejo	\$244,413	\$303,772	\$322,749	\$372,157	\$367,117

Source: Transparentcalifornia.com website

The cities of Dixon, Fairfield, Rio Vista, and Suisun City contract (outsource) with a law firm for their legal services. An attorney from within the contracted firm is usually appointed by the city council to act in the role of City Attorney.

An outsourced city attorney/firm is an independent contractor, which means that the attorney/firm and the city enter into a professional services agreement. This agreement generally provides that the city attorney will provide services, as defined in the agreement, for a retainer. If a yearly retainer is not used, then the services are provided on an hourly fee basis.

A retainer generally provides for basic services such as attendance at city council and/or applicable meetings, phone call and email responses to city staff and elected officials' questions, drafting resolutions, ordinances and city contracts. A retainer can provide for a maximum number of service hours or unlimited service hours. If a maximum number of hours is provided for, then the city attorney is paid on a per hour basis once the maximum hours are reached each month.

The following table depicts the information provided to the Grand Jury in response to a Request for Information for the city's current contract/service agreement containing retainer and billing rate schedule.

Table 2 – Outsourced City Legal Services

City	Dixon	Fairfield	Rio Vista	Suisun City
<b>Document Effective Date</b>	8/12/15	7/1/17	3/7/11	6/2/09
<b>Monthly Retainer Amount</b>	\$15,000	\$46,800*	\$8,500	\$7,500
<b>General/Basic Retainer Hours Covered Monthly</b>	108	No limit	40	50
<b>Excess Retainer Hourly Rate</b>	Blended Rate for all legal professionals General/Basic \$150	N/A	\$215	Blended Rate for all legal professionals General/Basic \$150
<b>Special Non-Basic Hourly Rate</b>	Blended Rate for all legal professionals \$225	Shareholder/Sr Attorneys \$300-\$330 Associates \$195-\$235 Asst/Paralegal \$140-\$160	Shareholder/Of Counsel \$225-\$300 Principles \$210-\$250 Associate \$190-\$240 Paralegals \$90-\$125 Doc/Law Clerk \$85-\$110	Blended Rate for all legal professionals \$200

\* Fairfield – Document provided an annual retainer rate for all general services of \$561,600. Monthly figure listed is 1/12 of annual amount.

**B. The City Attorney Comparison Tables and Charts**

Municipal Law is the area of law specific to the function of a city or county and their governmental bodies. Illustrated in the following condensed table are some of the duties and responsibilities of a city attorney. This is not an all-inclusive list. It is used only to demonstrate the complexities facing city attorney offices and gathered by perusing city websites and responses to informational requests; an empty box does not necessarily mean the function is not performed, rather than it was not listed.

Table 3 – City Attorney Duties List

<b>DUTIES</b>	<b>I-BENICIA</b>	<b>O-DIXON</b>	<b>O-FAIRFIELD</b>	<b>O-RIO VISTA</b>	<b>O-SUNSHINE CITY</b>	<b>I-VACAVILLE</b>	<b>I-VALLEJO</b>
<b>I = In-House City Attorney</b>							
<b>O = Out-Sourced City Attorney</b>							
<b>Legal Services, Litigation, Risk, and Administrative</b>							
-sets liability claims, insurance and indemnification standards	X			X	X	X	X
-reviews insurance and contracts for compliance	X				X	X	X
-reviews claims and potential claims mitigating damages to improve conditions	X				X	X	X
-advice on topics (water, wastewater, police, fire, parks, special districts, community services & legislation affecting the city)	X	X	X	X	X	X	X
-prepares/reviews agreements, letters, documents, ordinances, deeds, pleadings & resolutions	X	X	X	X	X	X	X
-performs legal research	X	X	X	X	X	X	X
-maintain administrative policies & procedures in the legal dept.	X			X	X	X	X
-prepares election documents	X					X	
-supervise/review work of legal & clerical support staff, and dept. budget	X					X	X
-support and advise city manager, committees, city council, commissions, boards, Human Resources, and staff	X	X	X	X	X	X	X
-attend regular meetings of the City Council or City Manager	X	X		X	X	X	X
-ex-officio (prosecuting attorney) and prosecuting criminal violations against city	X				X	X	X
-litigating appeal or petition for extraordinary relief to courts of appellate jurisdiction		X	X				X
-coordinates special legal counsel, appraisers, engineers, technical and expert services for civil litigation/proceedings	X	X		X	X	X	X
-attendance at planning commission and other committees created by city council				X	X	X	X
-handle real estate transactions, acquisitions, sale and lease review/negotiations				X	X	X	
-research and services related to wetlands regulatory issues				X	X		
-public finance and bond issues				X	X	X	

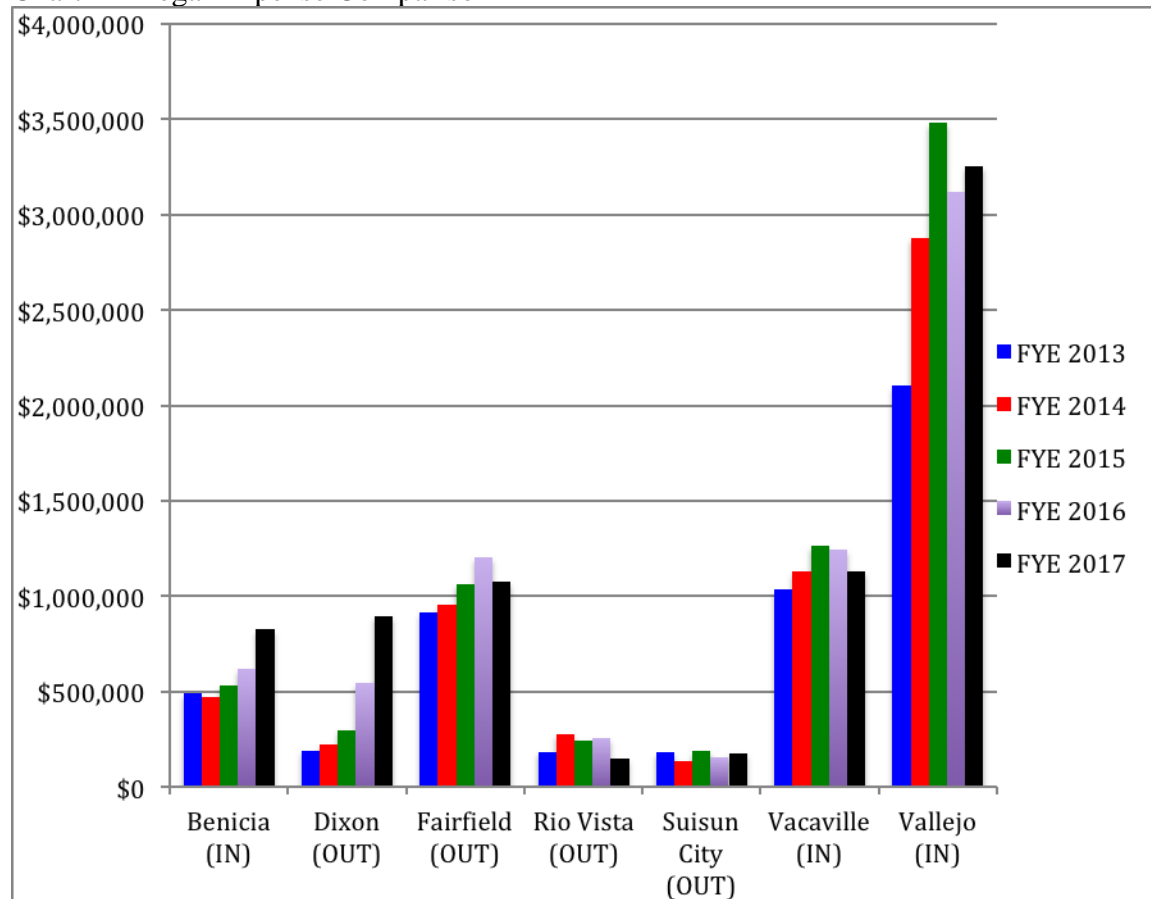
The following table specifies which cities have in-house or outsourced City Attorneys. It also provides a five-year comparison of total reported legal expenditures by city. The figures do not include lawsuit settlement agreements paid out by an insurance provider. Settlements can stem from litigation involving police activity, human resources (personnel) issues, land use, etc.

Table 4 – Total Legal Expense Data

		Total of Expenditures for all legal related expenses across all funds, departments, and accounts.				
City	Type	FYE 2013	FYE 2014	FYE 2015	FYE 2016	FYE 2017
Benicia	In-House	\$490,862	\$474,826	\$535,463	\$617,363	\$824,962
Dixon	Outsourced	\$191,886	\$221,586	\$298,301	\$543,236	\$898,019
Fairfield	Outsourced	\$916,382	\$953,801	\$1,065,800	\$1,200,528	\$1,073,526
Rio Vista	Outsourced	\$185,153	\$277,681	\$243,376	\$251,227	\$147,857
Suisun City	Outsourced	\$180,456	\$134,445	\$190,260	\$152,166	\$177,147
Vacaville	In-House	\$1,033,799	\$1,128,506	\$1,263,868	\$1,242,453	\$1,132,771
Vallejo	In-House	\$2,103,385	\$2,878,304	\$3,481,885	\$3,114,059	\$3,255,821

The following legal expense bar chart is a depiction of the data listed in Table 4 showing the annual fluctuations within the cities.

Chart 1 – Legal Expense Comparison



The following table presents a quantitative comparison of the legal costs based on population.

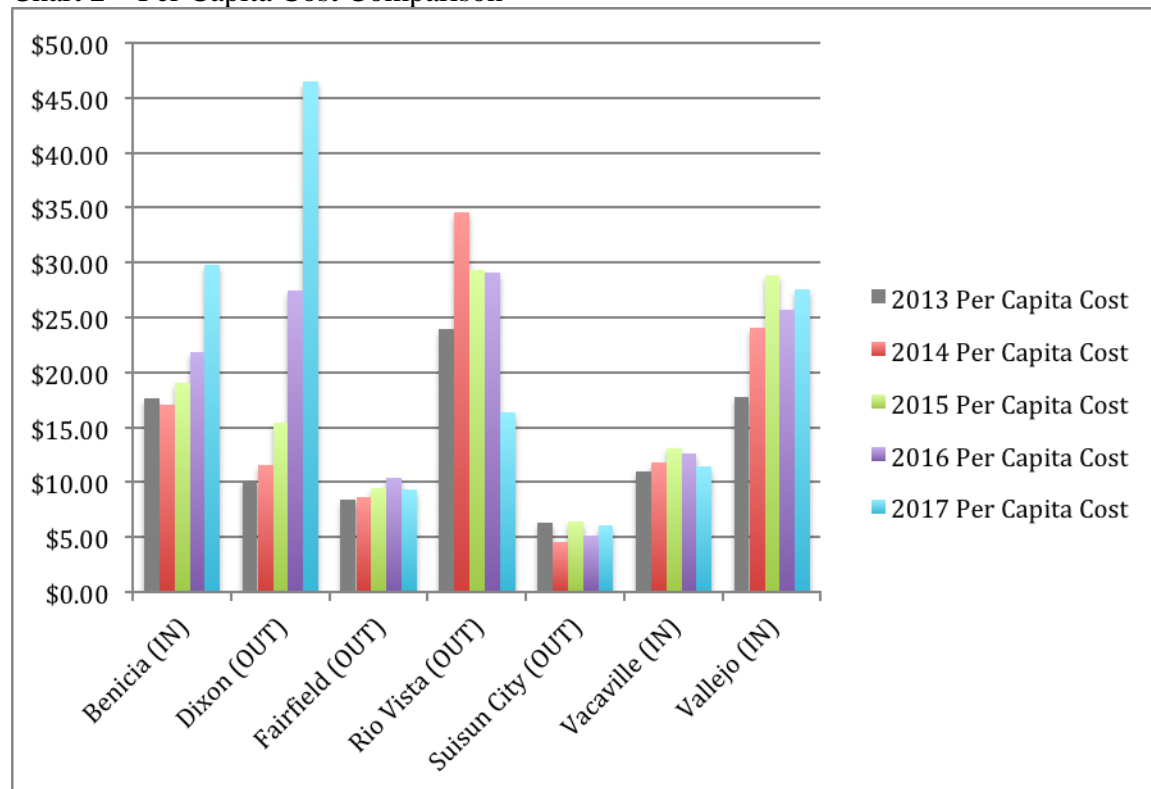
Table 5 – Population and Per Capita Cost Data<sup>3</sup>

City	2013 Pop.	2013 Per Capita Cost	2014 Pop.	2014 Per Capita Cost	2015 Pop.	2015 Per Capita Cost	2016 Pop.	2016 Per Capita Cost	2017 Pop.	2017 Per Capita Cost
Benicia	27,864	\$17.62	27,831	\$17.06	28,053	\$19.09	28,174	\$21.91	27,695	\$29.79
Dixon	18,917	\$10.14	19,094	\$11.61	19,309	\$15.45	19,806	\$27.43	19,298	\$46.53
Fairfield	109,127	\$8.40	110,792	\$8.61	112,518	\$9.47	114,756	\$10.46	114,157	\$9.40
Rio Vista	7,727	\$23.96	8,027	\$34.59	8,313	\$29.28	8,641	\$29.07	9,019	\$16.39
Suisun City	28,732	\$6.28	29,147	\$4.61	29,366	\$6.48	29,505	\$5.16	29,295	\$6.05
Vacaville	94,090	\$10.99	95,519	\$11.81	96,419	\$13.11	98,303	\$12.64	98,456	\$11.51
Vallejo	118,669	\$17.72	119,802	\$24.03	120,759	\$28.83	121,299	\$25.67	118,280	\$27.53

\* Annual population for 2017 was obtained from the County of Solano FY2017/18 Recommended Budget. The remaining years were obtained from an Internet search by city. Listed sources included: United States Census Bureau.

The following per capita bar chart is a depiction of the data listed in Table 5 showing annual city fluctuations

Chart 2 – Per Capita Cost Comparison



<sup>3</sup> Per capita is a Latin term that translates into "by head," basically meaning "average per person." Per capita can take the place of saying "per person" in any number of statistical observances. Per capita data is often used to make economic data comparable across entities of different sizes. Where absolute data is not comparable, per capita data can be used, as it is independent of city size.



## COMMENTS

The following is a list of selected attributes of In-house and Outsourced City Attorneys.

<u><b>In-house Attorney</b></u>	<u><b>Outsourced Attorney</b></u>
<ul style="list-style-type: none"><li>• provides institutional knowledge<sup>4</sup>, accessibility and continuity</li><li>• has an intimate and expanding knowledge of the city, its employees and citizens/public</li><li>• is readily accessible with no thought of an hourly fee</li><li>• contributes leadership skills</li><li>• can help the organization develop and manage future risk</li><li>• has a unique opportunity to build community trust</li><li>• as a municipal employee has a set hour work day schedule which provides the budget with a fixed cost associated with salary and benefits</li><li>• in an increasingly complicated legal environment, a generalist has limits in specialty areas of the law</li></ul>	<ul style="list-style-type: none"><li>• offers third party perspective and impartiality</li><li>• has access to expertise and knowledge of other municipalities, histories and responses</li><li>• skilled in or has access to specialty areas such as water rights, land use, regulatory issues, and California Environmental Quality Act</li><li>• can be cost effective as only services rendered are chargeable</li><li>• clinical approach to risk management</li><li>• is skilled at providing immediate cost effective answers</li><li>• as a consultant there are no employee benefits and terminating a contract usually involves no monetary penalties</li></ul>

This list provides a cautionary tale that when a city is analyzing the system that is appropriate for its method of governance, it must understand that both in-house and outsourced legal counsel provide value with merits and drawbacks of their own.

## COURTESY COPIES

City of Benicia Mayor  
City of Dixon Mayor  
City of Fairfield Mayor  
City of Rio Vista Mayor  
City of Suisun City Mayor  
City of Vacaville Mayor  
City of Vallejo Mayor

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<sup>4</sup> Institutional knowledge is gained by organizations translating historical data into useful knowledge and wisdom.

City Manager of Benicia  
City Manager of Dixon  
City Manager of Fairfield  
City Manager of Rio Vista  
City Manager of Suisun City  
City Manager of Vacaville  
City Manager of Vallejo

*This is an informational report. No response is required*