



CITY COUNCIL AGENDA STATEMENT



February 18, 2020

File ID: 20-0068

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AMENDING THE FISCAL YEAR 2019/2020 CITY ATTORNEY BUDGET TO FUND THE POSITIONS OF PARALEGAL AND INVESTIGATOR USING EXISTING CITY ATTORNEY BUDGET RESOURCES

RECOMMENDED ACTION

Council adopt the resolution.

SUMMARY

In 2018, with the dramatic increase in illegal marijuana businesses, the City of Chula Vista realized the value and importance of being able to prosecute violations of its Municipal Code, along with related state law offenses, as criminal misdemeanors. The City Attorney's Office committed to undertake these prosecutorial functions by establishing the Neighborhood Protection Unit, or NPU. City Attorney authority to serve this function is well-established in the City Charter and the Municipal Code.

Phase I of NPU implementation began in March 2019, with the hiring of a Deputy City Attorney III to serve as the City's first dedicated City Prosecutor. To date, the City Prosecutor has already filed multiple cases against individuals involved with the operation of illegal marijuana businesses. Phase II involves hiring the necessary support positions needed for the City Prosecutor and the Neighborhood Protection Unit to fully and properly function and to effectively and efficiently handle the quantity and complexity of cases presented for prosecution by Code Enforcement and the CVPD. The proposed funding of a Paralegal and Investigator for the NPU is immediately necessary to support the prosecution of the increased number and more complex illegal marijuana business cases, including those that identify and prosecute complicit landowners, owner/operators and higher-level managers. Such cases can also involve substantial coordination and evidence sharing with other investigatory and prosecutorial agencies at the federal, state and local levels. The City Attorney's Office original proposal for funding these necessary positions was to amend the Measure A Expenditure Plan to add these positions, and to apply Measure A reserves, in the short term, to fund them. While the Measure A funding option remains appropriate, out of respect for competing interests in the use of these funds, the City Attorney's Office now proposes funding from its existing budget. Such funds (approximately \$50,000) are available in the FY 19/20 budget year as a result of salary savings and the Office's ability to save outside attorneys' fees by handling even more case "in-house.",

ENVIRONMENTAL REVIEW

The City Attorney has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA, and no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

At the December 12, 2019, Measure A Citizen’s Oversight Committee (COC) meeting, the City Attorney presented on the then proposed plan to add the NPU Paralegal and Investigator as Measure A funded positions. The COC voted 4-2 in favor of Measure A funding the Paralegal and Investigator, as requested; however a minimum of (6) affirmative votes are needed for official COC action.

DISCUSSION

Role and function of the City Prosecutor and the Neighborhood Protection Unit

The first priority that has been identified for the NPU is the need to address the illegal cannabis businesses that have flooded the City. The immediate prosecution of these cases aligns directly with the Police Department’s goal of addressing the growing impact of illegal and unregulated cannabis sales. But, the Prosecutor needs support staff in order to be able handle a multi-case workload, and prosecute higher-level owners and operators of the illegal businesses. This is a critical time to focus and enhance City enforcement efforts as the City prepares to license legal cannabis business operations. Illegal operations pose a significant public health and safety concerns, and if left unchecked will reduce city revenue from licensed businesses.

Once the illegal marijuana business problem has been addressed, the NPU will be able to work closely with the Police Department and Code Enforcement to address other lower level, but still important, neighborhood crime and disorder conduct that violate the City’s Municipal Code. The NPU’s efforts are intended to supplement—not replace or compete with—ongoing efforts of the City’s Code Enforcement team, and the District Attorney’s Office in this area. In general, the City Prosecutor’s authority to prosecute criminal conduct extends to all violations of the Municipal Code, as well as related state code offenses. Prosecuting authority is limited to misdemeanors, as felony prosecution is within the exclusive jurisdiction of the District Attorney.

Currently, in a number of areas of misconduct, there is preliminary police involvement but insufficient follow up and a lack of definitive case resolution. Such areas include lower level, but still important, health and safety violations of the City’s Municipal Code, traffic enforcement, as well as other quality of life issues. The City Prosecutor can directly provide this follow-up to ensure more positive case resolution. With additional “boots on the ground” funded by Measure A being activated in the community, writing citations and taking other enforcement actions, additional prosecutorial support to follow up on such actions is imperative.

The City Prosecutor is uniquely positioned to respond dynamically to the needs of the community. They can respond to issues as they arise, determining what would be the best practice or approach to take when addressing the various crimes or issues that the City may be facing at any given time. This flexibility gives a

great benefit to the City and the community because the Prosecutor is responding directly to the community's needs.

NPU Staffing Needs

Current staffing levels of the City Attorney's Office are inadequate to competently address the increased workload and responsibilities of the City Prosecutor and the newly established Neighborhood Protection Unit.

The City Prosecutor is responsible for all stages of the criminal case including: preliminary case evaluations, supplemental investigation, as necessary, filing charges, arraignment, filing and responding to pre-trial motions, attending pre-trial hearings, settlement negotiations, trials, post-adjudication hearings, probation hearings, and any appeals. The City Prosecutor is also responsible for the set-up and administration of diversion and restorative justice programs and asset forfeiture.

Criminal cases are labor intensive and move at a very fast pace since criminal defendants have a statutory right to be brought to trial within 45 (calendar) days of arraignment (30 days if they are in custody). In order to properly manage such cases, it is standard practice for a prosecuting agency (whether a City Prosecutor or District Attorney) to have support staff, including paralegals and investigators. This support staff is vital to run an effective prosecution unit. Tasks such as case intake, data entry, mailings, correspondence, and other administrative jobs can be, and typically are, handled by support staff. This allows the prosecuting attorney to handle more complex matters and to manage a larger caseload.

An adept and well-qualified Paralegal is necessary to meet the expectations of today's modern prosecutorial requirements. The Paralegal's responsibilities will include:

- Prepare and draft legal memos and pleadings, perform legal research
- Obtain, review and process body worn camera, social media, and other technology
- Handle tasks such as case intake, data entry, mailings, correspondence, and other administrative tasks
- During a trial, the Paralegal will make sure that cases are appropriately managed and progressing
- Administer the Asset Forfeiture Program
- Assist with set-up and administration of diversion programs

An Investigator plays a critical role in preparing a case for trial and performs functions that City Prosecutor cannot. The Investigator would be responsible for:

- Obtaining dockets/court records
- Gathering documentary evidence like taking photos, obtaining certified records, DMV records, and criminal history
- Locating and serving civilian witnesses with subpoenas
- Posting and serving cease and desist notices
- Investigating businesses with the Secretary of State, Bureau of Cannabis Control & other state agencies

In order to provide solid follow-through on criminal investigations, and to maximize successful case resolution, the City Prosecutor, requires the minimal amount of additional support and resources requested. When not directly engaged in NPU criminal prosecutions efforts, the Paralegal and Investigator positions would also be available to support the City Attorney's Office civil litigation group. This would enhance this group's capacity to handle more cases "in-house" and thereby provide substantial cost savings compared to the alternative necessity of hiring outside counsel.

Conclusion:

In contemplation of a fully staffed NPU, the Paralegal and Investigator classifications were created and approved by the City Council during last year's budget process. Now it is necessary to fund and fill these positions. The NPU has already reached a critical stage where capacity is essentially exhausted. The NPU cannot develop and move forward, either in a faster pace/volume for the cannabis cases already being addressed, or to even consider expanding into new areas of concern, without the addition of these critical positions.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, nor has it been informed by any City Council member, of any other fact that may constitute a basis for a decision- maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

There will be no current year fiscal impact resulting from the funding of these positions. Sufficient funds (approximately \$50,000) are available in the City Attorney's Office existing FY 19/20 budget due to salary savings and reduction of outside attorneys' fees through case management and the increased handling of cases "in-house."

ONGOING FISCAL IMPACT

The positions outlined in this report will be included in the Fiscal Year 2021 base-line budget. The cost for both positions (salary and benefits) is projected not to exceed \$249,000 (\$119,326 for the Paralegal and \$129,574 for the Investigator). The Department will fund these positions with new revenues generated by efforts to streamline processes and enhance cost recovery efforts resulting in no net impact to the General Fund.

ATTACHMENTS

None

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