



# City of Huntington Beach

**File #:** 18-627

**MEETING DATE:** 1/22/2019

## REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Michael E. Gates, City Attorney  
Lori Ann Farrell Harrison, Assistant City Manager

**PREPARED BY:** Michael E. Gates, City Attorney  
Lori Ann Farrell Harrison, Assistant City Manager

**Subject:**

**Adopt Ordinance No. 4169 Amending Huntington Beach Municipal Code Chapter 3.03 Relating to Professional Services Contracts**

**Approved for introduction December 17, 2018 - Vote: 5-2 (Posey, Delgleize - No)**

**Statement of Issue:**

City Council authorization is requested to amend the City of Huntington Beach Municipal Code Section 3.03 related to Professional Services to ensure competitive procurement processes for the City's professional services, including legal services, while still preserving confidentiality and the attorney-client privilege once an attorney firm has been selected to defend the City. These modifications will protect the City's attorney-client privilege during litigation while still providing checks and balances required via the City Charter to ensure the prudent stewardship of public funds.

**Financial Impact:**

Not applicable.

**Recommended Action:**

Adopt Ordinance No. 4169, "An Ordinance of the City of Huntington Beach Amending Sections 3.03.020, 3.03.060, and 3.03.080 of Chapter 3.03 of the Huntington Beach Municipal Code Relating to Professional Services Contracts."

**Alternative Action(s):**

Deny for introduction Ordinance No. 4169, "An Ordinance of the City of Huntington Beach Amending Chapter 3.03 of the Huntington Beach Municipal Code Relating to Professional Services Contracts."

**Analysis:**

The City Attorney is charged with representing the City when the City is a party to litigation. On some occasions, the City Attorney is required to use specialized attorneys or subject matter experts

to assist in the litigation or specialized legal matter, such as ballistics experts, jury consultants, accident reconstruction experts and the like.

The City Attorney needs to protect and keep confidential the City's defense strategy on cases, which includes hiring certain types of experts for a specific purpose. This legal strategy may in certain cases necessitate non-disclosure.

The California Evidence Code, Code of Civil Procedure, Rules of Court and Professional Conduct, the Ralph M. Brown Act, as well as a host of other State Law and rules, govern the strict confidentiality of attorney work, including the retention of legal services and experts, which are both subject of attorney-client and attorney work product privileges.

Pursuant to Section 401 of the Charter of the City of Huntington Beach, the City Manager is tasked with ensuring the financial condition of the City and to maintain a centralized purchasing and procurement system for all City offices, departments, and agencies.

The Finance Department is responsible for providing financial management, oversight, monitoring and reporting for the City's complex financial resources, and to ensure compliance with State and local laws regarding the open and competitive bidding for City contracts paid for by taxpayers.

Therefore, in order to protect the City's interests in maintaining attorney-client privilege while still providing checks and balances in the procurement of attorney and expert services, staff recommends modifications to enable the City Attorney to maintain confidentiality for attorney and expert contracts while litigation is pending.

For attorney services under \$100,000 all existing administrative regulations and Municipal Code requirements remain intact.

City Council approval would be required for both attorney and expert services contracts exceeding \$100,000, similar to other professional services contracts in the City, but would occur in Closed Session to maintain the attorney-client privilege. The standard budgetary and financial reviews and approvals by the Finance Department and compliance with the Code will still be performed for all agreements for attorney services and experts of any dollar amount to ensure fiscal controls.

A new provision is also added to the Code to allow for a waiver of competitive bidding requirements in cases where there is substantial justification for utilizing a particular subject matter expert. A new "Expert Services Waiver Justification" Form has been created for this purpose. Such information will be provided to the City Council in Closed Session for expert services exceeding \$100,000 per contracted expert and to the Finance Director and City Manager for services under \$100,000.

Staff recommends these changes to the Huntington Beach Municipal Code Chapter 3.03 regarding Professional Services to ensure the open competitive process for general attorney services, while protecting the attorney-client privilege and the use of subject matter experts during litigation and other legal matters.

**Environmental Status:**

Not applicable.

**Strategic Plan Goal:**

Enhance and Maintain City Service Delivery

Strengthen economic and financial sustainability

**Attachment(s):**

1. Ordinance No. 4169, "An Ordinance of the City of Huntington Beach Amending Sections 3.03.020, 3.03.060, and 3.03.080 of Chapter 3.03 of the Huntington Beach Municipal Code Relating to Professional Services Contracts."
2. Legislative Draft of Ordinance No. 4169
3. Expert Services Waiver Justification Form.