


TO: TOWN COUNCIL  
FROM: TOWN MANAGER   
RE: CONSENT ITEM  
TOWN ATTORNEY REIMBURSEMENT OF EXPENSES

**ISSUE**

The Town Attorney has prepared a report indicating that a reimbursement of expenses would be appropriate for excess legal work that has been done over the normal monthly contract fee.

**RECOMMENDATION**

Approve paying Town Attorney for legal services expense that is above monthly contract in an amount not to exceed \$13,938.82 as documented by the billing record and approved by the Town Manager.

**CEQA**

There are no CEQA issues as it is self evident that payment of professional fees will not affect the environment.

**MONEY**

Professional fees in excess of month to month fees will be paid from reserves because by definition the fees, being extra, are not considered in the regular budget. It may be prudent from year to year to carry an amount for extra legal review that the Town Attorney does beyond the standard month to month contracted services. It may also be prudent to pay excess amounts on a monthly basis so as not to accumulate large expenses.

**DISCUSSION**

The Town Attorney has prepared an explanation of legal fees that he has incurred above the month to month contract services. He asks for a reimbursement of these fees. In addition is information on legal costs in other towns.

**Town Council Meeting**  
(November 9, 2010)

**TO:** Honorable Mayor & Town Council  
**FROM:** Dave Larsen, Town Attorney  
**SUBJECT:** Paying for Past Legal Services

**RECOMMENDATION**

Consider reimbursing me for work I have not been paid for.

**DISCUSSION**

I work under a payment cap. That means that I receive \$135 per hour for my legal services, not-to-exceed \$5,687 per month. This comes to 42 hours per month.

The problem is that I have been putting in 50 hours or more per month for some time now. As a result, I have provided over 103 hours of free legal services to date, which amounts to \$13,938.82 worth of work I have not received payment for.

A couple of you have indicated that while it may more difficult to adjust my salary given the economy, that you felt that I should at least be paid for all of the work I have performed to date. (Otherwise my real hourly rate is substantially less than \$135 per hour). It was also suggested that I take a survey of city attorney salaries in certain towns and cities in Northern California. (See attached survey).

The survey reflects that most municipal attorneys in this region work under a retainer agreement rather than a cap. That means that they get paid the retainer amount for agreed upon city attorney services, regardless of the hours actually worked. Of course, the retainer rates are calculated based on an estimate of the number of hours worked.<sup>1</sup>

Whether one is using a capped rate or retainer, an adjustment is in order if either party is receiving a wind-fall. In my case, it seems fair for Loomis to reimburse for past services given the large amount of free services it has received to date.

My attached resume reflects my municipal law background and time spent with Loomis.

**CEQA**

Paying for past legal services does not trigger CEQA requirements.

**MONETARY IMPACT**

Paying for past legal services will cost the Town \$13, 938.82.

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<sup>1</sup> The estimated number of hours is multiplied by a discounted rate (in recognition that the attorney may not work all of the estimated hours each month) as indicated in Footnotes 1-4 of the Survey. For services over the basic, other attorneys are paid at their regular city rate – see Survey, column 4. In either case, \$135 per hour represents the bare bottom in compensation.

Local Salary Survey  
8/18/10

<u>Entity</u>	<u>Monthly Retainer</u>	<u>Monthly Cap</u>	<u>Add'l Work Per Hour</u>
<u>Marysville</u>	\$9,250 <sup>1</sup> (Routine services - no litigation included)	None	\$200
<u>Auburn</u>	\$9,000 (Routine services - no litigation included) <sup>2</sup>	None	\$225
<u>Colusa</u>	\$6,250 (Routine services - no litigation included)	None	\$195 - \$295
<u>Grass Valley</u>	\$6,000 (Routine services – no litig. / limited mtngs)	None	\$150 - 250
<u>Nevada City</u>	\$4,000 (Flat fee for routine services)	None	Negotiable
<u>Live Oak</u>	\$3,240 <sup>3</sup> (Routine services - no litig. or adm. hearings)	None	\$180
<u>Sutter Creek</u>	\$3,000 <sup>4</sup> (Attendance at meetings)	None	\$250
<u>Wheatland</u>	\$ 350 (1 Council Mtng)	None	\$215
<u>Colfax</u>	Payment for actual work at \$225 per hour	None	N/A
<u>Loomis</u>	Payment for actual work at \$135 per hr not-to-exceed monthly cap	\$5,687	\$135 <sup>5</sup>

<sup>1</sup> Retainer amount based on 50 hours per month at discounted rate of \$185 per hour

<sup>2</sup> Retainer amount based on 49 hours per month at discounted rate of \$185 per hour

<sup>3</sup> Retainer amount based on 20 hours per month at discounted rate of \$162 per hour

<sup>4</sup> Retainer amount based on 20 hours per month at \$175 per hour

<sup>5</sup> City Atty has performed \$13,938.82 of free basic services as of October 31, 2010

David J. Larsen  
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Profile

Accomplished attorney with strong background in land use, real estate and municipal law, including development approvals, zoning and boundary disputes; corporations and LLCs, purchases and sales, leases and easements; and virtually all aspects of being a city attorney.

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### Legal Experience

#### Law Offices of David J. Larsen

*Principal* 2005 – present

- Assist with environmental, subdivision, and land use permits and approvals
- Handle real estate negotiations, document preparation and resolution of land disputes
- Negotiate, mediate, arbitrate, lobby and litigate (including writs and appeals)
- Provide legal services for a variety of cities (e.g. hearing officer, trainer, special counsel)
- Currently serve as city attorney for the Town of Loomis (10 yrs) & City of Isleton (3 yrs).

#### Berding & Weil, LLP

*Of Counsel* 1997 – 2005

(Also *City Attorney of the Town of Loomis*)

- Handled disputes with cities, counties and the State (including the Coastal Commission)
- Handled a variety of HOA issues including member disputes and CC&R interpretations.

#### In-house City Attorney Positions

As an in-house city attorney, I was assigned a host of duties, eventually involving virtually all facets of municipal law. As a deputy, I handled code enforcement and advised the planning commission. As an assistant, I was also assigned to various departments on a rotating basis (e.g. planning, redevelopment, police, personnel, public works) while handling an active case load (e.g. law & motion matters, writs, court and jury trials and appeal matters). As city attorney I directly advised the city council. In addition to my current city attorney duties in Loomis and Isleton, I was Milpitas City Attorney (1994 – 1997); Pleasant Hill City Attorney (1988 – 1993); Oxnard Assistant City Attorney (1983 – 1988) and Merced Deputy City Attorney (1980 – 1983).

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### Education

**McGeorge School of Law**  
*Juris Doctor*

**Stanford University**  
*Masters in Education*

**Stanford University**  
*B.A. in Psychology*

Pre-legal Honors: Dean's List, English Honors, lettered in Pac-10 (high jumper), ΘΔΧ

Legal Honors: Traynor Society, Dean's List, Moot Court Honors.

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### Special Emphasis

- Successfully negotiated excellent settlement for Milpitas in Orange County Bankruptcy
- Wrote and presented a variety of professional papers and articles
- Drafted *Development Agreement Manual* for Institute of Local Self-Government
- Drafted two amicus land use briefs on behalf of more than 100 cities

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### Representative Clients

Representative clients include Blackhawk HOA, Marriot, Habitat for Humanity, Delco Builders, DiDonato, Corrie and DG&H development companies, and the additional cities of Alameda, Danville, Dixon, Pleasanton, San Mateo and San Ramon.

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### Community Involvement

Involved in San Ramon Rotary (past-president), Museum of the SRV, Leadership SR, SRV Education Foundation and initiated school district efforts to better address special ed. needs.

11/03/10

**Law Offices of David J. Larsen**  
**Loomis City Attorney Reserve**  
**Account Statement**

Date	Num	Memo	To Reserve	From Reserve	Balance
12/31/2006	14	Reserve Balance forward from previous system	14,667.31		14,667.31
01/31/2007	108	Loomis Reserve Adjustment		1,187.50	13,479.81
02/28/2007	1047	Loomis Reserve Adjustment		1,153.75	12,326.06
04/30/2007	1078	Loomis Reserve Adjustment		1,502.50	10,823.56
05/31/2007	1102	Loomis Reserve Adjustment	860.00		11,683.56
06/30/2007	1133	Loomis Reserve Adjustment		861.25	10,822.31
08/21/2007	1157	Loomis Reserve Adjustment		3,055.00	7,767.31
09/15/2007	1175	Loomis Reserve Adjustment	387.50		8,154.81
10/15/2007	1195	Loomis Reserve Adjustment		1,840.00	6,314.81
11/12/2007	1211	Loomis Reserve Adjustment		962.54	5,352.27
12/15/2007	1234	Loomis Reserve Adjustment	16.25		5,368.52
01/08/2008	1251	Loomis Reserve Adjustment		2,042.50	3,326.02
02/10/2008	1272	Loomis Reserve Adjustment		928.79	2,397.23
03/18/2008	1284	Loomis Reserve Adjustment		118.79	2,278.44
04/16/2008	1302	Loomis Reserve Adjustment		1,502.50	775.94
05/12/2008	1318	Loomis Reserve Adjustment		775.94	0.00
10/23/2008	1396	Loomis Reserve Adjustment	2,176.21		2,176.21
11/10/2008	1409	Loomis Reserve Adjustment		827.54	1,348.67
12/17/2008	1423	Loomis Reserve Adjustment		895.04	453.63
01/20/2009	1438	Loomis Reserve Adjustment		321.29	132.34
02/16/2009	1449	Loomis Reserve Adjustment		3,291.29	-3,158.95
03/10/2009	1457	Loomis Reserve Adjustment		1,705.04	-4,863.99
05/07/2009	1464	Loomis Reserve Adjustment		1,907.54	-6,771.53
05/07/2009	1469	Loomis Reserve Adjustment		85.04	-6,856.57
06/10/2009	1478	Loomis Reserve Adjustment	319.96		-6,536.61
07/13/2009	1488	Loomis Reserve Adjustment	2,918.71		-3,617.90
08/10/2009	1493	Loomis Reserve Adjustment	3,087.46		-530.44
08/10/2009	1494	Loomis Reserve Adjustment	607.50		77.06
09/15/2009	1497	Loomis Reserve Adjustment	2,142.46		2,219.52
09/15/2009	1498	Loomis Reserve Adjustment	337.50		2,557.02
10/14/2009	1503	Loomis Reserve Adjustment	1,805.00		4,362.02
11/10/2009	1505	Loomis Reserve Adjustment	2,176.25		6,538.27
12/15/2009	1511	Loomis Reserve Adjustment	286.25		6,824.52
01/12/2010	1517	Loomis Reserve Adjustment		1,063.75	5,760.77
02/15/2010	1522	Loomis Reserve Adjustment	83.75		5,844.52
03/10/2010	1527	Loomis Reserve Adjustment	758.75		6,603.27
04/15/2010	1535	Loomis Reserve Adjustment		659.00	5,944.27
05/12/2010	1540	Loomis Reserve Adjustment	2,176.00		8,120.27
06/14/2010	1547	Loomis Reserve Adjustment		793.79	7,326.48
07/17/2010	1551	Loomis Reserve Adjustment	4,133.71		11,460.19
08/11/2010	1556	Loomis Reserve Adjustment	488.71		11,948.90
09/15/2010	1561	Loomis Reserve Adjustment	3,391.21		15,340.11
10/15/2010	1568	Loomis Reserve Adjustment		1,401.29	13,938.82
<b>TOTAL LOOMIS RESERVE</b>			<b>42,820.49</b>	<b>28,881.67</b>	<b>13,938.82</b>