



AGENDA FOR THE COMMITTEE OF THE WHOLE MEETING
CITY OF PORTAGE
NOVEMBER 19, 2024

- 4:30 p.m. Call to Order.
- Roll Call.
- A. Review and discuss options related to the provision of legal services.
 - 1. Report from the City Manager on Legal Services
 - B. Petitions and Statements of Citizens:
 - C. Summary of Discussion.
- Adjournment.

TO: Honorable Mayor and City Council

FROM: Pat McGinnis, City Manager

SUBJECT: Report on Legal Services

SUPPORTING PERSONNEL: Adam Herringa, Chief Operating Officer

ACTION RECOMMENDED: Information Only

The five-year contract between the City of Portage and Bauckham, Sparks, Seeber, Thall and Kaufman for city legal services expires on August 31, 2025. The City Council has identified the review and provision of legal services as a key priority for the current fiscal year.

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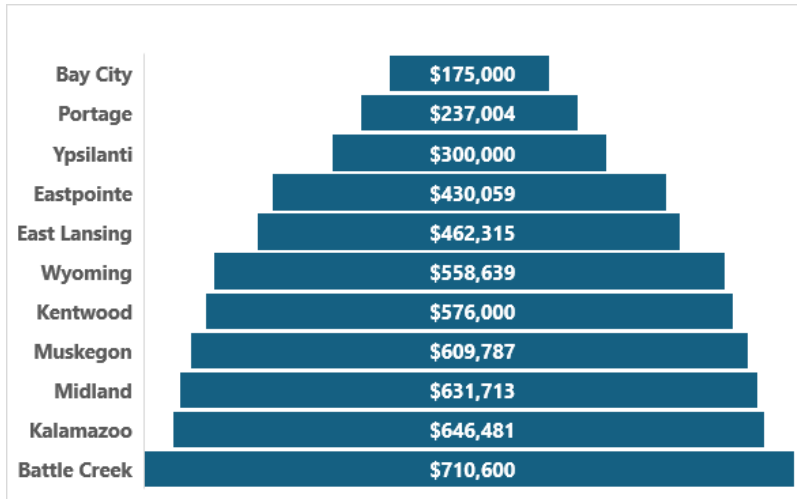
Legal Services
Research models for delivering legal services and assist the Mayor and City Council in creating the most productive and complete package to serve Portage.

For background, the Charter of the City of Portage addresses the issue in how a City Attorney is appointed. Section 6.2(a) states “the Council shall appoint the City Manager and the City Attorney who shall each serve at the pleasure of the Council.” As a result of that Charter requirement, the City Attorney is appointed directly by the City Council in a manner similar to that of the City Manager. The City Attorney’s duties are also outlined by the City Charter; Section 6.6 states in part that the City Attorney “shall act as the legal advisor of and be responsible to the Council in all respects concerning the performance of its official duties.” The City Attorney also serves as an advisor to the City Manager concerning legal issues affecting the City Administration. The City Attorney prosecutes all ordinance violations, as well as prepares and reviews all ordinances, regulations, contracts and bonds. The City Attorney attends and advises for all City Council meetings. The City Attorney also serves the various boards and commissions of the city and performs other duties as prescribed by the Charter and the Council as needed.

In preparation for the discussion, a survey was conducted to determine the approximate costs for similar communities. It is difficult to obtain a direct comparison as each city varies in their provision of legal services. However, the table below provides an approximate comparison.

City	Population	Total
Bay City	32,082	\$175,000
Portage	49,302	\$237,004
Ypsilanti	19,393	\$300,000
Eastpointe	33,676	\$430,059
East Lansing	48,528	\$462,315

Wyoming	77,451	\$558,639
Kentwood	53,987	\$576,000
Muskegon	37,183	\$609,787
Midland	42,663	\$631,713
Kalamazoo	73,126	\$646,481
Battle Creek	52,175	\$710,600



Additionally, the City Attorney prepared a summary document of the services provided by her firm. This document is attached for reference.

FUNDING: Not Applicable

- Attachments:**
1. Memo to City Council Re Legal Representation 11.13.2024
 2. Prosecution Attachment

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JOHN H. BAUCKHAM
1923 – 2015

HARRY F. SMITH
1906 – 1972

MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Catherine P. Kaufman, City Attorney



SUBJECT: Legal Representation

DATE: November 13, 2024

It is our understanding that the City Council's adopted Priorities for Fiscal Year 2024-2025 include Priority #5, which is to consider models for delivering legal services and assisting the Mayor and Council in creating the most productive and complete package to serve Portage. I provide the following information regarding our firm's representation of the City of Portage, for the Council's consideration.

Bauckham, Thall, Seeber, Kaufman & Koches, P.C.

Bauckham Thall has served as City Attorney for the City of Portage since 7/1/2020. I have served as City Attorney since 9/1/2020. Our firm is a boutique municipal law firm located in Portage Michigan. Our firm has eight attorneys (four partners and four associates). Ninety-five percent (95%) of our practice involves representation of cities, villages, townships and municipal authorities throughout the State of Michigan. As general counsel for the Michigan Townships Association, we are instrumental in participating in proposed legislation affecting municipalities, representing municipalities with various state agencies, writing amicus briefs on behalf of municipalities (including the Michigan Municipal League) to the Michigan Supreme Court, federal district courts and the U.S. Supreme Court and serving on statewide committees representing municipal interests. Our attorneys are members of the State Bar of Michigan Governmental Law Section, Real Property Section, Cannabis Law Section and others. Additionally, I am member of the Michigan Association of Planning and am a certified (AICP) planner. Our firm has over 200 municipal clients throughout the State of Michigan

Legal Services Provided to City of Portage

Our firm serves as general legal counsel to the City of Portage, which includes handling the following routine matters for the City: consultation with City departments, review of contracts/agreements, police and ordinance prosecutions, bankruptcy, FOIA, review of matters for Department of Public Safety (warrant requests, gun forfeitures, etc.). Additionally, we provide legal assistance on all City related matters and litigation, including identifying and recommending outside counsel for special matters. It should be noted that when our firm was appointed City Attorney in 2020, the City already used many outside legal firms, which had been approved by the prior City Attorney. Many of those special counsel relationships have remained ongoing during our firm's tenure as City Attorney.

Police Prosecutions: Our firm handles police/ordinance misdemeanor prosecutions for the City. This involves preparing for/attending pre-trials, trials, arraignment hearings, probation violations, hearings for expungements, etc. Attorney Erin Geschwendt is the lead attorney handling prosecutions for the City. Other attorneys handling prosecutions for the City include Attorney Josh Thall, Partner Seth Koches, Partner Roxanne Seeber, Attorney Michael Bila. As City Attorney, I often consult with all firm attorneys on City prosecution matters. Bauckham Thall has an excellent reputation with the district court judges in Kalamazoo County. One reason for that reputation is Attorney Geschwendt's practice of making arraignment offers in advance of arraignments. While this approach takes more time up front, it significantly cuts down the number of cases that even reach the pre-trial stage and has increased the number of pleas. Attorney Geschwendt advises that the district court judges are very favorable to the City's approach and encourage other prosecutors to follow the City's lead in this regard.

I have attached weekly lists of prosecution cases for City of Portage to this memo, for the Council's review. Attorney Geschwendt estimates the following time for preparation and attendance at court:

- a. Pre trial preparation - .1 hour
- b. Pretrial attendance - .2 hour (plus travel time, mileage and parking)
- c. Reviewing body cam video if defendants have an attorney - .5 to 1.5 hours
- d. Cases where a motion is filed by defendant – additional 1.5 to 2 hours for preparation of response to motion and oral argument
- e. Jury trial – preparation for jury trial – 1.0 hour (DWLS). 1.5 hour (Retail Fraud), 3.5 hours (OWI)

- f. Jury Trial – preparation if there is a victim (FTS ID PD/PI ACCIDENT) or R/O add an additional .5 hour for victim contact.
- g. Jury Trial participation – anywhere from .5 day to 2 days (travel time, mileage and parking).

FOIA: Our firm reviews and assists the City in responding to FOIA requests and FOIA appeals. FOIA requests are forwarded to our office by both Public Safety and the Clerk's office. We also consult with Public Safety and the Clerk's office on their handling of FOIA requests. The following is estimate of numbers of FOIA requests handled by our firm:

- 1. Several FOIA requests per week from Public Safety – average 20-30 pages. If redactions are required, a review of this type of report can take 2 + hours.
- 2. Large FOIA requests – we often review very large FOIA requests, which can take several months to review and redact. Some current and recent large FOIA requests our firm has handled include:
 - a. Smith homicide - 4,500-page report
 - b. Colon homicide – several hundred-page report, approx. 10 hours of bodycam, approx. 200 photos and evidence
 - c. Johnson homicide – multiple hundred-page reports, dozens of hours of bodycam footage, approx. 3,000 photographs
 - d. Sterffy homicide – several hundred-page report, hundreds of pages of records, hundreds of hours of bodycam and security footage, thousands of photographs
 - e. Lockhart homicide – police report, crime scene and autopsy photographs

Other Services for Public Safety: We also handle warrant requests and gun forfeiture requests for the Public Safety Department.

- 1. Gun Forfeiture Requests: Review of these requests typically involve significant time to research what charges might have been brought against the person, what conviction (if any) was entered, and whether the City has the discretion to forfeit the weapon based on the circumstances. Our office handles 2-5 of these requests per month. Review of these requests takes time to ensure that if the City is required to give a weapon back to someone who committed a crime, it is because we are required by law to do so. 1- 1.5 hours per request.
- 2. Warrant requests: we receive a few of these each month. I will review these requests with the input of Attorneys Josh Thall and Erin Geschwendt and determine if a warrant should issue. 1 – 1.5 hours per request.

3. Nolle of previous cases. Our firm reviews requests forwarded by 8th District Court to nolle (dismiss) cases off the court's register (for non-action, age, etc.). As prosecutors, we review each case to determine its continued validity. .5 – 1.5 hours per review.

Requests to purchase firearm: our office has worked with Public Safety (Diane Malz) to set up a process to assist Public Safety with review of applications to purchase firearms. We have assisted with one request so far, which involved Attorneys Josh Thall and Erin Geschwendt researching state and federal law regarding domestic violence and impact on ability to obtain a firearm. Our firm's role with these requests is to assist City staff with secondary review of these applications when MSP gives incomplete information or advises the City to consult with its own legal counsel.

Zoning/Ordinance Enforcement: Bauckham Thall has been instrumental in streamlining and creating a workable process for civil case ordinance enforcement in the City of Portage. We have worked with the Department of Community Development on obtaining court orders, including remediation orders and/or continual fines for failing to comply with the City's Ordinances. Many of these cases are things like improper signs, storage of junk vehicles and property maintenance issues. City staff has the support of our firm whenever a citation is needed or an inquiry regarding a particular civil ordinance violation is made. In short, our firm and the City have developed a good routine handling these cases, which we believe will be confirmed by the Department of Community Development.

In addition to routine cases, we have assisted the City Staff with tools to address larger problems

1. Portage Motel (Shaver Road). Our firm wrote and assisted the Community Development Department in getting an administrative search warrant for the former Portage Motel on Shaver Road. The investigation established that numerous families were living in substandard and unsafe conditions (no kitchens, improper addition to building, installation of daisy-chained space-type heaters without permits and unsafe). A school bus stop was at this location and children were living in this building under horrific circumstances. This matter was ultimately resolved with the issuance of citations, court orders, and the eventual demolition of the building.
2. Horses on Sprinkle Road. The Department of Community Development successfully removed two neglected horses living on a postage-stamped sized lot on Sprinkle Road. These two remaining horses were owned/housed by the same person that allowed one to escape and get killed on Sprinkle Road several years prior. City Ordinance Enforcement Officer Chris Boshaw was instrumental in finding a location that would accept the horses and the court orders obtained by our firm allowed the city to take possession of the horses long enough to move them off the property and to a horse rescue. Interestingly, many of the people that we spoke to knew of the horses and that they had been removed from the very small property on which they were housed, but did not know that the City had to be involved in an ordinance violation case to make it

happen.

4. Davis Creek Apartments. Davis Creek Apartments on Meredith/Sprinkle have been neglected by the owners for years. Upon information from the fire department regarding the use of “ovens” to heat the apartments, and numerous false CO₂ alarms the fire department responded to, our firm worked with the Community Development Department (Deputy Director of Building and Housing Terry Novak and Senior Building Official Brady VanderVeen) to identify additional exterior structural issues including the dilapidation of stairs and landings to get to second-floor apartments on many of the buildings. Although resolution of this matter is still ongoing, the owners have addressed the biggest structural concerns by moving people out of their apartments and fixing the most dangerous problems. City staff has been more than patient in allowing time for temporary shoring and the obtaining of architectural plans for continued repair to the buildings with the protection of the residents of foremost concerns. The heating issues have been resolved to the satisfaction of the Community Development Department.
5. Arby’s on Westnedge. Our firm has recently been advised of individuals living in the former Arby’s building on Westnedge. The Community Development department and Attorney Roxanne Seeber have provided a notice and given time for appeal to the construction board of appeals, as required by the International Property Maintenance Code provisions recently adopted by the City. Once the appeal period is up, citations will be issued to the owner of the building with the aim to obtain a court order for demolition of the building.
6. Civil enforcement matters: Our firm has helped empower city staff, particularly those in the Department of Community Development, to address concerns in an effective and timely manner.

Bankruptcies: Partner Robert Thall handles bankruptcy cases for the City of Portage, including, but not limited to, Bed Bath and Beyond, ASCENA Retail Group Chapter 11, Art Van Furniture Chapter 11, David’s Bridal, etc. These cases are complicated and may take many years to final determination.

Assist City Departments: Our firm assists all city departments with legal matters, including review and approval to form of agreements, review of ordinance interpretation and application, meeting attendance at Planning Commission, ZBA and City Council meetings, other assistance as requested. By way of example, yesterday Attorney Josh Thall and I worked with City Clerk Eklov and Deputy City Clerk Tammy Durian to review the City ordinance regarding renewal of City marijuana permits and application of certain ordinance requirements to specific renewal applications.

Our firm is honored to serve as City Attorney for the City of Portage. We have worked hard to establish a strong working relationship with the City Council, appointed officials and City staff

since taking over as City Attorney in July 2020. We are particularly proud of being able to open lines of communication with the Department of Public Safety, in order to better prosecute and serve the citizens of Portage. It should be noted that upon taking over as City Attorney, when Attorneys Koches, Josh Thall and I met with Public Safety command staff, one of the officers told me that they had worked for the City for 25 years and had never spoken to or met the City Attorney. We have worked hard to change that. For instance, all of our firm's attorneys who prosecute for the City have done ride alongs with Public Safety.

We continue to work to improve our relationship with the City Council, boards and commissions and City staff. We hope to continue our firm's representation of the City of Portage for many years.

If I can answer any questions or be of any assistance, please advise.