

RESOLUTION NO. 2012-10

A RESOLUTION of the City Council of Bainbridge Island, Washington, amending the City of Bainbridge Island Manual of City Governance Policies, Procedures and Guidelines.

WHEREAS, on March 10, 2010, the City Council adopted the City of Bainbridge Island Manual of City Governance Policies, Procedures and Guidelines (the "Governance Manual"); and

WHEREAS, Section 9.4 of the Governance Manual provides that any amendments to the Governance Manual be made by resolution; and

WHEREAS, at the August 8, 2012 City Council meeting, City Council approved by motion certain amendments to the Governance Manual; now, therefore,

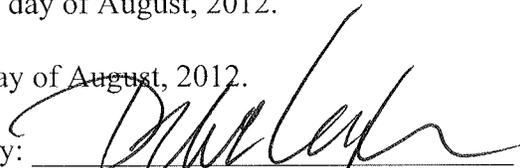
THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND DOES RESOLVE AS FOLLOWS:

Section 1. Section 3.11 of the Governance Manual is amended to read as indicated on Exhibit A.

PASSED by the City Council this 22nd day of August, 2012.

APPROVED by the Mayor this 22nd day of August, 2012.

By: _____


Debbi Lester, Mayor

ATTEST/AUTHENTICATE:

By: Rosalind D. Lassoff
Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK: August 17, 2012
PASSED BY THE CITY COUNCIL: August 22, 2012
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EXHIBIT A

3.11 Role of City Attorney

The City Attorney's ultimate client is the City itself – a municipal corporation. The City Attorney's relationship to the local government is similar in a number of respects to that of an attorney who represents a corporation. In that capacity, the City Attorney provides legal advice to the City Council, the City Manager, the Department Directors, and City staff. (See KTT (footnote 39).)

The City Attorney may represent the City in actions brought by or against the City or against City officials in their official capacity. However, other attorneys may be hired to handle specific cases because of the nature of the case, because the City Attorney has a conflict or other reason he or she cannot become involved, or due to limited resources of the City Attorney's office. In rare cases, the City Attorney may have a conflict and not be in a position to advise both the City Council and the City Manager. (See MRSC "Knowing the Territory.")

In those rare cases where either the City Council or the City Manager perceive such a conflict, the City Attorney should be consulted directly in order for him or her to make a decision about whether it is possible for the City Attorney to adequately represent the City in that situation. If the City Attorney determines that he or she cannot do so, then it is the responsibility of the City Attorney to secure alternate legal assistance.¹

The City Manager cannot prohibit the Council from having access to the City Attorney's advice. For reasons of efficiency or cost effectiveness, the City Manager may decide that certain legal questions should be channeled to the City Attorney through the City Manager, to ensure that questions are clearly worded and communications back to Council are consistent. (See MRSC "Councilmember Handbook" (Dec. 2009; p.12).)

The Council can determine as a policy matter whether the City shall obtain legal advice from an on-staff City Attorney or by reliance on a law firm, but the Council may not direct the appointment of an individual to the position of City Attorney – that being the role of the City Manager. (See MRSC "Code City Handbook" (June 2009; p. 51))

¹ There are two scenarios in which a city council has the implied authority to hire outside counsel. One, if the council hires counsel to represent it, and it prevails on the substantive issue to the benefit of the city, a court may direct the town to pay the reasonable fees and costs of outside counsel. *State v. Volkmer*, 73 Wn. App. 89, 95 (1994) (citing *City of Tukwila v. Todd*, 17 Wn. App. 401, 563 P.2d 223 (1977)). Two, if extraordinary circumstances exist a court may determine that a contract with outside counsel is both appropriate and necessary. *State v. Volkmer*, 73 Wn. App. 89, 95 (1994) (citing *Wiley v. Seattle*, 7 Wn. 576, 579, 35 P. 415 (1894).

Extraordinary circumstances may exist where there is a vacancy in the office of city attorney; or where the city attorney is ill, disqualified, absent, or unavailable; or where the legal official of the corporation refuses to appear and perform the necessary services; or where he has, or represents, adverse interests. *City of Tukwila v. Todd*, 17 Wn. App. 401, 406, 563 P.2d 223 (1977) (citing McQuillin, *The Law of Municipal Corporations* §29.12 at 262-63 (3d ed. 1966)).