I. **Purpose, Overview and Scope of this Policy**

The City Attorney is the chief legal officer of the City of St. Helena and is appointed by, and responsible to, the City Council. The policies stated herein are to ensure that the City receives and manages general legal and litigation services in accordance with best practices.

II. **Authority**

The City Council has authority to update this policy.

III. **Policy – City Attorney Appointment and Duties**

A. **Appointment of City Attorney**

The City contracts out the position of City Attorney through a request-for-proposal process. The City Attorney appointed by a majority vote of the City Council shall be experienced in legal issues affecting municipal government. The City Attorney shall provide legal services pursuant to a legal services agreement that defines the scope of services and the basis of compensation. Unless otherwise determined by the Council, the City Attorney shall be the primary contact for all legal matters and is charged with oversight of assisting attorneys, including in litigation matters.

B. **Extended Absence or Disability**

The City Council may designate a duly qualified attorney to perform the duties of the City Attorney in the event of the extended absence or disability of the City Attorney. The City Attorney may designate an attorney covered by the legal services agreement during short absences of the City Attorney.

C. **Professional Liability Insurance**

The City Attorney shall carry professional liability insurance satisfactory to the City Council.

D. **General Duties and Responsibilities**

The general duties of the City Attorney include but are not limited to the following:
1. **Legal Counsel**  
The City Attorney shall serve as the general legal counsel and advisor to the City Council and City Manager on all items of legal municipal concern, as requested by the City Council or City Manager.

2. **Special Counsel**  
The City Attorney may request the appointment of counsel with specialized expertise. Such appointment shall be subject to approval by the City Council.

3. **Litigation**  
Unless exception is made, the City Attorney shall be attorney of record or oversee civil litigation or criminal actions initiated by or brought against the City and/or its elected officials, appointed officials, officers, or employees.

4. **Attendance at Meetings**  
The City Attorney shall attend meetings of the City Council, commissions, and committees that require legal counsel or advice. Decisions regarding the attendance of the City Attorney at meetings other than City Council meetings shall be determined by the City Manager.

5. **Opinions**  
The City Attorney shall provide legal opinions when requested by the City Council or City Manager. Such opinions may be oral or written as appropriate.

6. **Legal Developments**  
The City Attorney shall keep the City Council apprised of judicial decisions and federal and state legislation that could significantly impact the City.

7. **Preparation of Documents**  
As determined by the City Manager, the City Attorney shall oversee the drafting or review of ordinances, resolutions, contracts, agreements, settlements, and other legal documents.

8. **Legal Project Budgeting**  
The City Attorney shall submit a budget to the City Council for legal projects that appear likely to require more than $25,000 in legal expense. If it appears that the initial project budget is likely to be exceeded, an updated budget must be submitted for approval. If the project budget has been exceeded, no further payments will be made until a revised budget has been approved.
9. **FPPC Activities**
   The City Attorney shall provide advice relating to issues under the purview of California Fair Political Practices Commission (FPPC). The City Attorney may direct any elected or appointed official to consult directly with the FPPC.

10. **Risk Management.**
    The City Attorney shall provide advice on risk management, liability, personnel and insurance matters including, on an as needed basis, in cooperation with the Redwood Empire Municipal Insurance Fund, a joint powers authority, of which the City is a member or any successor risk management authority.

11. **Council and City Attorney Relationship.**
    The City Council shall address legal matters through the City Attorney. If a Councilmember has a City-related legal question, the Councilmember may contact the City Attorney directly for advice. If the City Attorney advises that more than one hour of attorney time will be needed, the City Attorney may not address the question until the Council has approved the legal work.

E. **Evaluation**
    The City Council shall evaluate the City Attorney (and his/her office) not less than bi-annually. The Council and the City Attorney will jointly establish the schedule for the evaluation. Council members will be asked to complete an evaluation form and forward it to the Mayor. The Mayor and Council members will meet in closed session to discuss the Attorney’s performance and to assimilate the individual performance evaluations. The Council will then conduct a closed session evaluation with the City Attorney to discuss general legal and litigation services, performance issues, and objectives.

F. **Removal**
    The following procedure shall be followed in the removal of the City Attorney:

1. **Vote**
   The removal of the City Attorney shall require a majority vote of the City Council.

2. **Legal Services Agreement**
   Removal shall be in accordance with the legal services contract.
IV. Litigation Policies and Procedures

A. Assignment of the Case

The City Manager, working in cooperation with the City Attorney, shall prepare an assignment letter with respect to matters in active litigation. The letter shall identify counsel of record. It shall identify any other member of the legal team. The letter shall also specify City employees who are to be copied on status reports from litigation counsel.

The City Manager will comment in the assignment letter on the outcome objective for each case. For example, if the case is one of questionable liability and a relatively low level of exposure, it may be the City’s objective to limit discovery and try the case. On the other hand, it may be the intention of the City to defend vigorously a low exposure case that has significant precedential implications for the City.

B. Acknowledgement of the Case

Litigation counsel shall acknowledge in writing acceptance of the assignment upon receipt of the assignment letter. Acceptance of the assignment confirms that litigation counsel has no conflict of interest or other disability precluding effective representation of the City.

C. Preliminary Liability Report

Within 45 days of receipt of assignment, principal litigation counsel shall provide the City Manager with a preliminary liability report. Based on the report, the City Council shall undertake to evaluate its potential financial exposure and assess whether to litigate actively the case, try to settle the case, or to limit its discovery based upon the exposure. The preliminary report must be received before the City authorizes payment for legal services in connection with the litigation matter.

The first report should contain the following captions:

1. Facts
   Litigation counsel should give a synopsis of the facts giving rise to the lawsuit.

2. Status of Pleadings
   Litigation counsel should review the status of the formal pleadings. If a third party’s pleading can be challenged by demurrer or motion to dismiss, or if a motion for change of venue or removal to federal court seems desirable, the pros and cons of such a filing should be discussed. Any recommendations for cross-complaints, including issues of solvency or potential insurance coverage of cross-defendants, should also be discussed.
3. Relief
Litigation counsel should summarize the relief sought by the complaint. Any claim for damages should be summarized.

4. Liability Analysis and Plan of Action
Litigation counsel should provide an initial impression of the City’s potential exposure. This should be quantified by the use of percentages when possible. If counsel cannot meaningfully assess the City’s potential exposure, counsel should provide a brief discussion of what is required before a meaningful assessment can be made.

5. Legal Opinion
Litigation counsel should provide a brief discussion of governing legal principles, highlighting uncertainties in the law that could affect the outcome of the case.

6. Request for Investigation/Professional Consultation
Any request for field investigation or professional consultation should be requested in the preliminary liability report. This includes a recommendation for an investigator or professional consultant. Counsel should identify fieldwork or evidence collection that may be required and advise whether City staff can be of assistance. Litigation counsel is not authorized, without permission from the City Manager, to assign field investigation to associates, law clerks or paralegals.

7. Discovery Plan
Litigation counsel should briefly identify what discovery is anticipated for more definitive evaluation of the City’s potential exposure. Litigation counsel should list the person(s) the City should depose or are likely to be deposed by adverse parties. If the case calls for early retention of experts, that issue should be noted in the report. The report should describe any other site investigation, witness interviews, or other needed investigation. The report should outline the City’s proposed discovery.

8. Litigation Budget
Litigation counsel must attach a litigation budget to the report. In preparing the budget, litigation counsel should take into account the litigation cost of any prior similar cases. As soon as it is reasonably foreseeable that the case is under budgeted, an updated litigation budget
should be completed for approval by the City Council. The City will not pay fees except in accordance with an approved litigation budget.

9. Remarks/Recommendations
Litigation counsel should include in this section other pertinent information, such as any settlement demand, the availability of alternative dispute resolution or arbitration, or possible simplification of issues.

10. Report Length
The ideal report length should not be greater than five pages, not including the attached litigation budget.

D. Ongoing Litigation Reports

1. Updated Status Reports
Litigation counsel must provide the City Manager with updated status reports every 90 days. Counsel should report only on new developments since the last report. Litigation counsel should flag at the top of the first page any items that are urgent or require an immediate reply. It is not necessary to restate information previously reported. If there has been no material activity in the 90-day period, a report so stating is sufficient.

Status reports should include a periodic reevaluation of the litigation plan and should specifically address the following:

a. The ongoing strategy for defense, prosecution or resolution of the case, including a factual analysis of developments related to liability and damages.

b. A description of planned discovery with a timetable for completion.

c. A brief synopsis of the discovery completed since the last report.

d. A listing of filed papers (pleadings, motions, and memoranda) that may be of material importance to the outcome of the litigation.

e. Court actions or calendar dates, including but not necessarily limited to mandatory settlement conferences, trial setting conferences, discovery hearings, arbitration and trial dates.

f. Anticipated changes in the litigation budget.
g. New settlement demands or other material communications from opposing counsel.

h. A list of upcoming “to do” tasks.

2. **Depositions & Deposition Reports**
   Absent authorization from the City Manager, a single attorney shall represent the City in all depositions.

   Litigation counsel should prepare short reports on depositions, including counsel’s impressions of the witness and the witness’s role or impact in the case. Such reports can be included or attached to updated status reports.

3. **Timely Major Development Reports**
   Litigation counsel must promptly report to the City Manager major developments, including settlement demands, any settlement conference date, hearing dates on major motions, especially those with the potential to be outcome determinative, and trial, arbitration, or mediation dates.

4. **Trial/Arbitration Reports**
   No later than 60 days prior to trial (or binding arbitration or mediation), litigation counsel will provide a report, which shall include:

   a. An assessment of the City's liability.

   b. An assessment of opposing parties’ claims.

   c. An assessment of the legal defenses (and probability of prevailing).

   d. An assessment of the chances of prevailing at trial.

   e. The verdict value in compensatory damages case, assuming full liability.

   f. An assessment of any other factors affecting the items above, including demeanor or credibility of important witnesses, evidentiary disputes, tendencies of local juries, the judge or opposing counsel, liability and solvency/coverage of co-defendants, or similar important issues.

   g. An appraisal of settlement value, considering verdict value and chances of prevailing.
h. Status of settlement discussions.

i. Estimated future fees and costs through trial (since last billing).

j. The City Manager may request a daily oral report during a trial, arbitration, or mediation.

3. Final Reports
A brief report should be sent to the City Manager. Closing papers (such as the judgment, arbitration award, or settlement agreement) and final billing should be attached.

E. Significant Strategy Decisions
A primary goal of these policies and procedures is to enable the City to stay involved in significant litigation decisions. Many actions are routine, such as sending out standard discovery requests or granting an extension of time to opposing counsel. But some are not. For example, when the opposing party seeks multiple extensions of time, the City Manager should be consulted. Similarly, deciding whether some discovery undertakings should be delayed pending settlement discussions are strategy decisions that should be discussed with the City Manager. Selection of an arbitrator or mediator, or waiver of a jury trial, must be done in consultation with the City Manager. Decisions such as filing indemnity cross complaints, conducting informal exchanges of discovery materials with co-defendants or the claimant, or sharing discovery costs with co-defendants, must also be made in consultation with the City Manager.

F. Discovery
To facilitate prompt discovery responses involving the City, litigation counsel should provide the maximum possible lead-time for preparation of responses, particularly for answers to interrogatories. Unless directed otherwise, such discovery requests should be provided to the department or employee involved with a copy to the City Manager so that the City Manager can assure timely follow-up. Litigation counsel should review discovery requests in advance for objectionable items so that City staff does not spend unnecessary time preparing responses.

G. Settlement Authority
Litigation counsel has no authority to settle cases without prior authorization from the City Council. There are many cases that require that litigation counsel handle negotiations directly. In all such circumstances the City Manager must be kept apprised at each step of negotiations.
H. Extraordinary Expenses
Litigation counsel should obtain prior City Council approval before incurring expenses in the following areas: Special counsel, experts, professional consultants, investigative services, independent medical exams, and out-of-area travel. Litigation counsel should provide a curriculum vitae and discuss the pros and cons of hiring with the City Manager. Litigation counsel shall also submit an estimated cost for the services.

I. Motion Practice
Careful consideration must be given to the value of any motion before it is filed. Except in unusual circumstances, time and effort should not be spent preparing, filing and arguing a motion unless the motion will significantly shorten or terminate the suit or gain a distinct advantage in the litigation.

J. Legal Research (including time on Lexis and Westlaw)
The City’s litigation attorneys are expected to have knowledge in the area of claim requirements, writ of mandate proceedings, CEQA actions, government immunities and tort and contract defenses. Therefore, the City Council expects extended legal research billings to be limited to out of the ordinary legal issues.

If a legal research project is expected to exceed four hours, prior approval by the City Manager is required. A copy of the work product from such project should be forwarded to the City Manager.

V. Billing Statements
A. Statement Content
   1. Each activity must be separately dated and itemized, with a description of the work along with the initials of the attorney performing the work. Block billing (multiple daily descriptive explanations of activities with a single time entry) is not acceptable.

   2. The amount of time to perform the task must be recorded to the nearest tenth of an hour.

   3. The rate and hours charged by each attorney or paralegal working on legal issues or a case must be stated in the bill.
4. Interoffice conferencing among attorneys is not compensable unless it is a necessary strategy meeting related to a significant legal event (such as an upcoming trial).

5. Duplicate entries for reviewing and analyzing the same documentation or legal research are not compensable.

6. General overhead and administrative costs (including secretarial time, word processing time) are not separately compensable except to the extent that they are included as a standard administrative charge in the legal services agreement.

7. Time to "organize file" is a secretarial function and not compensable.

8. Case docketing activities should not be duplicated or repeated by several attorneys.

9. Actual charges or rates for charges should be shown (FAX, photocopy, out of area telephone, postage, etc.) unless covered by the standard administrative charged as stated in the legal services agreement.

10. Telephone calls should specify the participants and the subject matter discussed.

11. Billings should be submitted monthly but must be submitted no less than quarterly unless no activity has occurred.

B. Other Billing Matters
   1. Unless otherwise specified in the legal services agreement, bills from vendors or other contractors under $10,000 should typically be paid by the firm and included on the attorney's bill for reimbursement. Bills of $10,000 or over should be sent directly to the City for payment. Use of vendors or independent contractors must be previously approved.

   2. Routine use of overnight mail or messenger service is strongly discouraged unless included in the standard administrative charge in the legal services agreement.

   3. Absent prior approval by the City Manager, the City will not pay for more than one attorney to attend hearings (court, arbitration, or mediation) or trials.
4. The City Manager will review and approve all billings for payment. Any questions regarding charges will be directed to the principal attorney on the matter. Payments will not be remitted until any disputes on billings are resolved.

5. Unilateral fee rate increases by law firms will not be accepted. Any proposed fee increase must be approved by the City Council prior to implementation.