CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Boards of Administration Joint Personnel Committee

FROM: John Flynn, CEO

SUBJECT: Legal Services Assessment Vision'31 Initiative 5.2.3

DATE: August 31, 2026

Approved | Date

RECOMMENDATION

Discussion and action to provide direction to staff on the Legal Services Assessment.

Staff requests from the Committee:

1. Provide feedback to staff on the analytical framework governing the assessment: two operating models under comparison, the current scope boundary, the baseline peer group, and the five-point cost analysis described below.

2. Provide direction to staff to continue the analysis, including exploring employment authority and classification creation in an effort to develop recommendations on a path forward.

BACKGROUND

Vision'31 Initiative 5.2.3 directs an assessment of legal service delivery capacity and a determination of the right operating model for ORS. Both Boards approved the Strategic Plan in April 2026 and the FY2027 work plan in June 2026, which includes this initiative. The commitment made to both Boards is that they will receive the findings with a full comparison of options and transparent cost information, regardless of what the assessment indicates.

The comparison covers general counsel work, together with domestic relations order and other family law work. Fiduciary counsel, disability counsel, federal tax counsel, and investment counsel remain outside the comparison and are expected to remain outsourced under either model. Litigation, employment, specialty, and conflict counsel also remain outside of this analysis scope.

ORS currently retains outside counsel to serve as general counsel to both Boards and ORS under a contract structure that includes a fixed fee component for baseline general counsel services and an hourly component for additional general counsel matters, with fees tracked separately for each Board. The same firm separately provides fiduciary counsel services, billed hourly and tracked apart from general counsel work.

ORS separately retains outside counsel for domestic relations order review and other family law matters. Domestic relations order reviews are billed at a flat fee per matter, and other family law work is billed hourly. Both arrangements reflect the new contract structure and isolated billing setup adopted with the current agreements, which underlies the cost baseline in Appendix A.

ANALYSIS:

This analysis evaluates the current outsourced General Counsel model against a potential internal Retirement General Counsel model. It considers cost, legal services capacity, transition requirements, peer practices, and the legal and governance framework necessary to establish an internal function.

The analysis is preliminary and is intended to identify the financial, operational, and governance issues that must be resolved before staff develops a final recommendation. The sections below present the cost comparison and expected service capacity, followed by the peer analysis, staff review of authority, remaining questions, and next steps. Supporting detail is provided in Appendices A through E.

Cost Analysis

The five-point cost analysis consists of:

1. Current Outsourced Baseline
2. Year 1 Personnel Cost
3. Year 2 Personnel Cost
4. Steady-state Internal Cost
5. Enhanced Service Level

1) Current Outsourced Baseline

Staff analyzed one year of billing data. In-scope general counsel totaled 733 hours and $514,669. In-scope domestic relations order and family law work totaled $41,819. The combined in-scope baseline is $556,488. These figures reflect the twelve-month period tracked for legal services provided. General counsel data covers June 2025 through May 2026; DRO/Family Law data covers August 2025 through July 2026. Appendix A provides a full breakdown.

2) Year 1 Personnel Cost

For the internal model, staff developed a preliminary base salary planning assumption for the Retirement General Counsel using the midpoint of the average published salary range for the six peer systems with a stated range in Appendix C, or $271,262. No comparable City classification exists for a retirement-specific general counsel role, so this benchmark remains peer-based. Applying a benefits and payroll load of approximately 40%, the loaded Year 1 internal cost is estimated at $379,767, consisting of the Retirement General Counsel position alone, which is the only new position in Year 1.

During Year 1, the new Retirement General Counsel will transition responsibility from Reed Smith, with the pace depending on the attorney's experience and qualifications. At the Contract Year 3 rate, Reed Smith's fixed fee will be $28,330 per month combined. Staff assumes most fixed-fee General Counsel responsibilities to transfer relatively quickly (contracts, agenda and Board packet review, Board and committee meeting support, minutes review, routine policy review, etc). The contract with Reed Smith contemplates this transition but will require an amendment to codify this new working relationship. Hourly Reed Smith support would remain available to provide continuity, institutional knowledge, and specialized assistance.

3) Year 2 Personnel Cost

Year 2 internal cost adds a preliminary planning assumption for a future legal support position. Staff used the City of San José Legal Analyst II classification of $101,470 to $123,330. Legal Analyst II was selected because its duties sit above the clerical Legal Administrative Assistant series and below the more senior Legal Analyst III and Senior classifications, matching the substantive legal research, document, and case support work anticipated for this role. Using the midpoint of that range ($112,400) and the same 1.4 loading factor, the loaded cost of the support position is estimated at $157,360. Combined with the Retirement General Counsel, the loaded Year 2 internal cost is estimated at $537,127. This is presented to illustrate potential cost. The specific classification, duties, and timing of any Year 2 support position remain to be determined by the Retirement General Counsel based on demonstrated workload and submitted through the normal budget process.

4) Steady-state internal cost

Steady-state internal cost is estimated at the same $537,127 loaded total. This assumes Reed Smith General Counsel services will be reduced to a de minimis amount, used at the direction of the new Retirement General Counsel for support and history.

5) Enhanced service level

An insourced General Counsel model is expected to provide greater day-to-day legal capacity, more immediate access for staff and the Boards, and more proactive integration into ORS operations. The November analysis will further define the expected service levels, scope of support, and measures of success.

Current billing records measure work referred to outside counsel rather than potential organizational legal demand. Some legal-related work is absorbed by management, and outside counsel is generally not present when legal questions arise during internal management discussions or committee meetings. An internal General Counsel would provide greater opportunity for real-time advice, earlier identification of legal issues, and direct participation in discussions as they occur.

The combined in-scope work reflects a demonstrated minimum of approximately 833 hours during the twelve-month baseline period, consisting of 733 confirmed Reed Smith General Counsel hours and an estimated 100 hours of DRO and Family Law work. Using 1,752 hours as a capacity modeling assumption, one full-time Retirement General

Counsel would provide standing legal capacity of slightly more than twice the outsourced baseline. Year 2 and steady state would add dedicated legal support capacity for case processing, document preparation, and research support.

Peer Group Analysis

The baseline peer group includes CCCERA, VCERA, FCERA, SJCERA, SamCERA, SCERA, and SBCERS, selected based on membership size and assets. Six of the seven peers show a retirement-specific in-house legal classification. See Appendix C for the breakdown of reporting and appointing structures. The SBCERS General Counsel Charter, adopted in 2024, provides the clearest documented model for Board appointment on CEO recommendation, administrative reporting to the chief executive, and direct Board access for fiduciary purposes. It is attached in Appendix E. Direct confirmation from SCERA is still pending.

City Charter and San José Municipal Code Analysis

Staff reviewed the City Charter and the San José Municipal Code provisions bearing on an internal position. This review is staff work product prepared to frame questions for the committee. It is not legal advice and has not yet been reviewed by counsel. See Appendix D for section reference language.

Staff's review identified the following provisions as relevant to an internal position, summarized here for Committee context. City Charter §810(e) and Municipal Code §3.28.155 and §3.36.385 address each Board's authority to engage counsel by contract, exercised separately by each Board. City Charter §810.1(b) addresses appointment authority for ORS professional and technical staff, held by the Chief Executive Officer. §810.1(c) addresses discipline and removal of ORS employees, referencing applicable Civil Service provisions. Position creation and classification are addressed through the Civil Service Rules, the Civil Service Commission, and Council ordinance under §1102 and §1103. §902 addresses Council authority over compensation. §810(d) addresses budget approval. How these provisions work together for a new attorney position raises questions that I will need to resolve with counsel.

The review also identified several interrelated questions concerning employment authority for an ORS-based attorney position, its Civil Service classification, and the Boards' legal advisory functions. This area is still under examination to determine the appropriate implementation path for the recommendation.

What the Analysis Does Not Yet Establish

- The legal and governance framework for an internal General Counsel, including client representation, privilege, conflicts, use of separate counsel, and each Board's direct access to legal advice.
- Classification feasibility and organization placement, including the hiring, reporting, and oversight structure.
- High-level estimates for an enhanced service level.

Next Steps

The anticipated sequence is:

- Joint Personnel Committee discussion and direction
- Classification work with City
- Authority discussions with City and General Counsel
- Final JPC discussion and recommendation in November
- Board discussions and direction at December meetings
- Budget development and requests January through June 2027.

The final written analysis is targeted for December 2026 to inform FY2028 budget decisions.

CONCLUSION:

The analysis to date indicates that an internal Retirement General Counsel model warrants further development. Preliminary cost estimates are comparable to the current outsourced baseline while providing substantially greater standing legal capacity, and the peer review shows that an internal legal function is common among comparable retirement systems.

The remaining work is to determine how an internal General Counsel model can be implemented within the City and Board governance framework and to develop a stronger foundation for how the additional legal capacity would improve ORS operations, responsiveness, and decision support.

John Flynn
Chief Executive Officer (CEO)

Appendix A: Current Cost Baseline

Reed Smith – General Counsel (June 2025 – May 2026)

Category	PF	FED	Total
GC Fixed Fee	$146,023.61	$149,271.55	$295,295.16
GC Hourly	$33,105.77	$44,051.60	$77,157.37
Joint GC Hourly	$71,108.70	$71,108.70	$142,217.40
Total	**$250,238.08**	**$264,431.85**	**$514,669.93**

Saltzman and Johnson (August 2025 – July 2026)

Category	PF	FED	Total
DRO	$6,500.00	$6,500.00	$13,000.00
Other Family Law	$7,930.00	$20,889.00	$28,819.00
Total	**$14,430.00**	**$27,389.00**	**$41,819.00**

Hours are confirmed only for the Reed Smith general counsel component (733.57 hours); Saltzman and Johnson work is not measured in hours in the underlying billing records. Applying the lower of Saltzman and Johnson's two contract hourly rates, $420 per hour, to the $41,819 in-scope amount yields an estimated 100 hours of work.

The current cost baseline for this analysis is $556,489, reflecting a minimum of 833 hours of in-scope legal services.

Appendix B: Two Operating Models Under Comparison

- **Model 1: Continued Outsourcing.** Current provider structure retained. Continue outsourced general counsel; DRO/Family Law work continues as outsourced. An enhanced service level and its cost are being developed for comparison.

- **Model 2: Internal Retirement General Counsel.** An ORS-employed Retirement General Counsel with fiduciary counsel, disability counsel, federal tax counsel, investment counsel, and other specialty counsel retained externally as under Model 1. Staffing is staged: Year 1 includes substantial transition support from Reed Smith; Year 2 assumes declining transition support; a legal or paralegal support position in steady state is a planning assumption only, to be determined by the Retirement General Counsel based on demonstrated workload and submitted through normal budget processes.

Appendix C: Peer Comparison Reference

This appendix summarizes the head legal role, appointment authority, reporting organization, performance evaluation responsibility, and published compensation for each system in the ORS peer group where information has been identified. Entries draw from a mix of direct confirmation from peer chief executives, published class specifications, and, for one system, a formally adopted governance charter.

Fund	Title	Appointing Authority	Reporting Org	Evaluation	Compensation
CCCERA	General Counsel	CEO[1]	CEO	CEO[1]	$284,976 – $363,708
VCERA	Retirement General Counsel	Board[2]	Board[2]	Board[2]	$239,135 – $325,313
SJCERA	Retirement Legal Counsel (public title: Chief Counsel)	Not stated	CEO, but also legal advisor to the board	CEO[1]	$205,046 – $249,235
SCERA	Asst. Retirement Administrator / Chief Legal Counsel	Not stated	CEO, but also legal advisor to the board	Not stated	$213,554 – $259,575
SamCERA	Retirement Chief Legal Counsel	CEO[3]	CEO, but also legal advisor to the board[3]	Not stated	$264,784 – $330,949
SBCERS	General Counsel	Board, on CEO recommendation[4]	CEO (administrative/functional); Board directly for fiduciary duties[4]	CEO, in consultation with Board[4]	$227,947 – $290,917
FCERA	No in-house position[5]	N/A	N/A	N/A	N/A

[1] Confirmed through CEO confirmation.
[2] Per 2025 organization chart and direct CEO confirmation.
[3] Per direct CEO confirmation; the Board holds meaningful authority over continuation of the relationship despite CEO appointment.
[4] Per the SBCERS General Counsel Charter (2024). The SBCERS class specification itself states only "under administrative direction" and does not independently state the dual reporting structure; the Charter is the source for appointment, reporting, and evaluation authority.
[5] FCERA retains all legal services externally by specialty: Board Counsel (Baker, Manock & Jensen), Fiduciary Counsel (Reed Smith LLP), Investment Counsel (Foster Garvey PC and Foley & Lardner LLP), and Disability Hearing Counsel (Fresno County Counsel), per FCERA's FY2025 ACFR.

Appendix D: San José Municipal Code and City Charter references

San José Municipal Code References

3.28.155 Authority to secure other contractual services.

A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.28.150 and the authority to enter into contractual arrangements for investment related services as provided in Part 3 of this chapter, the board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the board:

1. Actuarial services.
2. Auditing services.
3. Investment manager search services.
4. Investment performance evaluation services.
5. Proxy voting services.
6. Other consultant services which the board deems necessary to carry out its duties and responsibilities under this retirement plan.

B. The contracts described in subsection A. shall be entered into in the name of the board of administration for the federated city employees retirement system.

(Ords. 24696, 25092.)

3.36.385 Authority to secure other contractual services.

A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.36.380 and the authority to enter into contractual arrangements for investment related services as provided in Part 4 of this chapter, the board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the board:

1. Actuarial services.
2. Auditing services.
3. Investment manager search services.
4. Investment performance evaluation services.
5. Proxy voting services.
6. Other consultant services which the board deems necessary to carry out its duties and responsibilities under this retirement plan.

B. The contracts described in subsection A. shall be entered into in the name of the board of administration for the police and fire department retirement plan.

(Ords. 24723, 25084.)

San José City Charter References

§810. Retirement Board or Boards.

(a) The City Council by ordinance shall establish one or more retirement boards to administer the retirement plans established pursuant to Article XV of this Charter.

(b) The term of membership, qualifications of the members and the size of each retirement board shall be prescribed by ordinance. The members of any retirement board shall be appointed and removed in a manner prescribed by ordinance with a majority of the members appointed by the City Council. The City Council shall appoint and remove the members of any retirement board in a manner prescribed by ordinance. The members of each retirement board shall be paid a monthly stipend determined pursuant to the provisions of Section 1001.1 of this Charter.

(c) Each retirement board shall administer the retirement plan or plans that the retirement board has been designated to administer in accordance with the fiduciary duties and obligations established by law, the City Charter, and as further prescribed by ordinance.

(d) Each retirement board shall annually adopt a budget approved by the City Council covering the entire aggregate expense of administration of the retirement plan or plans that the retirement board has been designated to administer for the ensuing fiscal year, using the same fiscal year as the City pursuant to Section 1200 of this Charter.

(e) Each retirement board may retain or employ, by contract, attorneys to assist the retirement board on matters reasonably necessary to carry out their fiduciary duties in the administration of the retirement plan or plans that the retirement board has been designated to administer.

(f) Each retirement board shall comply with all open and public meeting requirements established by state law and applicable Council action.

Added at election November 4, 2014

§810.1. Retirement Board; Power of Appointment.

(a) The retirement board or boards may appoint and prescribe the duties of the chief executive officer and the chief investment officer or such equivalent positions of the Office of Retirement Services to assist in the administration of the plan or plans. Such appointed officers shall serve in unclassified positions at the pleasure of the appointing retirement board; if more than one board then the boards shall jointly appoint the chief executive officer and the chief investment officer.

(b) The chief executive officer or the officer holding an equivalent position of the Office of Retirement Services may appoint and prescribe the duties of the professional and technical employees and clerical employees employed in the Office of Retirement Services.

(c) In addition, when the chief executive officer or the officer holding an equivalent position deems it necessary for the good of the service they may suspend without pay, demote, discharge, remove or discipline any such employee in the Office of Retirement Services subject to any applicable Civil Service provisions of the Charter and any Civil Service Rules adopted thereto.

(d) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the retirement board or boards is empowered to appoint or the chief executive officer is empowered to appoint, but the Council

may express its views and fully and freely discuss with the retirement board or boards anything pertaining to the appointment and removal of such officers and employees.

e)Compensation set for chief executive officer, chief investment officer, or their equivalent and the investment professional staff shall be set in accordance with Charter Section 902 and the board or boards shall consider compensation of equivalent positions in comparable United States Public Pension Plans in recommending the total compensation for the positions of chief executive officer, chief investment officer or their equivalent and the investment professional staff.

Added at election November 4, 2014

Amended at election November 8, 2022

§902. Compensation.

The compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council. All officers and employees shall be entitled to be reimbursed for actual and necessary expenses incurred while performing official business of the City when said expenses have been authorized or approved by the proper authority.

§1102. Civil Service Rules; Contents.

The Council shall adopt Civil Service Rules for the Classified Service relating to the following matters: Creation of positions; applications for employment; examinations; eligibility and qualifications; duration of eligible lists; certification of eligible lists; appointments; promotions; demotions; transfers; resignations; layoffs; temporary reductions due to retrenchment or completion of work; performance ratings; factors and weights to be considered in efficiency rating; filling of positions; classification of positions; specifications for positions; separation from service; dismissals; suspensions; disciplinary action; such other things, consistent with this Charter, as the Council may deem proper and necessary.

§1103. Civil Service Rules; Manner of Adoption.

Civil Service Rules for the Classified Service shall be adopted, and may from time to time be repealed or amended, by ordinance of the Council. Upon adoption, Civil Service Rules shall have the force and effect of law.

The Council may adopt, repeal or amend any Civil Service Rule for the Classified Service, provided it first receives from the Civil Service Commission a report or recommendation with respect to the proposed new Rule, if a new Rule is proposed to be adopted, or with respect to the proposed repeal or amendment of an existing Rule if an existing Rule is proposed to be repealed or amended; provided, however, that if the Civil Service Commission refuses or fails

to submit to the Council a report or recommendation on any proposed new Rule, or proposed repeal or amendment of any existing Rule, within ninety (90) days from and after the date the Council requests such a report or recommendation, the Council may adopt such new Rule or repeal or amend such existing Rule, without first receiving a report or recommendation thereon from the Civil Service Commission.

Appendix E: SBCERS General Counsel Charter