



Office of the City Manager

CONSENT CALENDAR

June 1, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Farimah Brown, City Attorney
Michael Woo, Deputy City Attorney
Subject: Waiver of Sanctuary City Ordinance for Westlaw Contract

RECOMMENDATION

Adopt a Resolution waiving the contract prohibition of Berkeley Municipal Code Chapter 13.105, Sanctuary City Contracting, in order to enter into a contract with Westlaw.

CURRENT SITUATION AND ITS EFFECTS

In order to provide legal services, the City Attorneys' office ("CAO"), relies on external legal resources. The preeminent provider of legal resources is Westlaw, a Thomson Reuters Company. However, Westlaw provides services to the United States Immigration and Customs Enforcement Department. Pursuant to Chapter 13.105, the Sanctuary City Contracting Ordinance, the Council must grant a waiver in order for the City to contract with Westlaw.

BACKGROUND

One of the most critical tasks performed by attorneys is legal research. From researching cases and statutes for litigation to preparing ordinances and reviewing contract terms, having a robust and comprehensive legal research tool is indispensable. Since 2000 and until the passage of the Sanctuary City Contracting Ordinance in 2019, the CAO has contracted with Westlaw, a Thomson Reuters company. Westlaw is relied upon by numerous legal organizations, governmental agencies, and non-profit organizations. Current subscribers include entities such as the Federal Courts, California courts, MALDEF (www.maldef.org) RAICES (www.raicestexas.org) Rio Grande Legal Aid (www.trla.org), Centro Legal de la Raza (www.centrolegal.org/) as well as the AMLAW 100 and law firms of all sizes. Westlaw is essential to work done by city attorneys, public defense agencies, legal aid associations and prosecutors. In firms with more than 500 attorneys, Westlaw is the legal resource service of choice for 75% of those firms and is the leading platform in the legal industry, relied on for:

- Accuracy of case law, statutes and regulations, all of which are interconnected through its *proprietary* Key Number System, a master classification system of U.S. law.

- Editorial Enhancements that allow customers to quickly isolate legal issues of importance as well as see their development through the American Jurisprudence system.
- *Exclusive* content critical to municipal attorneys, such as *McQuillen: The Law of Municipal Corporations*, *Matthews Municipal Ordinances*, and *The Ordinance Law Annotations*.
- In addition to the exclusive and proprietary sources described above, the following critical legal research resources are also proprietary to Westlaw: California Jurisprudence, the Rutter Group Collection, Miller & Starr CA Real Estate, Witkin Library, American Law Reports, CA Civil Practice Collection, CA Judges BenchBook Series and CA Code Forms Government¹.

The Sanctuary City Contracting Ordinance, adopted in 2019, prohibits contracting with an entity that provides services to the United States Immigration and Customs Enforcement Department unless a waiver is granted by the Council. Section 13.105.030 provides that a waiver can be granted "...based on a specific determination that no reasonable alternative exists, taking into consideration the following:

1. The intent and purpose of this ordinance;
2. The availability of alternative services, goods and equipment; and
3. Quantifiable additional costs resulting from use of available alternatives

The intent and purpose of the Ordinance is to ensure that the City does not financially support any company that provides services that infringes upon the rights of immigrants. Here, the CAO will be using Westlaw to, among other things, enhance efforts to *protect* immigrant rights as needed. With respect to availability of alternative services, as explained above, due to the specialized and proprietary nature of Westlaw services, no alternative exists to provide the level of resources offered by Westlaw. Additionally, the second most used legal research software with 14% of the market – LexisNexis – also provides data services to the United States Immigration and Customs Enforcement Department. But, not only is LexisNexis also not in compliance with the Sanctuary City Contracting Ordinance, its software lacks the capability of Westlaw's products. Consequently, no amount of additional costs can equate to the offerings from Westlaw.

¹ While Westlaw licenses some of these products to third parties, the products within those third party services are stand alone and not integrated with each other as they are in the Westlaw ecosystem and thus significantly reducing their utility to the user. Additionally, no other company provides the wide suite of integrated legal products such as calendaring, data management and time keeping available from Westlaw.

ENVIRONMENTAL SUSTAINABILITY

While much of the proprietary publications identified above were previously only available in print (and are still available in print today), the CAO intends to contract only for online access to these sources, thereby significantly reducing reliance on print publications and the concomitant negative impact on the environment.

RATIONALE FOR RECOMMENDATION

The CAO requires services provided by Westlaw and no alternative exists.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

ADOPT A RESOLUTION WAIVING THE CONTRACT REQUIREMENTS OF THE SANCTUARY CITY CONTRACTING ORDINANCE PURSUANT TO CHAPTER 13.105 OF THE BERKELEY MUNICIPAL CODE, IN ORDER TO ENTER INTO A CONTRACT WITH WESTLAW, A THOMSON REUTERS COMPANY

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, in order to enter into a contract with Westlaw, a Thomson Reuters Company, the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

WHEREAS, the three factors: the intent and purpose of the act, the availability of alternative service providers and quantifiable additional costs resulting from the use of alternative providers have all been considered; and

WHEREAS, the use of services provided by Westlaw is indispensable to the practice of law; and

WHEREAS, contracting with Westlaw will not violate the intent of the Ordinance as its services will be used to promote the interest of the immigrant community in conformance with the intent and purpose of the Ordinance; and

WHEREAS, no other contractors are available who can provide the services required by this contract; and

WHEREAS, no additional costs are quantifiable as there are no available alternatives; and

WHEREAS, failing to provide this waiver would result in additional costs to use Westlaw on an ala carte basis; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver to the "no-contract" provision of the B.M.C. Section 13.105 is approved because no reasonable alternative exists to the services that will be provided under contract with Westlaw, a Thomsen Reuters Company.