



Office of the City Manager

CONSENT CALENDAR

May 9, 2023

To: Honorable Mayor and Members of the City Council  
From: Farimah Faiz Brown, City Attorney  
Submitted by: Marc Shapp, Deputy City Attorney  
Subject: Waiver of Sanctuary City Ordinance to Amend Westlaw Subscription

RECOMMENDATION

Adopt a Resolution waiving the contract prohibition of Chapter 13.105, Sanctuary City Contracting, in order to amend the City Attorney's Office subscription to Westlaw to include case calendaring capabilities.

CURRENT SITUATION AND ITS EFFECTS

The City's Biennial Budget for Fiscal Years 2020 and 2021 included annual funding of \$25,000 per year for the City Attorney's Office (CAO) to procure calendaring software to provide a way to manage court deadlines, project flow, and files. However, the CAO was until recently unable to identify a satisfactory product.

The CAO has identified Deadline Assistant, the calendaring solution offered by Westlaw, a Thomsen Reuters Company (Westlaw), as a satisfactory solution that meets the CAO's case calendaring needs. On June 1, 2021, Council adopted Resolution No. 69,907-N.S., granting the CAO a waiver pursuant to Chapter 13.105, the Sanctuary City Contracting Ordinance, specifically in order for the City to contract with Westlaw to obtain necessary legal research resources. Accordingly, the CAO now requests a resolution waiving the Sanctuary City Contracting Ordinance requirements in order to amend the current Westlaw subscription to include Deadline Assistant.

BACKGROUND

The CAO brings litigation on behalf of the City and responds to claims and lawsuits to protect the City's interests. A critical component of all litigation is the management of deadlines imposed by rule and the various courts in which the cases are filed. Cases may be adversely decided based on missed deadlines irrespective of the merits of the City's position. Furthermore, malpractice exposure from calendar related errors is a significant risk for every lawyer and every legal department. The CAO can greatly reduce these risks with rules-based legal calendaring software. In addition, to the extent such calendaring software is customizable, the CAO can leverage that capability outside of the litigation context to increase general workflow efficiency.

The CAO researched potential calendaring software options and initially determined that the CompuLaw product offered by Aderant North America, Inc. (Aderant) was the best product available for the CAO's needs. However, during discussions with Aderant it became clear that Aderant was unable or unwilling to certify compliance with several of the City's contracting requirements, including the Sanctuary City Contracting Ordinance.

The CAO then reviewed Westlaw's calendaring product, Deadline Assistant. Deadline Assistant is offered as an add-on to the CAO's existing legal research subscription. Acquiring this capability would allow the CAO to better organize its caseload, automatically schedule critical dates in accordance with the applicable rule set, and create custom rule sets to apply to other areas of the CAO's workload.

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, Council already has approved the use of Westlaw to, among other things, enhance efforts to *protect* immigrant rights as needed. Amending the CAO's Westlaw subscription will further enhance the CAO's capabilities to do so. With respect to the availability of alternative services, as explained above, the CAO has been unable to identify an alternative product from a supplier that is willing to certify compliance the Sanctuary City Contracting Ordinance. Indeed, not only is the Aderant product offered by a company that also will not agree to comply with the Ordinance, Aderant also declined to sign on to several other of the City's contracting requirements. Consequently, no amount of additional costs can eliminate the need for a waiver of the Ordinance.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The CAO intends to contract only for online access to Deadline Assistant. Therefore, there is no identifiable impact on the environment.

RATIONALE FOR RECOMMENDATION

The CAO requires case calendaring capabilities, and no vendor has been identified that will comply with the Sanctuary City Contracting Ordinance.

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 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 contract with Westlaw, a Thomson Reuters Company, to add case calendaring capabilities, 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 calendaring software 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 without also requiring a waiver; and

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

WHEREAS, failing to provide this waiver would result in increased risk of adverse litigation outcomes and exposure to malpractice claims; 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.