

ORDINANCE 2015 - 04



ORIGINAL

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, AMENDING SECTION 2.42.030 "DUTIES AND RESPONSIBILITIES OF COUNCIL"; AMENDING SECTION 2.42.040 "CASE LOAD LIMITS AND TYPES OF CASES"; AMENDING SECTION 2.42.060 "ADMINISTRATIVE EXPENSES"; AMENDING SECTION 2.42.070 "SUPPORT SERVICES"; AMENDING SECTION 2.42.080 "REPORTING PROCEDURES"; AMENDING SECTION 2.42.090 "TRAINING, SUPERVISION, MONITORING, AND EVALUATION OF COUNSEL"; AMENDING SECTION 2.42.100 "SUBSTITUTION OF COUNSEL AND ASSIGNMENT OF CONTRACTS"; AMENDING SECTION 2.42.140 "TERMINATION OF CONTRACT OR REMOVAL OF COUNSEL"; AND CREATING SECTION 2.42.160 "UPDATE AND EVALUATION"**

**WHEREAS**, the Washington legislature by RCW 10.101.030 requires the City of Sunnyside ("City") to legislatively adopt Standards for the delivery of Public Criminal Defense Services; and

**WHEREAS**, in 2011, Sunnyside adopted Public Defense Standards to comply with RCW 10.101.030; and

**WHEREAS**, the City Manager and staff have engaged in a process of reviewing the Standards for Indigent Services as required by the Supreme Court of the State of Washington since 2011; and

**WHEREAS**, since the adoption in 2011 and the initiation of that review, Standards have been adopted, case load weighting have been established, and litigation has occurred providing additional direction for the preparation of appropriate Standards; and

**WHEREAS**, on December 4, 2013, a decision in *Wilbur vs. City of Mount Vernon* was rendered providing additional guidance to Washington cities

regarding the provision of indigent defense services, its funding, and evaluation of existing and necessary services; and

**WHEREAS**, the City Manager and staff have done a comprehensive assessment of the Standards adopted in 2011, as well as an evaluation of the indigent defense procedures before the Sunnyside Municipal Court, and have identified modifications to the procedure, the agreements with the defense providers, prosecutors, and the Municipal Court, and prepared Standards and procedures which are designed to enhance the protection of the rights of all those accused of the crime and specifically that vulnerable portion of the City citizens who cannot afford to secure legal representations in criminal proceedings and to assure those rights are preserved.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

**Section 1.** That Section 2.42.030 entitled "Duties and responsibilities of counsel" of the Sunnyside Municipal Code shall be and hereby is amended and shall read as follows:

**2.42.030 Duties and responsibilities of counsel.**

Counsel shall follow the duties and responsibilities set forth in the individual contract. Counsel shall maintain malpractice insurance with agreed-upon policy limits. The individual contract shall require that public defense services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the Washington State Bar Association, case law, and in particular *Wilbur vs. City of Mount Vernon*, and applicable court rules defining the duties of counsel, and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the best interest of the client. The Public Defender, conflict counsel and every attorney providing indigent defense services by contract with the City shall warrant that he/she has:

A. Read the *Wilbur vs. City of Mount Vernon* (December 2013) decision, and will provide services in accord with its provisions; and

B. Ensure that the compensation provided is sufficient to provide adequate training, administrative and staff services, and infrastructure required by these standards, court rule, and the State and Federal Constitution. [Ord. 2011-9 § 1, 2011.]

**Section 2.** That Section 2.42.040 entitled "Case load limits and types of cases" of the Sunnyside Municipal Code shall be and hereby is amended and shall read as follows:

**2.42.040 Case load limits and types of cases.**

The City shall endeavor to include in individual contracts the types of cases for which representation is to be provided and the maximum number of cases which each attorney shall be expected to handle. Case loads shall allow counsel to give each client the time and effort necessary to provide effective representation. Case load limits should be determined by the number and type of cases being accepted and by the City Prosecutor's charging and plea bargaining practices. The Public Defender, conflict counsel, and every attorney providing indigent defense services by contract with the City, shall comply with all case load limitations imposed pursuant to the Court Rule and adopted Standards of the Washington State Supreme Court. [Ord. 2011-9 § 1, 2011.]

**Section 3.** That Section 2.42.060 entitled "Administrative Expenses" of the Sunnyside Municipal Code shall be and hereby is amended and shall read as follows:

**2.42.060 Administrative expenses.**

Administrative costs of providing representation shall be counsel's responsibility. Such costs shall include, but not be limited to, travel, telephones, law library, electronic research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the individual contract. Private offices and/or conference rooms shall be available which allow the maintenance of confidentiality. A telephone system, internet access and postal address shall be provided by the Public Defender. [Ord. 2011-9 § 1, 2011.]

**Section 4.** That Section 2.42.070 entitled "Support services" of the Sunnyside Municipal Code shall be and hereby is amended and shall read as follows:

**2.42.070 Support services.**

Counsel shall staff his/her office with an appropriate number of support staff and other support services. Counsel shall also acquire or maintain appropriate computer/word processing equipment in order to handle the paperwork generated by the contract case load as well as to comply with the reporting procedures required in SMC 2.42.080. The Public Defender, when needed, will

provide access to the services of a social worker, mental health professional and translator. The cost for these services will be provided per the terms of the contract. [Ord. 2011-9 § 1, 2011.]

**Section 5.** That Section 2.42.080 entitled "Reporting procedures" of the Sunnyside Municipal Code shall be and hereby is amended and shall read as follows:

**2.42.080 Reporting procedures.**

A. Counsel shall maintain a case reporting and management information system, which includes the number, type, attorney hours, and disposition of indigent defense cases. All of the above-described information shall be provided to the City on a regular basis or such other schedule agreed to by the City. Counsel's case reporting and management information system shall be maintained independently from client files in order to not disclose any privileged information. All records pertaining to expenses and billing shall conform to generally accepted accounting principles.

B. All Public Defenders providing services by contract shall quarterly certify their compliance with the standards for indigent defense by filing a Certification of Compliance as required by CrR 3.1, CrRLJ 3.1 and JuCR 9.2. Such forms shall be filed with the City's Municipal Court. Copies of each Public Defender's certification shall be provided to the City's Defense Contract Administrator. [Ord. 2011-9 § 1, 2011.]

**Section 6.** That Section 2.42.090 entitled "Training, supervision, monitoring, and evaluation of counsel" of the Sunnyside Municipal Code shall be and hereby is amended and shall read as follows:

**2.42.090 Training, supervision, monitoring, and evaluation of counsel.**

~~A. The training, supervision, and monitoring of counsel and their staff shall be the sole responsibility of counsel, except as provided in the individual contract. The City shall strive to evaluate counsel on a consistent basis. All training, supervision, monitoring, and evaluation of counsel shall conform to the standards set by the Washington State Bar Association and the Washington State Defender Association.~~

B. The City Manager shall designate a Public Defense System Contract Administrator to provide monitoring and evaluation of the Public Defense Services provided by the City.

C. Public Defense Services shall include a case reporting system and information management system. Such systems shall have the capability to provide periodic reports to the City regarding the caseload generated under the

contract for each attorney and intern providing services under the contract, case disposition and history. [Ord. 2011-9 § 1, 2011.]

**Section 7.** That Section 2.42.100 entitled "Substitution of counsel and assignment of contracts" of the Sunnyside Municipal Code shall be and hereby is amended and shall read as follows:

**2.42.100 Substitution of counsel and assignment of contracts.**

The counsel engaged by local government to provide public defense services should not sub-contract with another firm or attorney to provide representation and should remain directly involved in the provision of representation. If the contract is with a firm or office, the City should request the names and experience levels of those attorneys who will actually be providing the services, to ensure they meet the minimum qualifications. The employment agreement should address the procedures for continuing representation of clients upon the conclusion of the agreement. Alternative or conflict counsel should be available for substitution in conflict situations at no cost to the counsel declaring the conflict. Conflict counsel shall adhere to the standards established by this Ordinance, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this agreement. [Ord. 2011-9 § 1, 2011.]

**Section 8.** That Section 2.42.140 entitled "Termination of contract or removal of counsel" of the Sunnyside Municipal Code shall be and hereby is amended and shall read as follows:

**2.42.140 Termination of contract or removal of counsel.**

A. The termination of an individual contract for public defense services will be determined by the provisions set forth in the individual contract. Removal by the court of counsel from representation normally should not occur over the objection of both counsel and the client.

B. Termination of the contract, other than by mutual agreement or expiration of its term, shall occur only for "good cause." Good cause shall include the failure of the contract Public Defender to render adequate representation to clients, the willful disregard of the rights and best interests of the client, and/or the willful disregard of these Standards. Termination may also occur for violation of the express terms of the contract, provided, however, that the Public Defender shall be provided reasonable opportunity, following notice, to cure any technical contract violations that do not impair the provision of quality representation to the indigent client. [Ord. 2011-9 § 1, 2011.]

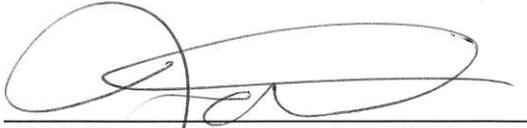
**Section 9.** That a new Section 2.42.160 entitled "Update and evaluation" of the Sunnyside Municipal Code shall be and hereby is created and shall read as follows:

**2.42.160 Update and evaluation.**

As the rules established by the Washington State Supreme Court are applied and interpreted by the Courts and, when appropriate, the Washington State Bar Association and other administrative agencies, the City states its intent to review and modify these standards.

**Section 10.** This Ordinance shall be effective five (5) days after passage, approval and publication as required by law.

**PASSED** this 9<sup>th</sup> day of March, 2015.

  
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JAMES A. RESTUCCI, MAYOR

**ATTEST:**

  
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DELILAH SAENZ, CMC, CITY CLERK

**APPROVED AS TO FORM:**

  
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KERR LAW GROUP, PLLC  
Attorneys for the City of Sunnyside