

TOWN OF BROOKLINE ADVISORY COMMITTEE
Land Use, Zoning, and Sustainability Subcommittee Report
Legal Department: FY23 Budget
Public Hearing: February 22, 2022

Attendance: Chair Carlos Ridruejo. Members C. Scott Ananian, Anita Johnson, Georgia M. Johnson, Linda Olsen Pehlke, David Pollak. Associate Town Counsel John Buchheit. Deputy Town Administrator Melissa Goff. No Members of the Public.

Recommendation: Favorable Action by a vote of 6-0 with no abstentions

Executive Summary:	The Legal Department FY23 budget of \$1,105,224 represents a 2% increase from FY22, reflecting a step toward restoring some of the cuts made in the FY21 COVID budget. The FY23 budget is still down 6% from FY21.
Voting Yes will...	Approve the departmental budget request as proposed by the Town Administrator and Select Board. This is essentially level-funding the department, although some additional funds were added to consulting services (outside counsel) to provide some additional capacity.
Voting No will...	Reject the budget/priorities as proposed.
Financial impact [if any]	DCPD is under-resourced to manage its regulatory workload and advance the town’s planning agenda. This budget is a compromise reflecting the SB and TA’s overall priorities across all departments. The impact is that regulatory work will get done but other priorities including planning and sustainability work will be slow and incremental.
Legal implications [if any]	The online version of the Zoning Bylaw is being made current and indexed, but the much-needed work of updating Brookline’s zoning – work requiring staff, community, and consultant effort – is further deferred due to funding constraints.

Budget Overview

There is currently no department head (Town Counsel) for the Legal Department. Associate Town Counsel John Buchheit prepared the budget. Deputy Town Administrator Melissa Goff opined that the department head position was expected to be filled in “a matter of weeks, not months”.

The Legal Department budget proposal includes 7.71 FTE staff, as follows:

- Town Counsel (Department head) (1 FTE) *currently unfilled*
- First Assistant Town Counsel: Patty Correa (1 FTE)
 - Civil rights litigation
- Associate Town Counsel: Jonathan Simpson (1 FTE)
 - Land use, Town Meeting support
- Associate Town Counsel: John Buchheit (1 FTE)
 - Building and contracts work

- Associate Town Counsel: Michael Downey (1 FTE)
 - Labor and contracts
- Senior Paralegal (1 FTE)
- Paralegal (1 FTE)
- Senior Office Clerk (0.71 FTE)

Additional or unusual work and special projects are typically handled by contracts with outside counsel, which are budgeted under the “General Consulting Services” line item. Staff salaries comprise 74% of the budget, with outside counsel accounting for an additional 14% of the budget.

Administration

The legal department is committed to advancing the Town’s Policy Issues and Initiatives with the following specific objectives:

- Increase community engagement:
 1. Increase community engagement and provide legal support for Town Departments, officials, and Town Meeting via a revised department website.
 2. Improve Open Meeting Law and Conflict of Interest law training to better promote community engagement.
 3. Centralize and organize items of particular legal importance to the Town, such as Special Acts and Local Option statutes adopted by the Town.
- Draft special legislation and bylaw changes necessary to allow the Select Board to delegate licensing functions, as approved by Town Meeting.
- Complete negotiations with all Town unions.
- Participate in the Massachusetts Commission Against Discrimination’s “Train the Trainer” program to enable the department to train Town staff on current discrimination law.
- Advise on Town contracts to allow more efficient procurement of contractors and services.
- Expand the experience base of the Town’s attorneys by exposing them to a greater variety of legal subjects.
- Obtain favorable rulings in pending federal and state cases.
- Provide Town Boards, Commissions and Departments with the timely legal information they need to make decisions and set policy.

Accomplishments

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Discussion / current work

- Spiegel case: A mediator mutually acceptable to the Town and to Mr. Spiegel has been recently appointed; agreement on this selection took “quite some time”. That mediator has been given all the information they’ve requested.
- Real Estate Transfer Tax: Committee members discussed the current status of Brookline’s Home Rule petitions, in particular the Real Estate Transfer Tax passed by Town Meeting in XYZ. It was recognized that there have been communications gaps between our State Representative, the Select Board, the Clerk’s office, and the Legal Department, that everyone involved is interested in addressing.

- Support for School Department: In response to a question from the committee, it was stated that the amount of support provided by the Legal Department to the Schools is typically estimated as “one attorney”.
- Support for Town Meeting: the Committee discussed metrics to quantify the support the legal department gives to Town Meeting, with a desire to incentivize early and timely interventions as well as to properly recognize the hours spent supporting Town Meeting. It was expressed that perhaps additional technology would be helpful if this sort of finer-grained tracking were to be done.

Anticipated changes in staffing needs, work methods, and more

Although the outside counsel budget was increased this year in order to provide additional capacity in the department, the budget for outside counsel is not expected to continue to increase: “we pride ourselves on trying to be able to do most of our work in-house.” However, government work has become complex and there are times when specialist help is beneficial to the Town. Concrete examples include: litigation involving a Town employee, issues involving environmental laws, and recent litigation around the value of the 111 Cypress Street property. The department feels they presently have a good balance of in-house counsel and outside specialist counsel.

The department also expects to increase the capacity of the Town’s antidiscrimination efforts by participation in the Massachusetts Commission Against Discrimination’s “Train the Trainer” program; they expect to begin training department heads.

Expanding the experience base of the Town’s attorneys is expected to allow attorneys to better cover for one another, as well as improve coverage of corner cases such as insurance claims.

Recommendation

The Subcommittee voted to recommend approval of the Legal Department FY23 Budget by a vote of 6-0 with no abstentions.