

**Advisory Committee: Land Use, Zoning, and Sustainability Subcommittee
Legal Department FY23 Budget
Public Hearing Held via Zoom 22 February 2022**

Overview	FY21 Actual	FY22 Budget	FY23 Budget	
Request	\$ 1,179,915	\$ 1,081,333	\$1,105,224	<i>A step toward restoring some of the cuts made in the FY21 COVID budget</i>

Expand All	FY21 Actuals	FY22 Budget	FY23 Budget	Variance
▶ SALARIES	\$ 953,423	\$ 812,449	\$ 813,075	\$ 626
▶ SERVICES	142,941	183,269	206,269	23,000
▶ SUPPLIES	813	2,500	2,500	0
▶ OTHER	81,205	81,500	81,500	0
▶ BUDGETED CAPITAL	1,533	1,615	1,880	265
Total	\$ 1,179,915	\$ 1,081,333	\$ 1,105,224	\$ 23,891

Recommendation:

The advisory committee recommends favorable action on the legal department budget request of \$1,105,224. This is essentially level-funding the department, although some additional funds were added to consulting services (outside counsel) to provide some additional capacity.

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.

Public Hearing:

The Land Use, Zoning, and Sustainability Subcommittee held a virtual public hearing on the FY23 Legal Department budget via Zoom on February 22, 2022. Attending were subcommittee chair Carlos Ridruejo; subcommittee members C. Scott Ananian, Anita Johnson, Georgia M. Johnson, Linda Olsen Pehlke, and David Pollak; Associate Town Counsel John Buchheit; and Deputy Town Administrator Melissa Goff. No members of the public attended.

Hearing Recording

Click on the link below. Enter the passcode when prompted to view the recording of this hearing.

https://brooklinema.zoomgov.com/rec/share/w_2zJUIYQmgx_M7-oSvesWOJDxfgGPVBWryljETZo_BuVLMFeqN4J5UZivaHbb.WLop2nYXy990Fh8v

Passcode: Tf^rhQ9#

FY23 Budget:

There is currently no department head (Town Counsel) for the Legal Department, however responsibilities are being shared (see attached communication from Joslin Murphy, former Town Counsel). Associate Town Counsel John Buchheit prepared the budget. At the subcommittee hearing Deputy Town Administrator Melissa Goff opined that the department head position was expected to be filled in “a matter of weeks, not months”. At the hearing of the full advisory committee, we were informed that current Weymouth Solicitor Joseph Callanan has been appointed to the position and will start at the end of March 2022.

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.

Details of this year’s budget can be found in Section IV of the Fiscal Plan, pages 31 - 34, and at the [opengov link here:](https://stories.opengov.com/jq7lwPVEO/published/undefined)

<https://stories.opengov.com/jq7lwPVEO/published/undefined>

Discussion:

Objectives

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

- Assisted with negotiating, drafting, and reviewing numerous contracts and other legal documents related to creating affordable housing, real estate transactions and clean energy projects, including the installation of solar panels on several Town buildings.
- Assisted with establishing and drafting restaurant outdoor seating policies and procedures.
- Secured a dismissal of an unfair labor practice charge filed by the fire union thereby avoiding a full hearing on the matter.
- Assisted with drafting warrant articles proposing amendments to the Town's zoning and general by-laws.
- Settled two grievances and one unfair labor practice charge, thus avoiding full hearings and the costs associated with those hearings.
- Led and managed negotiations with all bargaining units in the Town.
- Successfully defended the Department of Public Works before the Attorney General's Bid Protest Unit, where it awarded a contract to the second low bidder because it deemed the lowest bidder not responsible.
- Assisted with drafting special legislation and related proposed bylaw changes to authorize Select Board Delegation of licensing functions (filed as [S.2684](#))
- Provided legal advice and support related to marijuana licensing policy and regulation.
- Successfully opposed a summary judgment motion alleging that a decision of the Preservation Commission was arbitrary and unreasonable.

Discussion / current work

- Spiegel case: An individual (a retired judge) mutually acceptable to the Town and to Mr. Spiegel has been recently appointed to review the matter; agreement on this selection took "quite some time". That individual is being given all the information they've requested. Their report was originally expected on February 21, but the new target date is March 21; the full Advisory Committee is expected to meet to consider that report on March 22.
- Real Estate Transfer Tax: Subcommittee members discussed the current status of Brookline's Home Rule petitions, in particular the Real Estate Transfer Tax passed by Town Meeting in November 2019 and filed in May 2021 as [HD.3571](#). 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 subcommittee, 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 subcommittee 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.
- The advisory committee inquired as to whether any budget adjustments would be needed due to the personnel changes in the department, but were reassured that the budget was fully funded with a budget sufficient for expected staffing.
- A number of Advisory Committee members expressed concerns about the effective functioning of the department given the recent turnover. “It’s been a challenging year but we’ve stayed afloat; we’re looking forward to the new Town Counsel and starting the next chapter.” Committee members also expressed concern that with the appointment of new Town Counsel the department will have all-male leadership, whereas it previously had a 50/50 gender split; and that the longest-tenured members of the department were lost, leaving the remaining staff relatively inexperienced;. Former counsel Joslin Murphy has volunteered to consult with the Town, which has helped the transition in the department.
- Discussion on a previous departmental budget (Library) had raised the concern that the salaries being offered by the Town were not competitive, making it difficult to fill positions. The department noted in response that consideration had initially been given to hiring a consultant to help with the Town Counsel search, but “we started by just advertising and we found someone”. Similarly, the most-recently-filled paralegal position was filled despite Somerville advertising a similar position a week later at 10% greater salary. The department has not yet started a search to fill the position formerly held by Patty Correa; it was expected that that search would begin shortly after the new Town Counsel takes their position.

Anticipated changes in staffing needs, work methods, and more

Although the outside counsel budget was increased this year by a small percentage in order to provide additional capacity in the department, “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 former Town employee, issues involving environmental law, and recent litigation around the taking by eminent domain of the 111 Cypress Street property for the high school expansion. The department feels they presently have a good balance of in-house counsel and outside specialist counsel; however they would still like to see their General Services budget restored to pre-pandemic levels (\$200,000).

The department also expects to increase the capacity of the Town’s anti-discrimination 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

On a motion by C. Scott Ananian, seconded by Harry Friedman, the Advisory Committee voted to recommend approval of the Legal Department FY23 Budget as submitted by a vote of 22-0-0.

Appendix A: Comment received from Jolin Murphy

Dear Chair Doughty and Vice Chair Benka - I am writing in response to comments that were made last night during the Advisory Committee's discussion of the Legal Department's budget; in particular, how the Department has been functioning in the absence of a Department Head for the past several months. In view of that conversation, I wish to reassure you and the Committee that the administrative model that was developed in order to transition to new leadership in the Department was not an afterthought, but instead, the result of a long and thoughtful discussion among and between members of the office and the Town Administrator. As part of that discussion, which considered a number of external and internal factors, Associates Town Counsel Buchheit and Simpson generously offered to share certain administrative and other responsibilities, and I offered to continue to provide support to the office until a successor Town Counsel was named. I wholeheartedly agree with Vice Chair Benka's comment that they have both performed admirably in this regard over the past several months, and I deeply appreciate the comments made by Committee members Granoff and Kahn on my behalf. The Department is looking forward to Joe Callanan's arrival later this month, and I will certainly do what I can to support his arrival. Please know that it has been my great privilege to work for this Town for so many years, and I sincerely thank the Committee for its ongoing support of the Legal Department and its extraordinary members. Best regards, Joslin