

TOWN OF BROOKLINE ADVISORY COMMITTEE
Planning and Regulation Subcommittee Report
FY22 Program Budget for Legal Services

The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing on Friday, February 26, 2021, virtually on the Zoom platform to review the FY22 Legal Services budget. In attendance were Subcommittee members Steven Kanen (Chair), David Pollak, Carlos Ridruejo, Lee Selwyn, and Neil Wishinsky. Also present were Town Counsel Joslin H. Murphy, Deputy Town Administrator Melissa Goff, and Advisory Committee Vice Chair Carla Benka.

Budget Summary

The FY22 Office of Town Counsel budget request is \$1,081,333, an increase of \$4,763 (0.44%) over the FY21 budget and a decrease of \$67,837 (-5.9%) from the prior year FY20 actual expenditure. Personnel expense makes up the greatest part of the budget, with outside services as the second biggest component.

Presentation

Town Counsel Murphy presented a three-page budget memorandum (attached) that:

- Describes the work of the Office of Town Counsel;
- Lists ten FY22 Objectives and ten FY21 Accomplishments;
- Lays out the departmental budget in line-items and a pie chart.

Town counsel Murphy described the budget as very lean, and noted that her entire eight person staff (five attorneys, two paralegals and one administrator) is working full tilt. She reviewed the addition of attorney Michael Downey two years ago as (primarily) labor and employment counsel, and said that she believes that this move to reduce outside consulting has paid off both financially and in the services that her department provides.

Town Counsel reviewed the department's FY22 Objectives, noting in particular two key objectives that had slipped off the list published in the Budget Book because she had been unaware that there was a limit of ten.

Community engagement is a new focus for this department with a range of specific efforts including coordinating with the Office of Diversity, Inclusion and Community Relations, plans for revamping the department's web page to make it more informative and accessible, and Town Counsel's recent participation on a panel sponsored by the League of Women Voters on how to write a Warrant Article.

Another key objective for the coming year is **Transition Planning** – something that is being emphasized by the Town Administrator for all departments. Their focus is to make sure that every attorney experiences as wide a variety of legal work as possible to increase both capability and resiliency.

One of the key accomplishments of the past year has been **supporting the town in response to the Covid-19 pandemic**, the transition to a "virtual" Town Hall and Town Government, and the significant amounts of emergency legislation that was passed into law by the legislature and needed to be appropriately and successfully implemented.

Town Counsel also noted that in the area of **process takings and unpaid taxes**, over \$400,000 in unpaid taxes were recovered – all of this dating from prior periods to the Covid-19 pandemic. This was also an area where the department was able to broaden the variety of work experience across the staff – a key to its transition plan – with the entire staff sharing the work load and collaborating in the effort.

Discussion

In response to questions from subcommittee members, Town Counsel Murphy and Deputy Town Administrator Goff provided the following information.

Public records requests: Continuing the discussion from the previous year's subcommittee hearing, Town Counsel affirmed that the Town receives a huge number of requests which arrive on a weekly basis. Responding correctly and promptly is critical, and she personally oversees the bulk of this work. The prior model relied heavily on coordinated work with the Town Clerk's office, and they are now managing more of the responsibility within the Legal Department. They are in the process of evaluating software that is currently used by the School Department with an eye toward implementing this at some time in the future.

Zoning challenges and proposed zoning changes: Comprehensive permit (40B) projects and other development related issues, as well as proposed Warrant Articles that would change the Zoning Bylaw, continue to be an active area of work where the Legal Department coordinates closely with Planning and other Town staff and Boards. Town Counsel is aware of three draft Warrant Articles for Annual Town meeting just in the area of fossil fuel free buildings, and other issues such as micro-units are also active.

Supporting transition of Town Clerk and Town Meeting Moderator: Town Counsel agreed that the retiring office holders both brought enormous competence, capability and historical knowledge. She assured the subcommittee that the Office of Town Counsel will be able to support these transitions and provide sound legal advice.

Legal Settlements: \$75,000 is budgeted in FY22 for legal settlements, but it was noted that settlements can also be made through the town's Liability Fund as well as the Workers Compensation Fund, and those settlements are not included in the Legal Department's line item for settlements. Because Town Meeting passed a Warrant Article requiring disclosure of all settlements greater than \$25,000, the subcommittee asked Deputy Town Administrator to footnote or otherwise address this more comprehensively in communications to Town Meeting.

Support of the School Department: Deputy Town Administrator Goff said that about \$124,000 of the Legal Department's budget (exclusive of outside counsel costs) was spent in support of the Schools in FY20, and that this amount (along with the corresponding amounts for other departments) is reported in the "rolled up" school budget that also includes employment benefits, retirement costs, etc.

Proactive consulting with Department heads and Board chairs: Town Counsel agreed that an important aspect of the work of her Office is to coordinate with both Department heads and Board chairs in areas where their work may raise questions of potential liability for the Town and/or its employees.

Recommendation

The subcommittee voted 5-0 to recommend approval of the requested Legal Services budget of \$1,081,333 for FY22.

Town of Brookline FY22 Program Budget

Administration and Finance / Legal



Program Description

The Office of Town Counsel functions as the Town of Brookline's municipal counsel, providing legal advice to Town officials and employees in Town related matters. With the support of staff, the Town's attorneys represent the Town, including its officials and employees, in the majority of claims and lawsuits in which they may be named as parties, including personal injury and property damage claims brought under M.G.L. c. 84 and the Massachusetts Tort Claims Act; in administrative hearings and appeals before state and federal agencies, and in the state and federal trial and appellate courts. The Town's attorneys draft, review and approve contracts, leases, and other municipal legal instruments; respond to open meeting and public records law requests and appeals; provide daily advice to Town officials, administrators and employees in matters concerning employment, open meeting, public record, conflict of interest, and zoning law; and provide advice and support to Town Meeting members and others in matters pertaining to Town Meeting.



FY22 Objectives

1. Complete acquisition of West Side of former Newbury Campus.
2. Resolve ongoing dispute at 617 Boylston between the owner, the developer of the neighboring parcel and the Town's Building Department.
3. Continue to assist in the revision of base DPW contracts to allow more straightforward procurement of contractors.
4. To legally vet warrant articles with perspicacity toward flagging possible concerns early in the reviewing process leading up to Town Meeting.
5. Explore expansion of our inter-office organization of a form and research library.
6. Continue to provide legal advice and guidance to Human Resources and other Town departments with labor and employment issues.
7. Obtain favorable rulings in the currently pending federal court cases.
8. To advance individual attorney exposure to a greater variety of legal work.
9. Successfully and effectively negotiate successor union contracts, all of which are scheduled to expire on June 30, 2021 (police contract expired on June 30, 2020).
10. Provide continued support to the Planning and Building Departments with legal needs related to permitting, including legal opinions, code revision, regulatory review and warrant article drafting.

FY21 Accomplishments

1. Provided guidance to Town officials and administrators in response to the introduction of the COVID-19 pandemic and related emergency legislation.
2. Successfully defended a preliminary challenge to Section 5.09 of the Zoning By-Law.
3. Guided the Fisher Hill Overlay District project through final stages of permitting, including the ongoing negotiations to acquire the west side of the former Newbury Campus.
4. As principal co-author of the Town's briefs, defended the Town's posture in its appeal pending before the Supreme Judicial Court in the matter of Town of Brookline v. Gerald Alston and the Massachusetts Civil Service Commission.
5. Provided legal advice to the Planning Board and Zoning Board of Appeals on a number of issues, including the effect of c. 40A, §6; the intersection of c. 40B and infectious invalidity and others.
6. Successfully defended the Town against preliminary injunctive relief sought by the Firefighters local union in the Norfolk Superior Court.
7. Represented the Town's public bodies in response to open meeting complaints and public record access appeals.
8. Assisted with the drafting of warrant articles proposing amendments to the Town's zoning and general by-laws.
9. Negotiated, drafted and reviewed numerous contracts and other legal documents related to environmental issues; real estate transactions; and real estate development projects.
10. Continued to improve the Town's approach to public records requests to ensure more efficient and effective compliance with the requirements of the law.

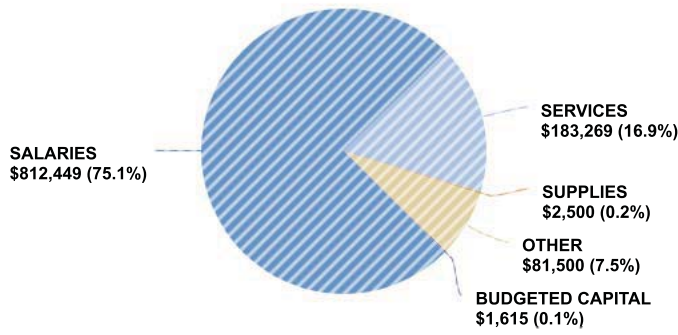
FY22 Budget Line Item Report



Visualization

Sort By Chart of Accounts

- SALARIES
- SERVICES
- SUPPLIES
- OTHER
- BUDGETED CAPITAL



FY22 Budget



Collapse All	FY20 Actual	FY21 Budget	FY22 Budget	2021-22 Variance	2021-22 Variance
▼ SALARIES	\$ 783,637	\$ 807,686	\$ 812,449	4,763	0.59%
(510100) TRANSFER- SALARIES	-4,672	0	0	0	0.00%
(510101) PERMANENT FULL TIME	734,763	774,299	778,896	4,597	0.59%
(510102) PERMANENT PART TIME	24,676	33,887	33,955	68	0.20%
(510201) TEMPORARY FULL TIME	13,410	0	0	0	0.00%
(513044) LONGEVITY PAY	4,050	3,950	4,048	98	2.42%
(515059) A DAY BUYOUT	11,410	0	0	0	0.00%
(515501) CLOTHING-UNIFORM ALLOWANCE	0	550	550	0	0.00%
(OFFSETS) OFFSET	0	-5,000	-5,000	0	0.00%
▼ SERVICES	248,985	183,269	183,269	0	0.00%
(522010) OFFICE EQUIP R & M	0	150	150	0	0.00%
(522015) D P EQUIP R & M	0	150	150	0	0.00%
(522016) COMPUTER SOFTWARE R & M	995	0	0	0	0.00%
(523011) COPY EQUIP RENTAL/LEASES	1,837	3,059	3,059	0	0.00%
(524008) GENERAL CONSULT SERVICES	202,111	133,510	133,510	0	0.00%
(525002) WIRELESS COMMUNICATIONS	1,611	1,900	1,900	0	0.00%
(528040) LITIGATION COSTS	18,704	22,500	22,500	0	0.00%
(528080) SUBSCRIPTIONS	23,727	22,000	22,000	0	0.00%
▼ SUPPLIES	2,553	2,500	2,500	0	0.00%
(531012) OFFICE SUPPLIES	2,484	2,500	2,500	0	0.00%
(533210) MEALS & RECEPTIONS	69	0	0	0	0.00%
▼ OTHER	112,271	81,500	81,500	0	0.00%
(553010) PROFESSIONAL DUES/MEMBERS	4,197	4,000	4,000	0	0.00%
(553020) IN STATE CONFERENCES	2,887	2,500	2,500	0	0.00%
(556010) CLAIMS & SETTLEMENTS	105,187	75,000	75,000	0	0.00%
▼ BUDGETED CAPITAL	1,724	1,615	1,615	0	0.00%
(5A0017) LEASED COMPUTER EQUIPMENT	1,724	1,615	1,615	0	0.00%
Total	\$ 1,149,170	\$ 1,076,570	\$ 1,081,333	4,763	0.44%