

**Town of Brookline
Advisory Committee Minutes – DRAFT
Thursday, March 9, 2023**

Meeting Recording:

<https://brooklinema.zoomgov.com/rec/share/HUwOUQReEk6ZBT89iYVM4fZoga4n2OuwrqBP8ZfmyMFbnTW3rXOaRRLi u2YqtHmT.E9LfhO9IWabszsG?startTime=1678405633000>

Passcode: w&e2+N+#

Present: Ben Birnbaum, Harry Bohrs, Clifford Brown, Patricia Correa, John Doggett, Dennis Doughty, Katherine Florio, Harry Friedman, David-Marc Goldstein, Susan Granoff, Kelly Hardebeck, Amy Hummel, Anita Johnson, Alisa Jonas, Janice Kahn, Pamela Lodish, Joslin Murphy, Donelle O’Neal, Linda Olson Pehlke, Markus L. Penzel, David Pollak, Stephen Reeders, Carlos Ridruejo, Lee Selwyn, Alok Somani, Carolyn R. Thall, Christine Westphal

Absent: Neil Gordon, Carol Levin

Also Attending: Deputy Town Administrator for Policy and Fiscal Affairs Melissa Goff, Town Counsel Joe Callanan, Select Board Member John VanScoyoc, Carla Benka, Perry Grossman, Mike Toffel, Fran Perler, David Trevitt, Richard Nangle, and other members of the public.

The meeting was called to order at 7:00 PM.

Announcements: Pursuant to this Board’s Authority under 940 CMR 29.10 (8), all of the committee members will be participating remotely via telephone or video conferencing due to emergency regulations regarding the Corona virus. The Chair has reviewed the requirements of the regulations. There is a quorum physically present and all votes taken will be recorded by roll call so all above listed Advisory Committee members will be allowed to vote.

The report from the Human Services Subcommittee, Discussion and Possible Vote on FY 24 Council on Aging Operating Budget has been postponed.

We have received a packet from Melissa Goff with 24 Warrant Articles that have been filed and these will be reviewed.

7:00 pm Public Comment

7:15 pm Report from the Land Use, Zoning and Sustainability Subcommittee, Discussion and Possible Vote on FY 24 Legal Department Operating Budget

Anita Johnson, a member of the Subcommittee gave the report on the budget hearing on the Legal Department Operating FY24 budget. The Land Use, Zoning and Sustainability Subcommittee voted 6-0 for Favorable Action on the budget as presented. The full report is linked to these minutes below.

Town Counsel reported that the Legal Department’s FY2024 budget request is for level funding compared to prior year budget in the amount of \$1,113,569. This request assumes the passage of a May operating override. The Legal Department’s base budget request is \$33,000 lower, in the amount of \$1,080,569.

Town Counsel had no additional comments but welcomed questions.

Comments, Questions, Discussion

Linda Olson Pehlke, also a member of the subcommittee added to Anita's excellent summary some of what she recalled about things discussed during the hearing. One of them was the question about seeking outside counsel versus using in-house counsel. And one thing that noted is that this is a goal of the Town Counsel's office, but it was not really reflected in a reduction in the amount of funding being requested for outside counsel. It was more or less seen as kind of a safety net, a cushion to still have there, and because we don't know what's coming down the pike, and we don't know how well the idea of trying to settle more in in-house is really going to work.

Another thing that they heard a lot about which was heard last year as well was the effort to train all of the attorneys in all the fields that are covered by the office, so that there is an ability to broaden the attorney's knowledge and to interest them and other things, and also to kind of be able to make decisions about the town's response on a legal matter. It's more of a group decision that it's discussed amongst the attorneys, and they sometimes, debate, ideas and things, and the subcommittee thought that that was a really positive thing for a number of reasons, just in terms of having more eyes on a problem and more expertise being offered.

Q: Whether or not offices like the Legal department report on how much time they spend on the schools and it gets reported to DESE. When you determine how much time you spend on the Schools do the Schools reimburse you for that time? A: No there is no reimbursement. It is based on the estimate FY22 is reported but no chargeback. Like with fire drills or crossing guards, no charge back to Police.

Comment: As a follow up, does it make sense to discuss this further? Probably not if the amount of time the departments spend is minimal. However, Legal is encouraging Schools not to use outside counsel, and use the Town at no expense. Now we are told we are going to need another attorney which is a problem if we are not charging their time back to the Schools. Hope the policy changes especially if the School takes on more support from Legal.

David Pollock clarified that Town Counsel is trying to strengthen the department's bench. If Schools hire Town Counsel and add another attorney there might be a more formal arrangement. No one is anticipating the free ride you are suggesting.

Melissa added that there is a movement to bring more services onto the Town-side and IT is one example and then there is an agreement put in place. It would be part of the Town School partnership as well.

At what point do a department's expenses reach a point when the Town asks that the Schools start paying? A: That is part of the Town School Partnership. It is a question of which side of the ledger you want to keep it on. And we believe it should stay with the department providing the services.

Joslin Murphy added that in her experience the Town always provided legal services to the Schools except for labor and collective bargaining. This has always been the case and is written into the School Committee's policy manual.

David Marc asked Town Counsel a question about a recent free speech at public hearings ruling <https://www.bostonglobe.com/2023/03/07/metro/sjc-rules-free-speech-public-hearings-includes-right-use-rude-personal-disrespectful-words/>

Town Counsel noted that the Town might be likely for the action (threat to remove a citizen from a hearing) but not necessarily the employee. This would be a similar situation for Advisory Committee chairs.

Comment: Concern was raised that if legal is done by the Town for Schools and the amount of money is not transferred from the Schools to the department, we will end up with a similar situation that we have with the Building Department, repairs and maintenance are not funded to the extent that they need to be.

Melissa responded that the one distinction there is that the level of funding for the school plant program within the building department is not the town's decision. It is the school committee decision on what to reduce their revenue allocation by in order to provide funding for that sub-program other than the regular maintenance, increases, that we provide to that account for utilities and then just regular growth and employee steps, and the two and a half percent is later that we've applied for 2008 override. The issue really is about some things above and beyond, and kind of keeping pace with some of the issues that have been going on as we've grown into our footprint as well.

Susan Granoff: In reading the report I noticed that one of the questions concerned the Department's goal of providing earlier review of warrant articles to petitioners. How many warrant article petitioners have consulted with you through this current session and last Town Meeting. A: Last Town Meeting we did a better job. About 24 Articles filed today we are aware of 19 of them. I will need to break down how many people contacted us of those 19. That included people talking to us 2 weeks ago and 2 days ago.

Susan added, when the question of scope arises, when people want to make amendments and changes to originally filed article, they don't understand that the original wording determines scope. People need to check with counsel to make sure that they understand this so they need to draft their original wording carefully. An inducement to get petitioners to come to you. Maybe TMMA needs to do a better job of informing petitioners of how important that step is. Town Counsel noted that ultimately the Moderator is the one who determines scope. In one instance Jonathan Simpson did work with a petitioner around this issue.

Harry Bohrs: Question raised about MBTA Communities Act. Have you started to give thought to how the office will deal with this if it goes sideways within the 2024 budget? A: Town Counsel replied that he has not considered it in 2024 budget but in 2023 talking about compliance and lobbying. Litigating over guidelines. Believe people's concerns are in the details in the guidelines. Familiar with standards where guidelines are enforceable or not. Only unenforceable when inconsistent with the legislation that created them. Get guidelines changed that we don't like and work within the system and state regulators rather than litigation. For 2024 I wouldn't recommend spending money on outside litigation.

Comment: Law versus the guidelines. Many of us have read letters and comments to DHCD from Mass Municipal Association and Mass Municipal Lawyers Association that indicates the guidelines exceed the statutory authority. The reason we had people come to our subcommittee and make comments about concerns about representation has to do with taking the point of view of what is best for Brookline and some of us feel that should be the guide star rather than fearing some sort of potential thing. We have to look at how we can make cases to defend what we think is best for Brookline.

Q: You mentioned that the Select Board is your client. Who is your boss? A: The Select Board directs litigation, that is what is in the bylaw. My client is the Town of Brookline. How do I understand what the Town of Brookline means depends on the appointed body – it could be the Town Clerk. If a department wants to sue, they have to go before the Select Board. So, who the client is depends on the situation. Employee, elected official or appointee.

Comment: Caution too much about worrying about rates for outside counsel and don't want to appear that the Town is easy to shake down. Where should we set the needle?

Town Counsel noted that it depends on the client and their risk tolerance. Litigation risk analysis in order to understand the expected value of a case and settle a case for less than that value it is a win. Need to make the client aware of their actions. Ultimately it is determined on a case-by-case basis and over the years the Town has not really paid a lot in claims.

Joslin Murphy said the Town does have experience with the Lawyers Committee for Civil Rights. They wrote opening letters that highly embellished and misrepresented facts about two cases. Those cases settled for about \$150,000 each and then came the Alston case. New counsel was hired and it was settled. The point is isn't there room here to dip your toe in the water with this case, brand new statute and there may be other communities in similar situations, Brookline has a history of trying to improve affordable housing?

Town Counsel said yes but what is the argument? I don't have a problem dipping a toe if we have claim or argument that can get past rule 11, but challenging guidelines is difficult. Just because we don't like it or we think the State should have done something different, is not a winning argument.

MOTIONS

A **MOTION** was made and seconded for Favorable Action on FY24 Operating 'base' Budget for the Legal Department of \$1,080,569.

By a **VOTE** of 25 in favor, none opposed, and no abstentions, the Advisory Committee recommends Favorable Action on FY24 Operating 'base' Budget for the Legal Department of \$1,080,569.

A **MOTION** was made and seconded in the event of a successful override, to recommend adding \$33,000 to the Legal Department FY24 Operating Budget.

By a **VOTE** of 17 in favor, 7 opposed, and 2 abstentions, the Advisory Committee recommends Favorable Action in the event of a successful override adding \$33,000 to the Legal Department base budget for a total of \$1,113,569.

The Chair clarified why we are splitting these votes and clarified the difference between the base budget and the override budget. All of the votes we are taking now are subject to revision and our final decision will be on Warrant Article 7.

8:15 pm Overview of Warrant Articles and Explanations if available

The Chair gave an overview of the submitted articles noting that they potentially will be renumbered after next Tuesday. He and the Vice Chair will send out assignments and subcommittees can begin to reach out to petitioners to get hearings scheduled.

The Chair invited Advisory Committee members who have submitted articles to offer some highlights/background on them.

8:45 pm Other Business

Upon a **MOTION** made and seconded to adjourn, and voted unanimously, the meeting was adjourned at 8:52 p.m.

Documents Presented

<https://www.brooklinema.gov/DocumentCenter/Index/3879>

- 2023 02 27 Land Use Subcommittee Report to AC on Legal Department Budget rev1
- Police Salary Comparables
- FY24 Section 4E Legal
- 2022-12-14 - Woburn Dec MBTA Communities Letter_Signed.cleaned
- 2023-02-06 - MBTA-Zoning-Law-Demand-Letters- (highlighted)
- 2023-02-20 - AG to send advisory to noncompliant towns on housing mandate _ Massachusetts Lawyers Weekly
- 2022-12-13 - Don't try to flout the Housing Choice law highlighted
- Select Board Warrant Article Public Hearing Schedule 2023
- DRAFT Order for 2023 Annual Town Meeting

VOTES

	Vote 1	Vote 2
# Votes Yes	25	17
# Votes No	0	7
# Votes Abstain	0	2
Vote Description:	MAIN MOTION: FAVORABLE ACTION on FY24 Operating 'base' Budget for the Legal Department of \$1,080,569	MAIN MOTION: In the event of a successful override, recommend adding \$33,000 to the Legal Department FY24 Operating Budget
	<i>Enter Y, N or A</i>	<i>Enter Y, N or A</i>
Ben Birnbaum	Y	Y
Harry Bohrs	Y	Y
Cliff Brown	Y	Y
Patty Correa	Y	Y
John Doggett	Y	A
Katherine Florio	Y	Y
Harry Friedman	Y	N
David-Marc Goldstein	Y	Y
Neil Gordon		
Susan Granoff	Y	Y
Kelly Hardebeck	Y	Y
Amy Hummel	Y	Y
Anita Johnson	Y	Y
Alisa Jonas	Y	Y
Janice Kahn	Y	Y
Carol Levin		
Pam Lodish	Y	Y
Joslin Murphy	Y	N

Donelle O'Neal, Sr.	Y	N
Linda Olson Pehlke	Y	Y
Markus Penzel	Y	Y
David Pollak	Y	Y
Stephen Reeders	Y	N
Carlos Ridruejo	Y	N
Lee Selwyn	Y	N
Alok Somani	Y	N
Carolyn Thall		Y
Christine Westphal	Y	A
Dennis Doughty		

DRAFT