

CITY OF WHEELING



OFFICE OF THE CITY SOLICITOR
CITY COUNTY BLDG., 1500 CHAPLINE STREET
WHEELING, WV 26003

MEMORANDUM

TO : Robert Herron, City Manager

FROM : Rosemary Humway-Warmuth, City Solicitor *RHW.*

DATE : January 22, 2022

RE : 2022-23 Fiscal Year Budget

Attached please find the proposed Budget for Fiscal Year 2022-23 and accompanying justification for increases in a few line items. Also attached are Goals and Objectives for the Legal Department for the upcoming Fiscal Year. Should you have any questions regarding the attached, I will be happy to discuss the proposed Budget at your earliest convenience. Thank you in advance for your consideration.

RHW:jb

BUDGET INCLUSIONS 2021-2022 "HIGHLIGHTS"

- \$50 million in bonds issued over various projects - as City Solicitor there was much more work from the Legal Department incorporated in such issuance, obviously with outside bond counsel, for over 20+ years. These bonds supported projects for water and sewer improvements, police headquarters, acquisition and development, etc. As well as the current Fire Department development, and future projects.
- Acquisition and Development matters include America/19th Street property; former Clay School; 1400 Block - bookstore; Police Department separation from OVMC and Fire Department on 17th Street.
- The municipal Building Commission was formed for the first time this past year to assist in development matters regarding municipal property.
- The Legal Department assisted in various matters, such as FOIA requests, HRC, and WesBanco Arena ice rink negotiations.
- The Legal Department approves all AIA engineering contract documents for various development matters throughout all areas of concern -
 - Wheeling Pitt Lofts and Garage
 - Center Wheeling Garage
 - OVMC matters, such as leases, agreements, developmental MOU's
 - Vendor contracts proposed by departments of the City such as the Pro Champs (Building Codes), Credit Card Payment access (Finance), Cyber Safety (IT)
- Assistance from the Legal Department as needed on CARES Act and ARPA funds regarding legal guidance on Fund usage.
- Work with the Assistant City Manager on many of the OVMC topics, etc., as well as parking facilities, special projects and Centre Market matters personnel, etc.

- Additional Duties: With the loss of the HR Director, the Legal Department assisted the Human Resources Department, which has occurred periodically throughout the past year in the absence of an H.R. Director.
- As well, concerning the loss of the civil engineer in the Engineering department, Legal has assisted with contract procedures generally, Legal provides contract approval and provides more assistance as needed and continues to be on contracts until an engineer is secured.
- Building and Planning - Legal assisted with transition with Codes. Legal worked to coordinate efforts with Tom Connelly, Bill Lanham with regards to Pro Champs, etc.
- Development Department - Legal assists with various projects, such as WVDEP - America/Clay School regarding acquisition, environmental remediation, development projects such as trails project on the former Robrecht property, new project on 1400 Market Street and Legal continues to monitor past projects such as status on 1107 Main Street, etc.
- Legal continues to work on various ordinance amendments, of note this past year were those concerning:
 - Centre Market Commission reconsideration
 - Municipal Building Code - Construction
 - Tree Board - Creation
 - Planning and Zoning Codes - various proposals of City Council to the Planning Commission on Parking, nono-conforming uses, accessory structures, pending currently.
 - With regards to the Homeless Liaison, the Legal Department works on coordinating the various processes with legal requirements to coincide with the City's 2020 4th Circuit Case which was a clearly positive and victorious case for the City and which laid the patchwork for all future homeless encampment matters.
- Of major importance is the continued successful litigation in both inhouse and outside insurance counsel due to the diligence of the legal staff. The City has not received an adverse litigation decision this year, and this is the past track record for decades.

LEGAL DEPARTMENT

Fiscal Year 2021-22 to date has a very busy period for the Legal Department of the City of Wheeling. Solicitor Rosemary J. Humway-Warmuth, Esq. serves as the City's full-time legal counsel. Additionally, Laurie McDermott, Esq., of the McDermott Law Firm serves, in a very limited capacity, as the City's part-time Special Assistant Solicitor assigned to real estate and land development matters and another assistant, Howard Klatt, serves in limited capacity for municipal court litigation, assistance with land use boards and commissions and will be utilized more in the future for monetary fee collections (water/sewer/fire service, etc.). Previously the Legal Department made a modification in the duties and responsibilities of the legal staff to better suit the needs of the Department. Such changes resulted in a significant departmental savings. Several years ago the Legal Department had been understaffed with primarily one (1) attorney, the City Solicitor, to handle the ever increasing workload. Staffing needs were previously discussed in last budget session and are addressed in this budget in order to bring staff to a minimum necessary operating level by budgeting appropriately for the positions of Assistant City Solicitors for the future of the department. Increased employees in departments such as Finance, Collection and Code Enforcement, as well as various regulatory matters associated with the West Virginia Public Service District, WV DEP, EPA, etc. and Home Rule initiatives in recent years has increased the workload in the Legal Department triggering the need for assistance by the staff in the Legal Department. The Legal Department is currently well positioned, staffed, yet future needs on staffing are being planned, and very busy.

The City's involvement in civil litigation remains constant, as well as requests for legal advice or assistance from within the City Administration and from the various boards and commissions which participation by the Legal Department remained at an optimum level during Fiscal Year 2021-22. The Legal Department of the City of Wheeling has continued to provide the Governing Body and the City Administration with effective legal counsel and representation during this time. Although the trend over the past 20 years has been for an increase in litigation, the Legal Department does not initiate requests for budget increases in most line items and rare but appropriate increases in a few areas. With the various Home Rule initiatives such as Vacant Property Registration, increased citation authority for health and nuisance violations, B&O collection being a sole focus of the B&O Auditor, increased delinquent water bill court collections with continued fire service fee court collections, the Legal Department is very busy each day. All of these initiatives in various other City Departments funnel into the Legal Department at different stages and ultimately at time for court enforcement.

As the City of Wheeling is a municipal corporation, the solicitor functions as general counsel for this public corporation. I, Rosemary Humway-Warmuth serve as the City Solicitor. This is my 24th term approaching the 25th year of municipal public service. I have served as the International Municipal Lawyers Association (IMLA) State Chairperson for West Virginia and have received certification as a Municipal Law Fellow signifying legal expertise in local government practice. No other attorney in West Virginia holds this designation and there are less than 70 persons nationally to have achieved the certification. In the fall of 2014, I received a repeated recertification from the IMLA as a fellow signifying approximately twenty-five (25) years of recognized expertise in municipal legal matters. In 2005 I was also appointed to the Policy Advisory Committee of the IMLA along with 15 other attorneys nationwide and I remain on that national committee. In 2014, I was appointed to the IMLA National Board of Directors and have been reappointed since such time to a term through 2023 and there has never been an IMLA Board Member for the State of West Virginia prior to my appointment. Furthermore, in 2020 I had been nominated by the IMLA selection committee and have been elected as the Secretary-Treasurer, which places me in the

position of succession to the Presidency of the IMLA in the fall of 2023. The IMLA is this nation's oldest and largest professional organization for city and county attorneys and is comprised of municipal attorneys across the United States and Canada. The IMLA holds educational meetings annually, including a spring seminar in Washington, D.C. and an annual seminar in the fall which the Solicitor attends, if possible. As Solicitor I have been a speaker at the national conferences which is an honor for Wheeling as no other city attorney from the State of West Virginia had ever been a conference speaker. Clearly, the honor of being the President of IMLA is one I share with the City of Wheeling and State of West Virginia.

As Solicitor I am also a member of the Municipal League of West Virginia's Legislative Review Committee. I consistently work with the State League on legislative issues including, but not limited to, the revising of state statutes for eminent domain actions, annexation, service fees, liens and dilapidated properties, home rule, etc. - whatever appears to be a topic for yearly legislative action of municipal interest. I have worked with the Legal staff of the Office of the Governor and the Municipal League on crafting four House Bills, which resulted in or improved current legislation including, but not limited to such issues as: 1) Vacant Structure Registration (based upon Wheeling's Home Rule Ordinances); 2) streamlining and reducing business licensing categories (again, based upon Wheeling's Home Rule Ordinances); and 3) fire debris removal liens (a by-product of Home Rule litigation involving the Pilot Project Cities); 4) revision to eminent domain statutes; and 5) Pilot Home rule statutory revisions to the current law. I previously served as the Secretary for the State of West Virginia Municipal Attorneys Association and have been the President of this organization since 2015, and am a member of the Ohio County Bar Association and sit as a member of its Board of Directors, along with the West Virginia Bar Association and am a member of the WV State Bar Association's Government Lawyers Committee and the American Bar Association.

The Legal Department of the City of Wheeling provides legal assistance and representation to the City Council, the administration and all commissions, boards and authorities of the City. The Legal Department is responsible for advising and assisting in the preparation of all ordinances and rules; determining the legality of any proposed actions by the council, the administration, and all commissions, boards and authorities of the City; handling all criminal prosecutions and appeals by the City; and representing the City in all legal proceedings in which the City, the council, the administration, and any commissions, boards and authorities are parties before any forum. The Legal Department as well serves as legal counsel and actively advises during the meetings of the Planning Commission and the Board of Zoning Appeals, and assists in any sub-committee meetings along with the regular commission meetings. Similar to prior years when there have been absences/vacancies, the City Solicitor had been the primary source in the performance of the higher level executive duties performed by or with the Human Resources Department.

In order to fulfill the obligations imposed on it by law, the Legal Department currently operates with a staff of one full-time attorney and one part-time attorney for other real estate related matters on an as-needed basis with particular emphasis on land development. A part time Assistant City Solicitor to handle municipal court matters and various other duties as included in the job description and as directed by the City Solicitor has also been added back into the budget since 2012-13. The Department shares with the City Manager's Office one full-time secretary. The Legal Department coordinates and monitors matters that have been referred to insurance counsel. Also, for Workers Compensation litigation matters, the Department also utilizes limited outside counsel coordinated with the Human Resources Department and the City's third party administrator, on claims. Specialized counsel are used for bond issues and consultation on some Public Service Commission litigation or cases such as the Center Wheeling Redevelopment and other Tax Increment Finance Project matters. The Department necessitates, and the budget allows, for the limited utilization for

additional professional legal services on an as needed basis and for professional legal education within the department. The Solicitor has acquired, and actively negotiates, a reduced rate with various local firms for specialized assistance and services and can verify that there has been a departmental savings for the legal services provided as needed while the quality of representation continues at an optimum level without an increase in the budget.

As a historical reference, never before had the City undertaken such a large public development project as the East Wheeling Recreational Complex. The amount of work placed upon the Legal Department to achieve the goals of this endeavor had, over those past years, been continuous, time-consuming and extremely complicated. The Legal Department was charged and accomplished the majority of the directives involving not only legal matters involving the project, but economic development responsibilities. The Legal Department in January of 2013 was successful in condemnation proceedings wherein the Legal Department sought the remaining three (3) of the thirty four (34) parcels necessary for site acquisition by the Circuit Courts, granting the City's Motion and finding that the taking is an appropriate public use. Further litigation on the condemnation concluded in 2015, as the City had already placed the estimated FMV (Fair Market Value) Funds in escrow and the attorneys for the various remaining defendants agreed that the City's FMV appraisals were acceptable, which in essence concluded this matter.

The Legal Department provides significant advise and necessary service to all commissions and boards and it depends upon what matters they are involved with to gauge the service. For example, in the past the Wheeling Arts and Entertainment Commission as well as the City's Human Rights Commission regarding development goals related to the Commission. The Legal Department drafted the Ordinance creating the Commission to foster the Arts and Entertainment focal points of the City and, as well, drafted and assisted, and continues to assist, in the City's Human Rights Commission Ordinance and Procedure, which was previously modified in the summer/fall of 2013 and most recently in 2016. In 2020, as solicitor, I presented an overview of the Human Rights Commission's Ordinance on gender discrimination at the WVU Law Review Symposium as well as participated in several WV Home Rule panels at the same event. There was significant work on such modifications to achieve Council's directive to broaden protections within the City toward the goal of promoting inclusivity and anti-discrimination. Other commissions, such as the Historical Buildings Commission in conjunction with the Wheeling National Heritage Corporation, have also relied upon the Legal Department for preservation projects within the City and various projects concerning demolition of historic structures within the City. 2021-22 should provide a discussion of a proposed ordinance amendment concerning demolition review of historical structures. As well, significant time and research was devoted to the modification of the City Human Rights Commission Ordinance and the coordination with the City and State agencies concerning duties and responsibility of local complaints and particularly the complaint process of the local commission. The Legal Department has provided significant amounts of time to the Human Rights Commission in 2019, including successful mediation and conciliation of complaints. Other such development for Boards and Commissions in 2020-21 includes the Mayor's Economic and Community Development Committee, creation of a Tree Board and several current projects launched by Council members.

The Legal Department has continued a significant amount of work in 2021 continuing into the current year on various Public Works Department projects and regulatory programs. These include, but are not limited to, upgrades at the Water Department Plant; Water Pollution Control regulatory issues primarily relating to rate increases in both water and sewer; both state and federal water and sewer treatment related matters; Clator sewer separation project; various Public Service Commission water line extension cases as well as rate and rate related matters; other construction projects such

as the prior Wells Street Bridge project, tank painting, demolitions; jogging trail expansion and sidewalk projects in Center Wheeling and other areas of the City; landfill closing issues; MS4 Stormwater Ordinance and program creation and program implementation, etc.; the Washington Farms PSC Complaint requesting the City to take control of their private water utility, and similar matters.

The caseload of civil litigation in which the Legal Department is involved has remained fairly constant during Fiscal Year 2019-20. There have been several significant employment/personnel matters, as well as City Council/policy matters being litigated by the Department. There has been a trend of increased litigation noted over the past twenty (20) years. At the end of Fiscal Year 2015-16 approximately 50 cases were pending in various courts or forums wherein the City of Wheeling was a party thereto, and this trend continued into 2016-17 as well as 2017 to present. For the current Fiscal Year, the Legal Department, with the limited assistance of outside counsel, has been successful in disposing of numerous actions in both state and federal court, as well as administrative hearings, which were dismissed on substantive grounds or otherwise settled by agreement of the parties such that there are currently approximately 25 to 30 such cases pending in various courts or forums wherein the City of Wheeling is a party.

The Legal Department has also extensively advised and assisted the City Administration and its department heads, as well as the various City boards and commissions during Fiscal Year 2021-22. The Legal Department routinely advises the Building Code Board of Appeals concerning appeals of the Codes Official, and the Board of Zoning Appeals and the Planning and Zoning Commission on requests for variances, special use permits, special exceptions, zone change requests, etc. The City Solicitor has been proactive in the continuation with the Development Department and Public Works Department concerning land use matters throughout the City. The Legal Department also acted as counsel for the Police, Fire and Municipal Civil Service Commissions in a number of meetings and hearings during the Fiscal Year. The Legal Department also advises the Human Rights Commission and, at the same time, presents the case in support of the complainant at public hearings, as previously noted.

Working with the Building Code Enforcement Department, the Legal Department continues to proceed to file and recover delinquent liens, some of which date back to the mid 1980's. This process will continue in the next fiscal year. The Home Rule Ordinances enacted in our City since 2009 are currently being utilized and anticipated to assist greatly in lien collection of the Home Rule Legislation the City Legal Department crafted provides for mandatory service liens on unpaid fees and costs owed and provides for potential judicial sale of properties subject to such liens. This still remains a difficult process due to State tax lien practices. The Legal Department has continued to work with the Administration and state bodies to further the Home Rule Pilot Project at the legislature. Additionally, the Legal Department, in conjunction with the City Manager and the Finance Department, has instituted measures to recover whenever possible the delinquent B&O taxes and hotel/motel tax remittance from local businesses which has been successful. The Legal Department continues to secure Deeds of Trust on particular properties whose owners were delinquent on B&O taxes. The creation of a B&O Tax Auditor position for the Finance Department also increases the duties and responsibilities of the Legal Department in the procedural collection process, enforcement and the ultimate action of Court enforced collection. The Department will continue to work on such actions in the next fiscal year. This year continuing the trend in the litigation, there have been several Circuit Court cases involving building and health code issues, accidents related to City property and employment related matters which have been and are being successfully litigated.

The Legal Department, City Administration and Finance Department also crafted B&O Tax Incentive legislation tailored upon the suggestions of the Mayor's Downtown Revitalization Committee and continues to work on potential new incentive legislation as well the Legal Department has worked and continues to work with the B&O Tax Auditor on various collection matters, in order to effectuate the actual collections when taxpayers are delinquent, since the position was implemented in 2010. The Legal Department worked quite diligently in creating the downtown tax incentive legislation and the departmental application forms, which to date more than 100 businesses have utilized and made an inquiry and application. There are also other various B&O tax incentive matters that the Legal Department crafted and assists application thereof. Along with the vacant structure Home Rule Ordinance, and streamlining of business licenses, the Legal Department has also crafted development promoting Ordinances such as the regulation of land use and zoning issues in the residential and downtown development zones; employee residency requirements, etc. In the past and continuing into 2021-22, the Legal Department has worked on Option Agreements for property acquisition in the downtown area to further the development directives of City Council. The Legal Department worked on the Memorandums of Understanding concerning the development and transfer of 1104-1107 Main Street and the successful completion of the former Keg & Kraut property on 16th and Wood Streets/

As background, prior to my employment with the City, there had been no collection actions for the Fire Service Fees. In 1998 the City successfully litigated the issue distinguishing the Fire Fee from any form of taxation. Through the actions of this Legal Department, and after the exhaustion of appeals through the United States Supreme Court of Appeals, the City collected hundreds of thousands of dollars in fees owed. The Fire Service Fee collection process supports the budget of the Fire Department which process was begun, over a decade ago and was previously non-existent. The vacant property registration program's documents and enforcement procedure is modeled upon the successful fire service fee process.

Since March 1998 a program has been implemented through the efforts of the Legal Department in conjunction with the Finance Department to collect delinquent fire service fees. Since inception and litigation upholding the validity of the fees, over one million dollars in delinquent fees have been collected. The process involves the sending of final notices to all accounts with notice that court action will be filed. If property owners contact the Finance Department, they may pay in full or sign a reasonable payment agreement which typically requires the current year to be paid with the balance in future installments. When no response is received from the notice, a lawsuit is filed in either Magistrate Court (for amounts under \$5,000) or Circuit Court (for amounts over \$5,000). At that time, if a property owner wants to make payments, an Agreed Judgment Order is signed and entered by the court containing substantially similar payment requirements as above. As well as some form of security and attorney fees and costs being reimbursed to the City's General Fund. Should no response be received to the complaint, a motion for default judgment is filed and the judgment is then recorded in the County Clerk's office as a lien. In addition, if there is a breach of the payment plans, other assets may be attached to satisfy the judgment. Delinquencies collected have amounted to approximately \$75,000.00 per fiscal year for the past several fiscal years. Members of the Finance Department work in tandem with the Solicitor on these collection matters. During Fiscal Year 2019-20 we were also successful in continuing the practice of settling Fire Service Fee litigation once payment has been received.

During Fiscal Year 2012-13 a similar collection practice was begun and has continued to produce a steady increase in collection volume for the Water and Sewer Utilities Accounting Department and the collection practice has produced a monetary gain for the Utility and continues to do so through

2020-21. The process follows the same route as noted above for other fee collection in the Finance Department. The utility collection process has been quite successful to date and is anticipated to continue along this path. The City, through the Legal Department, has also successfully litigated WVPSC hearings, most notably resulting in decisions in the City's favor regarding fee collection justification on large, unpaid billings and the collection of the debts continue in 2021-22.

Payment of past due Development Department Enterprise loans and other collection litigation continues to be filed on behalf of the City in a similar fashion of the Cronos and James O'Malley collection action of several years ago. The Legal Department continues to file collection actions for recovery of the demolition costs, including attorney fees and interest, expended for the abatement of public health and safety nuisances, as in the past, such as in 2006 for the Army & Navy Surplus Store, under the guidelines of the Nuisance and Uninhabitable Structures Ordinance for example in 2007 – Fast Service & Ohio Valley Realty Co. and in 2008 – 2009 (currently) the 1041 & 1043 Market Plaza fire ravaged structure demolitions and the 2009-10 Nick's Music Store collapse and subsequent demolition. For structures surrounding the new East Wheeling Sports Complex that have experienced severe fire damages and/or are subject to raze orders in Municipal Court, the Legal Department had secured in Court Orders directing the razing of those properties and most (3 of 4) of the former landowners have deeded the property to the City in lieu of a lien being placed upon such property and such property was razed and similar action continues in 2021-22 within this vicinity of the City. There has been continued success in collection of past due Hotel and Motel fees and B&O fees, including past owed B&O from out-of-state contractors. For example, those contractors working on various projects in the City and those businesses who wish to do business with the City in the form of contracting bids yet they are delinquent in fees or taxes owed are issues that the Legal Department is requested to intervene in order to achieve compliance. As previously stated, the B&O Auditor relies upon the Legal Department in many cases to achieve final stages of compliance/payment from taxpayers.

The Legal Department devotes much time on employment law related matters not only for the municipal, fire and police forces, but also for the municipal corporation's Boards and Commissions. The Fiscal Year to date has been challenging with several matters wherein the Legal Department has been active and where potential litigation has been averted and very important legal issues have been successfully litigated, such as executive pay/overtime/compensatory time, etc. However the threat of Mandamus actions, or similar suits, wherein a successful litigant receives attorney fees has been an ongoing concern of this Department and should be a concern shared by department heads when faced with potential litigation. The City, as one of the areas largest employers, shares the concerns of potential increased employment related lawsuits and the Legal Department pays particular attention to such. The threat of litigation has also been monitored through interaction and communication with the Department of Human Resources, the City Manager and department heads. The Solicitor does have an area of expertise which lies in employment law and litigation and attends yearly a legal professional services national seminar solely focused upon matters of employment law. It is crucial for the Legal Department to receive annual employment law updates on both a state and federal level. Knowledge of how the City may implement effective tools, such as those detecting drug usage through recent technology and accompanying interpretation of employment policies, is vital information as well as such topics as the most recent changes in minimum wage implementation, the federal regulations for the Americans with Disabilities Act and the Family Medical Leave Act currently being implemented, etc. The Solicitor also has historically had a close working relationship with the Human Resources Department which has been an asset given that the Human Resources Director resigned in early 2015. In 2018 the Human Resources Director resigned in lieu of termination and the Legal Department worked diligently with the City Manager and Finance Director to cooperate with State and Federal authorities culminating in the plea of guilty to

wire fraud and federal sentencing thereafter. . The Solicitor continues to assist on personnel policies and actions. Matters of potential litigation will not be discussed at length, however many of the current cases which are being handled by the Legal Department have their genesis in employment actions such as departmental reorganizations, residency requirements being enforced, interpretations of workers compensation benefits, employment practice and policies, and pension benefits statutes, wage and labor issues, etc.

Much research and litigation time has been allocated to cases concerning Planning and Zoning Law and interpretation decisions made by the City Planning and Zoning Administrator or the Board of Zoning Appeals as well as public health, safety and welfare issues focusing primarily on structures under Raze an repair Notices or Public Nuisance declarations and potential land use/development issues. The Legal Department also worked on the ten (10) year Comprehensive Plan update process completed in 2015 which is continuing through 2016 and 2017. In the past several cases involving actions of the Planning Department which were pending in state and federal court were resolved in the City's favor. The Legal Department continues to be very active with the training of personnel in the Development Department regarding implementation of Home Rule initiatives such as the Vacant Structure Registration Program, citation authority implementation and all areas of Code Enforcement in the Department. As solicitor, I have represented the City in Planning and Zoning issues such as the House of Hagar Christian Worker Home which was a high profile matter within the East Wheeling neighborhood which attracted the attention of the ACLU. The matter was amicably resolved in accord with the law.

Actions prosecuted by the Legal Department in the City of Wheeling Police Court have continued the trend of increasing over the past years and remain fairly constant with an increase over last year's analysis. To date during Calendar Year 2021 (only counting January of 2022), the Legal Department prosecuted approximately 50-60 general offenses and traffic related offenses per Municipal Court date (approximately 1,500 cases annually), of which approximately 90% result in a plea or finding of guilt against the defendant. In late 2015 the penalty of jail time was removed by ordinance from the offenses prosecuted in Municipal Court. This served to make the City of Wheeling's court similar to most others in the State and to potentially save the City on jail costs in the future. The number of tickets/citations issued for Calendar Year 2017 are believed to be similar to last year which was approximately 1,500. Similarly, during Calendar year 2017 Police Court fines were imposed for general offenses and traffic related offenses believed to be approximately in the amount of \$250,000.00 - \$275,000.00. Late in 2009 the Solicitor instituted discussion with the City Administration and the Municipal Court Judges concerning a new state statute providing for collection of municipal court fees via garnishment of any personal or business income tax refunds. The system became operable for the 2010 tax season and has since proven a useful tool in collection of fines and costs owed the municipality via the municipal court process and police citations that remain unpaid. The Legal Department believes this is a vital and important deterrent to crime, as well as a financial tool that should be coordinated between the Finance Department and the Municipal Court so that fees and fines assessed are collected.

Again, as history, prior to my employment with the City, there was little to no action on dilapidated structures. As the Assistant City Attorney, at the direction of the Governing Body, an aggressive process targeting dilapidated property and ownership responsibility was implemented emphasizing increased enforcement activity via the Municipal Court system. The notice procedure and court enforcement process used in the City of Wheeling Municipal Court for dilapidated structures and health code issues is a model for municipalities throughout the state. As Solicitor, I am often asked to speak at conferences hosted by the State Municipal League concerning these issues and the City

of Wheeling's policies and practices in the Building Code and Health Code court actions. In 2015 I was a featured speaker at the West Virginia University Law School statewide conference on dilapidated structures and sources of assistance in combating such and I have spoken on this and other related topics at other conferences at both the state and national level, most recently in 2020 at the WVU Law Review Symposium mentioned previously.

In Municipal Court, dilapidated structure and health code violations have been a focus of the Department for the past several years to such a degree that there needed to be an increase in the staffing and scheduling to accommodate the increase. It is difficult to quantify the numbers of offenses or cases, since most cases have a continuing nature allowing the owners to rehabilitate the structures while undergoing court supervision. However, there are approximately 15 to 25 cases on the docket each court date. To date for 2021-22 there have been approximately 100 new cases prosecuted on building code violations, and several health code violation prosecutions. Due to COVID-19 there were fewer cases due to mandatory court closures. The City also prevailed on several circuit court appeals to the decisions made by the judges in the municipal court. An example of how the appeal system works can be seen in one such appeal which concluded in 2008, affirmed a \$10,000.00 building code violation against the Tighe property on Chapline Street, which resulted in a monetary lien enforced through judicial sale concluding final court action in 2008. The Legal Department routinely places liens on properties after receiving a Court determination and this practice continued through 2019-20. It is noted that the efficiency of the Department and ability to carry-out the tasks and goals in the Municipal Court are assisted greatly by the services of the Municipal Court Judge Miller, as well as Clerk Judy Bickmeyer along with the additional Building Inspector and Health Code Officials. The Vacant Property Registration Program, along with the additional Code Enforcement Officer and the corresponding duties of that position, which include on-the-spot citation authority continued to increase the workload for the Legal Department and the Municipal Court for 2021-22 and beyond.

The number of requests for legal advice and assistance within the Administration remain high as the Department maintains an open door policy and accommodates the schedules of the staff seeking advice. Interdepartment requests for legal assistance included, but were not limited to, Freedom of Information request responses, requests for legal opinions to requests for preparation of ordinances, rules, forms and agreements, contract review and negotiation, maintenance of police court proceedings and requests for title examination; lane abandonments and liens. With a full-time attorney as solicitor on staff as well as one assistant, the various requests for legal assistance from all sources can be answered in a more expeditious manner but requires diligence and dedication. Clearly, the Legal Department not only performs the prosecutorial function for the City, but also assists heavily in the legislative function as well. The Legal Department continued to provide quality legal assistance and representation to the City of Wheeling, its representatives, boards, commissions, agencies and authorities in various forms.

Since 2011 the Legal Department has joined with other Home Rule cities to combat legal challenges to the statutory Home Rule Program. One such litigation matter was litigated in Kanawha County Court where the City of Wheeling, through the Legal Department, was represented on the issue of preserving Home Rule authority received a ruling in the favor of the Home Rule City's and preservation of the statutory authority of Home Rule as crafted by the Legislature. In 2012 the Legislative Interim Committees signaled the continuance of the Home Rule Pilot Program in 2012, 2013, 2014 and 2015 and Wheeling played a significant role in persuading the legislature to do so based upon initiatives and work of the Legal Department. Currently the City of Wheeling Legal Department continues to work with the WV Municipal League's legislative initiative regarding Home Rule for municipalities statewide.

With the fruition of the Home Rule Pilot Program's approval of the City's application, there have been, and will continue to be, more occasions during 2022-23 for the Legal Department to research and to write legislation in the form of ordinances and to assist the City Manager and the City Council in the exercise of authority to abate nuisances pursuant to the City Code. Earlier in this document the Home Rule Ordinances, such as vacant property registration, service lien priority and streamlining and reducing business license fees, have been discussed. A similar process for the new legislation had been used in the recent past for ordinances such as that providing for the use of insurance proceeds for demolition of buildings destroyed by fire is an example of some of the past year's local legislation. Such legislation is similar to the Nuisance Ordinance which was a major piece of local law that has assisted the City in previously closing establishments, such as "Bud's Bar," which negatively affect the community's health, safety and welfare. The legislation also allows for a permanent nuisance declaration which previously the City did not have as an enforcement option. The nuisance legislation continues to be successfully utilized, for example previously the City Legal Department worked to close the nuisance bar in Warwood known as the Batting Cage and this nuisance bar remains closed. The Circuit Court affirmed the City's ability to declare such nuisances and has held that the ordinance is a constitutional exercise of government power. The Video Lottery Distance Ordinance was also a major piece of legislation that continues to be an effective tool limiting the proliferation of Limited Video Lottery (LVL) parlors in the City. The past work on Motorized Recreational Vehicles and/or Scooters as well as the Dangerous and Vicious Dog Ordinance, the Human Rights Anti-Discrimination Ordinance, restrictions in land use, residency, changes in various ordinances such as the Municipal Auditorium Board to the Sports and Entertainment Complex and the creation of the Arts and Entertainment Commission are also examples of areas of ordinance revision for the City's Codified Ordinances that the Legal Department routinely provides over the years.

As way of historical background, the Legal Department played an integral part in the West Virginia Home Rule Application process, from attendance and participation at informational meetings of the WV Municipal League, to the actual application drafting and current enactments. The prior legislative work the Department had been involved with concerning dilapidated and abandoned structures, lien priority status of fee collection and land use legislation was of great benefit when the filing of the Home Rule Application became an expedited process. In 2008 Wheeling became one of four (4) cities to become the first to utilize the legislation as a Pilot Home Rule City pursuant to the new law passed in 2007. The Legal Department had crafted Draft Ordinances based upon the Home Rule Application for consideration of the Governing Body and in 2008 an Ordinance introducing legislation for Conditional Use Permits, which was a part of the Home Rule Application, was passed by the City Council. In 2009-2010 the City enacted and finalized all initially proposed Home Rule Ordinances and was the first city to amend its application so as to enable the City to add the streamlining of business license fees. The City's vacant structure registration and license fee simplification ordinances have become models for the 2010 State legislature and proposed statute amendments and are active enforcement areas for the Legal Department for 2012 and for the years to come. The Legal Department looks forward to crafting whatever future legislation that City Council feels is needed concerning lien and collection enforcement, etc. The City and its Legal Department were active during the 2014-15 Legislative Session the Pilot Home Rule Program did not "sunset" and was expanded for other municipalities throughout the State and thereafter continued to be active so that the authority would be broadened to Class III and IV cities throughout this state. As previously stated, the Legal Department remained active through 2016-17 in efforts to preserve the Home Rule Statute and create ordinances for the City of Wheeling pursuant to such authority. Through 2015 the Legal Department continued the work begun in the fall of 2007, to assist the Development Committee of City Council in the plans to redevelop the Downtown Central Business District. The work involves integrating the plans currently underway involving outside consultants

and various other City organizations, as well as municipal departments, into a cohesive re-development scheme in the 1100 Block of Market and Main Street and Market Plaza area. The Legal Department's primary focus is upon land acquisition, relocation of existing businesses, demolition contract coordination needed, and TIF legislation preparation and adherence. The Legal Department from 2012 through 2017 has successfully negotiated property acquisition and worked with the City Manager and Bond Counsel for the redevelopment initiatives for downtown Wheeling and efforts continue through today. The Legal Department was quite active in providing the necessary negotiation, contractual assistance and necessary counsel for acquisition and relocation and development of the 1100 block in Downtown Wheeling for the future Health Plan development. As well, various other downtown properties were also acquired with the assistance of the Legal Department and the goal to facilitate development and maintain health, safety and welfare standards for the community.

The Legal Department continues to be involved in various complex contractual matters. Some of the past contractual issues that the Legal Department has facilitated, other than the usual paving, demolition and routine acquisitions, were: land use grants for the skatepark by the I-470 Chambers Complex, the development of rules for the Dog Park in Tunnel Green, conclusion of the engineering contracts for the newly constructed firehouse on Wheeling Island, ongoing engineering service contracts for the renovation of the municipal Water Department Treatment Facility, the 911 Communication Department changeover (transferring 911 services from the City to the County in 2013) various cell tower initial contracts and co-location agreements and new bonding and security agreements for infrastructure, indemnification on various development projects, etc. Closure of the North Park Landfill and the updating of the WV Land and Water Use Grants were concluded in 2008, revisited through 2012 continues through the present as well as the expansion of the Miracle Field area of the I-470 Recreation Complex where such grants are used. Most of these grants came into existence several decades ago, throughout the City were updated to provide appropriate legal descriptions, geographic mapping and recording of easements at the local, state and federal level.

This past year continued to be a very busy year for work on issues involving the City Pension Boards, in particular the Fireman's Pension concerning a DROP (Deferred Compensation Program) which work was ongoing into 2016. A Generic Model Qualified Domestic Relations Order, previously crafted by the City Legal Department and approved by the Pension Boards, has been used for various cases concerning pension distributions, disabilities, etc. have been undertaken. The Circuit Court of Ohio County dismissed challenges to the City's rejection of a domestic relations order which the City's Pension Board had never approved. The QDRO format continues to be a useful tool for employees and the Pension Boards. Other issues such as disability pensions, pension calculations, etc., are matters routinely handled by this Department.

The work on Tax Increment Financing and Re-financing Projects, and the various development projects within the City, has also been another avenue of challenge and accomplishment for the Legal Department with the continuation of the Lowe's, Stone's Building Projects and the downtown TIF areas located primarily in the 1100 Block of Main and Market Streets as well as the Downtown Waterfront and Capitol Music Hall, along with the financing bonds being more of a focus in the past ten years. It is anticipated that there will be much more work needed in the coming years so that the City may expand development and hopefully its finances. The Department welcomes the opportunity to be a part of this growth.

In 2020 the Legal Department worked with the Chief of Police to craft a "Drug House Nuisance Ordinance" based upon similar ordinances in other WV municipalities. To date it has produced several successful outcomes and should continue to do so. The negotiation and acquisition in 2020

of the former OVMC campus in Center Wheeling was a large legal endeavor for the Department which was quite involved and successfully executed. Numerous Memorandums of Understanding, development Option Agreements, service/construction contracts for the facility and the Centre Market Parking Garage have been areas concentrated on by the Legal Department for 2020-21 and it is anticipated that similar work will continue. The Legal Department also provided significant work toward the acquisition of the Americo property at 19th and Jacob Streets. Such work included the transfer agreements, title searches/opinions, environmental issues, etc. During this same time frame, issues involving increased criminal activity in a particular downtown homeless encampment led to ACLU litigation with the City in Federal Court wherein the City prevailed. The Court's Order in that case has been cited by municipal practitioners across the country as it was so favorable to the position of this municipality given the challenges that the ACLU launched. The City has, and will continue to rely upon such order concerning situations which may necessitate further encampment removals. The Legal Department, during 2021-22, continues to be an integral part in various projects associated with the Downtown Streetscape Project. As well, for 2022-23 various bond issues and related projects also involve work of the Legal Department.

In order to maximize the capabilities of the Legal Department within budget, the focus is upon the personnel, specifically the attorney's ability to multi-task at a high level of productivity with positive outcomes for the City in matters completed or being addressed. The attorneys, primarily the Solicitor, are able to function well at many levels as general practitioners of municipal law as one can see from the depth of the duties discussed herein. The position of the assistant(s) is more focused on such areas as Municipal Court prosecutions and Real Estate/Land Use. Currently more staffing must be added to the Department. There is a good compliment to the expertise of the legal staff which can be enhanced with the discretion to utilize, on an extremely limited basis, outside professional services for particular litigation when necessary. The secretarial assistance provided by Judy Beabout cannot be overlooked nor discounted when evaluating the efficiency of the Legal Department. All of the Solicitor's legal briefs, letters and court documents are typed by her in a timely and accurate fashion. She serves as a legal secretary in many capacities and is able to handle deadlines and short notices well, which are commonplace in any legal department and her work is stellar. The foregoing has continued to streamline the efficiency and operations of the Legal Department.

Because of the nature of the Legal Department, which is much more of an autonomous working environment of corporate counsel with the attorneys handling cases from start to finish, there are minimal budget increases requested. A small but extremely productive legal staff can and does operate efficiently for the Department. A small increase in salary, which has previously been discussed in the past several years, which represents a small increase in compensation, is being requested for fiscal year 2021-22 for the Solicitor. The much needed budget for Legal Services has been included in the budget as it has been in prior years of departmental operation and reflects the need for such due to increased litigation and departmental workload.

The Legal Department requests and requires out of operational necessity that no decreases be made within its budget. Thank you in advance for your attention to the information and for the consideration of those few absolutely necessary requests made by the Department.

In conclusion, Fiscal Year 2021-22 marked a year of continuing positive and proactive growth for the Legal Department of the City of Wheeling. The Legal Department has been successful in decreasing the pending case load against the City of Wheeling, its representatives, commissions, agencies, boards and authorities, increasing revenues through affirmative and proactive actions and continuing to provide sound, reasoned and defensible legal advice. By utilizing various time-saving

office management practices, the Legal Department has been able to achieve the highest and best use of its most important resources – personnel and time. The Legal Department of the City of Wheeling has been and will continue to effectively meet the City’s needs for quality legal assistance. Thank you for the opportunity to serve the City of Wheeling Administration, Governing Body and its citizenry.

RHW:jb

LEGAL DEPARTMENT CONTINUED GOALS AND OBJECTIVES
FOR FISCAL YEAR 2022-23

The following is a general overview, not meant to be all inclusive:

- A. Collection of delinquent revenues
 - 1. Fire service fees
 - 2. B & O taxes and license fees
 - 3. Other
- B. Code Enforcement
 - 1. Building and Health Codes
 - 2. Zoning Ordinances
 - 3. Other Codified Ordinances
- C. Codified Ordinances
 - 1. Assistance in updating Comprehensive Plan and Zoning Code
 - 2. Assistance in updating various sections of the General Offenses and Traffic Offenses sections of the Codified Ordinances – Assistance in creating various health, safety & welfare ordinance(s) and other ordinances as directed
 - 3. Special Projects
 - i. Tax Increment Financing/Bond Issues/Yearly Reporting Information/New TIF District Applications, Ordinances, Maps, and Legal Requirement
 - ii. Centre Wheeling/South Wheeling/Downtown Wheeling Development Areas
 - iii. Pension Fund Issues
 - iv. Telecommunications and other City initiatives
 - v. Water/Sewer Rates and Bond Projects and Bond Issues, Plant upgrades etc.
 - vi. Home Rule Initiatives and Ordinances
 - vii. Annexation matters
- D. Real Estate Matters
 - 1. Trail extensions
 - 2. Street abandonments
 - 3. Encroachments
 - 4. Title issues, leases, etc.
 - 5. Heritage Port and Land and Water Grant Project Areas
 - 6. Development Initiatives
- E. Personnel Matters
 - 1. Policies and Procedures – Uniform Application & Development, Participation as counsel in Grievance Procedures
 - 2. Civil Service Commissions (Fire, Police and Municipal)
 - 3. Benefits Issues
 - 4. Human Rights Commission, Centre Market Commission, Municipal Auditorium Board, etc.
 - 5. Safety Committee/Handbook Policy Review
- F. Litigation, both as plaintiff and defendant, as needed (local, state and federal)
- G. Municipal Court (Misdemeanors, traffic offenses, fees/fines [parking tickets], [health, safety, welfare], dilapidated structures)
- H. Development Projects - specialized project work identified by Governing Body
- I. Contract Matters – engineering projects, plant renovations, telecommunications contracts, etc.
- J. Legislative Issues and Initiatives - local, state and federal
- K. Participation at community watch meetings and various informational or speaking events as requested

CONTINUED GOALS GENERALLY

The Legal Department seeks to:

- ▶ Initiate meetings and legal proceedings to collect fees and revenues which should produce increased revenues and decreased number of delinquent accounts
- ▶ Be proactive in an attempt to thwart any possible legal actions or activity which may adversely affect the municipality, the Administration, City officials and the general public
- ▶ Provide assistance to departments and boards and commissions in areas of code enforcement, civil service commission, employment issues and development matters which should produce increased productivity of various boards, commissions and departments as well as increased development activities
- ▶ Review and negotiate where needed various contract matters for departments and provide legal review of proposed agreements which should produce timely execution of contract documents
- ▶ Continue to utilize the Internet connection to access legal web sites and forums available to the municipal lawyer from our membership in IMLA as well as other sites such as the Supreme Court, Public Service Commission, etc. This has also helped to aid in general communication with and from the Legal Department via e-mail/internet.
- ▶ Budget Generally – The Department will strive to keep the future budgets at a status quo in the Department and place minimal requests as absolutely necessary or where deemed deserving.

SUPPORTING INFORMATION

BUDGET INCREASE REQUEST – 2022-23

▶ **Salary Adjustments –**

- Asst. Solicitor - #4417-10-1202 - Requesting fund increase of \$5,000.00
- Special Asst. Solicitor - #4417-20-2135 - Requesting \$60,000.00 for special assistant solicitor and provide funds to hire an additional assistant city solicitor after the fiscal year.
- Please consider increasing the salary of Judy Beabout who, in addition to her general duties performed, provides Legal secretarial services for the Legal Department and the municipal court as needed.

During fiscal year (2020-2021) the following information was provided, considered and for the most part heard which was and is appreciated. It is repeated herein only to show that the current amounts from the Fiscal Year 2021-22 Budget are appropriate for Fiscal Year 2021-22 without any further increases or decreases. Travel budget is low but due to continuing COVID concerns in 2022, it is not requested to be increased at this time.

In prior years a few line items for legal services, legal expenses, and technical references had continued to be reduced, which was very problematic on the budget, therefore last year a few of these line items were requested to be restored and appropriately designated and restored. These slight adjustments represents what had been included in this Department's budget and which is still a small monetary amount to cover such costs. The Legal Department respectfully requests that no further decreases be made to the existing budget. The cost of the City Clerk's yearly billing alone from Walter Drane for Codified Ordinances and Replacements is paid from the Technical & References Line Item #4427-20-2149 of this budget amount and such line item needs to be increased by at least \$5,000.

As well, there is contemplated to be an additional cost of approximately \$1,000.00 per year for technology needs and \$5,000 as per year for legal education requirements which have historically been collapsed within the Legal Expenses line item which as discussed above has been decreased over the years from \$20,000 to the current \$10,000. Therefore, the Legal Department requires that Line Item #4417-20-2176 be increased to \$20,000. Similarly, a small increase in the travel line items is necessary for purposes of legal education seminars and conferences attendance in Line Item #4417-20-2153.

Another adjustment, as for all employees, is in estimated costs of employee health care. The solicitor and one assistant solicitor have family coverage costs. Jury costs have remained in the budget to cover potential for costs incurred in State courts.

Realizing these difficult economic times and constraints upon the budget, as well as the Legal Department's ability to consistently work within the existing annual budget without any further decreases, no other increases are requested for fiscal year 2021-22

PLEASE BE ADVISED THAT USUALLY MOST OF THE EXPENSES BY THE LEGAL DEPARTMENT OCCUR IN THE LAST QUARTER OF THE FISCAL YEAR.

THANK YOU IN ADVANCE FOR CONSIDERATION OF THE ABOVE AND FOR THE PRIVILEGE OF SERVICE THE CITY OF WHEELING AS SOLICITOR.

**CITY OF WHEELING
DEPARTMENTAL BUDGET REQUEST
FISCAL YEAR 2022-23**

DEPARTMENT/DIVISION: LEGAL		DEPARTMENT/DIVISION HEAD: ROSEMARY HUMWAY-WARMUTH				
LINE ITEM (NUMBER & TITLE)	BUDGET CURRENT YEAR	PROPOSED BASE	NEW PROJECTS AND CAPITAL OUTLAY	BUDGET REQUEST	INCREASES (DECREASES)	APPROVED BY CITY MANAGER
Salary Special Asst. 4417-20-2135	\$ 14,595.00			\$ 60,000.00	\$ 45,405.00	
Salary Asst. 4417-10-1202	\$ 22,749.00			\$ 27,749.00	\$ 5,000.00	
Salary Solic. 4417-10-1213	\$ 92,145.00			\$ 92,145.00	\$ 0.00	
Salary Bonus 4417-10-1523	\$ 325.00			\$ 325.00	\$ 0.00	
Salary Longevity 4417-10-1905	\$ 1,170.00			\$ 1,170.00	\$ 0.00	
Soc. Sec. 4417-10-1902*	\$ 1,348.00			\$ 1,348.00	\$ 0.00	
Soc. Medicare 4417-10-1924	\$ 1,584.00			\$ 1,584.00	\$ 0.00	
Group Ins. Eye 4417-10-1920	\$ 1,962.00			\$ 1,962.00	\$ 0.00	
Group Ins. Hosp. 4417-10-1921	\$ 31,871.00			\$ 31,871.00	\$ 0.00	
Retire 4417-10-1901	\$ 0.00			\$ 0.00	\$ 0.00	
Overtime 4417-10-1904	\$ 0.00			\$ 0.00	\$ 0.00	
Telephone 4417-20-2173	\$ 616.00			\$ 616.00	\$ 0.00	
Travel 4417-20-2153	\$ 2,861.00			\$ 4,000.00	\$ 1,139.00	
Postage 4417-20-3146	\$ 277.00			\$ 277.00	\$ 0.00	

* Reflects part-time assistant social security which is part of the salary inclusion

CITY OF WHEELING
DEPARTMENTAL BUDGET REQUEST
FISCAL YEAR 2022-23

DEPARTMENT/DIVISION: LEGAL		DEPARTMENT/DIVISION HEAD: ROSEMARY HUMWAY-WARMUTH					
LINE ITEM (NUMBER & TITLE)	BUDGET CURRENT YEAR	PROPOSED BASE	NEW PROJECTS AND CAPITAL OUTLAY	BUDGET REQUEST	INCREASES (DECREASES)	APPROVED BY CITY MANAGER	
Add. Pub. 4417-20-2144	\$ 2,919.00			\$ 2,919.00	\$ 0.00		
Dues 4417-20-2138	\$ 1,172.00			\$ 1,172.00	\$ 0.00		
Tech Ref. 4417-20-2149	\$ 19,459.00			\$ 19,459.00	\$ 0.00		
Leg. Exp. 4417-20-2176	\$ 19,459.00			\$ 19,459.00	\$ 0.00		
Jury 4417-20-2177	\$ 195.00			\$ 195.00	\$ 0.00		
Leg. Svcs 4417-20-2135	\$ 14,595.00			\$ 14,595.00	\$ 0.00		
Settlement 4417-20-2136	\$ 1,000.00			\$ 1,000.00	\$ 0.00		
Ins./Workers Comp 4417-20-2171**	\$ 3,506.00			\$ 3,506.00	\$ 0.00		
Suppl. 4417-30-3135**	\$ 495.00			\$ 495.00	\$ 0.00		
Cap. Out. 4417-40-4151**	\$ 0.00			\$ 0.00	\$ 0.00		
Insurance 4417-20-2134**	\$ 3,104.00			\$ 3,104.00	\$ 0.00		

** These line items are included in the Legal Department's Budget but the Department doesn't draw from this line item. However, the request is to keep the same amount from previous Budget Year or whatever the amount the Finance Director and City Manager deem necessary.