

## TOWN COUNSEL Updated

Research regarding the Office of Town Counsel: Bylaws and some inquiries with the following towns or cities in Massachusetts.

<u>Town</u>	<u>Appoint</u>	<u>Term</u>	<u>Model of Service</u>
Amherst	Town Mgr		
Arlington	Town Mgr	Indefinite	In-House fte 4.53(2 attorneys TC&Town Counsel & Workmens Comp) use Special C Constr, Labor, Negot.,
Belmont	Selectmen		
Braintree	Mayor	Indefinite	
Brookline	Selectmen		In-House 4 attorneys
Burlington	Selectmen	Annually	
Dedham	Selectmen	Annually	
Lexington	Selectmen	Annually	
Needham	Selectmen		In-House \$75,000 stipend plus billing, Utilizes Special Counsel
Newton	Mayor		In-House Law Department
Norwood	Selectmen	Annually	Murphy, Hesse, Toomey and Lehane
Sudbury	Selectmen	At 36 months evaluate & consider RFP	
Wellesley	Selectmen	Annually	

## **ARLINGTON**

### **ARLINGTON BYLAWS**

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## **ARTICLE 2: SELECTMEN**

### **Section 1. Duty**

**The Selectmen shall have the general direction and management of the property and affairs of the Town in all matters not otherwise provided for, so far as permitted by law.**

### **Section 2. Representative Powers**

**The Selectmen may appear, either personally or by Town Counsel or by Special Counsel duly employed by them before any Court, Committee of the Legislature, or any Federal, State, or County Board of Commissioners, or other tribunal to protect the interests of the Town, but they are not authorized hereby to commit the Town to any course of action. They shall have authority as agents to institute, prosecute and defend suits and claims against or involving the interests of the Town, and to settle same when, in their judgment upon advice of counsel, such settlement is for the best interest of the Town.**

Today, I spoke with Deputy Town Administrator Sandy Poole March 6, 2019 regarding their In-House Model. They have two attorneys a Town Counsel and an attorney for Workman's Compensation. The staff includes a paralegal, an administrative secretary and another part time secretarial staff. 4.3 staff. Access managed through Town Administrator and Board of Selectmen. Planning Department provides access for Planning Board and ZBA. Utilize Special Counsel for 40B. Success of Town Counsel due to his special talents.

## BELMONT

### § 40-200 Board of Selectmen.

**A.** The Board of Selectmen shall consist of three members elected by ballot at the Annual Town Election for a term of three years. One member shall be elected in each year.

**B.** The Selectmen shall have the general direction and management of the property and affairs of the Town in all matters not otherwise provided for by law or by these bylaws.

**C.** The Selectmen may appear, either personally or by the Town Counsel or by special counsel duly employed by them, before any court, committee of the Legislature or any state or county board or commission or other tribunal to protect the interests of the Town.

**G.** The Selectmen shall have the following appointment powers:

**(1)**

The Selectmen shall annually, and whenever a vacancy shall exist, choose some competent lawyer to act as Town Counsel. He shall be paid such compensation as the Selectmen may determine and they may remove him at pleasure. The Town Counsel shall provide such legal services concerning the affairs of the Town as may be required of him by any Town officer, board, committee or commission.

[Amended 4-26-2004 ATM, approved 8-19-2004]

## BROOKLINE

Brookline Town Counsel-March 6, 2019 Joslin Ham Murphy, 617-730-2190

Today, I spoke with Joslin Murphy, lead Town Counsel in the Town of Brookline.

Approximately, 50 years ago, the first In-House attorney was appointed by the Board of Selectmen. Town Counsel was adopted through Special Acts of the state legislature. The office has added in increments of one attorney at a time created a staff of four attorneys with limited use of outside counsel. Previously an Executive Secretary, then the Town Administrator was the chief operations officer of the town. The Select Board is the appointing authority and the Town Administrator is the Supervisor of Legal Services. "The Town Administrator and I carry out the directions of the Select Board," according to Ms. Murphy.

Ms. Murphy commented on the In-House Model. It provides the ability of town officials, departments to readily get information that they need to met their responsibilities. She suggested that the In-House attorneys have a real pulse on the community versus an outside firm that may have other attorneys working on an individual legal issue. She also, noted that the readily available access to the town lawyers nip problems in the bud.

Brookline's last Annual Town Meeting has authorized funding to add labor counsel to the town staff. The town plans to pursue adding In-House labor counsel, while the Schools have it under consideration. The Schools appoint their own labor counsel.

The Select Board appoints Town Counsel based on the Town Administrator's recommendation of one candidate after his selection process.

## **DEDHAM**

### **§ 57-1 Selectmen to be agents of Town.**

The Selectmen shall be agents of the Town to institute, prosecute and defend any claims, actions and proceedings to which the Town is a party or in which the interests of the Town are or may be involved.

### **§ 57-2 Selectmen authorized to settle claims.**

The Selectmen, or their designee, may at their discretion compromise or settle any claim or suit to which the Town is a party within the amount of any appropriation available therefore or as otherwise authorized by law.

### **§ 57-3 Town Counsel to report status of actions.**

The Town Counsel shall, not later than 10 days after the close of each year, report to the Selectmen what actions have been brought against and on behalf of the Town and what cases have been compromised or settled, and the Selectmen shall include such report in the Annual Town Report.

### **§ 57-4 Selectmen to appoint Town Counsel.**

The Selectmen shall annually, as soon as practicable after final adjournment of the Annual Town Meeting, appoint a competent lawyer and member of the Bar of the Commonwealth in good standing to act as Town Counsel for the term of one year, from the day of his appointment following and until his successor is appointed and enters upon the performance of his duties, and may at their pleasure remove him from office. They shall likewise fill any vacancy in such office for the unexpired term and may employ special counsel whenever, in their judgment, necessity therefor arises and an appropriation is made or is available therefor.

### **§ 57-5 Qualifications for Town Counsel.**

- A.** Town Counsel shall have a minimum of five years experience as a city solicitor, Town counsel, or assistant Town counsel; in the case of a law firm being retained by the Town as a Town counsel, only those attorneys within the firm who have a minimum of five years experience as a city solicitor, Town counsel, assistant city solicitor, or assistant Town counsel shall represent the Town;
- B.** Town Counsel shall have substantial experience in litigation before trial courts (both state and federal) and state administrative agencies and should have a demonstrated record of success in major municipal litigation;
- C.** Town Counsel shall have a demonstrated ability to provide suitable back-up capacity during absence, illness or vacations;
- D.** Town Counsel shall have expertise in a variety of municipal law specialty areas such as land use, environmental law, civil rights, contracts, and municipal finance law;
- E.** Town Counsel shall not be eligible to participate in the Town's group insurance program nor shall Town Counsel be eligible for retirement or other benefits;
- F.** Town Counsel shall be a member in good standing of the Massachusetts Bar; and
- G.** Town Counsel shall at all times maintain a professional liability insurance policy in a minimum amount of \$1,000,000.

## **§ 57-6 Duties of Town Counsel.**

It shall be the duty of the Town Counsel to conduct the prosecution of, defense of, or compromise claims, actions and proceedings to which the Town is a party, and the prosecution of actions or proceedings by or on behalf of any Town Officer, Board or Committee as such; to conduct the defense of any action or proceedings brought against any Town Officer, Board or Committee as such when the Selectmen, having determined that any right or interests of the Town are or may be involved therein, shall so request; to conduct proceedings brought by or against the assessors before the Appellate Tax Board; to assist in the prosecution of complaints for violation of any by-law of the Town, when requested so to do by the Board or Officer enforcing the same, with the approval of the Board of Selectmen; to examine and report upon titles to all land to be acquired by the Town; to prepare or approve contracts, bonds, deeds and other legal instruments in which the Town is a party or in which any right or interest of the Town is involved; and generally to advise and act for the Town, Officers, Boards and Committees upon and in legal matters touching the duties of their respective offices.

## **LEXINGTON**

### **Chapter 90. Officers and Employees**

#### **Article VI. Town Counsel**

#### **§ 90-24. Appointment; compensation; special counsel.**

The Board of Selectmen shall each year within thirty days after the annual election of Town officers appoint some attorney-at-law as Town Counsel, who shall serve for the term of one year and until his successor is appointed; he shall receive for his services such compensation as the Town may determine and he may be removed at any time by a majority vote of said Board. Said Board may, whenever it deems necessary, employ special counsel to assist or act in place of the Town Counsel.<sup>[1]</sup>

[1]

*Editor's Note: Original Sec. 2 of this article, which immediately followed this section, was amended 4-24-1974 ATM by Art. 89 and deleted 5-3-1982 ATM by Art. 48.*

#### **§ 90-25. Preparation of legal instruments; legal advice.**

[Amended 5-3-1982 ATM by Art. 48; 4-9-2001 ATM by Art. 29]

The Town Counsel shall draw or supervise the drawing or approval of all contracts, deeds, bonds and other legal instruments relating to the Town; he shall give legal advice and furnish a written opinion when so requested by the Town Meeting or by any Town officer, board, department, committee, commission, authority or trusteeship, regarding any legal question or matter relating to the duties of such officer, board, department, committee, commission, authority or trusteeship, and no such officer or entity shall at the expense or in behalf of the Town employ or be represented by any other than the Town Counsel unless authorized by the Board of Selectmen.

#### **§ 90-26. Investigations.**

The Town Counsel shall, as soon as possible after receiving notice from the Chief of Police or otherwise, of any injury to person or property, under circumstances which may give rise to a claim of damages against the Town, make or cause to be made a thorough investigation relative thereto and, with the approval of the Board of Selectmen, take such steps as may be deemed necessary to properly protect and defend the Town against such claim.

#### **§ 90-27. Prosecution or defense of cases.**

[Amended 4-24-1974 ATM by Art. 89]

The Town Counsel shall, unless otherwise directed by the Town Manager with the approval of the Selectmen, prosecute or defend all cases and proceedings to which the Town is a party. He shall also prosecute, unless otherwise directed by the Town Manager with the approval of the Selectmen, all cases for the breach or violation of the by-laws of the Town.

## § 90-28. Annual report.

[Amended 5-3-1982 ATM by Art. 48; 6-16-2014 STM by Art. 7]

The Town Counsel shall annually report in writing to the Board of Selectmen, by a date determined by the Board of Selectment, all actions by or against the Town which were pending at the beginning of the preceding fiscal year; all actions brought by or against the Town during such year; and all actions settled or disposed of during such year. Such report shall show the full name of each plaintiff or defendant, the nature and amount of the claim in each case, and the terms upon which any case was settled or disposed of during such year. Such report shall be printed in the Annual Town Report.

## § 90-29. Holding other office.

The Town Counsel shall not during his term of office hold any other appointive or elective office of the Town.

## **NEEDHAM**

2.2.3 Town Counsel The Selectmen shall appoint a Town Counsel, who shall act as attorney and counsel for the Town and the various officers and boards thereof, to institute and prosecute suits in the name of the Town, to defend suits brought against the Town, and to compromise and settle suits and claims, unless otherwise ordered by special vote of the Town. Town Counsel shall have the authority to engage the services of attorneys to assist in carrying out the duties of the office.

Today, I spoke with Deputy Town Administrator of Finance David Davison, March 6, 2019. Needham has a town employee Town Counsel that is paid a stipend of \$75,000 and is paid billable hours if his time exceeds the stipend.

He assigns Special Counsel for legal issues that require special experience. Schools appoint special counsel for labor negotiations and special education. The Town Counsel holds office hours Thursday mornings for the Schools, Thursday afternoon at Public Safety-DPW Building, signs contracts, and Friday morning in Town Hall. Usually two hours for each session.

## **NEWTON**

The Law Department for the City of Newton represents and advises the City, its departments, boards, and commissions, as well as the officials and employees of the City in all areas of municipal law. The Law Department does not represent, and is not able to provide legal advice to, members of the public.

## LAW DEPARTMENT

Sec. 15-1. City Solicitor—Qualifications; legal advisor of city; additional counsel. There is hereby established a law department which shall be under the charge of the city solicitor who shall be an attorney and counselor at law of the courts of the commonwealth. He shall act as the legal advisor and solicitor of the city except in special cases in which the mayor may authorize or require him to secure the advice or services of additional counsel. (Rev. Ords. 1973, § 2-68)

Sec. 15-2. Same—Duties generally.

(a) It shall be the duty of the city solicitor to examine or cause to be examined all titles to property and to draft all deeds, obligations, contracts, bonds, leases, conveyances, agreements and other legal instruments of whatever nature, which may be required by any ordinance or order of the city council or by any board or officer to which the city or its agents may be a party, and which by law, usage or agreement the city is to be at the expense of drawing.

(b) All orders for the laying out, discontinuance, change or improvement of streets or ways, for the taking of lands for any municipal purpose whatsoever, for the assessment of betterments and all other forms of assessment shall be drawn by him or under his direction or approval.

(c) It shall be the duty of the city solicitor to commence and prosecute all actions and other legal proceedings and suits begun by the city, and to defend all actions and suits brought against the city in any court or other tribunal of the commonwealth, or of the United States; to appear as counsel in any other action, suit or prosecution which may involve the rights and interests of the city; and to defend any of the officers of the city in suits and prosecutions against them for any official action or for the performance of any official duty when any right, privilege, ordinance, act or direction of the city council may be brought in question.

(d) He shall also appear as counsel before the legislature of the commonwealth, or any committee thereof, whenever the interest and welfare of the city may be directly or incidentally affected.

(e) He shall, when requested, furnish the mayor, the city council or any member thereof, any committee of the city government or any board or officer of the city who may need the same in the discharge of official duty, his legal opinion upon any subject touching the duties of their respective offices; but whenever the opinion is required to be in writing, the question submitted for his consideration shall also be stated in writing.

(f) It shall be his duty to attend all meetings of committees of the city council when requested by any chairman of a committee, and may attend in person or send an assistant. (Rev. Ords. 1973, § 2-69)

Sec. 15-3. Same—Duties in connection with accidents. The city solicitor shall investigate the facts in relation to accidents reported to him; shall keep a record of the same, together with the names and addresses of the witnesses; and may incur any reasonable expense therefor, and in providing for the conduct and defense of all legal proceedings by and against the city. (Rev. Ords. 1973, § 2-70)

Sec. 15-4. Same—Compensation. The city solicitor shall receive in full for all his services such compensation as the city council may determine.

## § 15-5 NEWTON ORDINANCES – LAW DEPARTMENT

§ 15-6 Newton Ordinances On-Line - Chapter 15 - page 2 (Rev. Ords. 1973, § 2-71)

Sec. 15-5. Settlement of claims.

(a) G.L. Chapter 258 claims. In accordance with Section 5 of Chapter 258 of the General Laws:

(1) the mayor may settle any and all claims for damages under Chapter 258; and

(2) for any claim in excess of \$2,500.00, the settlement may be made only with the approval of the city solicitor. For any claim of \$5,000.00 or less, the mayor may delegate to the city solicitor the right and duty to make a settlement therefor.

(b) Other claims. Any claim for damages not covered by subsection (a) above:

(1) may be settled by the city solicitor without the approval of the mayor if it does not exceed \$1,000.00 and without the approval of the city council if it does not exceed \$5,000.00, or

(2) may be settled by the city solicitor subject to the approval of the mayor if it exceeds \$1,000.00 and subject to the approval of the city council if it exceeds \$5,000.00.

(c) Payment of claims. With the exception of claims for employee benefits and claims for real and personal property tax appeals, payment of claims settled pursuant to subsections (a) and (b) above shall be made from the law department's "judgments and settlements" account. Unless determined otherwise by the mayor and the city council, payment of claims shall be funded as follows:

(1) claims of \$5,000 or less shall be paid from the law department's "judgments and settlements" account as budgeted in the annual budget including any supplemental appropriations made thereto;

(2) for payment of claims in excess of \$5,000 but less than \$50,000, funds shall be transferred from an account designated by the mayor and approved by the city council into the "judgments and settlements" account and (3) for payment of claims of \$50,000 or more, funds shall be transferred from the "liability insurance fund" into the "judgments and settlements" account. No payment shall be made from the "liability insurance fund" without the authorization of the mayor and the city council. (d) Semi-annual report. The city solicitor shall present to the city council a semi-annual report of all settled claims for damages that do not require city council approval pursuant to this section. (Rev. Ords. 1973, § 2-72; Ord. No. S-94, 6-18-85; Ord. No. T-113, 11-15-90; Ord. No. X-74, 02-17-04)

Sec. 15-6. Warrants for payment of recording fees. The comptroller of accounts, upon request of the city solicitor, may issue his warrant for the payment by the collector-treasurer to the Middlesex South District Registry of Deeds of an amount not exceeding three hundred dollars (\$300.00) at any one time as an advance deposit for the payment of recording fees and return postage for § 15-6 NEWTON ORDINANCES – LAW DEPARTMENT § 15-6 Newton Ordinances On-Line - Chapter 15 - page 3 documents recorded on behalf of the city with such registry or with the land court. The city solicitor shall keep accurate accounts of all payments made from such deposit, and upon the first day of each month or upon request shall render to the comptroller of accounts a transcript thereof with proper vouchers attached. No additional advance shall be made unless all money previously advanced shall have been properly accounted for. (Rev. Ords. 1973, § 2-73)



# **NORWOOD**

## **ARTICLE V.**

### **Legal Affairs**

Section 1. The Board of Selectmen shall annually appoint an attorney-at-law to act as Town Counsel, who shall be paid such salary as the Town votes, and said Board shall have full authority to employ special or additional counsel whenever, in its judgment, necessity therefore arises.

Section 2. The Board of Selectmen shall have full authority as agents of the Town to institute, prosecute and compromise suits in the name of the Town, and to appear, defend and compromise suits brought against it, and to appear in proceedings before any tribunal, unless it is otherwise specially voted by the Town.

Section 3. The Town Counsel shall draft all bonds, leases, obligations, conveyances and other legal instruments, advise on all questions relating to the warrants for Town Meetings, and do every professional act relating to Town affairs which may be required of him, by vote of the Town or any board of Town Officers. Also, when required by said boards or any committee of the Town, he shall furnish a written opinion on any legal question that may be submitted in writing to him, and he shall at all times furnish legal advice to any officer of the Town who may require his opinion upon any subject concerning the duties incumbent upon such officer by virtue of his office. He shall, when required by the Town or any board of Town Officers, prosecute any suits ordered to be brought by the Town, and shall appear at any court in the Commonwealth in defense of any actions or suits brought against the Town or its officers, in their official capacity. He shall also, whenever his services may be required, try and argue any and all cases, whether in law or in equity, to which the Town shall be a party before any tribunal in the Commonwealth, or before any board of referees or commissioners, and appear at any and all hearing in behalf of the Town.

Section 4. Whenever it shall be necessary to execute any deed conveying land, or any other instrument required to carry into effect any vote of the Town, the same shall be executed by the Treasurer in behalf of the Town, unless the Town shall otherwise vote in any special case.

Section 5. The Town Clerk shall have the custody of the Town seal and shall keep a true copy (in a book to be kept for such purpose alone) of all deeds or conveyances executed in behalf of the Town by any Town officer. It shall be the duty of the Town Clerk to see that every conveyance to the Town of any interest in real estate is properly recorded in the Registry of Deeds.

# **WELLESLEY**

## **ARTICLE 25. TOWN COUNSEL**

25.1. Office and Qualifications. The Town shall have a Town Counsel who shall be an attorney admitted to practice in the Commonwealth. Town Counsel need not be a resident of the Town or maintain a law office in the Town.

25.2. Term. The Town Counsel shall be appointed annually by the Selectmen for a yearly term to commence on July 1. The Selectmen shall have the power to remove Town Counsel whenever in their judgment the interests of the Town so require. In case of a vacancy in the office, the Selectmen shall fill the same by a new appointment.

25.3. Responsibility. Town Counsel shall be responsible for the performance of all legal services to the Town.

25.4. Duties. It shall be the duty of Town Counsel:

- a. to examine, or cause to be examined, all titles to property in which the Town may be interested;
- b. to draw, supervise the drawing, or review all deeds, obligations, contracts, bonds, leases, conveyances, agreements and other legal instruments, of whatever nature, which may be required by any bylaw, vote or action of the Town, or

by any board or official, or to which the Town or its agent may be a party, and which by law, usage or agreement the Town is obligated to draw;

c. to draw, or supervise and approve, all votes for the laying out, discontinuance, change or improvement of streets or ways, for the taking of lands for any municipal purpose whatever, for the assessment of betterments, and all other forms of assessment;

d. to commence and prosecute all actions and other legal proceedings and suits by or on behalf of the Town or any board or official, upon vote duly taken by such board or written direction of such official and after the Selectmen have been notified of and approved such vote; except that approval by the Selectmen shall not be required if Town Counsel deems the situation to be of an emergency nature or in those instances when such board or official is vested by statute with the authority to commence and prosecute legal proceedings;

e. to defend all actions and suits brought against the Town in any Court or other tribunal in this Commonwealth or elsewhere;

f. to appear as counsel, when directed by the Selectmen, in any other action, suit, or prosecution which may involve the rights and interests of the Town:

g. to defend all persons elected or appointed to any board and all officers and officials of the Town in suits or prosecutions against them for any official action, or for the performance of any official duty, when any right, privilege, act or direction of the Town may be brought into question;

h. to defend, subject to the approval of the Selectmen, all employees of the Town in suits or prosecutions against such employees for acts within the scope of their authority as agents of the Town, unless such suits or prosecutions are brought by the Town or on its behalf;

i. to appear as Counsel before the Legislature of the Commonwealth or any committee thereof, whenever the Selectmen determine that the interests or welfare of the Town may be directly or indirectly concerned, or when requested to do so by a vote of the Town;

j. to consult with, advise or attend meetings of any board, officer or official, either upon the request of the Chair thereof or the officer or official involved, or when in the Selectmen's opinion any matter before such board, officer or official has significant legal implications to the Town, and in either instance to furnish a legal opinion upon any subject respecting the official duties of the board, officer or official; k. to prepare, when requested, any article for the Warrant for any Town Meeting and to review all articles and motions for form and legal sufficiency.

l. to make a monthly report to the Selectmen on all actions taken during the preceding month and to other Town boards, officers and officials on legal matters which occurred during the preceding month and specifically relate to such board, officer or official; and

m. to make an annual report of the work done during the preceding year and the status of all business and litigation pending at the close of that year.

25.5. Special Counsel. Unless expressly authorized by statute, a vote of Town Meeting, or vote of the Selectmen, no board, officer or official of the Town shall engage, whether or not for remuneration, any attorney, other than Town Counsel, with regard to its or his official duties, or any Town business, or the business of any of the departments thereof. The Selectmen may, whenever they deem necessary, employ special counsel to assist or act in place of Town Counsel.