

---

---

## DEPARTMENT OF LAW

---

---



**TO:** MAYOR JOHN B. O'REILLY, JR.  
**FROM:** DEBRA A. WALLING, CORPORATION COUNSEL  
**SUBJECT:** FY 2014 BUDGET - EXECUTIVE SUMMARY  
**DATE:** FEBRUARY 28, 2013

---

### Overview:

The full-time staff in the Law Department consists of the appointed Corporation Counsel; the Deputy Corporation Counsel; five full-time Assistant Corporation Counsels; one Legal Coordinator, and two Legal Specialists. One Assistant Corporation Counsel was appointed as the City's Chief Labor Negotiator and another also acts as the City's Risk Manager, resulting in the elimination of a full-time position and part-time position from prior budgets. Since the merger with the City Plan Department last year, there is also one full-time Senior Planner, two part-time planners, and one full-time clerical position. The full-time clerical position was initially shared with the Economic and Community Development Department. Due to assignment adjustments, the Law Department clerical staff has taken over the City Plan reception function and the Senior Planner has taken over most of the City Planning Commission support functions previously performed by the full-time City Plan clerical person. Thus, it is anticipated that the full-time clerical position will be transferred to the Economic and Community Development Department budget in the next fiscal year.

The part-time legal staff presently consists of one part-time Program Coordinator, one part-time attorney and two part-time law clerks.

In order to comply with the staffing level target, one (1) FTE was eliminated from the legal staff in FY 2012. The target was achieved by eliminating one (1) part-time attorney who was assigned to the 19<sup>th</sup> District Court prosecutions and one (1) law clerk position. The impact was complaints from the 19<sup>th</sup> District Court about the lack of prosecutors.

During FY 2012, the Department of Law was responsible for processing 15,882 criminal cases, which are about 1,200 more criminal cases than last year. It was responsible for processing 21,509 civil infractions, which is about 2,600 more civil infractions than last year. This increase in case load negatively impacts the speed and efficiency of prosecutions, particularly in view of having one less part time attorney to help with the court dockets each day. Further, the limitation on

hours worked for part-time employees places additional burdens on the full-time attorneys to perform clerical work, court filings, and research functions, which is not an effective use of their time. This negative impact will likely continue because the most current statistics for FY 2013 show that the Department of Law has been responsible for processing 11,304 criminal cases and 12,236 civil infractions. These numbers indicate that the amount of cases processed by the end of FY 13 will be similar to FY 2012, if not higher.

All of the full-time attorneys specialize in specific, technical areas of law. However, they are also regularly called upon to attend meetings and provide legal opinions/advice to City officials and employees on a broad range of municipal and general legal subjects. They have vast experience and expertise in municipal legal issues. All of the attorneys are paid fixed salaries and they do not receive overtime compensation for working in excess of 40 hours per week.

The Legal Coordinator and two Legal Specialists have extensive experience in litigation support, which is critical to the department's success in court. Each of these individuals also have vast institutional knowledge and an excellent understanding of municipal issues. Inasmuch as they are the frontline staff, they strive to consistently provide superior customer service during their frequent interactions with the public and City employees.

The two part-time law clerks provide essential legal research, court filing, and drafting functions. One of the law clerks is also a licensed attorney who assists with District Court prosecutions to help fill the void created by the elimination of a part-time attorney position in FY 2012. The other law clerk is a third year student who plans to take the State Bar exam in July 2013. If/when either of the law clerks leaves for other employment, there will be a difficult period of time until their position is filled. The law clerks also assist with debt collections, tax appeals, and clerical duties.

#### Fee Structure:

The only statutory fees charged by the Law Department are those costs associated with the preparation of FOIA responses. The fee structure is set by statute. Reimbursement for attorney fees and costs are always sought in connection with the successful defense of each civil lawsuit filed against or by the City. Unfortunately, the award of such fees is always discretionary with the court and they are rarely awarded. The fines and restitution obtained by successful prosecutions in the 19<sup>th</sup> District Court are tied to the number and types of arrests by the Police Department. No significant changes are anticipated in FY 2014.

The Department has established a proposed fee schedule for rezoning applications, special land use requests, and site plan reviews. This will be the first time fees for these functions will be charged. The proposal was reviewed

with the Planning Commission and will be presented to the City Council for adoption in the near future.

Revenues and Expenditures:

Predictable revenues in the Law Department are limited to those costs charged for FOIA preparation. FOIA revenue:

<b>Fiscal Year</b>	<b>Revenue generated</b>	<b>FOIA requests processed</b>
2009	\$9,579	757
2010	\$10,915	791
2011	\$16,441	984
2012	\$19,271	1,034
2013	YTD \$12,882	YTD 606

- The Law Department is aggressively pursuing litigation filed in January 2009 against Burton-Katzman Development Company and its principals and affiliated companies for recovery of up to \$20 million in compensatory damages. The Court has already ruled in the City's favor on its breach of contract claim and ordered Burton-Katzman Development Company, *et. al.* to complete the West Village Commons project. The Court held Burton-Katzman in contempt for not commencing construction and assessed damages in the amount of the City's total bond payments at that point in time, which was \$5 million. Burton-Katzman immediately filed bankruptcy proceedings after its appeal of the contempt sanction was unsuccessful. The Bankruptcy Court ruled that it was a "bad faith filing" and awarded the City its attorney fees and costs. Burton-Katzman asked for reconsideration of that ruling, which was denied. This complicated litigation was being successfully handled in-house, with minimal assistance from outside counsel until a recent resignation by an Assistant Corporation Counsel assigned to the case. That has intensified the use of outside counsel to keep up with the numerous pleadings filed by four law firms representing various defendants. All rulings by the trial court are now on appeal in the Michigan Court of Appeals. If or when these matters are remanded to the Wayne County Circuit Court for trial, the City will completely depend on assistance/expertise from outside counsel, since I am a witness in the case.
- All general employee contracts expired on June 30, 2010. After prolonged negotiations, three contracts and one salary plan settled. The settlements included concessions such as non-refundable pension contributions (4% of final average compensation) and an 80/20 health premium co-pay, resulting in a savings of 8% of salary and benefits for the City. Litigation has resulted with regard to some contracts and continues. The City pursued Act 312 arbitration with the two dispatch units. Hearing dates are being scheduled. After fact finding, continued negotiations with the

Teamsters union are scheduled. Negotiations with the non-supervisory police and fire unions successfully concluded. The supervisory police contract expires on June 30, 2013. Negotiation meetings have been scheduled.

- In FY 2013, the Law Department was responsible for the sale of nine (9) non-buildable vacant lots to adjoining homeowners to expand their existing lots, which generated revenue of \$48,300. Three (3) buildable lots were sold for the construction of new homes for \$60,606. Through the sale of these properties, these lots are now back on the tax roll and no longer have to be maintained by the City of Dearborn.

<b>Fiscal year</b>	<b>Total side lots sold</b>	<b>Revenue generated</b>	<b>Total Buildable lots sold</b>	<b>Revenue generated</b>	<b>Total Rehabbed homes sold</b>	<b>Total Revenue generated</b>
2010	13	\$132,900	0	0	0	0
2011	9	\$57,300	0	0	1	\$65,000
2012	17	\$84,850	1	\$26,000	2	\$146,000
YTD 2013	9	\$48,300	3	\$60,606	2	\$130,500

The Law Department is intensively involved in actions and litigation geared toward protecting the property tax base and laying the foundation for future expansion of that base. Working in close cooperation with the Department of Assessment, the Law Department defends property tax valuation appeals in the Michigan Tax Tribunal by conducting aggressive discovery, facilitating negotiations, and appearing at all hearings in Lansing. In FY 2012, the Department of Law received 60 new tax appeals, resolved 82 appeals, and had a total of 111 appeals pending at the end of the year. The trend of increased filings appears to be leveling off as the economy gradually improves. In comparison, 225 appeals were pending at the end of FY 2011. Two key results are achieved when defending these appeals and engaging in closely-monitored settlement negotiations: first, the property tax base is protected from unnecessary erosion; and, second, to the extent that values are adjusted appropriately within the context of market values, Dearborn is able to maintain a reputation of being a city in which it is affordable to do business.

During FY 2012, 20 new properties were identified as dangerous 31 hearings were held before the Hearing Officer, and 27 hearings were held before the Demolition Appeal Board. At the close of FY 2012, 3 structures were undergoing rehabilitation, 19 structures had been demolished, and 7 were awaiting demolition. Thus far in 2013, 6 new structures have been identified as dangerous, 22 hearings have been held before the Hearing Officer, 22 hearings

have been held before the Demolition Appeal Board, 8 structures are undergoing rehabilitation, and while 6 structures have been demolished to date, an additional 13 are pending demolition as noted in the chart below.

Fiscal Year	Properties identified as dangerous	Hearings before Hearing Officer	Hearings before Demolition Appeal Board	Homes in Rehab	Structures demolished	Structures awaiting demolition
2012	20	31	27	3	19	7
YTD 2013	6	22	22	8	6	13

Key Assumptions:

- New lawsuits will continue to be filed each year.

Calendar Year	New civil lawsuits	New workers compensation lawsuits	New cases with City as plaintiff
2005	29	2	2
2006	35	2	3
2007	30	2	1
2008	32	2	3
2009	36	4	1
2010	30	2	1
2011	31	0	1
<b>2012</b>	<b>31</b>	<b>1</b>	<b>1</b>
<b>YTD 2013</b>	<b>7</b>	<b>0</b>	<b>0</b>

Year	Lawsuits dismissed without cost to City	Reserves returned to General Fund
2005	21	\$260,000
2006	40	\$520,000
2007	27	\$186,000
2008	27	\$145,500
2009	15	\$108,970
2010	24	\$240,000
2011	18	\$394,500
2012	28	\$721,000
2013	YTD 4	\$30,000

- In-house counsel is more cost-effective than retaining outside counsel for the City's legal representation. Outside counsel will be retained sparingly for highly specialized issues.
- Staffing level reductions may not be adequate to handle prosecutions in the 19<sup>th</sup> District Court and the defense of new lawsuits and claims filed against the City. This issue is constantly monitored and will continue to be monitored to provide the best and most cost-effective delivery of legal services

#### Organization/Personnel Changes:

Two years ago (1) FTE, comprised of two important part-time positions (an attorney and a law clerk), was eliminated. The loss of one prosecutor considerably slowed down processing of the caseload each day in the 19<sup>th</sup> District Court. The elimination of a law clerk position caused attorneys to perform many of their own clerical, court filing, and research functions, which is very time consuming and not as cost effective.

During the past fiscal year, the City Plan Department was merged with the Law Department. The Law Department assumed supervisory, administrative, and reception functions for the City Plan Department. Therefore, the vacancy due to the death of the City Planner was not filled and the full-time receptionist for the City Plan Department shifted to the Economic and Community Development Department.

#### Changes in Service Levels/Methods:

Increased demands on service are anticipated in FY 2013 and beyond due to new initiatives such as the acquisition and rehabilitation of foreclosed residential properties and the proposed reduction in part time staff hours from 32 to 28 per week. Furthermore, the Corporation Counsel has assumed additional supervisory and administrative duties that were formerly handled by the City Planner.

#### Summary:

The Department of Law will continue to "do more with less," but there has been an obvious decrease in service to the 19<sup>th</sup> District Court because a part-time attorney position was eliminated in FY 2012. The elimination of a law clerk position put more clerical demands on the attorneys in the department, which is not an effective use of their time. The absorption of the City Plan Department into the Law Department has eliminated the full-time City Planner and receptionist positions, but has imposed additional administrative and supervisory

duties on the Corporation Counsel and clerical support staff in the Law Department.

Of course, the other variables that typically influence the departmental budget are all of the unexpected issues that arise during the fiscal year that require an effective response, advice, defense, or prosecution by this department.