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

DATE : January 21, 2015

RE : 2015-16 Fiscal Year Budget

Attached please find the proposed Budget for Fiscal Year 2015-16 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

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LEGAL DEPARTMENT

Fiscal Year 2014-15 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, Gary Sacco, Esq. serves, in a 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 commission 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. The Legal Department had been understaffed with primarily one (1) attorney, the City Solicitor, to handle the ever increasing workload. Staffing needs were addressed in the last budget in order to bring staff to a minimum necessary operating level by budgeting appropriately for the positions of Assistant City Solicitors. 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, 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 2013-14. 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 17 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 Vacation Property Registration, increased citation authority for health and nuisance violations, B&O collection being a sole focus of a newly hired 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 17th term approaching the 18th 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 2009, I received recertification from the IMLA as a fellow signifying over ten (10) 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. 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.

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: 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); and 4) Pilot Home rule statutory revisions to the current law. I previously to served as the Secretary for the State of West Virginia Municipal Attorneys Association and am currently the President of this organization, and am a member of the Ohio County Bar Association, 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. During 2013 the City Solicitor has assisted in the performance of many of the higher level administrative duties performed by or with the Human Resources Director.

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.

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 have, over the past years, been continuous, time-consuming and extremely

complicated. The Legal Department has been charged and has accomplished the majority of the directives thus far 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 is minimally anticipated over the next year. Time is not of the essence as the City has already placed the estimated FMV (Fair Market Value) Funds remain in escrow but in 2014 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 has provided significant advise and necessary service to 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 modified in the summer/fall of 2013. 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. As well, significant time and research was devoted in 2013 to the modification of the City Human Rights Commission Ordinance and the coordination with the City and State agencies concerning duties and responsibility sharing on local complaints and particularly adjudicatory functions of such local commission.

The Legal Department has had a significant amount of work in 2012 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 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 caseload of civil litigation in which the Legal Department is involved has remained fairly constant during Fiscal Year 2014-15. There have been several significant employment/personnel matters, as well as City Council/policy matters being litigated by the Department (i.e., Kotson, two man cruiser, eminent domain, etc.) There has been a trend of increased litigation noted over the past sixteen (16) years. At the end of Fiscal Year 2013-14 approximately 50 cases were pending in various courts or forums wherein the City of Wheeling was a party thereto, and this trend continued into 2014-15. 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 2014-15. 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 Legal Department also acted as counsel for the Police, Fire and Municipal Civil Service Commissions in a number of meetings 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.

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. The Legal Department has continued to work with the Administration ad 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 hiring of a new B&O Tax Auditor 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 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 with the new B&O Tax Auditor on various collection matters 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 approximately 100 businesses have utilized and made an inquiry and application. 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.

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 2013-14 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 produced a steady increase in collection volume for the Water and Sewer Utilities Accounting Department. 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 a 2014 decision in the City's favor regarding fee collection justification on large, unpaid billings.

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 Crones 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 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. The Legal Department is in the final stages of acquiring the property from the five prior owners, in lieu of demolition lien payment as Mr. Marshall recently passed away. 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 has secured in 2013-14 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. 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 ver 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 Director 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 a close working relationship with the Human Resources Department which has been an asset given that the Human Resources Director resigned. 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 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. The Legal Department also has worked on the ten (10) year Comprehensive Plan update process. Several cases involving actions of the Planning Department which were pending in state and federal court were resolved in the City's favor in 2014. 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.

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 2015 (only counting January of 2015), 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. The number of tickets/citations issued for Calendar Year 2014 are believed to be similar to last year which was approximately 1,500. Similarly, during Calendar year 2013 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 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 in Calendar Year 2014 there have been approximately 100 new cases prosecuted on building code violations, and several health code violation prosecutions. 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 2014-15. 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 Judges Miller and Nickerson, 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 2014-15 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.

In 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 is 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 and 2013 and Wheeling played a significant role in persuading the legislature to do so based upon initiatives and work of the Legal Department.

With the fruition of the Home Rule Pilot Program's approval of the City's application, there have been more occasions during 2014-15 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 and 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, 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 and 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. As previously stated, the Legal Department remained active through 2014-15 in efforts to preserve the Home Rule Statute and create ordinances for the City of Wheeling pursuant to such authority and during the 2014 Legislative Session the Pilot Home Rule Program did not "sunset" and was expanded for other municipalities throughout the State.

Through 2014 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 in 2012 has successfully negotiated property acquisition and worked with the City Manager and Bond Counsel for the redevelopment initiatives for downtown Wheeling and efforts continued in 2013 through today.

The Legal Department continues to be involved in various complex contractual matters. Some of the contractual issues, other than the usual paving, demolition and routine acquisitions, were: land use grants for the skatepark by the I-470 Chambers Complex, 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. 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 through 2014 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 five 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 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 practioners 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. The foregoing has continued to streamline the efficiency and operations of the Legal Department. However, it is necessary to add another Assistant City Solicitor as was recognized several years ago due to the amount of work for the Legal Department created by other City functions and simply increased litigation and development initiatives.

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 represents a small increase in compensation, is being requested for fiscal year 2015-16 for the Solicitor. The much needed salary for the full-time Assistant City Solicitor has been included in the budget as it has been in prior years of departmental operation and reflects the 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 2014-15 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 collection 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 2015-16

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 – The Legal Department continues to use the Internet which has made the Department more accessible and provided more access to legal professionals. There is also a vast amount of free information, such as the Supreme Court Opinions being published on the Internet, which we now access, and E-mail was also previously added and continues to be used. These services will be continued and have been enhanced with usage of free ($) computer assisted legal research website are also for technical reference.

- 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 – 2015-16

- **Salary Adjustments** –
  - Solicitor – #4417-10-1213 - Requested fund increase of $4,051.00
  - SOCIAL SECURITY - #4417-10-1902 (SALARIED ASSISTANT SOLICITOR - SOCIAL SECURITY NECESSARY TO BE BUDGETED AT $1,240.00) - THIS HAS BEEN AT ISSUE FOR THE PAST 2 BUDGET SESSIONS AND NEEDS TO BE BUDGETED.

A minimal amount is requested to reflect an increase for the Solicitor as an appointed position. This request is believed to also reflect the ever increasing work performed by the Solicitor as head of this small department and the many job duties performed with merit and dedication. Again, Social Security needs to be budgeted for the Assistant Solicitor.

- Salary Longevity - # 4417-10-1905 - Increase due to year's of service
- Tech Ref - #4417-20-2149 - Requested fund restoration to $15,000.00
- Legal Services - #4417-20-2135 - Requested Fund Restoration to $15,0000.00
- Legal Expenses -#4417-20-2176 - Requested Fund Restoration to $10,000.00

In prior years a few line items for legal services, legal expenses, and technical references have continued to be reduced, which is very problematic on the budget, therefore at least two of these line items is requested to be restored (totaling approximately a $15,000.00 increase) to what previously had been included in this Department's budget and was still a small monetary amount to cover such costs. The cost of the City Clerk's yearly billing alone from Walter Drane for Codified Ordinances and Replacements is paid from one of these line items and is usually quite costly, utilizing most of this budget amount. As well, there is an additional cost of approximately $1,000.00 per year for technology (iPhone, etc.)

The only other adjustment is in estimated costs of employee health care. The solicitor and one assistant solicitor have family coverage costs.

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 2014-145

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 2015 – 16

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. 4417-10-1202 [See 4417-20-2135]	$ 13,000.00			$ 13,000.00	$ 0.00	
Salary Asst. 4417-10-1202	$ 20,000.00			$ 20,000.00	$ 0.00	
Salary Solic. 4417-10-1213	$ 75,949.00			$ 80,000.00	$ 4,051.00	
Salary Bonus 4417-10-1523	$ 725.00			$ 725.00	$ 0.00	
Salary Longevity 4417-10-1905	$ 650.00			$ 780.00	$ 130.00	
Soc. Sec. 4417-10-1902*	$ 0.00			$ 1,240.00	$ 1,240.00	
Soc. Medicare 4417-10-1924	$ 2,640.00			$ 2,640.00	$ 0.00	
Group Ins. Eye 4417-10-1920	$ 1,674.00			$ 1,674.00	$ 0.00	
Group Ins. Hosp. 4417-10-1921	$ 18,360.00			$ 18,360.00	$ 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	$ 450.00			$ 450.00	$ 0.00	
Travel 4417-20-2153	$ 3,000.00			$ 3,000.00	$ 0.00	
Postage 4417-20-3146	$ 300.00			$ 300.00	$ 0.00	

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

CITY OF WHEELING
DEPARTMENTAL BUDGET REQUEST
FISCAL YEAR 2014 – 15

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	$ 1,500.00			$ 1,500.00	$ 0.00	
Dues 4417-20-2138	$ 1,500.00			$ 1,500.00	$ 0.00	
Tech Ref. 4417-20-2149	$ 9,350.00			$ 15,000.00	$ 5,650.00	
Leg. Exp. 4417-20-2176	$ 3,000.00			$ 10,000.00	$ 7,000.00	
Jury 4417-20-2177	$ 200.00			$ 200.00	$ 0.00	
Leg. Svcs 4417-20-2135	$ 13,000.00			$ 15,000.00	$ 2,000.00	
Settlement 4417-20-2136	$ 550.00			$ 550.00	$ 0.00	
Ins./Workers Comp 4417-20-2171**	$ 2,000.00			$ 2,000.00	$ 0.00	
Suppl. 4417-30-3135	$ 500.00			$ 500.00	$ 0.00	
Cap. Out. 4417-40-4151	$ 0.00			$ 0.00	$ 0.00	

** This line item is 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 of $2,000.00 from 2014-15 Budget Year or whatever the amount the Finance Director and City Manager deem necessary.