

Memorandum

To: Town of Erie Board of Trustees
From: Malcolm Fleming, Town Administrator
Date: August 26, 2022
**Re: Contracted vs. In-House Counsel: Pros, Cons,
Departmental Organizational and Costs**



When Trustee Sawusch first asked me to research this issue, I asked Human Resources Director Alicia Melendez to give me an estimate of costs and recommended staffing to establish an in-house legal department. Alicia contacted the Town's compensation consultant, Graves Consulting, for assistance. Based on that initial request and simple research (less than 3 hours), Graves' and Alicia's initial estimate was that two positions (Town Attorney with Paralegal support staff) would be adequate, and salary and benefits for those two positions would cost roughly \$350,000 annually.

When a majority of the Board expressed interest in researching this issue in more detail, I asked Alicia to see if she could get information on the staffing and budgets for legal departments in other Colorado cities similar in size to Erie, as well as any pros and cons of contracted vs in-house those cities observed. Alicia contacted Brighton, Commerce City, Steamboat Springs and Windsor. Through her contacts Alicia also found a summary of survey information on 12 legal departments compiled by the City of Fort Collins. This survey (attached) covers mostly larger cities, but also includes Littleton (population 48,000). This survey, and the responses Alicia received from those cities she contacted suggests that minimum staffing for a legal department serving a town the size of Erie should be 3, and consist of the Town Attorney, Assistant Town Attorney and Legal Assistant. As indicated in Alicia's summary below, the cost of staffing a department organized this way would likely be around \$550,000.

I also asked Town Attorney Kendra Carberry for her assessment of what staff we would need to form an in-house legal department and her opinion on the pros and cons of in-house vs contracted services.

Below you will find Kendra's summary of the staffing considerations and pros and cons followed by the information compiled Alicia on other comparably sized cities that have in-house legal departments.

There are pros and cons with both in-house and contracted legal services. However, based on this research, it appears the most cost-effective approach is to continue contracting for the Town's legal services.

Town Attorney's Assessment of Staffing Needs and Pros/Cons

1. A paralegal will not be super-helpful for an in-house Town Attorney. Paralegals are most helpful in litigation, and you will likely be contracting out all of your litigation that is not covered by CIRSA. Really what you would need is a 2nd attorney. That attorney could be less experienced (and therefore paid less), but would definitely be more than a paralegal. Greenwood Village dealt with this when they went to an in-house structure - they assumed one attorney and one paralegal, and immediately had to rethink.
2. You would need to pay for malpractice insurance. Just want to make sure that is included in your budget, because it is not cheap. You would also need to pay for filing services, Westlaw access, etc.
3. You would need offices for this staff.
4. Expanding on #1, you would still need: litigation attorneys (currently Pat from my office); CORA (currently Dan from my office); oil & gas attorneys (Barb Green and John Sullivan); special districts (currently me); specialists in construction defect (Kyle Kreisler); personnel, including police issues (Marni Kloster); prosecution (Andy Ausmus). It sounds like Alicia has already separated those items, but the costs for Pat, Dan and me are included in my yearly figures, and would not be included in a budget for an in-house attorney.
5. This one is a little squishy, but we have found that in-house attorneys are more beholden to their clients for their entire job, so they are often less likely to be objective. Instead, they give the answer that the elected officials want to hear. This can result in some bad/risky decisions. As my mentor liked to say, "If they fire me, I wake up with a job, but if they fire the in-house guy, he does not." That is overly simplistic, but it makes the point.
6. In-house attorneys often have a difficult time with big, immediate issues, because they simply do not have the staff. In that case, they would hire us to help out. We do this for many municipalities, even those with a vast in-house attorney staff (*e.g.* Loveland, Aurora).

HR's On In-House Legal Department Staffing for Comparably Sized Cities

The City of Steamboat Springs is smaller in resident count (13,500 but with tourists closer to 40,000 year around) and similar in employee count (260 FT and 150 PT/Seasonal. They have a legal team of 3 positions:

- City Attorney: \$190,108 (with benefits: \$247,141)
- Assistant City Attorney: \$134,950 (with benefits: \$175,435)
- Legal Assistant: \$72,197 (with benefits: \$93,856)
- **Total Compensation and Benefits: \$516,432**

When asked about the pros vs cons they only had Pros:

"I honestly cannot think of one con in having our legal team in-house. They are relied upon daily and have a heavy workload. Our City Attorney attends every council meeting and is much needed. In addition to contracts, procurement, council guidance, ordinances, etc., I personally find it very valuable to walk down the hall and discuss legal matters that pertain to personnel or Risk."

HR recommends this organizational model.

Commerce City is about twice the size of Erie both in resident count (60,392) and employee Count (400 FT and 400 PT) and currently has 6 positions in their Attorney office and are considering adding an administrative support position in 2023 the positions are:

- Assistant City Attorney – 1 position
- Deputy City Attorney – 1 position
- Paralegal – 1 position
- Senior Assistant City Attorney – 2 positions
- City Attorney – 1 position

When asked about the pros vs cons they only had Pros:

"I have worked with having in-house and contract services and greatly enjoy having the services in-house. They are very familiar with our processes and charter and I have always been able to form good relationships with them to just easily call and bounce ideas off of. I felt like with contract services I was always hesitant to call them with small questions. "

The Town of Windsor is similar in resident count (35,000) and smaller in employee count (199 FT and 67 PT) and currently has the following positions:

- Town Attorney \$180,000 (not fully burdened)
- Assistant Town Attorney/Prosecutor (no salary given)

When asked about the pros vs cons:

Pro : *"They are at your disposal and readily able to answer questions."*

Con: *"Majority of knowledge and experience is municipal and water. Unable to help with employment law."*

The City of Brighton is only slightly larger than Erie in both resident count (40,000) and employee count (240 FT and 300 PT) and currently has the following positions:

- City Attorney
- Assistant City Attorney

HR did not receive a response from Brighton; this information was obtained via Brighton's website.

Additional factors to consider include:

Continuing Need for Specialized Counsel. We would likely have to continue retaining separate legal counsel to cover issues involving water, oil and gas, employment / personnel, and litigation (when needed).

Based on our comparable market, the Town would need to budget:

	Salary	Benefits	Total
Town Attorney	\$ 211,631	\$ 68,000	\$ 279,631
Assistant Town Attorney	\$ 150,000	\$ 50,900	\$ 200,900
Legal Assistant	\$ 56,332	\$ 19,300	\$ 75,632
Total	\$ 417,963	\$ 138,200	\$ 556,163

Note: *Salaries are approximate and may change based on experience and negotiations.*

Benefits include employer paid taxes, retirement, health, life, & dental insurance, and workers' compensation. These estimates do not include one-time costs of onboarding a new employee, such as recruiting expenses, laptop, phone, and office furniture, which can vary greatly depending on position needs and schedule. We assume these positions would be hybrid (working in the office some days and remotely others), so there would be additional ongoing costs associated with providing office space.