

Office of the Corporation Counsel

165 Church Street
203-946-7958

Department Head: Victor A. Bolden ppernal@newhavenct.net

Positions:	GF- 17
General Fund Budget:	\$ 1,812,304
Capital Fund Budget:	\$0
Special fund Budget:	\$0

Legal Authority: Charter and Code of Ordinances

Charter, Article VI, Section 17: Establishes the position of Corporation Counsel, identifies the appointing authority (“shall be appointed by and subject to the authority of the mayor”), defines qualifications (“shall have been an attorney and counselor at law of this state for not less than ten years, and shall reside in said city during the term of office”), and term of office (“term coterminous with that of the mayor”).

Charter, Article VI, Section 18: Defines the role (“the chief legal advisor of and attorney for the city and of all officers and departments thereof in matters relating to their official duties”) and duties of the Corporation Counsel (including to “prosecute or defend all suits for or against the city and shall prepare all contracts, bonds, and instruments in writing in which the city is concerned and endorse on easy approval of the form and correctness thereof.”).

Charter, Article VI, Section 19: Establishes positions of Deputy Corporation Counsel, identifies the appointing authority (“mayor shall appoint deputy and assistant corporation counsels”), defines their qualifications (“all of whom shall have been admitted to the bar of the state of Connecticut and shall have been practicing attorneys for at least two years”), and term of office (“each to hold office for the term of one year from said appointment or until their successor shall be appointed and duly qualified”).

Other pertinent Charter and Code of Ordinances provisions: Article XIV, Section 75-76 (requiring approval of the Corporation Counsel as to the form of city contracts and

related bidding requirements); City Code of Ordinance Sections 2-122, 151-164 (further defines the general duties of the Office of the Corporation Counsel, including but not limited to the duty to keep a docket and authority to settle claims, to transfer any funds collected to the city treasurer, to address claims, to approve contracts, and to enter into legal services contracts by a prescribed process).

Mission/Overview:

The Corporation Counsel is the chief legal advisor to and the attorney for the City and all City officers, boards, commissions and departments in matters relating to their official duties. The Office maintains a municipal practice group, which works with each department, board and commission of the City and is responsible for the following activities:

- Renders legal opinions to City Officials.
- Advises and represents departments, boards, commissions, officers and officials on legal matters, including court cases, transactions and administrative hearings.
- Maintains a real estate and commercial practice group, which, with the Economic Development Administrator and Livable City Initiative, is responsible for the following activities:
 - Real estate acquisition and disposition, commercial loans, small business loans, home loans, façade grants, real estate closings, tax collections and related matters. Negotiates and drafts documentation for complex City development projects.
- Maintains a trial practice group that is responsible for the following activities:
 - Civil litigation before federal and state courts. Areas of practice include personal injury, wrongful death, civil rights (including excessive force and false arrest), education law, constitutional law, tax appeals, foreclosures, real property, zoning, landlord/tenant, commercial law, labor, employment law, civil service disputes, worker's compensation and environmental law.
- Administrative proceedings before state agencies, including the State Connecticut Commission on Human Rights & Opportunities and the Freedom of Information Commission.
- Coordinating and managing activities of outside law firms retained on behalf of the City and City officials.
- Coordinating with the Controller's office, all claims covered by the City's Self-Protected Insurance Program with Chartis Insurance.
- Pursuing claims against third parties who cause damage to City-owned property.
- Advising City officials on Freedom of Information compliance and coordinating FOIA and Ethics training.
- Coordinate responsibilities for the Fair Rent Commission and the Department of Services for Persons with Disabilities.
- Coordinate legal activities related to employment of City personnel, including ADA compliance, worker's compensation third party claims and investigation of employee compensation.

- Coordinates the reporting of bodily injury claims filed by Medicare beneficiaries to the U.S. Department of Health and Human Services Center for Medicare & Medicaid Services (CMS) through a third-party service.

Attention Required by March 31st:

1. Appointment of Corporation Counsel

As referenced above, under Article VI, Section 17 of the City's Charter, the Corporation Counsel "serve[s] a term coterminous with that of the Mayor who appointed him." The term of current Mayor, John DeStefano, Jr., ends on December 31, 2013. As a result, a Corporation Counsel must be appointed by the incoming Mayor by January 1, 2014.

2. Appointment of Deputy, Assistant and Senior Corporation Counsels

As also referenced above, under Article VI, Section 18 of the City's Charter, all Deputy, Assistant and Senior Corporation Counsels serve a "term of one year from said appointment or until their successor shall be appointed and duly qualified." Currently, all of the Deputy and Assistant Corporation Counsels were appointed for a one-year term beginning on February 1, 2013. As a result, Deputy and Assistant Corporation Counsels must be appointed by February 1, 2014.

It is important to note that all of the City's attorneys, except the Corporation Counsel, have established a collective bargaining unit in 2013.

3. Budgetary submission

Under Article XI, Section 58 of the City's Charter, the Mayor must submit the budget for the City to the Board of Aldermen by March 1, 2014. As a result, the Office of the Corporation Counsel, along with every other City department, must have submitted proposed budgets for consideration in that March 1st filing.

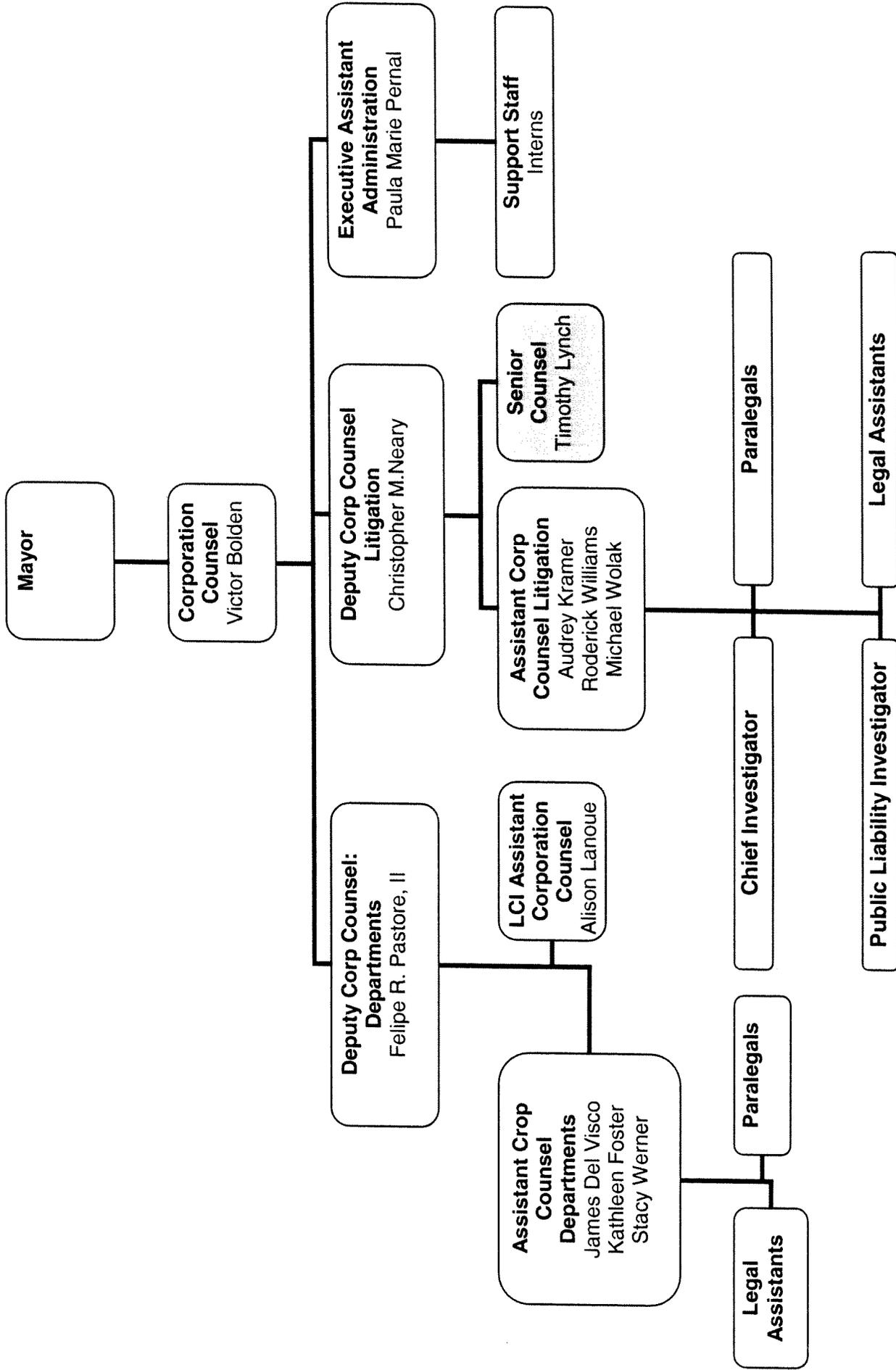
4. Review of major litigation

At any given time, the docket for the Office of the Corporation Counsel exceeds more than 1,000 pending lawsuits at various stages in the legal system. Immediate attention must be paid to the most pressing legal matters among them, generally those lawsuits with the greatest fiscal exposure for the City.

5. Adopt process for troubleshooting legal issues

Very quickly, the Corporation Counsel and staff should decide how legal issues and advice for City Departments and officials will be handled. It is beneficial to the City for City officials to know that legal advice can be provided before a decision is made in order to assess its legal merits.

Currently, legal staff are assigned primarily to various departments and advice is handled accordingly. This process allows staff members to become familiar with a Department's operations. However, in an era of increasing legal specialization, it also is viable to have staff seek out certain legal staff for particular problems.



Budget Summary:

CITY OF NEW HAVEN GENERAL FUND FY 13-14 DEPARTMENT REQUEST

AGENCY/ORGANIZATION	FY 12-13 BOA APPROVED	FY 13-14 DEPT REQUEST
133 - CORPORATION COUNSEL		
<u>101-LAW DEPARTMENT</u>		
50110 SALARIES PERMANENT	\$1,266,609	\$1,266,609
50130 OVERTIME	800	800
53310 MILEAGE	350	350
54410 OFFICE & LAB EQUIPMENT	3,275	3,275
55520 GENERAL OFFICE SUPPLIES	7,200	7,200
55530 BOOKS, MAPS, ETC.	45,000	45,000
55579 DUPLICATING & PHOTO SUPPLIES	0	0
56615 PRINTING, BINDING, FILM & DEVELOPING	0	0
56623 REPAIRS & MAINT SERVICES	225	225
56642 ENTRY, JUDGMENTS & EXPERT WITNESS FEES	0	0
56650 POSTAGE	1,200	1,200
56655 REGISTRATION DUES	5,000	5,000
56656 RENTAL EQUIPMENT	9,500	9,500
56662 MAINT SERVICES AGREEMENTS	8,625	8,625
56694 OTHER CONTRACTUAL	94,750	94,750
56696 LEGAL/LAWYER FEES	375,000	375,000
TOTAL	\$1,817,534	\$1,817,534
<u>AGENCY TOTALS</u>		
50000 PERSONAL SERVICES	\$1,266,609	\$1,266,609
50130 OVERTIME	800	800
51000 EMPLOYEE BENEFITS	0	0
52000 UTILITIES	0	0
53000 ALLOWANCE & TRAVEL	350	350
54000 EQUIPMENT	3,275	3,275
55000 MATERIALS & SUPPLIES	52,200	52,200
56000 RENTALS & SERVICES	492,300	494,300
57000 DEBT SERVICE	0	0
59000 CLAIMS & COMPENSATION	0	0
TOTAL	\$1,817,534	\$1,817,534

Summary of Open Items:

Please note that, in order to preserve attorney-client privilege and attorney work product protections, it is best to discuss the more serious pending matters with the transitional team in-person. Current staff will be available to the Mayor-Elect and/or designated members of the transition team to discuss these matters.

Major Functions / Projects:

The major functions/projects of this Report are addressed in the Mission/Overview, the Summary of Open Items and/or Key Systems/Processes sections of this Report.

Key Systems/Processes:

The Office of the Corporation Counsel has a Policy and Procedure Manual that has been in place since 2002 and remains generally applicable. See attached as Appendix A.

A. Internal Operational Processes

1. Legal Opinion Book

Under Article VI, Section 18 of the Charter, the Corporation Counsel is charged with maintaining a record of formal legal opinions issued, "recorded in an index book, which book shall be kept in the office of the corporation counsel and shall be the property of the city." The Office of the Corporation Counsel maintains this "Opinion Book" in the office's law library with volumes dating back to April 7, 1906. There also is an office memorandum related to form of legal opinions. See attached as Appendix B.

2. Legal Service Agreements

Under Section 2-162 of the Code of Ordinances, the Corporation Counsel is charged with seeking approval from "at least (2) members of aldermanic leadership, which for these purposes shall be its president, majority leader and minority leader..." to enter into any legal service agreements to provide legal services to or on behalf of the City of New Haven. See attached Sec. 2-162 and Sec. 2-376 of the Code of Ordinances, and Sec. 60 of the Charter as Appendix C.

2. The Request for Agreement ("RFA") Process

The City has adopted an automated system for the processing of RFAs. The system applies to any and all City contracts and other documents requiring approval through signatures. A step-by-step guide has been provided to assist users in that system. See attached as Appendix D.

3. Case Management Software System (“CityLaw”)

The City uses a case management software system, generally referred to as “CityLaw,” for the tracking of litigation matters, transactions of any kind (see RFA above) and other legal matters, such as formal legal opinions. The outside vendor used to develop “CityLaw” has provided an instructional sheet. See attached as Appendix E.

The attached document provides for instructions on how to open litigation matters in the CityLaw system. See attached as Appendix F. There also are instructions on case disposition in the CityLaw system. See attached as Appendix G.

4. Property Damage Claims and Investigatory Matters

Pursuant to an order of the Board of Aldermen, the City has adopted public guidance for the filing and processing of property damage claims. See attached as Appendix H. There also is a notice of claim investigation checklist, see attached as Appendix I, and City Motor Vehicle Accident Reporting form. See attached as Appendix J.

5. Livable City Initiative (“LCI”) Systems and Processes

LCI has a number of programs and the Office of the Corporation Counsel assists with these transactions, drafting necessary documents and conducting closings on real estate transactions, as required. There is a request to open assignment files form. See attached as Appendix K. There also is a loan processing checklist that is used. See attached as Appendix L.

6. Litigation Settlement Committee

Under Article VI, Section 20 of the City’s Charter, there is a Litigation Settlement Committee, “consisting of the mayor, the controller, the coordinator for administration appointed by the mayor, or their designees, two members of the financial review and audit commission who shall not be of the same political party, elected by their fellow commissioners, and two members of the finance committee of the board of aldermen, who shall not be of the same political party, elected by their fellow aldermen.”

The Litigation Settlement Committee reviews and must approve “any matter in litigation, the result of which would bind the city to make a payment in excess of five thousand dollars, or such greater amount as the board of aldermen may approve from time to time”

The Office of the Corporation Counsel has adopted a checklist to ensure that this process is followed. See attached as Appendix M.

7. Freedom of Information Act Requests/Responses

The City has a statutory obligation to comply with requests for the disclosure of public records under the Connecticut Freedom of Information Act ("FOIA"). To facilitate compliance with FOIA, the Office of the Corporation Counsel has adopted a process for identifying key personnel performing FOIA-related functions in each department. See attached as Appendix N.

8. Outside Counsel Billing Review System ("Bottomline Technologies")

The City has contracted with Bottomline Technologies to review the invoices of outside counsel. The adoption of this system ensures that the City is only billed for those matters provided for in the City's contracts and the accompanying guidelines provided to outside counsel.

9. Document Archiving ("Iron Mountain")

The City has contracted with Iron Mountain to assist the City with record retention, archiving and information management in compliance with the State of Connecticut Records Retention Schedules for Municipalities that are part of the Municipal Records Management Program. Iron Mountain maintains an electronic index of descriptive data of the City's records in their depository on a secured website. In addition, Iron Mountain offers guidelines on corporate records retention policies to assist its customers with the development and audit of its records. The Iron Mountain Customer Handbook, User Manual and Data Sheet SO User Manual are attached as Appendix O. A purchase order is established with Iron Mountain by each City department to cover the cost of the is annual service.

10. Aldermanic Submissions

There is a process for aldermanic submissions. Although the Board of Aldermen's Office of Legislative Services is the best resource on such matters, a checklist for aldermanic submissions is attached as Appendix P.

B. External Operating Processes

1. State of Connecticut Judicial Branch-E Services and On-Line Short Calendar Markings

E-filing of all civil cases in Superior Court, with some exceptions, is mandatory for attorneys and law firms without an exclusion from E-Services requirements. Documents in all e-filable cases must be filed electronically. The E-Services Quick Reference Guide and Procedures and Technical Standards are attached as Appendix Q.

Attorney and law firms must submit short calendar markings electronically through E-Services for Civil and Family matters. Matters must be marked in accordance with the

procedures set forth in the Notice section of the respective calendars and in accordance with the Civil and Family Short Calendar Standing Orders, which include the time frames for submitting markings. The Short Calendar Instructions and Standing Order are attached as Appendix R.

**2. United States District Court for the District of Connecticut ("CM/ECF")
aka PACER**

Attorneys and law firms may electronically file new civil cases using PACER.

3. Medicare Secondary Payer Reporting ("ISO")

The City has contracted with Insurance Services Office, Inc. ("ISO") to assist this office with reporting mandatory claim data (settlement, judgment & award) of all Medicare eligible recipients to the Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) in compliance with Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (P.L. 110-173), which imposed mandatory reporting requirements on liability, no-fault and workers compensation insurers. The legislation requires reporting of bodily injury claims filed by Medicare-eligible claimants to CMS. The ISO User Manual, Master Agreement and Product Supplement are attached as Appendix S. A purchase order is established with ISO in order to comply with CMS.

1. Insurance

The City of New Haven is self-insured. In addition, the City of New Haven is also covered by a general liability insurance policy issued by the Insurance Company of Pennsylvania through Marshall & Sterling, Inc., 103 Executive Drive, Suite 300, New Windsor, NY 12553-5506, with a self-insured retention of \$1,000,000, and a policy limit of \$20,000,000. The City provides Marshall & Sterling with quarterly reports for each policy period for all litigation matters, notices of intents, accident reports & accord notices, and subrogation and property damage claims.

2. Westlaw

The Office of the Corporation Counsel uses Westlaw, an electronic legal database, for legal research. The city has a multi-year agreement with West, a Thomson Reuters company which expires on June 30, 2014.

System Deficiencies/Attention Required:

1. Limited Resources

The Office of the Corporation Counsel is at its lowest staffing levels in decades. There are an insufficient number of lawyers and support staff to carry out the volume of work. There needs to be more staff to address the City's needs. The City's exposure to litigation and any other legal issues can be greatly reduced when there is sufficient staffing to provide advice to City Departments and key personnel.

2. Increased risk management

As suggested above, the City needs better risk management. However, this issue and its resolution are inextricably linked to increased staffing.

Key Contacts:

State Secretary of the State

Legislation and Election Administration Division
Contact: Theodore Bromley, Esq.

PACER

PACER Service Center
P.O. Box 780549
San Antonio, Texas 78278
800-676-6856

Outside Counsel FY 2014 (including those law firms assigned by Chartis):

Berchem, Moses & Devlin—Police, Labor & Employment, Arbitration
Ciociola, Christine—Tax Foreclosure
Crumbie Law Group—Tax Appeals and General Litigation
Del Sole & Del Sole—General Litigation
Dolan & Luzzi—Tax Foreclosures
Halloran & Sage—Tax Appeals
Howd & Ludorf—General Litigation
Jacobs, Evans—CEO matters
Karsten & Dorman—General Litigation
Marcarelli-Naizby—Tax Foreclosure
Mongillo & Insler—Tax Foreclosure
Morrison & Mahoney—Labor & Employment
Murtha Cullina—Tax Appeals
Neubert, Pepe & Monteith—Construction Litigation
Nuzzo & Roberts—Labor & Employment
Law Offices of Alfred Onorato—Tax Foreclosure
Palumbo & DeLaura—Tax Foreclosure
Parrett, Porto, Parese & Colwell—Tax Foreclosure
Shipman & Goodwin—General Litigation, Labor & Employment
Susman, Duffy & Segaloff—Tax Appeals, General Litigation
Wiggin & Dana—General Litigation
Winnick, Ruben, Hoffnung, Peabody & Mendel—Economic Development
Wilmer & Hale—Electric & Gas
Withers, Bergman—Employee Contribution