

## FISCAL REVIEW SECTION – LEGISLATIVE REFERENCE BUREAU

### Executive Summary: 2005 PROPOSED BUDGET-CITY ATTORNEY

1. The 2005 proposed budget for the City Attorney office is **\$6,029,759** a decrease of **4%** from the 2004 budget (Page 2).
2. One vacant position of Office Assistant II position is eliminated in 2005. FTEs for 2005 have decreased by 1 from the 2004 budget (Page 2).
3. In 2005, estimated staff costs for legal services for TIDs are reflected by a Capital Improvement Deduction of \$150,000 in the City Attorney's Salary line. (Page 2).
5. The City Attorney is currently reviewing ninety-six nuisance property referrals to date, in 2004. Litigation includes both nuisance and demolition matters (Pages 4 -6).
6. The Kohn Law Firm is contracted to collect delinquent property taxes and accounts receivable. Through August 2004, the Kohn Law Firm has collected \$2.1 million *in personam* delinquencies related to delinquent property taxes and city accounts receivable with a projected amount of \$6.2 million to be collected for 2004 and 2005. Kohn initiated 185 lawsuits in its collection efforts for the referred accounts all of which are still pending (Pages 6-7, 9-10).
7. Funds contained in Special Purpose Accounts under the authority of the City Attorney have **decreased** by **12%** from the 2004 budget (Pages 7-11). Under the auspices of the Collection Contract SPA, over \$6 million is estimated to be collected in 2004 with \$6.2 million projected for 2005. The Tax Intercept Program is projected to collect approximately \$3 million, 2004, in overdue municipal forfeitures (Pages 9-10).
8. The Comptroller's Office estimates a 2005 increase of 93% in revenue for the City Attorney's Office from the amount estimated for 2004 (Page 11).

**FISCAL REVIEW SECTION – LEGISLATIVE REFERENCE BUREAU**

**2005 PROPOSED BUDGET SUMMARY: CITY ATTORNEY**

<b>CATEGORY</b>	<b>2003 ACTUAL</b>	<b>2004 BUDGET</b>	<b>CHANGE</b>	<b>2005 PROPOSED</b>	<b>CHANGE</b>
<b>OPERATING</b>	\$6,279,151	\$6,301,050	0%	\$6,029,759	-4%
<b>CAPITAL</b>	0	0		0	
<b>POSITIONS</b>	65	61	-4	60	-1

The City Attorney's Office conducts litigation, provides legal advice to city officials, prepares and reviews legislation for the Common Council, collects claims and delinquencies, and prosecutes violators of city laws. The City Attorney is responsible for drafting all legal documents that are required in conducting the business of the city. The department is also responsible for the city's risk management function.

**Departmental Mission Statement**

To provide quality legal services and successfully meet clients' needs in accordance with the City Charter and statutory requirements.

**Analysis**

1. The position of Parking Citation Review Manager in the City Attorney's Office accounts for 1 FTE-Other. This position is reimbursed by the Parking Fund. Before the Parking Citation Review Manager position was created, all the assistant city attorneys assigned to the Ordinance Enforcement Division reviewed parking tickets. In order to do this, there always had to be one or two attorneys in the office, while the other attorneys covered the Municipal Courts. Creation of this position, and its continuance, has enabled the office to transfer one attorney position to City Hall. In addition, the remaining attorneys are handling opinions and assignments they did not have time to do before. The Parking Citation Review Manager has also improved customer service through more consistent decision making for ticket challenges and decreased wait time for review appointments.
2. Staff time spent providing legal services in connection with a tax incremental district (TID) can be charged directly to the TID. In 2005, these estimated staff costs are reflected by a Capital Improvement Deduction of \$150,000 in the City Attorney's Salary line. This amount is also reflected in the 1.50 FTE-Other.
3. One vacant position of Office Assistant II position is eliminated in 2005. The individual who previously filled the position was promoted and has taken on the duties of her former position as well as additional duties and responsibilities. The City Attorney is not expecting a major service impact related to this elimination.

4. Personnel costs include \$39,980 in *Other*. As specified in the Association of Municipal Attorney's contract, this amount will be available for distribution to the Assistant City Attorneys based upon a formula. This merit increase is effective the first pay period for the fiscal year following the year in which the performance has been evaluated.
5. Services funded in *Professional Services* (\$175,000) include expenses and expenditures relating to litigation and administrative matters including: membership dues, outside copying services, filing fees, courier services, Register of Deed recordings, State Process, Legal Fund reimbursement, Title Reports, court reporting and transcription services, and Westlaw charges.
6. \$69,700 has been budgeted for *Reimburse Other Departments* in the 2005 proposed budget. Expenditures include reimbursements to Milwaukee Printing & Records (MPR), Information Technology & Management Division (ITMD), DPW telephone charges, and DPW fleet charges (vehicle rental).
7. The Westlaw contract was renegotiated in late 2003. The new contract is a four- year contract that provides the same level of service at a greatly reduced cost. This reduction was in part possible because competition in the marketplace afforded the City Attorney's Office an opportunity to negotiate a lower contract price. This renegotiation provided a savings of approximately \$75,000.
8. FTEs are reduced by 1 for 2005 in light of the elimination of the Office Assistant II position.
9. No *Capital Projects* are proposed in 2005.
10. In total, Salary and Wages (\$4,098,058), as well as Fringe Benefits (\$1,475,301) account for 92% of the City Attorney's 2005 proposed budget.

#### **2004 Continuing Initiatives**

In order to improve workflow, the City Attorney's office has completed a project that transferred City Attorney opinions into an electronic format so that they could be word searchable and accessible through everyone's computer. This has enabled attorneys to search for prior work product and be more efficient in their research of current legal issues.

The 2004 budget stated that the City Attorney's Office would work with other city departments to develop a protocol for use of *in rem* property tax foreclosures and establish criteria for legal proceedings for *in rem* versus *in personam* action. Through 2004, the City Attorney has continued to develop procedures to facilitate this protocol.

Per Common Council Resolution File No. 030680, the Council, on September 23, 2003, adopted a "**Resolution authorizing and directing the City Attorney to establish internal protocol for community improvement in rem foreclosure actions.**" In accordance with that resolution, the City Attorney's Office met on various occasions with the Treasurer, Department of City Development, Health,

and the Department of Neighborhood Services, and a protocol ("Internal Protocol for Community-Improvement-In-Rem-Foreclosure Actions") was developed and, in December of 2003, finalized. In early 2004, the protocol, in questionnaire form, was then put on the City's website in the "MINT" system and is available for use.

Under the protocol, a department or alderperson wanting the City to acquire a specific tax-delinquent parcel, completes the questionnaire form available on the MINT (i.e., "Internal Protocol for Community-Improvement-In-Rem-Foreclosure Actions") explaining why the City should acquire the parcel and providing background information on the parcel, the delinquencies, reasons for the City to foreclose, proposed timing of the foreclosure, etc.

Regarding timing, the requester indicates on the questionnaire whether the parcel can/should be foreclosed against as part of the next regularly scheduled foreclosure file of the Treasurer (currently once per year) or sooner. If a sooner foreclosure is desired, the requester must identify fund-availability to pay the foreclosure costs.

The City Attorney then reviews the questionnaire to determine what *in personam* tax collection efforts have been already employed against the subject delinquencies and whether a legally defensible rational basis exists for foreclosing against the parcel sooner than the City would otherwise foreclose. If the taxes have not already been collected via the *in personam* remedy, and the requester has articulated a rational basis for foreclosure, the City Attorney then communicates that to Treasurer and the requester and the foreclosure is initiated.

To date, 14 parcels have been acquired under the protocol at the request of the Department of City Development with an additional 9 parcels from the "Do Not Acquire" list.

### **Public Nuisance and Abatement Program**

The City Attorney's Office receives referrals from Department of Neighborhood Services (DNS), the Police Department (MPD), the Health Department, the Mayor's Office and Common Council members regarding initiating legal action against property owners considered to be public nuisances. The actions involve nuisance abatement cases, drug house abatement activities and code enforcement violations. The progress of enforcing the public nuisance abatement and drug house abatement ordinances has been successful. The majority of the property owners and/or interested parties have been cooperative with the Office of the City Attorney, Milwaukee Police Department Vice Division and the Department of Neighborhood Services in abating nuisance activities in a timely-manner. In some cases, if the property owner does not abate the nuisance, the mortgage holders have begun foreclosure actions.

Program data illustrating actions through 2004 regarding this public nuisance and abatement initiative are as follows:

## Successes

In *City of Milwaukee v. Virginia Mueller*, the court granted the City's order for receiver to list property for sale and permanent injunction against the owner. In *City of Milwaukee v. Wisth*, the court granted the city's request to appoint a receiver to abate public nuisances in which the property owner abandoned or neglected the property. In *City of Milwaukee v. Cotton*, the mortgage holder began a foreclosure action based upon our office filing a nuisance action.

In *City of Milwaukee v. Wartgow*, a 1998 case has been dismissed and receivership costs have been collected. The owner has abated public nuisance activities and rehabbed the property. The property is being sold. In *City of Milwaukee v. Horn*, the owner sold the property to a new owner who entered into an agreement with the city to abate nuisances and correct building code violations. The City Attorney was proceeding with an action against Marvin Wilson's property located at 3030 W. Pierce; however, Mr. Wilson entered into an agreement with the city to abate nuisances and correct building code violations.

In *City of Milwaukee v. Bean, et al.*, the City is actively seeking contempt motions against defendants who are named on the injunction enjoining prostitutes who engage in illegal activities in certain areas designated by the City. The City is amending the permanent injunction to add additional defendants and will expand or create new target zones.

At the request of the Milwaukee County District Attorney, the City Attorney prepared an agreement for Common Council consideration to allow the DA's office to act, under the direction of the Milwaukee City Attorney, as a Special Assistant City Attorney representing the City in nuisance abatement receivership actions.

The Milwaukee Police Department is progressively utilizing the Chronic Nuisance Ordinance drafted by the City Attorney's Nuisance Abatement Team. About 95% of the property owners have complied with the requests.

## Challenges

In 2004, the Program continues to endure long-term challenges as in 2003, such as handling the significant number of requests for nuisance abatement investigation, and difficulty in locating property owners who have abandoned or neglected rental properties. There is a lack of funding to rehabilitate receivership properties for sale or use as rental properties, i.e., the 42 Woodland Units. It has been difficult to recover funds expended to abate nuisances or building code conditions from property owners. Finally, no evaluation has been conducted on the Program's design to assess the extent of its success and/or failure.

## Assignment Data

As of September 2004, there are approximately 96 matters pending. These matters include 10 lead abatement cases and referrals from the health department. There are 50 nuisance cases and referrals from alderpersons, constituents, community liaison, community organizers, MPD, and DNS and 8 demolition

cases and referrals from DNS. There are 15 further requests related to public nuisance issues from alderpersons, constituents, community liaison, community organizers, MPD, and DNS and 5 miscellaneous issues.

### **In Personam Tax Collection Remedy**

On June 29, 2001, the Council (File No. 001773) authorized amending the Kohn Law Firm collection contract to include use of the in personam remedy for collection of delinquent real property taxes. The Kohn contract was amended, and in mid August of 2001, the entire "do-not-acquire list" was referred to Kohn for collection [approximately 351 parcels with over \$8,000,000 in delinquent taxes (principal, interest, and penalties)].

In 2002, as part of a test program desired by the Treasurer's Office (the "Treasurer's Test Program"), additional delinquent real property taxes were referred to Kohn for collection. The "test" was to see how Kohn would do on collecting the tax-year 2000 delinquencies against non-DNA List parcels.

Under the Treasurer's Test Program, it was agreed that Kohn would charge a flat fee equal to 10% of the amount collected, and, that Kohn would only engage in pre-lawsuit collection activities.

On June 13, 2002, the non-DNA List parcels with tax-year 2000 delinquencies were referred to Kohn.

The Treasurer's Test Program lasted approximately 180 days. In 2003, the Common Council approved amending the Kohn Collection Contract. The amendment included establishing new fees pertaining to collection of real-property taxes. Subsequent to the amendment of the contract, the Treasurer – after the Treasurer had sent out a series of letters to delinquent owners attempting to collect – began referring all delinquent tax accounts (real and personal) to Kohn for collection. Hence *in personam* became the remedy of first choice for tax collection for the City. Accounts that Kohn is not able to collect (e.g., unable to locate owner; assetless owners, etc.) are then referred back to the Treasurer for *in-rem* foreclosure as the secondary or fallback remedy.

And, if a city department or alderperson wishes to "shortcut" the above process by having the city employ the *in rem* remedy sooner, rather than later, the department or alderperson uses the "Community-Improvement-In-Rem-Foreclosure Protocol" discussed on pages 3 and 4.

The following placement and collection statistics were provided by the Kohn Law and the Treasurer's Office through August 26, 2004. All figures are rounded to the nearest dollar.

For 2004, the Treasurer referred 3,910 delinquent tax accounts to Kohn for collection. The total principal amount owing on the accounts at the time of referral was \$8,951,192.78. As of Aug. 26, 2004:

- (a) Kohn collected \$2,114,511 from those accounts (this number includes principal plus penalties and interest). Kohn's fees, at approximately 14.4%, yield the city approximately \$1.81 million.

(b) Kohn closed 926 of the 3,910 referred accounts and sent them back (or will soon send them back) to the Treasurer as “uncollectable.”

(c) Kohn initiated 185 lawsuits in its collection efforts for the referred accounts all of which are still pending.

Kohn also points out that, relatively speaking, it is still early in the collection process regarding the 2004 accounts referred. Prior to bringing any lawsuit, under the in personam ordinance, (§304-48), a 4-week notice/warning letter must be sent. And prior to bringing suit, Kohn attempts prelawsuit collection. The 2004 accounts were first referred to Kohn on May 17, 2004, and the first group of “do not acquire” accounts was referred on June 14, 2004 (which was later than the April referral that is targeted for each year). Kohn also points out that that, when they are referring to the “2004 *in personam* accounts” they are more specifically referring to the “2004 in personam accounts that were referred in 2004” (which actually were mostly 2002 regular tax accounts and 2004 “do not acquire” tax accounts).

### **Special Purpose Accounts**

Special Purpose Accounts are not included in departmental budgets but expenditure authority over them is typically extended to departments by virtue of Common Council resolution after the budget is adopted.

The City Attorney's Office administers six special purpose accounts. Funding for the 2005 City Attorney SPAs is \$4.95 million, which is a decrease of \$600,000, or -12%, from the 2004 budget.

<b>Special Purpose Accounts</b>	<b>2003 Expenditure</b>	<b>2004 Budget</b>	<b>2005 Proposed</b>
Damages and Claims Account	\$2,978,309	\$2,400,000	\$ 1,800,000
Insurance Fund	\$625,294	\$ 700,000	\$ 700,000
Outside Counsel/Expert Witness	\$256,314	\$ 225,000	\$ 225,000
Collection Contract	\$1,416,365	\$1,250,000	\$ 1,250,000
Fire and Police Discipline/ Citizen Complaint	\$29,891	\$ 75,000	\$ 75,000
Receivership Fund	\$375,840	\$ 300,000	\$ 300,000
<b>Total</b>	<b>\$5,682,013</b>	<b>\$4,950,000</b>	<b>\$4,350,000</b>

## **Damages and Claims Account**

This account provides for payment of general liability judgements against the city. The 2005 Proposed Budget provides \$1.8 million for the Damages and Claims Account, \$600,000 less than the 2003 budget. The proposed funding for 2005 is based on the average of previous years and looks at current legal trends. The payment of a multi-year (\$600,000 per year proposed relief over 3 years beginning in 2002) was completed in 2004. This settlement with the U.S. Department of Justice was relative to the firefighters' discrimination lawsuit. The 2005 proposed budget for this SPA is adjusted to reflect the conclusion of these payments.

Approximately \$35,000 to \$55,000 is paid out monthly for routine claim and lawsuit payments. Another \$75,000 is paid annually for uninsured motorist claims.

*In 2003, the Damages and Claims SPA was supplemented with \$6 00,000 from the Common Council Contingent Fund. No additional appropriation has been required, to date, in 2004.*

Due to the unpredictable course of litigation, it is impossible to predict what if any major cases could result in judgments/settlements in 2005. The City Attorney believes that the proposal to fund the Damages & Claims Fund at \$1.8 million is adequate to fund routine settlements. However, the City Attorney has stated that three matters pending could result in judgments/settlements that could be well over \$1 million and possibly in the neighborhood of several million dollars. In the event that occurs, the City Attorney will have to request additional funding for those judgments/settlements. At this time, however, the City Attorney does not recommend increasing the funding for the Damages and Claims Fund for 2005 because a reasonable judgment about the amount of the ultimate judgment/settlement or when the obligation to pay will arise cannot be made.

## **Insurance Fund**

Funds are provided in this account to pay the insurance premiums on various policies carried by the city, to pay for public officials' bonds and to pay the fee of the city's risk management consultant, who advises the office on an as-needed basis. The 2005 proposed budget allocates \$700,000 for this account, a similar amount as budgeted in 2004. Premium increases in 2004 accounted for a \$100,000 increase in the 2004 budget from 2003.

## **Outside Counsel/Expert Witness Fund**

Council File # 030083 places expenditure authority for the Outside Counsel/Expert Witness Fund Special Purpose Account in the City Attorney's Office and requests the City Attorney to advise the Judiciary and Legislation Committee in writing within 48 hours of the hiring of any outside counsel; that the City Attorney advise the Judiciary and Legislation Committee in writing within 48 hours of the retention of any expert whose compensation is anticipated to exceed \$10,000; and that the City Attorney submit a



written report to the Judiciary and Legislation Committee every other meeting of expenditures from the Outside Counsel/Expert Witness Fund Special Purpose Account.

This account supports outside legal services in specific major court cases and experts in court and administrative matters. The City Attorney's Office tracks costs for each case and reports these costs and expenditures to the Judiciary and Legislation Committee. The purpose of the fund is to minimize Contingent Fund exposure and large unspent balances in closed cases. This account had formerly required large supplements from the Contingent Fund (\$575,000 in 1998, \$329,000 in 1999, and \$610,000 approved by the Council for 2000) related to legal costs associated with the Global Pension Settlement. No similar supplements have since been required.

As of September 13, 2004, approximately \$3,857 remains available for expenditures related to the purposes of this SPA.

In addition to independent medical examinations, the following cases and matters are currently being funded and, will very likely, carry over to 2005:

*Alexander, et al. v. COM* – Employment Discrimination  
*Arthur Jones v. COM* – Employment Discrimination  
Department of Administration Immigration Matter  
Health Department Immigration Matters  
Global Pension Settlement Implementation Issues  
Marchfirst, Inc. Bankruptcy (Kmart)  
*Miles v. Young, et al.* – Police Excessive Force  
Milwaukee Metropolitan Sewerage District v. COM – *Negligence Claim*  
*Monfre v. COM Dept. of Public Works* – Employment Discrimination – Disability  
*MPA v. COM* – Contract Dispute  
*Nelson, et al. v. COM* – Reverse Discrimination  
*Rusk v. City 02-CV-9526* (CPA Services)  
Special Prosecutors at Ordinance Enforcement Division  
Thomas Hayes – Consultant  
*U.S. v. COM 74-C480* – Police Testing Matter  
Water Department Immigration Matter

It is very difficult to predict what new actions may require use of the fund in 2005.

The 2005 proposed budget provides \$225,000 for this SPA, a similar amount as in the 2004 adopted budget.

### **Collection Contract**

This account funds private collection agencies' contracts with the city for the collection of outstanding personal property taxes and city accounts receivable. The 2005 proposed budget provides \$1,250,000 for

this account, a similar amount as in the 2004 budget. The Collection Contract generates over \$4 million in net revenue for the city.

The Kohn Law Firm provided the following information related to collection activities:

Kohn has estimated the following:

Total estimated city collections in 2004: \$6,170,886  
Total estimated city collections in 2005: \$6,200,000

Kohn indicates that future collections are difficult to predict as they are affected most significantly by gross referrals. But given that year 2003 gross collections were \$6,155,511, which is very similar to the projected 2004, it is not unreasonable to forecast approximately \$6,200,000 in gross collections for 2005, assuming referrals remain constant.

Kohn's fees vary significantly, depending on the type, size and legal status of each account. The various rates are set forth in their contract with the City. They indicate that the average or "blended" fee for all collections to date in 2004 calculates out to 14.4%.

The Collection Contract SPA also funds the activities of Professional Placement Services (PPS), L.L.C., which collects overdue Municipal Court judgments

Municipal Court expects \$3 million to be collected in 2004. Municipal Court indicates it is difficult to anticipate what will happen in 2005 but they estimate collecting not more than \$3 million unless the City gets a statutory change that will require the Wisconsin Department of Transportation to provide the Department of Revenue with Social Security numbers. If this would happen then the Tax Interceptor program collections would go up.

The commission percentage related to the Municipal Court Collection Contract is 24%.

### **Fire and Police Discipline and Citizen Complaint Fund**

This account was created as a component of the 2002 budget. This fund pays the legal and defense expenses for exonerated police and fire personnel. This fund was created to more accurately track and account for legal expenses paid for sworn personnel cleared of wrongdoing. The 2005 proposed budget provides for \$75,000, a similar amount to 2004. This amount reflects trends in current expenditures from this account and expected needs for 2005.

On average, each case expenditure is approximately \$1,000.00.

### **Receivership Fund**

This Special Purpose Account was created in the 2003 budget and placed under the control of the City Attorney's Office.

Funds from the Receivership SPA have been allocated to Neighborhood Incorporated Development Corporation (NIDC) to eliminate the City's indebtedness that NIDC incurred in purchasing forty-two (42) Woodland units (91<sup>st</sup> & W. Brown Deer Rd.). Funds have been expended for ongoing maintenance, property insurance, line-of-credit interest, consulting fees, property taxes, and utility bills.

The SPA has also funded court appointed receiver, TEAM, to manage, secure, and rehabilitate several properties and nuisance properties acquired through collection.

The Receivership SPA has enabled the program to sustain the Woodlands project and to undertake several other receiverships.

The Receivership SPA funds are used for recurring expenses from year to year and for new projects and program-related expenses.

Recurring expense include the indebtedness to NIDC for the Woodlands project. These expenditures will continue until the units are sold and/or line-of-credit is paid in full. The receivership expenditures will continue to fund court-appointed receivers to manage, secure, and abate nuisance properties. The program will continue to provide emergency services, such as hiring a security company to guard a building or conduct an immediate human health hazard clean up. The program anticipates utilizing SPA funds for new projects, such as lead-abatement and demolition cases as well as filing several nuisance abatement cases.

However, the impact of the \$100,000 reduction from 2003 has decreased Program activities. Currently, most of the SPA funds are being allocated to Woodlands Project (91<sup>st</sup> & W. Brown Deer Rd.). Further, the Program's ability to initiate receivership actions on behalf of the Common Council members and community residents and maintain costs to abate public nuisance and health hazard matters has been minimized. The City Attorney is now engaged in a planning process with the Department of City Development and several outside funding agencies to develop a long term plan for the Woodlands to become self-sustaining and thereby free up funding for other receivership projects.

The Receivership Fund is budgeted for \$300,000 for 2005, a similar amount as in 2004.

**DEPARTMENTAL REVENUES**

	2003 Actual	2004 Budget	2005 Estimate (% +/-)
Charges for Service	\$876,047	\$373,300	\$721,600 + 93%

Revenue estimates for the City Attorney are generally based upon three-year averages of typical experience. Sources for revenue include reimbursement from city departments and the Redevelopment Authority (RACM) and Employees' Retirement System (ERS). RACM reimburses the city for legal services charged, up to \$50,000 annually. Additionally, with Common Council approval, the Community Development Block Grant (CDBG) funding allocation will include \$30,000 for administrative costs for City Attorney services provided to the CDBG program in 2005 based on actual hours billed. Monies for this purpose would return to the City as general revenue after being billed and paid.

Other general sources of revenue include payments on property damage claims, administrative costs relative to vacating judgments against delinquent tax parcels, and awards and damages paid on lawsuits.

The amount collected from general revenue sources is difficult to predict.

Prepared by: Mark A. Ramion, 286-8680  
Fiscal Review Analyst-Senior  
Legislative Reference Bureau  
October 1, 2004