

RESEARCH AND ANALYSIS SECTION – LEGISLATIVE REFERENCE BUREAU

Executive Summary: 2010 Proposed Budget-City Attorney

1. The 2010 proposed budget for the Office of the City Attorney is \$6,813,103, a decrease of 4.1% from the 2009 budgeted amount of \$7,104,963 (page 2).
2. The 2010 proposed budget decreases authorized staffing levels by one Executive Administrative Assistant II and one Paralegal. These 2 positions will both be vacant at the end of 2009 (page 3). One additional support staff position will remain authorized but vacant in 2010. Two of the 33 authorized Assistant City Attorney positions remain structurally vacant (page 3).
3. The Special Purpose Accounts (SPAs) under the control of the City Attorney's Office remain at the same levels in the proposed 2010 budget 2010 as adopted for 2009 except for the Insurance Fund SPA. The Insurance Fund was budgeted at \$470,000 in 2009 and is budgeted at \$220,504 in the proposed 2010 budget. This reduction is due to pending state legislation that would authorize distribution of surplus funds from the Wisconsin Local Government Property Insurance Fund (pages 5 and 6).
4. The City filed *In Rem* proceedings to foreclose on 385 properties in 2007, and on 508 properties in 2008. The City acquired 155 of these properties upon default judgment in 2007 and 184 in 2008 (page 7). Two *In Rem* proceedings have been initiated by the City in 2009 foreclosing on a total of 800 properties of which 327 have been acquired by the City to date (page 7).
5. The Kohn Law Firm continues to collect delinquent property taxes and accounts receivable under a 5-year contract with the City that was awarded effective January 1, 2007 (page 6). The Kohn Law Firm collects on *In Personam* property tax delinquencies and other receivables. The Kohn Law Firm collected a total of \$6,272,711 in property taxes on behalf of the City in 2008. This amount is \$1,227,334 less (-16.2%) than the \$7,500,045 collected in 2007 (page 7).
6. Expenditures from the Damages and Claims Fund SPA have exceeded budgeted amounts in 2007 and 2008 by more than \$15,000,000. Expenditures in excess of budgeted amounts were \$2,961,137 in 2008, \$12,348,873 in 2007 (page). Much of this overage is due to the settlement of the *Alexander* litigation and as the result of the Comptroller's authorization of \$9.1 million to remedy the Milwaukee Public Schools property tax error in 2007. Experience suggests that amounts budgeted in recent years for Damages and Claims are "place holders" due to the unpredictable nature of litigation and claims (page 8).
7. Capital funding of \$4.6 million dollars was requested for renovation of the 8th floor of City Hall in 2010; the proposed budget provides nearly \$2.3 million of capital borrowing in 2010 with the remainder planned in 2011 (page 4).

RESEARCH AND ANALYSIS SECTION – LEGISLATIVE REFERENCE BUREAU

2010 Proposed Budget Summary: Office of the City Attorney

Category	2008 Actual Expenditures	2009 Budget	2010 Proposed Budget
Operating	\$7,268,135	\$7,104,963	\$6,813,103*
Capital	\$0	\$0	\$2,287,500
Positions	64	65	63

*The proposed 2010 O&M budget is 4.1% less than the 2009 budget and 5.7% less than the requested "cost-to-continue" budget.

Introduction

The stated mission of the Office of the City Attorney is to provide quality legal services and successfully meet clients' needs in accordance with the City Charter and statutory requirements. The Office organizes its services in 4 categories: conducting litigation, providing legal advice to city officials, preparing and reviewing legislation for the Common Council, and prosecuting violations of City laws. The Office oversees the collection of claims and delinquent receivables. The Office is responsible for drafting all legal documents that are required in the conduct of City business. The Office is also responsible for risk management functions.

This analysis examines the following key areas of operations and budget of the Office of the City Attorney:

- Personnel
- Operating Expenditures and Equipment
- Capital Accounts
- Performance Measures
- Community Prosecution
- Experience and Activities Related to Special Purpose Accounts
 - City Attorney Collection Account (Kohn Law Firm - *In Personam* foreclosures (information included about *In Rem* foreclosure experience); Harris & Harris collections
 - Damages and Claims Fund
 - Insurance Fund
 - Nuisance Abatement Fund (formerly the Receivership Fund)
 - Outside Counsel/Expert Witness Fund

Personnel

- The 2010 proposed budget decreases authorized staffing levels of the City Attorney's Office by 2 positions to a total of 63 authorized positions. These reduced positions are one Executive Administrative Assistant II and one Paralegal; one position is vacant and the other will become vacant due to retirement.
- One additional administrative support position will remain authorized but unfilled.
- The Office of the City Attorney, though caseloads and workloads continue to increase, intends to distribute the workload among remaining support staff.
- Two authorized positions for Assistant City Attorney remain vacant to allow for the unanticipated reappointment of a Deputy City Attorney to his or her former position.
- The proposed budget funds 54.80 O&M and 4.00 non-O&M positions. This is a reduction from 57.55 O&M funded FTE positions and 4.25 non-O&M funded FTE positions in the 2009 budget.
- The 2010 proposed budget for *Personnel Cost Adjustment* is \$178,900. This amount is \$76,240 greater than the amount included in the requested budget. The proposed figure assumes 1 unfilled support staff vacancy and appears to reflect planning for an additional vacancy later in the year.
- A *Grant and Aids Deduction* of \$21,276 budgeted for 2009 has been increased to \$30,000 for 2010 representing an amount to be received from Community Development Block Grant (CDBG) funds.

Operations and Equipment

- Operating expenditures remain the same in the 2010 proposed budget with the exception of General Office Expenditures which are reduced from \$34,000 to \$24,000.
- Operating expenditures in 2008 were \$394,391 and are budgeted at \$449,000 in 2010. The increase is largely due to increased costs for professional service expenses and information technology services.
- The Department of Administration-Information Technology Management Division (ITMD) does not support the law-related programming of the Office of the City Attorney which is dependent upon the availability of outside consulting and IT support for certain critical functions including docketing, calendaring and document control systems.

- The amount budgeted for equipment in 2010 is \$54,000 which is \$89,000 than budgeted for 2009. The 2009 budget authorized \$65,000 for new computers and additional funds for related software and equipment.

Capital Accounts

- The City Hall renovation of 8th floor offices for the City Attorney is presently scheduled for 2010 and 2011 with nearly \$2.3 million in capital borrowing budgeted in 2010 and another \$2.3 million scheduled in 2011. The full \$4.6 million capital borrowing was initially requested for 2010. Necessary renovation and reconstruction parameters suggest that a 2-year plan is more appropriate than a one-year plan.
- An earlier estimate for capital renovation costs of this project was more than \$1 million greater than current estimates. New estimates include cost savings due to reuse of construction materials and the downturn in economic markets.

Performance Measures

- The 2010 Proposed Plan and Executive Budget Summary identifies a series of performance measures referred to as "milestones" including claims resolved, lawsuits filed and resolved, number of legal opinions drafted, resolutions and ordinances drafted and reviewed, number of contracts and other legal documents drafted, number of referrals received and closed and number of ordinance violations resolved through dismissal, settlement or trial.
- These measures are often referred to as "process" measures and do not relate directly to the quality of services rendered or to outcomes. Reduction in claims and in cases that go to litigation may reduce the City's exposure, but it is not clear that this reduction has a real fiscal impact.
- An appendix has been prepared, based on information provided by the Office of the City Attorney that summarizes process measure results for the last 5 years (Appendix A).
- It may be useful in the future to develop additional tools for evaluation of the quality and outcome of services provided by the Office. These could involve an independent audit, a survey of City clients, and other measures including comparison with similar offices in other large cities.

Community Prosecution

- The Community Prosecution Program within the City Attorney's Office continues to operate successfully and with positive support from the neighborhoods served. The 2005 budget provided initial funding to hire two additional Assistant City Attorneys. Three attorneys are currently assigned to community prosecution

efforts. The City Attorney's Office reports that it is understood that more could be done, especially in matters of nuisance abatement, if additional attorneys were to be assigned. It should be noted that the District Attorney also provides coordinated support to these efforts.

- Beginning in 2008 Community Prosecution identified the operation of licensed alcohol beverage premises as a priority. This focus has continued in 2009.

In addition to resolving problems referred to the Community Prosecutors by numerous sources, the City Attorney's Office also continues to spear-head 4 citywide community prosecution initiatives.

- The first initiative is an effort to eliminate vacant, boarded-up, residential properties in the city of Milwaukee. That initiative was implemented to address the effects that a vacant, boarded-up property has on the surrounding community and the city as a whole. The initiative utilizes the enactment in 2005 of s. 275-32-7.5 of the Code (Council File # 041383) as a means to compel property owners to remediate Code violations. Every property owner was notified by mail of the ordinance regulating vacant, boarded-up residential properties. Additionally, the City Attorney's office personally contacted nearly 90% of the property owners and instructed them on the necessity to restore their property to a compliant condition.
- The City Attorney reports that the neighborhood policing strategies implemented by the Chief of Police have also presented new opportunities as well as challenges for community prosecution, especially related to increases in the volume of work.
- Appendix B includes information on nuisance abatement activities in 2008 and 2009 through August.

Special Purpose Accounts

Special Purpose Accounts (SPAs) are not included in departmental budgets but expenditure authority over them is typically extended to departments by virtue of Common Council resolution following budget adoption.

The City Attorney's Office administers five special purpose accounts. Proposed funding for the 2010 City Attorney SPAs totals \$3,099,504, a reduction of \$260,496 from the 2009 budget amount of \$3,360,000. The anticipated reduction is the result of pending state legislation that will likely be enacted to distribute surplus funds in the state's Local Government Property Insurance Fund.

Special Purpose Accounts	2008 Expenditure	2009 Budget	2010 Proposed
Damages and Claims Fund*	\$3,471,137	\$1,375,000	\$1,375,000
Insurance Fund	454,432	490,000	229,504*
Outside Counsel/Expert Witness	422,078	470,000	470,000
Collection Contract	804,629	1,000,000	1,000,000
Nuisance Abatement (Receivership) Fund**	222,490	25,000	25,000
Total	\$5,374,7666	\$3,360,000	\$3,099,504

*Note: This reduction is predicated upon passage of state legislation (2009 AB 403, SB 282).

**The Receivership Fund was renamed the Nuisance Abatement Fund in 2008.

Collection Contract

***In Personam* Tax Collection By the Kohn Law Firm**

- On June 29, 2001, the Common 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" (DNA 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. *In personam* actions therefore became the remedy of choice for tax collection for the City. Accounts that Kohn is not able to collect (e.g., unable to locate owner; owners without assets, etc.) are then referred back to the Treasurer for possible *in rem* foreclosure.

- If a City department or Common Council member wishes to "shortcut" the above process by having the City employ the *in rem* remedy sooner, rather than later, the department or Common Council member may use the process outlined in the "Community-Improvement-In-Rem-Foreclosure Protocol" as an alternative.
- A 5-year contract was entered with the Kohn Law Firm effective January 1, 2007.
- The Kohn Law Firm collected a total of \$6,272,711 in property taxes on behalf of the City in 2008. This amount is \$1,227,334 less (-16.2%) than the \$7,500,045 collected in 2007.

A Note About *In Rem* Tax Foreclosures

- Common Council Resolution File No. 030680, directed the City Attorney's Office to develop a protocol, finalized in December of 2004, for pursuing *in rem* property tax foreclosures. The protocol is intended to assist departments in determining whether community-improvement-in-rem-foreclosure-actions should be undertaken for particular parcels. In early 2005, the protocol, in questionnaire form, was put on the City's MINT. The protocol has resulted in improved interdepartmental coordination and communication. *In Rem* foreclosure can be a useful tool in addressing certain nuisance properties. The protocol provides a process for compiling information needed under a number of alternative foreclosure scenarios and replaces a process referred to as the "Fast Track" foreclosure. Failure to move quickly on properties that present an environmental hazard may be detrimental to public health and result in deterioration and a demolition order. The City filed suit to foreclose 385 properties in 2007, acquiring 155 of the properties on default judgments. In the first 8 months of 2008, the City filed suit to foreclose on 508 properties.

Bankruptcy Actions

- Collection activities, foreclosures and nuisance actions are stayed under federal bankruptcy proceedings. The City therefore has a significant interest in bankruptcy proceedings and in seeking relief from the automatic federal stay.
- The City Attorney has consulted with a law firm experienced in bankruptcy matters to evaluate and develop effective procedures for responding to bankruptcies in which the City may have a financial interest. The Office of the City Attorney reports that 6 *In Rem* foreclosed properties were returned to owners through bankruptcy in 2008.

Damages and Claims Account

This account provides for payment of general liability judgments against the city. The Proposed 2010 Budget for the Damages and Claims Account remains at \$1,375,000. Approximately \$35,000 to \$55,000 is paid out monthly for routine claims and lawsuit payments. Another \$75,000 is paid annually for uninsured motorist claims.

Expenditures from the Damages and Claims Fund SPA have exceeded budgeted amounts in 2007 and 2008 by more than \$15,000,000. Expenditures in excess of budgeted amounts were \$2,961,137 in 2008, \$12,348,873 in 2007. Much of this overage was due to the settlement of the *Alexander* litigation and the result of the Comptroller's authorization of \$9.1 million to remedy the Milwaukee Public Schools property tax error in 2007.

Through August of 2009, the Damages and Claims Fund paid out \$736,593 and is expected to pay out another \$3,250,000 given the pending settlement of the case of *Harris v. Clark*. This settlement will be reviewed by the Judiciary and Legislation Committee on Monday, October 5, as reflected in Resolution Files #090685 and #090686. Experience suggests that amounts budgeted in recent years for Damages and Claims are "place holders" due to the unpredictable nature of litigation and claims.

Insurance Fund

The budget for this account has been substantially reduced from \$490,000 in 2009 to \$229,504 in 2010. This assumes passage, which appears likely, of legislation by the Wisconsin Legislature distributing a surplus in the state's Local Government Property Insurance Fund. This legislation is 2009 Senate Bill 282 and 2009 Assembly Bill 403.

Outside Counsel/Expert Witness Fund

Council File # 030183 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. The reports for 2006 through 2009 can be accessed as attachments to Council Files # 051004, # 060942, # 070993, and # 081060, respectively.

It is currently anticipated that expenditures from this SPA will exceed the budgeted amount by approximately \$100,000 by the end of 2009.

Nuisance Abatement Fund (formerly the "Receivership Fund") SPA

The Receivership Fund was renamed the "Nuisance Abatement Fund" in 2008 reflecting the end of servicing the Woodlands receivership project and the actual use of these funds for other nuisance abatement efforts. The amount budgeted for this SPA remains at \$25,000.

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Appendix A

Internal Management Indicators, 2004 – 2008.

	2004	2005	2006	2007	2008
Legal documents drafted or reviewed	3,350	3,048	3,168	3,516	3,492
Corporate documents drafted	401	394	407	510	464
Government documents drafted	799	674	738	658	499
Average response days for reviewing state legislation	15	15	15	10	7
% claims resulting in lawsuit (within 3 years)	5%	8%	7.5%	6%	8%
Number of liability claims received	1,072	954	870	1,023	1,601
Court cases opened and closed	406/495	395/522	444/402	605/575	753/662
Litigation documents reviewed/drafted	2,150	1,980	2,023	2,348	2,529
Municipal Court prosecutions	140,860	131,702	130,521	135,611	158,473
Circuit Court cases	107	106	114	141	147
Citations reviewed in the office	74,807	47,291	53,271	55,545	51,252

Appendix B

Data on Nuisance Abatement Matters 2008 - 2009

		2008	2009 as of 8/31	Total
<u>General Nuisance Referrals</u>				
Nuisance Properties	Opened	58	36	94
Nuisance Properties	Closed	79	27	106
Nuisance Properties	Investigating & Monitoring	29	31	60
Drug House Referrals	Opened	112	127	239
Drug House Referrals	Closed	198	43	241
Drug House Referrals	Investigating & Monitoring	32	94	126
Licensed Premises	Opened	14	16	30
Licensed Premises	Closed	2	7	9
Licensed Premises	Investigating & Monitoring	7	14	21
Safe Streets (Districts 5 & 2)	Opened	19	1	20
Safe Streets (Districts 5 & 2)	Closed	1	17	18
<u>Nuisance Abatement Lawsuits 2008 - 2009</u>				
Commenced		9	4	13
Closed		6	2	8
Pending		3	2	5
<u>Raze Cases</u>				
Commenced		14	2	16
Closed		14	1	15
Pending		2	1	3