

RESEARCH AND ANALYSIS SECTION – LEGISLATIVE REFERENCE BUREAU

Executive Summary: 2009 Proposed Budget-City Attorney

1. The 2009 proposed budget for the Office of the City Attorney is \$7,104,963, an increase of 1.2% from the 2008 budget figure of \$7,023,288 (page 2).
2. The 2009 proposed budget reflects an increase in authorized staffing levels from 31 to 33 full time assistant city attorneys and a reduction in part time assistant city attorneys from 4 to 3 positions. Note that 2 full time positions remain structurally vacant for up to 2 filled deputy city attorney positions (page 2).
3. The Community Prosecution Program and the Public Nuisance Abatement Program continue to operate concerted multi-department efforts to reduce and prevent crime and to preserve and maintain quality of life at neighborhood levels (pages 4-5).
4. The City filed suit to foreclose 385 properties in 2007. The City acquired 155 of these properties upon default judgments. In 2008, the City has foreclosed upon 508 properties (+31.9% from total 2007 figure), and has acquired 184 properties at the time of default judgment (pages 5-6).
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. The Kohn Law Firm collects on *in personam* property tax delinquencies and other receivables. The Kohn Law Firm collected a total of \$7,500,045 in property taxes on behalf of the City in 2007 (pages 6-7, 10).
6. The firm of Harris & Harris was awarded a contract to pursue Municipal Court judgments effective May 1, 2007. Collection through the Wisconsin Tax Refund Intercept Program (TRIP) have resulted in new efficiencies, lower costs of collection and fewer driver license suspensions (page 10).
7. In addition to \$9,137,066 authorized by the Comptroller to be expended through the Damages and Claims Fund SPA in 2007 for Milwaukee Public Schools related to the School's property tax levy, the City Attorney's Office expended \$4,586,807. A large portion of these expenditures related to the *Alexander* settlement. The proposed budget for the Damages and Claims Fund returns to a historic level of \$1,375,000 (pages 8-9)
8. Carryover capital funding will be used to continue planning for renovation of the City Attorney's City Hall offices. Capital funding for the renovation has been deferred until at least 2010 (pages 3-4).

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2009 Proposed Budget Summary: Office of the City Attorney

Category	2007 Actual	2008 Budget	Change	2009 Proposed	Change
Operating	\$6,948,088	\$7,023,288	+1.2%	\$7,104,963	+1.2%
Capital*	\$2,904	\$0	NA	0	NA
Positions	64	64	0	65	+1.5%

Mission

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

Services

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

Personnel

- The 2009 proposed budget increases authorized staffing levels of the City Attorney's Office by 1 to 65 FTEs. The proposed budget includes a new position Assistant City Attorney position that will be reimbursed by the Redevelopment Authority of the City of Milwaukee (RACM). Notwithstanding the current downturn in real property markets, the volume of legal work continues to grow.
- Two authorized positions remain vacant to allow for unanticipated reappointments of Deputies.
- The proposed budget funds 57.55 O&M funded FTE positions and 4.25 non-O&M funded positions.
- No retirements or vacancies are anticipated in 2009. However, based upon retirement eligibility, one or more vacancies may occur in 2009. The proposed budget for *Personnel Cost Adjustment* is \$154,114, more than twice the amount of \$75,444 in the requested budget.
- A *Grant and Aids Deduction* of \$21,276 has been budgeted to be received from Community Development Block Grant (CDBG) reprogramming funds.

Professional and Informational Technology Services

- The cost of services funded in the *Professional Services* line budgeted in 2008 was \$202,500 and is reduced to \$190,009 in the proposed 2009 budget, \$7,493 less than requested. Expenditure levels are susceptible to change due to the nature of litigation.
- *Professional Services* include expenditures relating to litigation and administrative matters including: membership dues, outside copying services, court filing fees, courier services, Register of Deed recordings, state process charges, legal fund reimbursement, mediation services, title reports, court reporting and transcription services, and Westlaw database charges. Increases in these expense figures are based upon experience and upon anticipated annual increases in service charges such as Westlaw. *Professional Services* expenses are generally non-discretionary. Additional funds for litigation-related professional services may be available from the Damages and Claims Fund SPA.
- The *Informational Technology Services* line was budgeted at \$86,550 in the 2008 budget and has been increased to \$97,500 in the proposed budget. This 12.7% increase is based upon recent experience including compliance with City IT requirements that all departments upgrade and conform to Windows Active Directory and Microsoft Outlook Exchange.
- 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.

Reimbursements to Other Departments

- \$36,500 has been requested and proposed in the 2009 budget for the *Reimburse Other Departments* line, a reduction of \$2,500 (-6.4%). Expenditures include reimbursements to Milwaukee Printing & Records (MPR), Information Technology & Management Division (ITMD), DPW telephone charges, and DPW fleet charges (vehicle rental).

Capital Accounts

- No amount has been included in the proposed 2009 budget of the Office of the City Attorney for *Capital Accounts*. An amount of \$5,633,000 was requested. Renovation of City Hall offices for the City Attorney will be deferred until 2010, at the earliest. Funds expended in 2007 from the carryover in Capital Accounts amounted to \$2,904. It is anticipated that planning and design activities will

resume in October, 2008, leading to proposals and estimates early in 2009. Budgeting for a full capital proposal within a single budget year may be a more effective strategy in seeking bids than budgeting over multiple years as originally planned.

2009 Continuing Initiatives

- Before the Parking Citation Review Manager position was created, all the Assistant City Attorneys assigned to the Ordinance Enforcement Division reviewed parking tickets. This required the presence of one or more attorneys in the office, while other attorneys covered the three Branches of the Municipal Court. Creation of the Parking Citation Review Manager position enabled the office to transfer one attorney position to City Hall and eliminated the need for attorneys from City Hall to cover for this assignment, freeing up more attorney time at City Hall. The position has improved customer service through more consistent decision-making related to ticket challenges and has decreased waiting time for review appointments. There are no plans to change or add to the duties of this position in 2009.
- 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.
- A primary focus in 2008 has been addressing problems related to the operation of licensed alcohol beverage premises. Attention also remains focused on drug paraphernalia, properties in foreclosure and rental properties that are chronic nuisances. Additional activities include enforcement utilizing the prostitution injunction, gang house abatement, receivership activities and training Milwaukee Police Officers and other City personnel.

Public Nuisance and Abatement Program

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. At this time, the City Attorney reports that, of 124 referrals of nuisance properties and drug houses made in 2007, 107 were closed successfully. As of August, 67 referrals have been made in 2008, and a total of 152 referrals from this and previous years have been closed. In 2007 and 2008 15 related lawsuits have been handled, 6 of which have closed. The number of referrals of nuisance properties has increased steadily over the past 3 years. The Department of Neighborhood Services is now the lead agency for this effort. Not unexpectedly, the "meltdown" in the sub-prime mortgage loan market has resulted in increases in vacant board-ups requiring attention.

- In response to requests from the Common Council and the Milwaukee Police Department, the Community Prosecution Unit has begun an initiative to deal with chronic nuisance properties in the city that have been identified through requests for police service. Prior to this initiative, the only adverse action taken against these property owners was to bill them for police services. This new initiative is designed to identify problems that exist at these properties and to work with owners to formulate viable solutions and plans to resolve the continuing problems. Failure to implement an effective plan may result in a nuisance action leading to forfeiture of the property. The City Attorney's Office anticipates as many as 50 to 100 potential nuisance actions annually that may be commenced against these property owners where the Milwaukee Police Department provides information concerning the nature of the calls for police service and the results of the corresponding investigation.
- The City Attorney also reports that the neighborhood policing strategies implemented by the new Chief of Police have also presented new opportunities as well as challenges for community prosecution, especially related to increases in the volume of work.

In Rem Tax Foreclosure

- 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.

In Personam Tax Collection Remedy

Background

- 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; asset-less owners, 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.

Current *In Personam* Experience

- A new 5-year contract was entered with the Kohn Law Firm effective January 1, 2007.
- According to the Kohn Law Firm, the number of real property tax collection files referred in 2007 was 3,960, a 15.4% increase over 3,431 referrals made in 2006. The total amount collected by the Kohn Law Firm in 2007 on all referrals was \$7,500,045.
- The Kohn Law Firm reports that the number of real property tax collection files referred in the first 8 months of 2008 is 4,807, a substantial increase. The Kohn Law Firm projects that collections in 2008 will be approximately 12% greater than in 2007.

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 is exploring a consulting contract 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 consulting contract is expected to be in the amount of approximately \$27,000 to be paid from the Receivership Fund SPA.

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 2009 City Attorney SPAs totals \$3,200,000, a reduction of \$470,000 from the 2008 budget. The reduction is due to 3 factors. First, the 2008 City Attorney Collection Contract Fund SPA is reduced by \$250,000 due to the terms and experience with the Harris and Harris collection contract and the contract with the Kohn law Firm. Second, the Receivership fund is reduced in 2009 from \$325,000 to \$25,000. Third, recalculations and reductions in insurance premiums have resulted in a \$20,000 reduction in the Insurance Fund SPA. The Outside Counsel, Expert Witness Fund SPA is increased in the Proposed 2009 Budget by \$105,000 to \$430,000, a level closer to historical annual expenditures.

Special Purpose Accounts	2007 Expenditure	2008 Budget	2009 Proposed
Damages and Claims Fund*	\$13,723,873	\$1,375,000	\$1,375,000
Insurance Fund	468,596	490,000	470,000
Outside Counsel/Expert Witness	422,078	225,000	430,000
Collection Contract	971,333	1,250,000	1,000,000
Receivership Fund	211,027	325,000	25,000
Total	\$15,796,907	\$3,665,000	\$3,300,000

*Note: in addition to the settlement of the *Alexander* law suit, this account was used to pay Milwaukee Public Schools due to an error related to property tax rate calculations.

Damages and Claims Account

This account provides for payment of general liability judgments against the city. The Proposed 2009 Budget for the Damages and Claims Account is \$1,375,000, an amount that reflects historical experience. Prediction of actual expenditures is not a science; Expenditures often depend upon factors outside control of the City.

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.

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. In 2005 an amount of \$691,000 was expended from this SPA. However, only \$352,368 was expended in 2006. The 2008 Budget allocated \$490,000 based upon premium adjustment and recalculations. Further calculation has reduced the projected figure needed in this account by an additional \$20,000.

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, 2007 and 2008 can be accessed as attachments to Council Files # 051004, # 060942 and # 070993, respectively.

This account supports outside legal services in specific major court cases and experts in court and administrative matters. A primary purpose of this SPA is to minimize Contingent Fund exposure.

The following cases and matters are currently being funded and will likely carry over to 2009:

Jude v. City
Curtis Harris v. City (Police Excessive Force)
Fields v. Nawotka (Police Shooting)
Grzeca Law Group (Immigration Matters)
Hayes, Thomas (Legal Consultant)
Kaye v. City Appeal (Sale of Real Estate)
Loth v. City Appeal (Retiree Health Insurance)
MPSO v. City (Breach of Contract)
Young v. Ortiz
Loth v. City of Milwaukee
Lopez v. City
Prado v. City

It is not possible to predict what new actions or potential claims may require use of the fund in 2009.

The 2009 proposed budget provides \$430,000 for this SPA. This reflects an increase over the last several years and is based on actual expenditures.

A footnote added as an amendment to the 2007 budget reserving \$40,000 from this SPA to retain outside counsel for nuisance abatement and retained in the 2008 budget has been removed. None of these reserved funds have been expended to date for outside counsel.

Collection Contracts

The Collection Contract SPA pays the commission and fees of 2 private collection agency contractors for the collection of outstanding personal property taxes and city accounts receivable. The 2009 proposed budget provides \$1,000,000 for this account, a similar amount as in the 2005, 2006 and 2007 budgets. The Collection Contract SPA generates more than \$5 million in net revenue for the City.

The first contract is with the Kohn Law Firm for collection of taxes and other receivables. This is a 5-year contract awarded following a competitive bid process. The contract was effective on January 1, 2007. The Kohn Law Firm held the previous

contract. The current contract provides for reduced commissions for actions resolved both pre and post formal filing.

To date in 2008, the Kohn Law Firm has collected a total of \$5,882,007 on real property tax accounts. In 2007 a total of \$7,500,045 was collected.

In addition to the Kohn Law Firm contract, the Collection Contract SPA funds the activities of firm of Harris & Harris, which collects overdue Municipal Court judgments. The Municipal Court Collections contract expired at the end of March, 2007. An RFP was released in December of 2006 in a competitive process resulting in an award of the new contract to the firm of Harris & Harris. Expenditure from the Collections Contract SPA for this new contract totals \$810,000 annually.

It is important to note that the collection of outstanding Municipal Court judgments has been assisted by the expansion of the Tax Refund Intercept Program (TRIP).

Receivership Fund

This Special Purpose Account was created in the 2003 budget and placed under the control of the City Attorney's Office. The Proposed 2009 Budget reduces this Account to \$25,000 from \$325,000 in 2008. It is estimated that \$100,000 to \$125,000 will be available in carryover funds from the current year. This should be an amount sufficient to continue current nuisance property abatement efforts through 2009. Replacement funding will be necessary after 2009 to assure that nuisance property abatement activities can be maintained.

Most of the Receivership SPA funding is allocated to the Woodlands Project (91st & W. Brown Deer Rd.) Activities that have been funded to date include: ongoing maintenance of city and NIDC-owned units, insurance, and interest and principal payments on the revolving line of credit that NIDC incurred in purchasing those units. The SPA funds are used for recurring receivership costs.

Because most of the money in the Special Purpose Account is devoted to the Woodlands Project, the availability for funds to initiate and maintain receivership actions to abate public nuisances, and to provide emergency services, is limited. The goal of the program is to become more aggressive in taking control of properties that are menacing to neighborhoods and become more actively involved in abating nuisance behavior problems.

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