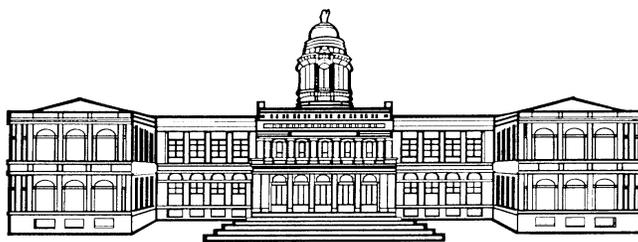


New York City Council



# BUDGET REPORT

Finance Division

March 2009

***Analysis of the  
Fiscal 2010 Preliminary Budget  
And  
Fiscal 2009 Preliminary Mayor's Management Report  
for the  
Law Department***

***Thursday, March 12, 2009***

**Hon. Christine C. Quinn**  
Speaker

**Hon. David I. Weprin**, Chair  
Committee on Finance

**Hon. Helen Sears**, Chair  
Committee on Governmental  
Operations

**Preston Niblack**, Director

**Jeffrey Rodus**, First Deputy Director

**Andy Grossman**, Deputy Director

**Eisha Williams**, Supervising Legislative  
Financial Analyst

## PREFACE

On March 12, 2009, at 11:30 am., the Committee on Governmental Operations, chaired by the Hon. Helen Sears, will hold a hearing on the Mayor's Fiscal 2010 Preliminary Budget and Fiscal 2009 Preliminary Mayor's Management Report for the Law Department.

Section 236 of the New York City Charter requires the Mayor to submit by January 16<sup>th</sup> a preliminary budget for the upcoming fiscal year.<sup>a</sup> In addition, under section 12 of the City Charter, the Mayor must make public and submit to the Council by January 30<sup>th</sup> the Preliminary Mayor's Management Report (PMMR) for the current fiscal year.<sup>b</sup> Among other things, the PMMR must contain "proposed program performance goals and measures for the next fiscal year reflecting budgetary decisions made as of the date of submission of the preliminary budget."<sup>c</sup> The Charter also requires the Council to hold hearings on the preliminary budget and to submit recommendations to the Mayor by March 25<sup>th</sup>.<sup>d</sup> This year, the Council will hold joint hearings on the Fiscal 2010 Preliminary Budget and the Fiscal 2009 Preliminary Mayor's Management Report.

Beginning with the Fiscal Year 2008 Adopted Budget, the Council and the Mayor's Office of Management and Budget agreed to an additional budget presentation, referred to by OMB as the budget function analysis, and by the Council as the program budget. Two agencies were initially presented in the program budget form. Beginning with the January 2008 Financial Plan (Fiscal 2009 Preliminary Budget), a total of 16 agencies are now in program budget form. The Law Department is not a program budget agency.

This report was prepared by Eisha Williams, Supervising Legislative Financial Analyst, under the supervision of Deputy Director Andy Grossman.

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<sup>a</sup> The Charter prescribes specific actions that are required as part of the annual budget submission process during a fiscal year. The Charter allows for changes, via local law, in the dates in the submission of the PMMR, as well as an extension for subsequent steps in the budget process. This year, Local Law 03 of 2009 changed the date for the submission of the Preliminary Budget to January 30<sup>th</sup>, and the date for the Council's Response to the Preliminary Budget to April 8<sup>th</sup>.

<sup>b</sup> Local Law 03 of 2009 changed the date of submission of the PMMR to February 13, 2009.

<sup>c</sup> New York City Charter, §12(b)(2).

<sup>d</sup> *See id.* at §247.

## Law Department (025)

Under the direction of the corporation counsel, the agency is responsible for acting as attorney and counsel for the city, and each agency and/or individual acting on behalf of the city; conducts all necessary legal business and proceedings; institutes actions in law or equity and any proceedings provided by law in all courts; maintains, defends and establishes the rights, interests, revenues, property, privilege, franchise or demands of the city through the following divisions: appeals, contracts and real estate (leases), tax and bankruptcy, family court, administrative law, pensions, affirmative litigation, workers' compensation, torts, economic development, environmental law, municipal finance, labor and employment law, special federal litigation, commercial and real estate litigation and general litigation.

The Law Department is responsible for more than 90,000 matters annually, and provides legal advice to all City agencies.

### PROGRAM TO ELIMINATE THE GAP

Since the Fiscal 2009 Budget was adopted in June, the Office of Management and Budget has twice asked agency heads to submit Program to Eliminate the Gap (PEGs) proposals. In the first round, in September, OMB sought PEG submissions equal to five percent of agency City tax-levy budgets for Fiscal 2010, with a further seven percent sought in December.

PEGs reduce the City's budget gap either by reducing an agency's City tax-levy Expense Budget spending, or by increasing City revenues. The chart below indicates the proposed PEG amounts for the Law Department based on the Fiscal 2010 forecast at the time the Fiscal 2009 Budget was adopted (June 2008).

<b>November and January Plan PEGs for Fiscal 2010 (in 000s)</b>	
<b>Fiscal 2010 Forecast at Fiscal 2009 Adoption (June 2008)</b>	<b>\$121,550</b>
Expense PEGs	(\$109)
Revenue PEGs	(\$13,909)
<b>Total Fiscal 2010 PEGs</b>	<b>(\$14,018)</b>
PEGs as a Percent of the Fiscal 2010 Forecast	11.53%

### PRELIMINARY BUDGET HIGHLIGHTS

The Law Department's Fiscal 2010 Preliminary Expense Budget of \$129.1 million is \$3.3 million more than its Fiscal 2009 Adopted Expense Budget of \$125.8 million. The \$3.3-million in total funds derives from an increase of \$2.5 million in City tax-levy, which now stands at \$123.4 million, an increase of \$50,000 in Capital Inter-Fund Agreement funds, and an increase of \$749,000 in Intra-City funds.

#### November Plan Changes

At the time of Adoption for Fiscal 2009, the agency's estimated budget for Fiscal 2010 was \$126.5 million. The estimated budget for Fiscal 2010 in City tax-levy was \$121.5 million. The November 2008 Plan decreased the City tax-levy portion of the agency's budget by \$67,000, bringing the agency's total Fiscal 2010 budget to \$126.4 million. The decrease in the agency's budget in the November Plan was

attributable to the PEG proposal to reduce the agency's PS budget by one position, and to other adjustments for collective bargaining.

### January Plan Changes

The January Plan now increases the agency's Fiscal 2010 budget by \$2.7 million, for a total of \$129.1 million. The \$2.7-million increase in total funds derives from an increase of \$1.8 million in City tax-levy funds, which now stands at \$123.4 million, \$51,000 in Capital Inter-Fund Agreement funds, and an increase of \$750,000 in Intra-City Funds. These increases in the agency's budget in the January Plan are attributable to other adjustments for collective bargaining and an Intra-City transfer from the Department of Human Resources and Administration to the Law Department.

### AGENCY FUNDING OVERVIEW

Agency Funding Sources	Fiscal 2009 Adopted Budget	Fiscal 2009 Modified as of 1/30/2009	Fiscal 2010 Preliminary Budget
City	\$120,852,721	\$120,852,721	\$123,362,492
Other Categorical	\$437,024	\$1,399,487	\$437,024
Capital IFA	\$2,010,086	\$2,010,086	\$2,060,717
State	\$0	\$0	\$0
Community Development	\$0	\$0	\$0
Federal-Other	\$0	\$120,000	\$0
Intra-City	\$2,475,134	\$3,582,888	\$3,224,699
<b>Total</b>	<b>\$125,774,965</b>	<b>\$127,965,182</b>	<b>\$129,084,932</b>

### HEADCOUNT OVERVIEW

Headcount (Uniform and Civilian)	Fiscal 2009 Adopted Budget	Fiscal 2009 Modified as of 1/30/2009	Fiscal 2010 Preliminary Budget
City	1,252	1,259	1,256
Non-City	36	37	36
<b>Total</b>	<b>1,288</b>	<b>1,296</b>	<b>1,292</b>

### UNITS OF APPROPRIATION

The operating budget of an agency is structured into several levels, each of which provides varying levels of detail on an agency's spending plans. The City Charter requires that U/As represent the amount appropriated for personal services (i.e., salaries, overtime, etc.) or Other Than Personal Services (i.e., supplies, contracts, etc.) for a particular program, purpose, activity or institution. The table below presents the Law Department budget, comparing the Fiscal 2009 Adopted Budget to the Fiscal 2010 Preliminary Budget. The Fiscal 2009 Modified Budget reflects this year's budget at the time this financial plan was released.

U/A#	U/A Name	Fiscal 2009 Adopted Budget	Fiscal 2009 Modified as of 1/30/2009	Fiscal 2010 Preliminary Budget	Percent Change from Adoption
001	Personal Services	\$94,770,963	\$94,111,378	\$97,628,654	3.02%
002	Other Than Personal Services	\$31,004,002	\$33,853,804	\$31,456,278	1.46%
	<b>Total</b>	<b>\$125,774,965</b>	<b>\$127,965,182</b>	<b>\$129,084,932</b>	<b>2.63%</b>

## FUNDING ANALYSIS

### January Plan Actions

#### Revenue PEGs

- **World Trade Center Revenue Collections.** The January Plan recognizes that the Law Department will collect \$4.3 million in Fiscal 2009 and \$2.5 million Fiscal 2010 in additional revenue from reimbursement for the preparation and litigation of the World Trade Center personal injury cases.
- **Asbestos Litigation Revenue Settlement.** The January Plan recognizes that the Law Department will collect \$2.5 million in additional revenue in Fiscal 2010 from an asbestos related settlement.

#### Expense PEGs

The following PEG proposals are scheduled to begin in Fiscal 2011 because the agency was able to reach its seven percent PEG target in Fiscal 2010 through the generation of revenue. (See above)

- **Across-the-Board PS Reduction.** The Law Department proposes to reduce its Personal Service Budget 36 positions in Fiscal 2011, 33 positions in Fiscal 2012 and 32 positions annually beginning in Fiscal 2013. This action would save approximately \$2.4 million in Fiscal 2011 and \$2.2 million in Fiscal 2012 and the outyears.
- **Senior Counsel Program Reduction.** The Senior Counsel Program has been in place for several years and is designed to improve the retention of senior Law Department attorneys through the provision of salary enhancements. Whereas the Department asks new attorneys for only a three-year commitment, retaining senior attorneys is deemed to be in the City's best interest as they enable the City to limit its judgment and claims payments. The January 2008 Plan increased funding for the program by adding \$462,500 in Fiscal 2009 and \$2.4 million annually beginning in Fiscal 2010.

The current January Plan now proposes to reduce the program by removing \$2.6 million in Fiscal 2011 and \$3.5 million in Fiscal 2012 and the outyears.

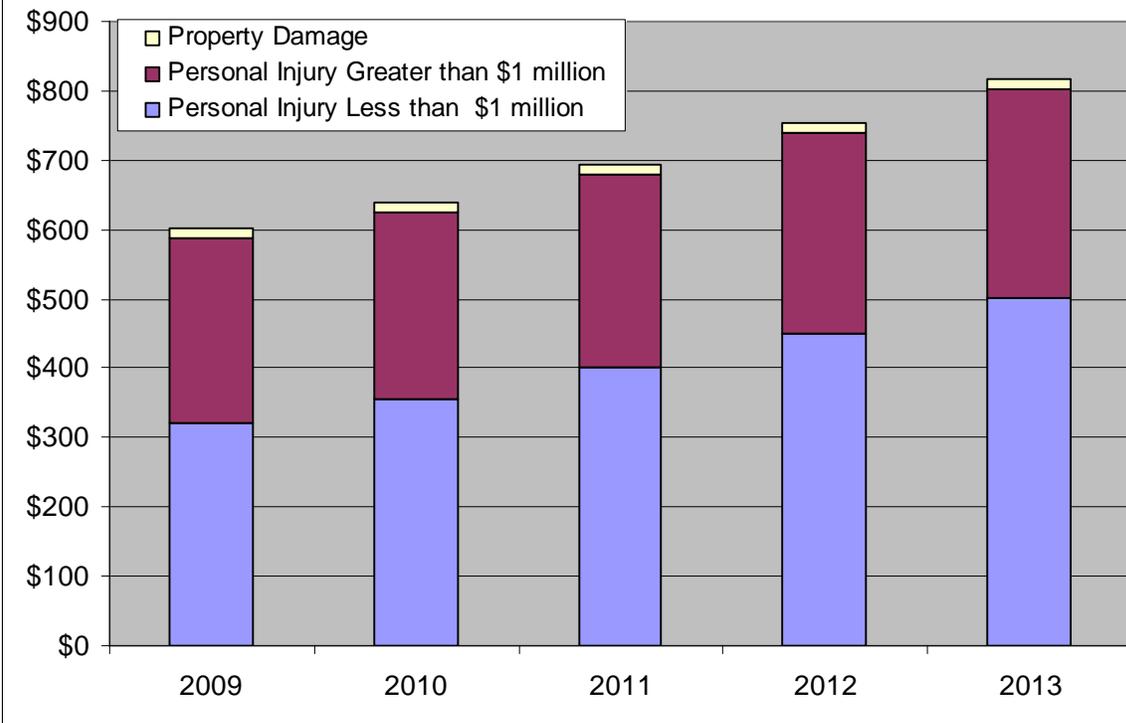
- **Tort Division Reduction Vacancies.** According to the Law Departments website, "the Tort Division is the Law Department's largest legal division. It employs over 200 lawyers and almost as many support staff. The division represents the City, its Department of Education, and its Health and Hospitals Corporation in all tort claims. It handles an enormous caseload – over 7,000 new suits each year, with another 33,000 pending – through vigorous investigation, zealous defense before State and Federal courts, and, when appropriate, settlement." The January 2008 Plan expanded the agency's Tort Division by 35 positions and approximately \$2.1 million annually beginning in Fiscal 2009.
- The current January Plan now proposes to remove \$2.7 million in Fiscal 2011 and \$2.8 million in Fiscal 2012 and the outyears. It is unclear how this proposed reduction in Tort division resources would impact the city's judgment and claims payouts.

The two charts below provide an overview for judgment and claims payouts. The first chart shows the annual actual cost for Fiscal 2006, 2007, and Fiscal 2008. In addition, it also shows the forecasted amounts for Fiscal 2009 and Fiscal 2010. The second chart shows the year-end forecasted amounts for Fiscal 2009 and each of the outyears. It should be noted that the projected costs to the City relating to judgment and claims are growing exponentially; whereas in Fiscal 2006 total payouts for judgment and claims totaled \$477 million the January Plan projects that payouts will increase to \$817 million by Fiscal 2013.

<b>Citywide Payouts for Judgment and Claims</b>					
	<b>Actual</b>			<b>Forecast</b>	
	<b>Fiscal 2006</b>	<b>Fiscal 2007</b>	<b>Fiscal 2008</b>	<b>Fiscal 2009</b>	<b>Fiscal 2010</b>
<b>Personal Injury Cases Less than \$1 million</b>					
<i>Medical Malpractice</i>	\$48,333,206	\$55,565,856	\$60,928,146	\$56,614,536	\$63,375,674
<b>Sub-total</b>	<b>\$48,333,206</b>	<b>\$55,565,856</b>	<b>\$60,928,146</b>	<b>\$56,614,536</b>	<b>\$63,375,674</b>
<i>Non-Medical Malpractice</i>					
Defective Sidewalk	\$52,632,764	\$56,074,315	\$53,652,439	\$61,574,768	\$65,581,029
School	\$24,853,037	\$36,964,337	\$38,777,144	\$34,129,873	\$38,205,800
Auto Accident (PI)	\$28,124,312	\$37,517,005	\$34,258,256	\$37,037,140	\$41,460,265
All Other	\$102,970,551	\$122,360,638	\$146,375,205	\$131,349,602	\$147,035,904
<b>Sub-total</b>	<b>\$208,580,664</b>	<b>\$252,916,295</b>	<b>\$273,063,044</b>	<b>\$264,091,383</b>	<b>\$292,282,998</b>
<b>Total</b>	<b>\$256,913,870</b>	<b>\$308,482,151</b>	<b>\$333,991,190</b>	<b>\$320,705,919</b>	<b>\$355,658,672</b>
<b>Personal Injury Cases Greater than \$1 million</b>					
<i>Medical Malpractice</i>	\$113,785,579	\$99,875,255	\$92,982,828	\$133,684,890	\$134,183,714
<i>Non-Medical Malpractice</i>	\$95,109,708	\$117,978,608	\$112,894,092	\$134,315,110	\$134,816,286
<b>Sub-total</b>	<b>\$208,895,287</b>	<b>\$217,853,863</b>	<b>\$205,876,920</b>	<b>\$268,000,000</b>	<b>\$269,000,000</b>
<b>Property Damage</b>	\$11,201,664	\$8,654,134	\$14,458,066	\$14,000,000	\$14,200,000
<b>Sub-total</b>	<b>\$11,201,664</b>	<b>\$8,654,134</b>	<b>\$14,458,066</b>	<b>\$14,000,000</b>	<b>\$14,200,000</b>
<b>Total Judgment and Claims</b>	<b>\$477,010,821</b>	<b>\$534,990,148</b>	<b>\$554,326,176</b>	<b>\$602,705,919</b>	<b>\$638,858,672</b>

## Judgments & Claims January Financial Plan Forecast

(millions of dollars)



### Agency – Wide Adjustments

- Baseline Intra City with the Department of Human Resources Administration.** The January Plan recognizes that the Law Department will receive annual Intra City funds in the amount of \$749,565 from the Department of Human Resources and Administration (HRA) beginning in Fiscal 2009. The funding will support legal services associated with child support cases arising under Uniform Interstate Family Support Act.
- Collective Bargaining.** City Funds totaling \$1.2 million in Fiscal 2009, \$1.8 million in Fiscal 2010 and \$1.9 million in Fiscal 2011 and the outyears are being transferred from the Labor Reserve in the Miscellaneous Budget to the Law Department to cover costs associated with collective bargaining.

Collective Bargaining	Fiscal 2009	Fiscal 2010	Fiscal 2011	Fiscal 2012	Fiscal 2013
District Council 37	\$1,195,582	\$1,818,680	\$1,818,680	\$1,818,680	\$1,818,680
Communication Workers of America Local 1180	\$25,997	\$35,400	\$35,400	\$35,400	\$35,400
Special Officers	\$10,357	\$25,040	\$29,110	\$29,110	\$29,110
<b>Totals</b>	<b>\$1,231,936</b>	<b>\$1,879,120</b>	<b>\$1,883,190</b>	<b>\$1,883,190</b>	<b>\$1,883,190</b>

## PRELIMINARY BUDGET ACTIONS (in 000s)

The following table is a summary of the Preliminary Plan actions for Fiscal 2009 and Fiscal 2010 that are described in the Program Budget section above. The Non-City actions include State, Federal, Other Categorical, Intra-City and Capital Inter-Fund Agreement (IFA) funding changes for the Law Department.

Description	Fiscal 2009			Fiscal 2010		
	City	Non-City	Total	City	Non-City	Total
<b>Agency Budget as per the November Plan</b>	<b>\$120,874</b>	<b>\$6,222</b>	<b>\$127,096</b>	<b>\$121,483</b>	<b>\$4,922</b>	<b>\$126,405</b>
<b>January Plan Other Adjustments</b>						
Collective Bargaining Special Officers	10		\$10	25		\$25
Collective Bargaining CWA 1180 RIP	26		\$26	35	\$1	\$36
Collective Bargaining CWA RIP IFA	-	\$0	\$0			\$0
Collective Bargaining D.C. 37	1,196		\$1,196	1,819		\$1,819
Collective Bargaining D.C. 37 IFA	-	\$33	\$33	-	\$50	\$50
Fiscal 2009 CSEC Grant	-	\$120	\$120	-		\$0
Baseline IC with Law Department and HRA	-	\$750	\$750	-	\$750	\$750
Fiscal 2009 PA Couch White Mod	-	\$20	\$20	-		\$0
<b>Total Other Adjustments</b>	<b>\$1,232</b>	<b>\$923</b>	<b>\$2,155</b>	<b>\$1,879</b>	<b>\$800</b>	<b>\$2,679</b>
<b>Total January Plan Budget Changes</b>	<b>\$1,232</b>	<b>\$923</b>	<b>\$2,155</b>	<b>\$1,879</b>	<b>\$800</b>	<b>\$2,679</b>
<b>Agency Budget as per the January Plan</b>	<b>\$122,106</b>	<b>\$7,145</b>	<b>\$129,251</b>	<b>\$123,362</b>	<b>\$5,722</b>	<b>\$129,084</b>