

THE COUNCIL OF THE CITY OF NEW YORK

Hon. Melissa Mark-Viverito
Speaker of the Council

Hon. Ben Kallos
Chair, Committee on Governmental Operations



Hearing on the Fiscal 2016 Preliminary Budget & the
Fiscal 2015 Preliminary Mayor's Management Report

Law Department

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Law Department Overview

Under the direction of the corporation counsel, the New York City Law Department is responsible for all of the legal affairs of the City. It represents the City, the Mayor, other elected officials, and the City's many agencies in all affirmative and defensive civil litigation, as well as juvenile delinquency prosecutions brought in Family Court and Administrative Code enforcement proceedings brought in Criminal Court. Law Department attorneys draft and review local and State legislation, real estate leases, procurement contracts, and financial instruments for the sale of municipal bonds.

The Law Department (the Department) is comprised of 16 legal divisions and four support divisions and is responsible for more than 80,000 matters. It also provides legal advice to all city agencies. It is staffed with 770 lawyers and 690 support professionals in ten offices located in all five boroughs, as well as in Kingston, N.Y.

Fiscal 2016 Preliminary Plan Highlights

- **Law Department Fiscal 2016 Preliminary Budget.** The Law Department's proposed budget for Fiscal 2016 totals \$171.6 million, including \$123.6 million to support 1,460 budgeted positions. Of the Fiscal 2016 total, 95.6 percent is City tax levy funding. (See page 2)
- **New Tort Unit, Vertical Case Handling.** The Preliminary Plan for the Law Department includes \$3.2 million in baseline funding to create a new Tort Division unit that would vertically handle certain civil cases brought against the New York Police Department from start to finish, rather than moving cases between lawyers at different stages of litigation. The Department is confident that vertical case handling would be a more efficient way to handle specific types of claims against the Police Department. It is expected to lead to more desirable outcomes, in turn deterring frivolous lawsuits. Details of this initiative can be found on page 3.
- **Judgment and Claims.** The Judgment and Claims (J&C) Budget is included in the City's Miscellaneous Budget and totals \$695 million in Fiscal 2015 for payments resulting from judgments against the City. In Fiscal 2014, the City's J&C payouts increased significantly compared to prior years to a total of \$732 million. A breakdown of judgment and claims expenditures is outlined on page 4.
- **Reduced Reliance on Contractors.** The Department's headcount has been increased in an effort to reduce its reliance on outside counsel. These efforts will reduce the Department's contract budget while increasing its personal services budget by a similar amount. Actions related to this initiative can be found on page 3.
- **Increase in State Cases Pending.** During the first four months of Fiscal 2015, cases pending in State court increased six percent, adversely impacting the City's ability to devote resources to affirmative motion practice. (See page 5)
- **Law Department Contract Budget.** The Law Department's Fiscal 2016 Contract Budget totals \$26.2 million and accounts for approximately 15.3 percent of the Department's total operating budget. The Fiscal 2016 total is 35 percent less than the Department's Fiscal 2015 Adopted Contract Budget. (See Appendix C on page 9)

Financial Summary

Law Department Financial Summary						
	2013	2014	2015	Preliminary		*Difference
<i>Dollars in Thousands</i>	Actual	Actual	Adopted	2015	2016	2015 - 2016
Spending						
Personal Services	\$100,010	\$104,281	\$109,627	\$114,949	\$123,569	\$13,942
Full-Time Salaried	92,227	95,711	106,621	111,753	120,295	13,674
Other Salaried & Unsalaries	4,434	4,739	2,722	2,912	2,991	269
Additional Gross Pay	1,974	2,181	282	282	282	0
Overtime	1,376	1,650	1	1	1	0
Other Than Personal Services	43,841	58,426	62,149	67,941	48,015	(14,134)
Supplies and Materials	1,176	1,476	1,149	1,225	1,075	(74)
Property and Equipment	918	2,766	1,148	1,695	674	(474)
Other Services and Charges	22,842	20,680	19,830	21,613	20,087	256
Contractual Services	18,870	33,461	40,003	43,309	26,162	(13,841)
Fixed and Misc. Charges	36	42	18	99	18	0
TOTAL	\$143,852	\$162,707	\$171,776	\$182,890	\$171,584	(\$192)
Funding						
City Funds			\$164,800	\$172,402	\$164,111	(689)
Other Categorical			417	672	417	0
Capital-IFA			3,335	3,519	3,577	242
Fed-Community Development			0	80	97	97
Fed-Other			0	41	0	0
Intra-City			3,225	6,176	3,383	158
TOTAL	\$143,852	\$162,707	\$171,776	\$182,890	\$171,584	(\$192)
Positions						
Full-Time Positions	1,294	1,354	1,380	1,405	1,460	80

*The difference of Fiscal 2015 Adopted Budget compared to Fiscal 2016 Preliminary Budget.

The Law Department's proposed budget for Fiscal 2016 totals \$171.6 million including \$123.6 million to support 1,460 budgeted positions. Of the Fiscal 2016 total, 95.6 percent comes from City tax-levy funding.

The Department's Fiscal 2016 Preliminary Plan includes an increase of 80 budgeted positions compared to the Fiscal 2015 Adopted Plan. The Preliminary Plan includes a proposal that creates a new Tort Division Unit to more vigorously contest civil lawsuits brought against the Police Department. The Department's headcount is further increased by its efforts to reduce its reliance on outside counsel. These efforts reduce the Department's contract budget while increasing its personal services budget by a similar amount.

In Fiscal 2014, The Department's spending increased significantly due in large part to the transfer of funding for outside counsel for major cases formerly reflected in the City's Miscellaneous Budget. This funding is now permanently included in the Law Department's budget.

Budget Actions Since Adoption

Since Adoption, the Law Department has identified new needs which would require additional funding of \$ 7.8 million for Fiscal 2016 (see Appendix B on page 8). The following are significant Law Department budget actions included in the November and Preliminary Plans.

- **New Tort Unit, Vertical Case Handling.** The Preliminary Plan for the Law Department includes \$3.2 million in baseline funding to create a new Tort Division Unit that would vertically handle certain civil cases brought against the police department from start to finish. This action would add 40 budgeted positions, including 30 attorneys and 10 support staff. Generally, the Department employs horizontal case management in which cases are passed to different specialized attorneys as a case proceeds at different stages (discovery, settlement, trial, etc.). The Department is confident that vertical case handling would be a more efficient way to handle specific types of claims against the police. It is expected to lead to more desirable outcomes, in turn, deterring frivolous lawsuits.
- **Litigation Support.** Since Adoption, the Department has identified \$2 million in new needs for court mandated costs associated with ongoing litigation. The majority of this funding is related to the Special Master for the Teacher Certification case. The City could be liable for as much as \$455 million in damages after a federal court ruled that a decades-old teacher certification exam discriminated against Black and Hispanic applicants.
- **Additional Full-time Staff for Special Federal Matters.** The Preliminary Plan includes additional baseline funding of \$930,000 for ten positions for the Special Federal Litigation Division. This action is designed to reduce the Department's reliance on outside counsel. The Special Federal Litigation Division specializes in defending the City and its officials in civil rights cases brought in federal court in which police, District Attorney, or correction officer misconduct is claimed. The additional funding would increase the division's total Fiscal 2016 budget to \$11.6 million to support 137 positions.
- **Additional Appeals Division Staff.** The Preliminary Plan includes baseline funding of \$707,000 beginning in Fiscal 2016 for eight new positions for the Appeals Division to handle increased workload. This action would bring the Appeals Division personal services funding to a total of \$4.95 million to support 55 positions.
- **Special Merit Program.** The Preliminary Plan provides funding to create a special merit program to recognize and retain junior attorneys. Junior attorneys would receive additional merit pay based on performance. The program is funded at \$1.9 million in Fiscal 2016, increasing to \$3.4 million by Fiscal 2019.
- **Reduced Reliance on Contractors.** The Preliminary Plan includes a headcount adjustment to enable the Law Department to hire 21 City employees instead of using outside contractors. The positions would be assigned as follows: six for the Appeals Division; two for the Family court Division, ten for the Tort Division; and three to Litigation Support Division. Salary costs will be funded using existing budgeted resources and will reduce the Department's contracting needs.
- **Bronx Police Unit Lease Expenses.** The November Plan included additional baseline funding of \$550,000 for lease expenses related to the move of the Department's Bronx Police Unit to 1775 Grand Concourse in the Bronx. The Unit is currently residing in limited space at the Department's central offices in Manhattan. The move is expected to be complete by the end of 2015.

Other Highlights

Judgment and Claims

The Judgment and Claims (J&C) Budget is included in the City's Miscellaneous Budget and totals \$695 million in Fiscal 2015 for payments resulting from judgments against the City. These expenditures represent the City's costs for tort and contract liability. Tort expenditures cover both personal injury and property damage claims, and typically represent about 95 percent of total costs. These projections incorporate a substantial amount of claims attributed to the Health and Hospitals Corporation for which the Corporation will reimburse the City.

The chart below represents Judgment and Claims payouts by agency from Fiscal 2011-2014.

Citywide Judgment and Claims Payouts				
Agency	Actuals			
(\$ in Thousands)	FY 2011	FY 2012	FY 2013	FY 2014
Police	\$190,235	\$204,578	\$156,600	\$245,665
Fire	23,566	31,578	23,436	138,281
HHC	147,364	127,480	124,066	131,692
Transportation	71,290	73,456	75,764	73,291
Sanitation	32,730	42,536	34,544	41,107
Education	59,313	32,958	37,680	34,871
Environmental Protection	12,378	8,540	4,042	19,852
Parks	18,893	20,423	30,923	19,266
Corrections	16,457	26,651	12,127	18,522
Housing, Preservation & Development	5,803	-	-	2,883
Children's Services	-	1,647	12,905	1,952
Citywide Administrative Services	-	4,718	-	-
Design and Construction	-	-	6,213	-
Social Services	70,054	-	-	-
All Other	15,990	8,303	6,183	4,839
Total	\$664,073	\$582,868	\$524,483	\$732,221

In Fiscal 2014, the City's Judgment and Claims payouts increased significantly compared to prior years to a total of \$732 million. The increase was most notable for the Police and Fire Departments due in large part to the settlement of the Central Park Five case and the FDNY exam bias case.

Miscellaneous Revenue

The Department's miscellaneous revenue sources include: fines from violations to the City's administrative code; revenues for the sale of de-mapped, small non-functional city roads; affirmative judgments and settlements in cases brought by the City; fees for OTPS costs associated with FOIL requests; and reimbursements for worker compensation payouts.

The Affirmative Litigation Division oversees the activities of the Department's collection contract. Attorneys in this Division represent the City as plaintiff on a wide range of issues including restitution, breach of contract and insurance.

Law Dept. Miscellaneous Revenue						
(\$ in Thousands)	Actuals				Budget	
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Admin. Code Violations	\$1,636	\$1,241	\$1,393	\$1,088	\$1,000	\$1,000
Sale of Streets	6,970	1,626	1,215	1,323	275	275
Affirmative R/E Litigation	2,276	210	13,356	30	250	250
Affirmative Litigation	21,584	13,682	12,588	10,187	9,759	9,759
Vending, XEROX Subpoena Fees	57	47	48	31	75	75
Collection Agency Claims	2,193	1,919	2,127	2,713	1,698	1,698
Worker Compensation	8,705	8,861	8,059	8,095	7,404	7,404
TOTAL	\$43,422	\$27,585	\$38,786	\$23,467	\$20,461	\$20,461

The Preliminary Financial Plan projects that the Law Department will generate miscellaneous revenue totaling \$20.5 million in Fiscal 2015. The majority of revenue, approximately 84 percent, is projected to be generated through affirmative litigation and reimbursements for worker compensation payouts. Miscellaneous revenue generated through affirmative litigation varies considerably from year to year depending on the type and size of pending cases. For example, in Fiscal 2013 the Department recognized a \$13 million settlement from the owners of 25 and 45 Sutton Place in Manhattan for failure to maintain curtain walls for which the City incurred repair expenses.

Tort Division

The Tort Division is the Law Department's largest. It employs over 200 lawyers and almost as many support staff. The Division represents the City, the Department of Education, and the Health and Hospitals Corporation in all tort claims. It handles a caseload of over 7,000 new cases each year, with another 20,000 pending through investigation, defense before State and federal courts, and settlement.

Tort Division Performance Measures

Performance Indicators	FY 12	FY 13	FY 14	4-Month Actual FY 14	4-Month Actual FY 15	Target FY 15
Total Cases pending in Federal Court	N/A	1,711	1,659	1,666	1,571	1,700
Dismissals or Discontinuances (Federal)	N/A	264	173	67	101	*
Total Cases pending in State Court	17,020	17,884	19,039	18,302	19,427	19,600
Affirm. motions to dismiss /summary judgment (State)	N/A	1,798	1,903	631	560	*
Win rate on affirmative motions (State)	N/A	72%	78%	78%	72%	65%

According to the Preliminary Mayor's Management Report:

During the first four months of Fiscal 2015 cases pending in state court increased 6 percent, adversely impacting the City's ability to devote resources to affirmative motion practice. Dismissals and discontinuances in federal court increased 51 percent during the reporting period.

The Family Court Division

The Family Court Division is the Department's second largest division, with over 80 attorneys who are responsible for handling some 15,000 cases annually. The Division is responsible for prosecuting juvenile crime, and its work also encompasses assisting victims of youth crime to secure access to a broad array of community-based services, including counseling, crisis intervention, and safety planning. In its civil practice, the Family Court Division aids families by bringing enforcement proceedings designed to obtain necessary financial support for children.

Family Court Performance Measures

Performance Indicators	FY 12	FY 13	FY 14	4-Month Actual FY 14	4-Month Actual FY 15	Target FY 14
Juveniles successfully referred to a diversion program with no new delinquency referral within 1 yr. (%)	N/A	85%	85%	85%	84%	*
Referred cases for prosecution (%)	55%	56%	58%	58%	53%	55%
Crime victims assessed for comm. based services (%)	44%	36%	46%	59%	45%	35%
Juvenile conviction rate (%)	73%	73%	75%	77%	72%	70%

According to the Preliminary Mayor's Management Report:

After remaining relatively stable for several fiscal years, the percentage of referred cases filed for prosecution decreased 5 percentage points during the reporting period. The Department's juvenile conviction rate also decreased 5 percentage points. Crime victims assessed for community-based services, decreased 14 percentage points compared to the first four months of last year, but was stable when compared to the end of Fiscal 2014.

Appendix A: Fiscal 2015 PS Budget by Program Area

<i>(\$ In Millions)</i>	Fiscal 2016 Funding	Budgeted Positions
Administrative Law Division	\$2.65	30
Affirmative Litigation Division	2.25	28
Appeals Division	4.95	55
Commercial and Real Estate Litigation Division	5.85	70
Contracts and Real Estate Division	1.30	12
Economic Development Division	1.20	15
Environmental Law Division	1.75	18
Family Court Division	12.20	154
General Litigation Division	2.50	26
Labor and Employment Division	5.15	61
Legal Counsel Division	2.17	19
Municipal Finance Division	0.60	6
Pensions Division	0.80	8
Special Federal Litigation Division	11.60	137
Tax and Bankruptcy Division	5.23	71
Tort Division	38.15	472
Worker's Comp. Division	4.35	82
Executive Administration	3.40	30
Operations Support	4.30	77
Info Tech Division	1.95	22
Administrative Services	11.22	67
Total	\$123.57	1,460

Appendix B: Budget Actions in the November and Preliminary Plans

<i>Dollars in Thousands</i>	FY 2015			FY 2016		
	City	Non-City	Total	City	Non-City	Total
Law Dept. Budget as of Fiscal 2015 Adopted Plan	\$164,800	\$6,977	\$171,777	\$150,015	\$6,977	\$156,992
New Needs						
Vertical Case Handling	0	0	0	3,222	0	3,222
Additional Appeals Div Staff (8)	0	0	0	707	0	707
FOIL Compliance - OTPS	405	0	405	0	0	0
Additional Staff- Special Federal Matters (10)	0	0	0	930	0	930
Litigation Support - OTPS	1,956	0	1,956	525	0	525
Special Merit Program	0	0	0	1,900	0	1,900
Additional Lease Expenses	0	0	0	553	0	553
OTPS Adjustment	520	0	520	0	0	0
TOTAL, New Needs	\$2,881	\$0	\$2,881	\$7,837	\$0	\$7,837
Other Adjustments						
Collective Bargaining Adjustments	1,109	67	1,176	1,723	105	1,828
Labor Transfer for Non-Union Employees	14	154	168	15	196	211
Salary Increases and Adjustments	3,590	0	3,590	4,513	0	4,513
Other Categorical-NYC&co Agreement	0	255	255	0	0	0
Misc. City Adjustments	8	0	8	8	0	8
Federal Funding	0	121	121	0	97	97
Intra-City Adjustments	0	2,914	2,914	0	99	99
TOTAL, Other Adjustments	\$4,721	\$3,511	\$8,232	\$6,259	\$497	\$6,756
TOTAL, All Changes	\$7,602	\$3,511	\$11,113	\$14,096	\$497	\$14,593
Law Dept. Budget as of Fiscal 2016 Prelim Plan	\$172,402	\$10,488	\$182,890	\$164,111	\$7,474	\$171,585

Appendix C: Contract Budget

Category	FY 2015 Adopted	Number of Contracts	FY 2016 Preliminary	Number of Contracts
Contractual Services General	\$440,300	14	\$440,300	14
Maint & Repair, General	2,798,502	17	1,520,632	17
Office Equipment Maintenance	200,000	9	200,000	9
Data Processing Equipment	701,200	8	701,200	8
Temporary Services	4,170,980	15	4,170,980	15
Cleaning Services	15,000	1	15,000	1
Transportation Expenditures	50,000	1	50,000	1
Training Programs for City Employees	85,450	24	85,450	24
Professional Services Accounting & Auditing	100,000	1	100,000	1
Professional Services Legal Services	12,522,000	31	7,255,000	31
Professional Services Engineer. & Architect.	130,000	28	130,000	28
Professional Services: Other	18,790,052	279	11,493,552	279
Fiscal 2016 Preliminary Budget	40,003,484	428	26,162,114	428

The Law Department's Fiscal 2016 Contract Budget totals \$26.2 million and accounts for approximately 15.3 percent of the Department's total operating budget. The Fiscal 2016 total is 35 percent less than the Department's Fiscal 2015 Adopted Contract Budget. The decrease is in large part due to efforts to reduce reliance on outside legal consultants by increasing budgeted full-time budgeted positions. Contracts in the category of Professional Services: Other, includes funding for consultants working on special cases, including the FDNY hiring bias case, and accounts for more than half of the entire contract budget. Temporary service contracts includes payments, fees and commissions for administrative and clerical support, court reporting and transcribing and other outside temporary services. The Department uses temporary services to manage increases in case volume.