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CITY OF OAKLAND



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Office of the City Attorney
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City Attorney

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December 14, 2010

Chairperson Quan and Members of the Finance and Management Committee

RE: Follow-up Report on Outside Counsel Expenditures

This is a follow-up report on the history of outside counsel expenditures. It addresses the specific questions raised by committee members at the November 16, 2010 Finance and Management Committee meeting.

Question: Why did outside counsel costs increase dramatically in specific practice areas?

Labor & Employment:

In July of 2008 we eliminated two labor and employment litigation attorneys. In the fiscal year before these two attorneys were laid-off the cost for outside counsel for labor and employment matters was \$285,879. The following fiscal year, 2008-09 after the lay-off, the cost of outside counsel for labor and employment was \$1,461,152. In fiscal year 2009-10 the cost was \$908,612. As of November 19, 2010 (fiscal year 2010-11), the cost of outside counsel for labor and employment matters is \$353,165. This represents approximately three months (July, August and September 2010) of outside counsel billings.

The increase in outside counsel for labor and employment matters cannot all be attributed to the elimination of the two litigation attorneys. Although in-house litigation attorneys handling a full caseload of 20-25 cases could theoretically handle the increase of labor and employment cases, there are always a discrete number of cases that require retention of outside counsel. For example, a case may be so time intensive that in-house attorneys cannot handle it or may present discrete, sensitive issues that the City Attorney determines would raise a perception of impropriety if an in-house attorney were assigned to handle.

During the past five year period, the City has had an increase in the number of labor and employment matters. The number of labor and employment matters opened per page 9 of City Attorney Annual Report 2009-10 is:

2005-06:	22
2006-07:	39
2007-08:	35
2008-09:	32
2009-10:	43

Attachment 2 of the November 16th report outlined a ten year history of outside counsel by each specific matter. Some of the significant matters that resulted in outside counsel costs escalating in the labor and employment area are as follows:

- Tuazon (OPD / ADA accommodation). Total outside counsel for all fiscal years \$119,000. Status: settled for \$75,000.00 / closed.
- Zamudio (OPD / alleged employment discrimination). Total outside counsel \$119,402. Status: closed, resolved through law and motion with no payout made by City.
- Bell (PWA / alleged disability discrimination). Total outside counsel \$71,685. Status: settled for \$41,000 / closed.
- Banks (OPD / alleged sex discrimination & harassment). Total outside counsel \$413,223. Settled for \$325,000 / closed.
- Clark (OPD / alleged disclosure of personal information caused emotional distress). Total outside counsel \$143,148. Settled for \$15,000 / closed.
- Yanke (OPD / alleged wrongful suspension without pay and civil rights violations). Total outside counsel to date \$68,474. Status: motion to dismiss granted to City, on appeal.
- FSLA / Donning & Doffing (OPD). Total outside counsel \$835,864. Status: settled, three installment payments of \$833,333 for three years. First settlement payment made, second due February 2011.
- Rush (OPD / alleged wrongful termination/ warrants case). Total outside counsel to date \$137,955. Status: open and on-going.
- Taylor-Johnson (CAO / alleged owed back wages). Total outside counsel to date \$227,887. Status: open and on-going.
- Longmire (OPD / alleged employment discrimination and civil rights violation). Total outside counsel to date \$24,653. Status: open and on-going.
- Crum (CAO / alleged discrimination/disability). Total outside counsel to date \$89,752. Status: open and on-going.

- Curtis (OFD / alleged employment discrimination & retaliation). Total outside counsel to date \$83,983. Status: open and on-going.
- English (PWA / alleged wrongful termination). Total outside counsel to date \$35,282. Status: open and on-going.
- Evans-Robinson (OFD / alleged employment discrimination). Total outside counsel to date \$248,725. Status: open and on-going.
- Foster (OPR / alleged discrimination & breach of contract). Total outside counsel to date \$120,542. Status: open and on-going.

Dangerous Conditions/Municipal Infrastructure:

In July 2009 three attorneys responsible for handling dangerous condition / municipal infrastructure litigation matters were laid-off. These attorneys also handled some labor and employment, construction and police force matters. In fiscal year 2007-08 the cost for outside counsel for dangerous condition matters was \$73,760. In fiscal year 2008-09 the cost was \$323,940. In fiscal year 2009-10 the cost rose to \$865,908. As of November 19, 2010 (fiscal year 2010-11), the cost of outside counsel for dangerous condition matters is \$697,033. This represents approximately three months (July, August and September 2010) of outside counsel billings.

Unlike labor and employment, there has been a slight decrease in the number of dangerous condition / municipal infrastructure lawsuits filed against the City. However, there are a number of very complex matters that require many attorney hours. The number of dangerous condition / municipal infrastructure lawsuits received per page 9 of Office of the City Attorney Annual Report 2009-10 is as follows:

2005-06:	46
2006-07:	48
2007-08:	44
2008-09:	33
2009-10:	34

Some of the significant matters that resulted in outside counsel costs escalating in the dangerous condition/municipal infrastructure area are as follows:

- Pereira (alleged intersection's dangerous condition caused pedestrian accident). Total outside counsel for all fiscal years \$40,903. Status: settled for \$40,000 / closed.
- Serrano (alleged trip & fall due to missing grate on drain). Total outside counsel \$121,865. Status: settled for \$500,000 / closed.
- Lakireddy (alleged intersection condition caused collision). Total outside counsel \$237,958. Status: closed, trial verdict in City's favor on 4/27/09. Lakireddy appealed and Court of Appeal filed a dismissal on 6/1/09. Remitter filed on 7/31/09 for City to recover cost. Lakireddy agreed to pay his entire debt to the City (\$15,892.59). On repayment schedule.
- Daniels (alleged traffic signals caused fatality pedestrian accident). Total outside counsel to date to date \$30,128. Status: open and on-going.

- DeGuzman (alleged City's infrastructure failure caused slide damages). Total outside counsel to date \$30,511. Status: open and on-going
- EPA / Our Children's Earth matters (injunctive relief under the Clean Water Act). Total outside counsel to date \$634,460. Status: open and ongoing. The issues related to this case are very specialized and would have required the City to retain outside counsel because we do not have the expertise in-house. Although the bulk of the litigation work in this matter is being handled by outside counsel, in-house attorneys are actively involved in all facets of case handling responsibilities.
- Gates & Jones (alleged berm construction caused flooding damages). Total outside counsel to date \$31,774. Status: open and on-going.
- Orduno (alleged intersection's dangerous condition caused pedestrian accident). Total outside counsel to date \$107,329. Status: open and on-going.
- EBMUD / Tunnel Road (Action brought by City for infrastructure (roadway) damages). This matter is not included in the numbers of lawsuits received above because it is an action that the City brought. Total outside counsel to date \$71,242. Status: open and on-going.
- EBMUD / McKillop Road (Action brought by City for infrastructure (roadway) damages). This matter is not included in the numbers of lawsuits received above because it is an action that the City brought. Total spent to date \$481,873. Status: open and on-going.

Contracts & Construction:

As stated above one of the three attorneys we eliminated in 2009 handled construction litigation. In fiscal year 2008-09, the cost for outside counsel for contracts and construction matters was \$92,428. In fiscal year 2009-10, the cost rose to \$868,085. As of November 19, 2010 (fiscal year 2010-11), the cost of outside counsel for contracts and construction matters is \$683,503. This represents approximately three months (July, August and September 2010) of outside counsel billings.

This increase can be attributed to two matters that the laid-off in-house attorney would have handled. These matters are:

- BBI Construction (alleged indemnity claim for breach of contract Sailboat House & Studio One). Total outside counsel to date \$570,785. Status: open and on-going.
- Underground Construction (Alleged breach of contract). Total outside counsel to date \$850,981. Status: open and on-ongoing.

Other Conflict Matters (non-police):

The Office of the City Attorney must retain outside counsel when a conflict arises that does not permit us to handle the matter.

In fiscal year 2008-09, the cost for outside counsel for other conflict matters (non-police) was \$323,406. In fiscal year 2009-10, the cost rose to \$462,411. As of November 19, 2010 (fiscal year 2010-11), the cost of outside counsel for conflict (non police) matters is \$155,279. This represents approximately three months (July, August and September 2010) of outside counsel billings.

This increase can be attributed to two matters. These matters are:

- Edgerly (alleged wrongful termination). Total outside counsel to date \$167,320. Status: open and on-going.
- Thompson (alleged wrongful termination). Total outside counsel to date \$289,143. Status: open and on-going

Question: What is the appropriate balance between in-house and outside attorneys. What are the optimal staffing levels?

Budget reductions have been focused on the litigation side of our office because it is less costly to hire outside litigators rather than retain outside counsel to handle the City's more complex specialized advice / transactional work. The hourly rate of hiring outside counsel litigators is significantly less than the hourly rate of hiring outside counsel to provide specialized legal advice.

Without question, as outlined above, the cost of outside counsel in various practice areas has increased as a result of the loss of the six litigation attorneys since 2008. A litigation in-house attorney with salary and fringe benefits costs the City, on average, \$225,000 per year. The support staff that supported these attorneys, one legal secretary and two paralegals, cost a total of \$339,000 annually. Going forward, the City is saving \$1,689,000 a year by eliminating these positions. The total cost of outside counsel for last fiscal year (2009-10) for matters that in-house attorneys could have handled if we had the in-house attorneys was \$2,614,781. As a result it has cost the City an additional \$926,000, by eliminating these positions.

Based on the above information we believe that by reinstating funding for 6 attorneys and 3 support staff for an approximate cost to the City of \$1,689,000, we could save the City approximately \$2.6 million in outside counsel costs. We believe that this number is conservative because in-house litigation attorneys would handle a greater overall caseload at a fixed annual salary, would be easily transferrable to assist other attorneys as needed and would create institutional expertise that would facilitate work and further reduce costs.

Question: What are the total legal costs to the City?

Being transparent on the total cost of legal services for the City has always been a high priority for the City Attorney's Office. This information is outlined in our annual report every year. The following is a summary for the past five fiscal years:

<u>Legal Services & Costs Including Payouts</u>	2005-06	2006-07	2007-08	2008-09	2009-10
<u>All Funds</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>
Office of the City Attorney Expenditures (Personnel/Operating)	13,085,421	13,397,438	15,477,939	14,718,993	13,786,365
Outside Counsel (all funds/all departments)	5,325,337	1,444,213	1,671,379	2,331,993	4,044,450
Legal Costs / experts/depositions, etc (all funds/all depts.)	<u>1,309,260</u>	<u>759,120</u>	<u>1,067,956</u>	<u>1,285,052</u>	<u>1,534,672</u>
Sub-total	<u>6,634,597</u>	<u>2,203,333</u>	<u>2,739,335</u>	<u>3,617,045</u>	<u>5,579,122</u>
Total Legal Expenses	19,720,018	15,600,771	18,217,274	18,336,038	19,365,487
Payouts of Claims & Lawsuits (all funds/all departments)	<u>4,371,716</u>	<u>5,495,475</u>	<u>6,149,865</u>	<u>5,393,223</u>	<u>8,367,843</u>
Grand Total Legal Services & Costs Including Payouts	24,091,734	21,096,246	24,367,139	23,729,261	27,733,330
City Attorney FTE	77.65	78.65	79.35	77.00	74.00

Question: What Funds Other than the General Fund Support the City's Legal Functions and Obligations?

The following is the Office of the City Attorney's Departmental Budget for 2010-11:

Fund	Fund Description	Budget 2010-11
1010	General Fund	\$3,462,073
1100	Self Insurance Liability	3,569,100
1150	Worker's Compensation	345,030
1710	Recycling Program	239,770
1720	Comprehensive Clean-up	40
1750	Multipurpose Reserve	60
2108	HUD-CDBG	50,218
2190	Private Grants	-7,760
2310	LLAD	190
2415	Development Service	457,630
3100	Sewer Service	141,820
4450	City Facilities Energy Conservation	79,851
7100	Police & Fire Retirement System	91,850
7120	Oakland Municipal Retirement System	22,960
7780	Redevelopment	3,974,100
Total Office of the City Attorney Departmental Budget		\$12,426,933

The budget appropriation for liability costs is established based on an actuarial report conducted annually by an outside firm which is required by the City's excess insurance carrier and outside financial auditors. Through an RFP process the Risk Management Department selects the actuarial firm. The actuarial report uses historical information to forecast future liability costs by type of liability and department. The City Council adopts the actuarial report and appropriates the monies to the four departments that cause the major source of liability: Police, Fire, Public Works and Park & Recreation. All other types of liability are budgeted in the "non-departmental" budget. Below is the 2010-11 liability budget:

Liability Budget			
For Payouts, Legal Costs (experts, depositions, court exhibits, etc.) & Outside counsel			
Fund	Fund Description	Department	Budget 2010-11
1100	Self Insurance Liability	Police	\$7,374,480
1100	Self Insurance Liability	Fire	1,491,890
1100	Self Insurance Liability	Public Works	2,060,090
1100	Self Insurance Liability	Park & Recreation	290,170
1100	Self Insurance Liability	Non-Departmental (all other depts.)	2,424,615
Sub-Total	Self Insurance Liability		13,641,245
3100	Sewer	Non-Departmental	275,000
Total for Payouts, Legal Costs & Outside Counsel (all funds)			\$13,916,245

Total 2010-11 Budget for Legal Services & Payouts (City Attorney Departmental Budget & Liability Budget)	\$26,343,178
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In addition to the information provided above to address specific questions raised by members of the Finance and Management Committee, we are also enclosing Attachment 1 which is the organizational chart of the City Attorney's Office and Attachment 2 which is the City Attorney's Annual Report for 2009-10.

Sustainable Opportunities:

No economic, environmental or social equity opportunities have been identified in connection with the subject of this report.

Disability and Senior Citizen Access:

There are no direct disabilities or senior citizen access issues associated with this report.

Action Requested of the City Council:

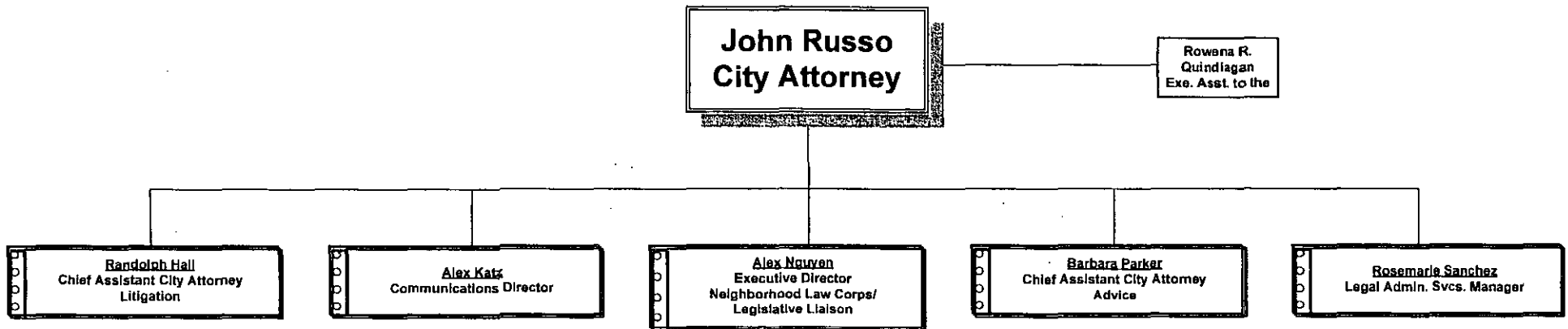
The City Attorney requests that City Council accept this informational report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John A. Russo", written over a horizontal line.

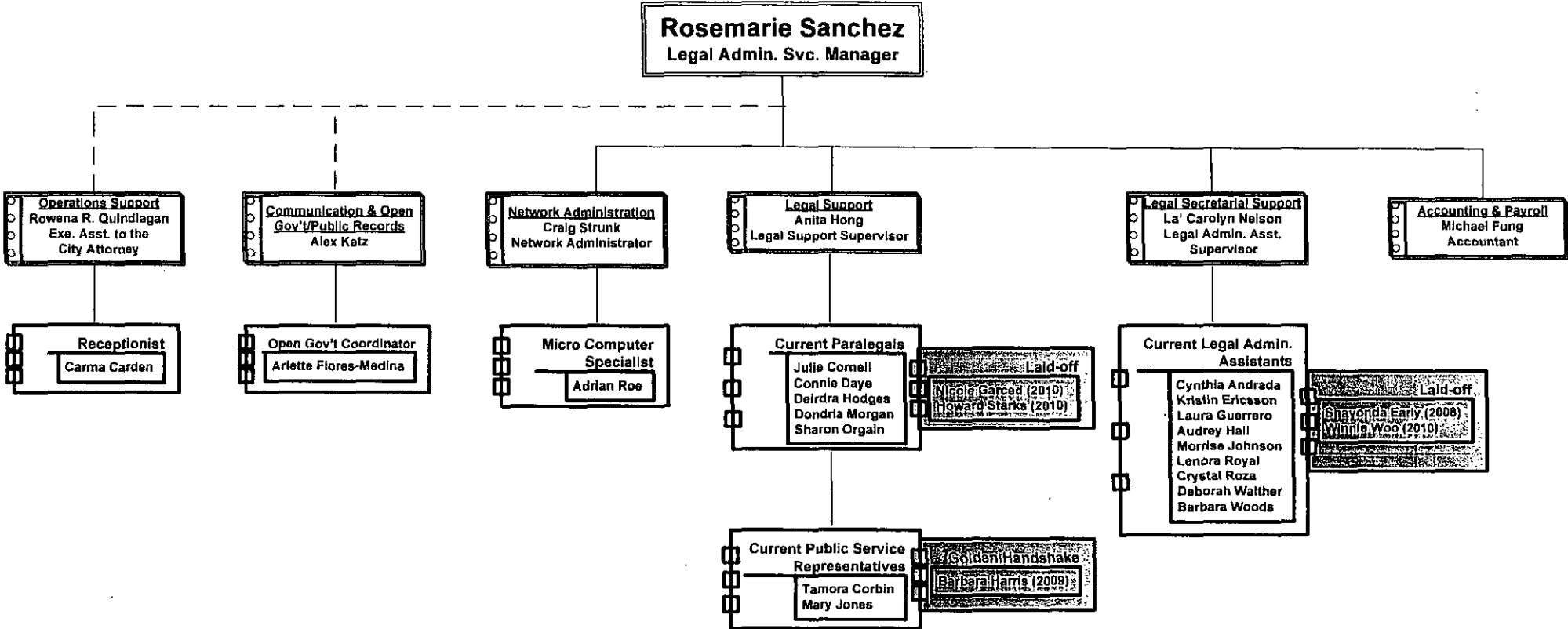
John A. Russo
City Attorney

OFFICE OF THE CITY ATTORNEY Management

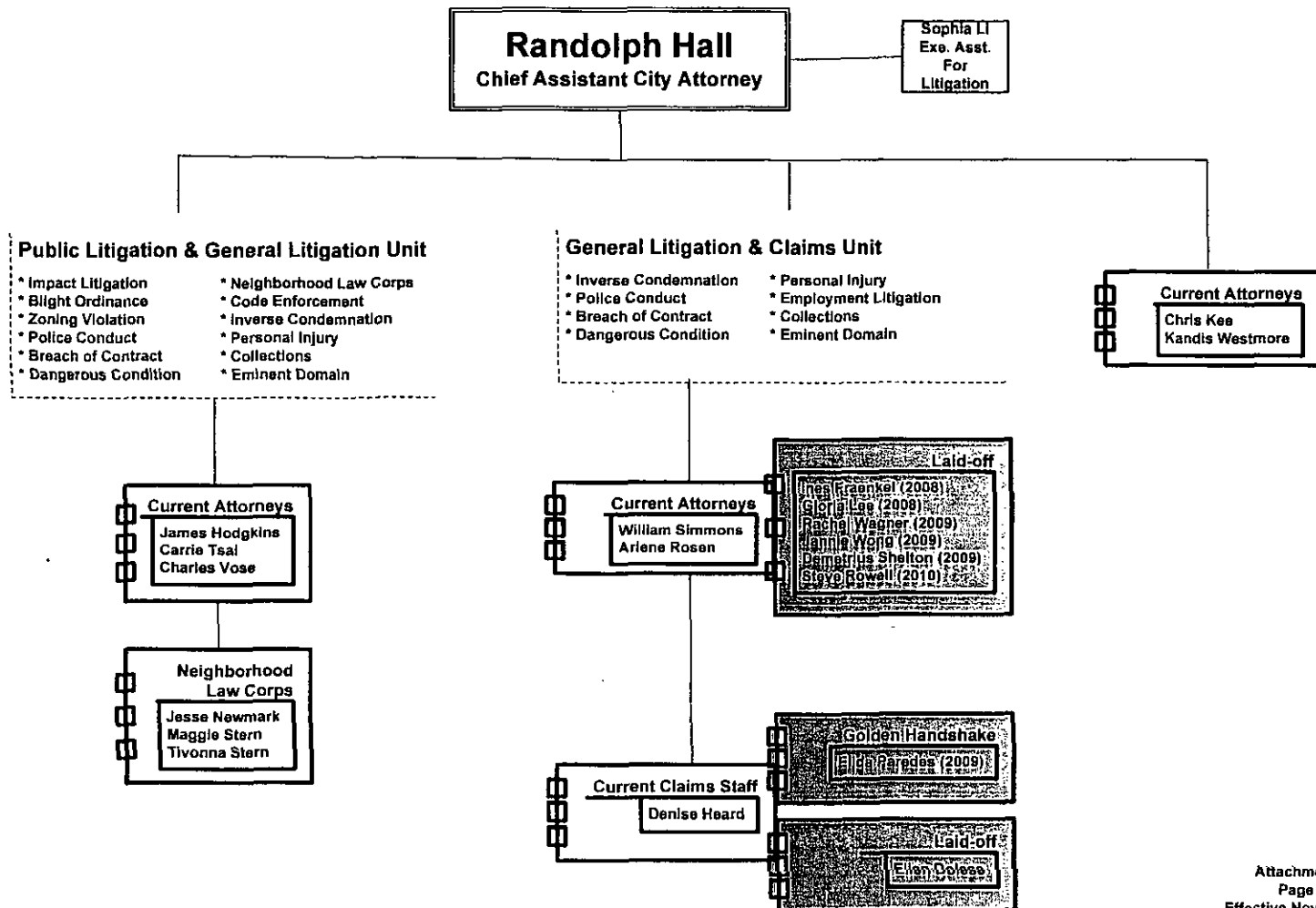


OFFICE OF THE CITY ATTORNEY

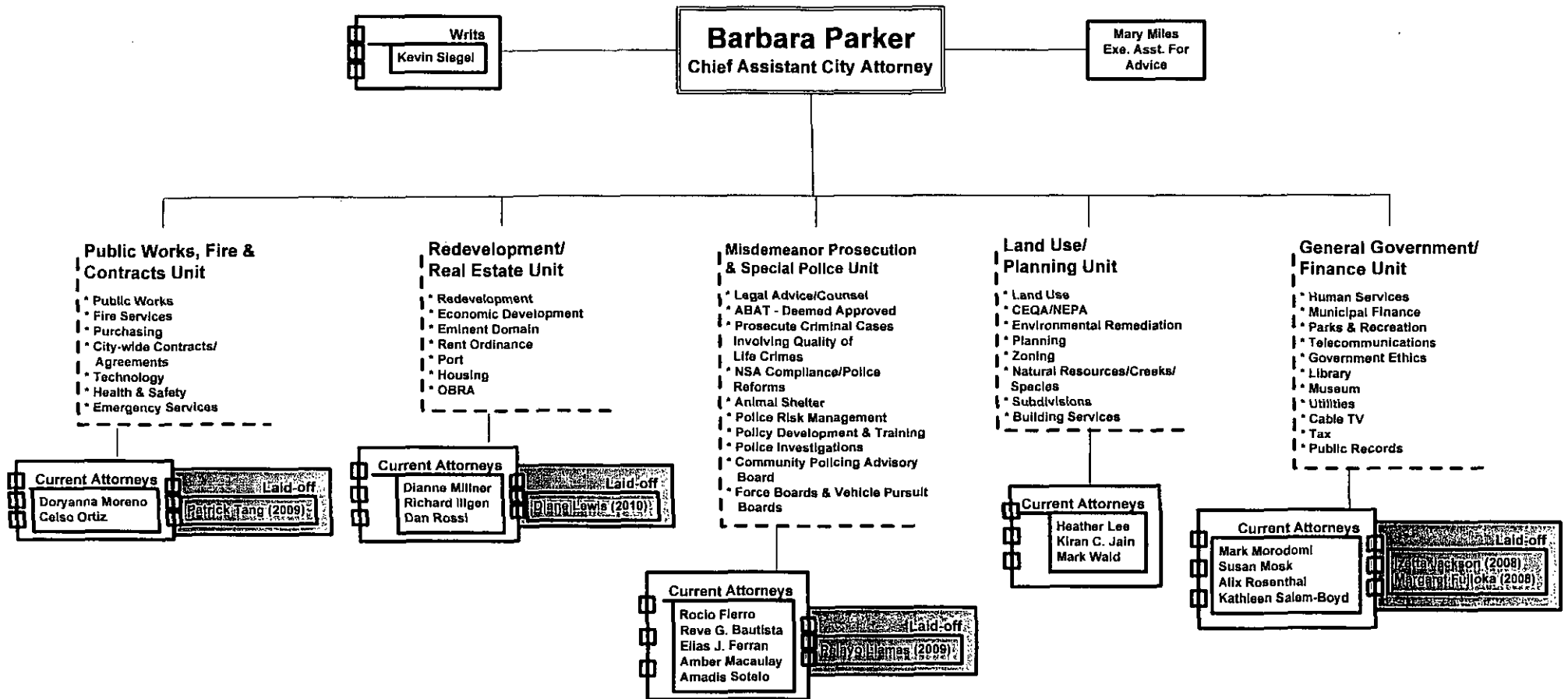
Operations



OFFICE OF THE CITY ATTORNEY Litigation



OFFICE OF THE CITY ATTORNEY Advice



OFFICE OF THE CITY ATTORNEY

Labor/Employment Advice

John Russo
City Attorney

Labor/Employment Unit

- * Labor
- * Personnel
- * Employment Litigation
- * Retirement
- * Negotiations
- * Arbitrations
- * Equal Employment
- * Civil Service Board
- * Auditor
- * Training
- * CPRB
- * Education

Current Attorneys

Vicki Laden
Caryl Casden
Jennifer Chin
Tracy Chriss

**1.0 Oakland City Attorney's Office Annual Report 2009-10
Introduction**

We consider Oakland residents and business owners to be the shareholders of this municipal corporation, to whom we are ultimately accountable. Like any shareholder, you are entitled to know how your taxpayer dollars are spent for legal services.

This annual shareholder's report provides a detailed review and analysis of litigation trends, financial results and community initiatives for the fiscal year from July 1, 2009 to June 30, 2010.

This was another challenging year for our city government, as it was for many of the Oakland residents and businesses who depend on the services we provide.

During this time, our philosophy – ***Jus Pro Populo, or law in service of the public*** – continues to guide how we provide legal services to the City of Oakland. We put this philosophy into practice by defending Oakland's progressive policies in court and initiating legal action when the community's quality of life or economic interests are jeopardized.

The City Attorney's Office aggressively defends taxpayer dollars in and out of court – seven out of 10 lawsuits resolved this year ended with no payment of money. Attorneys also continued to provide top notch legal advice to employees and officials in the other departments and branches of Oakland's government.

This report and the initiatives it details are driven by our commitment to transparency and accountability at all levels of government. Please don't hesitate to contact me with questions or feedback about any aspect of the work of the Oakland City Attorney's Office.

Mission Statement

The mission of the Oakland City Attorney's Office is:

- To provide the highest quality legal services to the City of Oakland;*
- To promote open government, transparency and accountability to the residents of Oakland in accordance with the letter and spirit of the law; and*
- To apply the law in an innovative and community oriented manner to improve the quality of life in Oakland neighborhoods.*

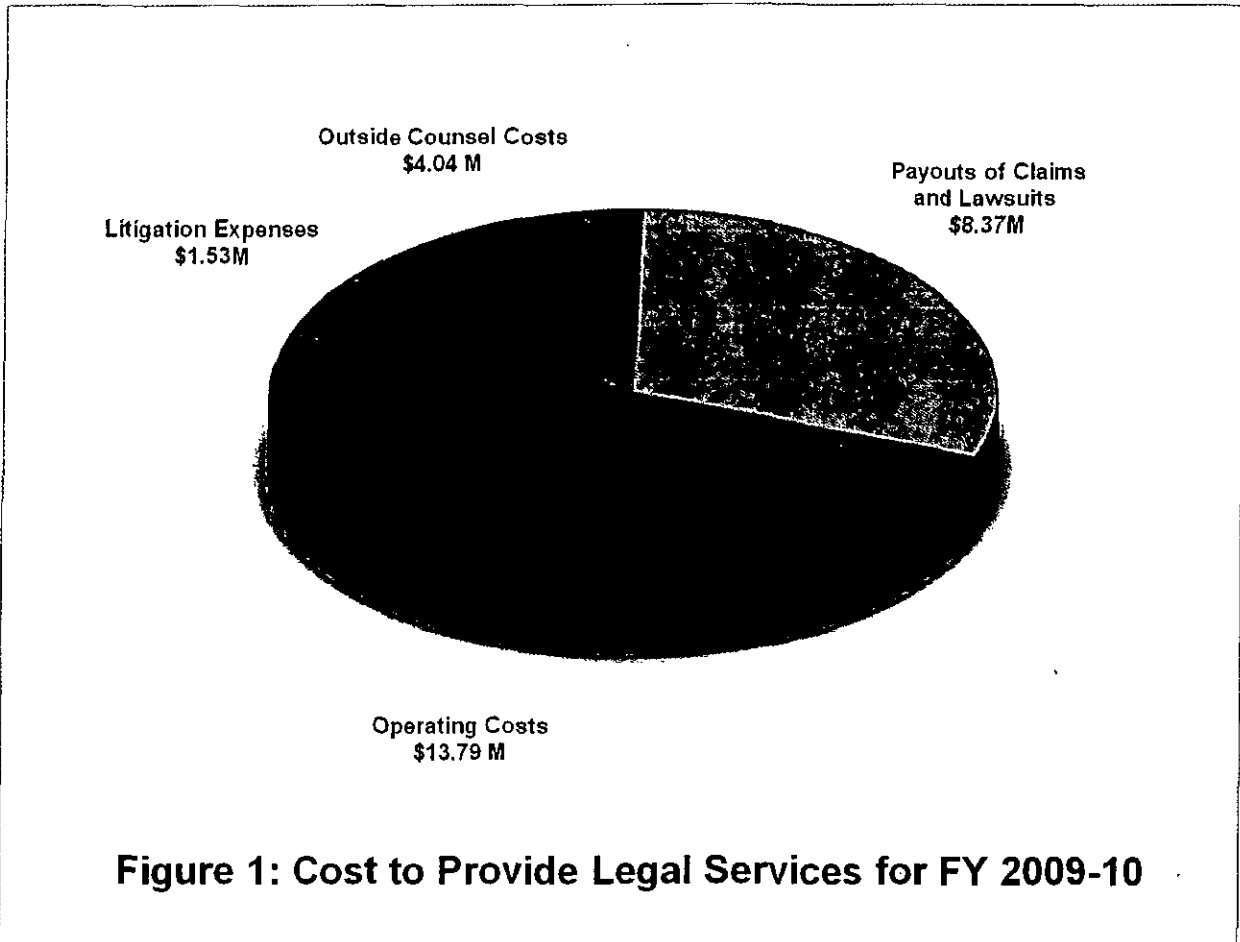
Sincerely,



John Russo
Oakland City Attorney

2.0 Financial Analysis

The Oakland City Attorney's Office aggressively manages claims, lawsuits, operating expenses and outside counsel costs to save taxpayer dollars. This year, the cost to provide legal services to the City of Oakland breaks down as follows:



This year, the total cost to provide legal services to the City of Oakland was **\$27.73 million**, including staff, litigation and operating expenses, outside counsel costs and payouts for claims, lawsuits and judgments (Figure 1). This represents an **increase of \$4 million** from the previous fiscal year (Figure 2).

Much of this increase – almost \$3 million – is in the category of Payouts of Claims and Lawsuits. The City Attorney's Office uses strategic litigation techniques to limit payouts and protect taxpayer dollars. Although a greater percentage of cases were resolved this year with no payment whatsoever, the total amount of payouts spiked in FY09/10 due to several high-liability infrastructure and police cases.

Although operating costs (salaries, equipment, overhead) were down by almost \$1 million this year due mainly to layoffs of attorneys and other staff, litigation expenses (expert witnesses, depositions, exhibits) rose only slightly. The cost of outside counsel went up by \$1.71 million – more than **73 percent**.

As advised in last year's Annual Report and in numerous communications to the City Council, reducing staff attorneys gives the City no choice but to hire outside counsel at a much higher hourly cost to respond to lawsuits and meet mandatory legal requirements.

Budget reductions mandated by the City Council have resulted in a loss of 11 attorney positions between July 2008 and the date of this report. Not surprisingly, the cost of outside counsel this year – \$4.04 million – is the highest since FY05/06, when costs spiked in this category due to one case (Pacific Renaissance).

Year In Review: Financial Results

- *Cost of legal services: \$27.73 million (+17%)*
- *Payouts for claims & lawsuits: \$8.37 million (+55%)*
- *Operating costs: \$13.79 million (-6%)*
- *Outside counsel: \$4.04 million (+73%)*
- *Litigation expenses: \$1.53 million (+18%)*
- *Billable hours: 71,074 (+2%)*

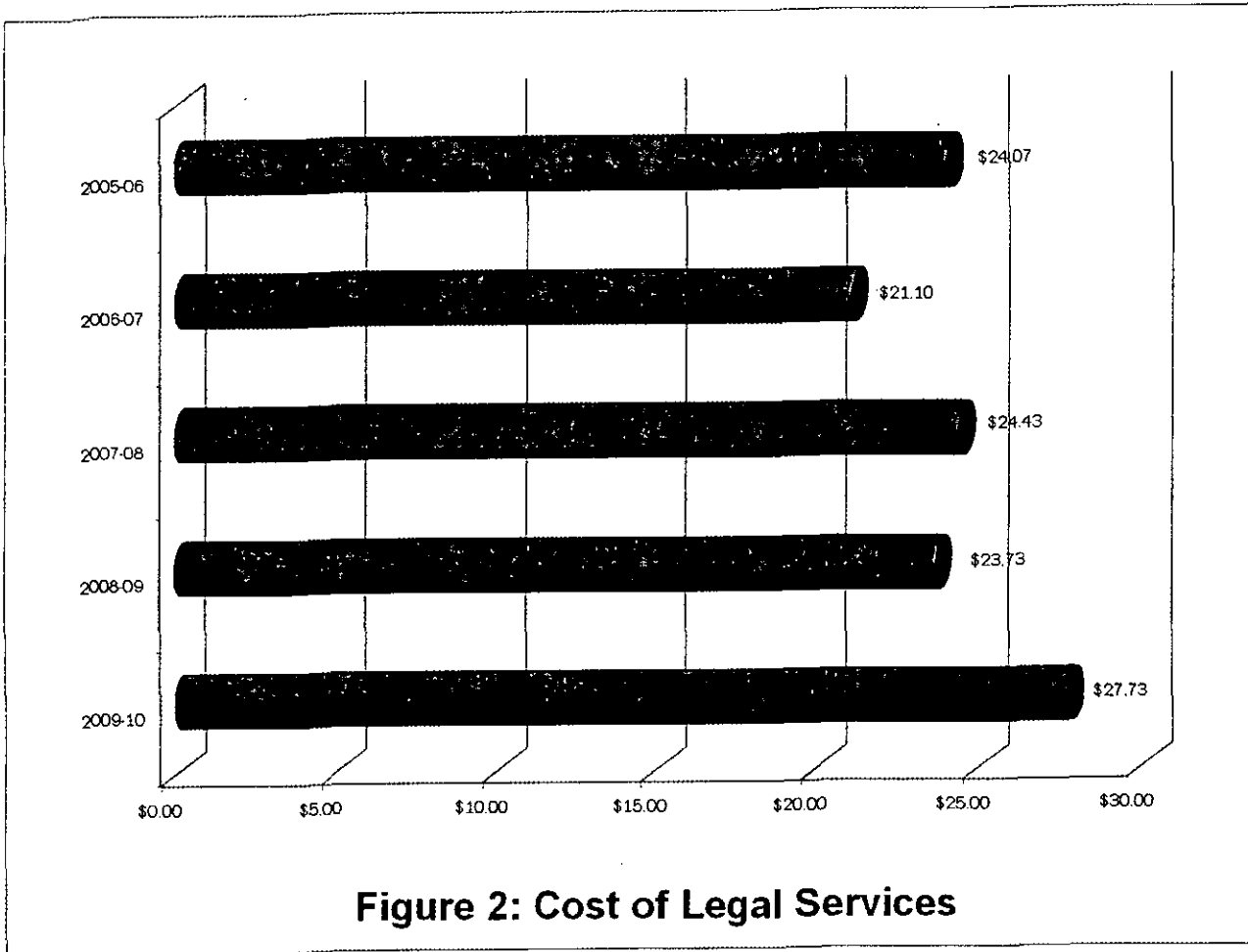


Figure 2: Cost of Legal Services

(Figure 2) The City Attorney's Office works diligently to contain costs and protect taxpayer resources. The cost of legal services rose this year in large part due to several high-liability police and infrastructure cases.

Starting in 2001, the City Attorney's Office initiated a long-term strategy with the goal of enhancing in-house legal expertise and reversing the trend of an increased reliance on outside counsel. In FY07/08, outside counsel costs were 34 percent lower than in FY01/02 – this is in nominal dollars and does not factor in the cost of inflation.

Since July 2008, the City Attorney's Office has lost 18 positions (11 attorneys and seven support staff) through layoffs and "golden handshake" retirements. Those 18 positions amount to \$3,255,088 in savings – staff attorneys account for \$2,011,298 of that amount. At the same time, the cost of using outside attorneys to meet the City's legal requirements has gone up by \$2.3 million.

Despite the greater demand for outside counsel, the City Attorney's Office has limited those costs wherever and however possible – First, by closely managing outside counsel hours; Second, by choosing to focus the bulk of the budget cuts on the in-house litigation staff and; Third, by increasing and redistributing case loads as much as possible for in-house attorneys. Cuts have been focused on the litigation side of our office because the cost of hiring outside litigators is far smaller than the cost of hiring outside attorneys to provide specialized legal advice (see **Cost Comparison** below).

The result has been a **net savings of almost \$1 million** on staff costs. Although outside attorneys cost more per hour than staff lawyers, the increase in the category of outside counsel is still **\$955,088** less than the amount saved through cutting in-house positions.

The City Attorney's Office has done its best to keep outside counsel costs down.

However, staffing has now reached a critical level at which further reductions in attorneys will be counter-productive – Oakland will spend more on outside counsel than it saves by cutting in-house attorneys.

Cost Comparison: In-House Attorneys and Outside Counsel	
Litigation	Amount
Deputy City Attorney IV (Salary & Benefits) (1500 billable hours)	\$234,290
Cost for Outside Counsel to handle the same work (\$250x1500 hours)	\$375,000
Potential Additional Cost to the City of Oakland	\$140,710
Transactional/Advisory	Amount
Deputy City Attorney IV (Salary & Benefits) (1500 billable hours)	\$234,290
Cost for specialty outside counsel to handle the same work (\$420x1500 hours)	\$630,000
Potential Additional Cost to the City of Oakland	\$395,710

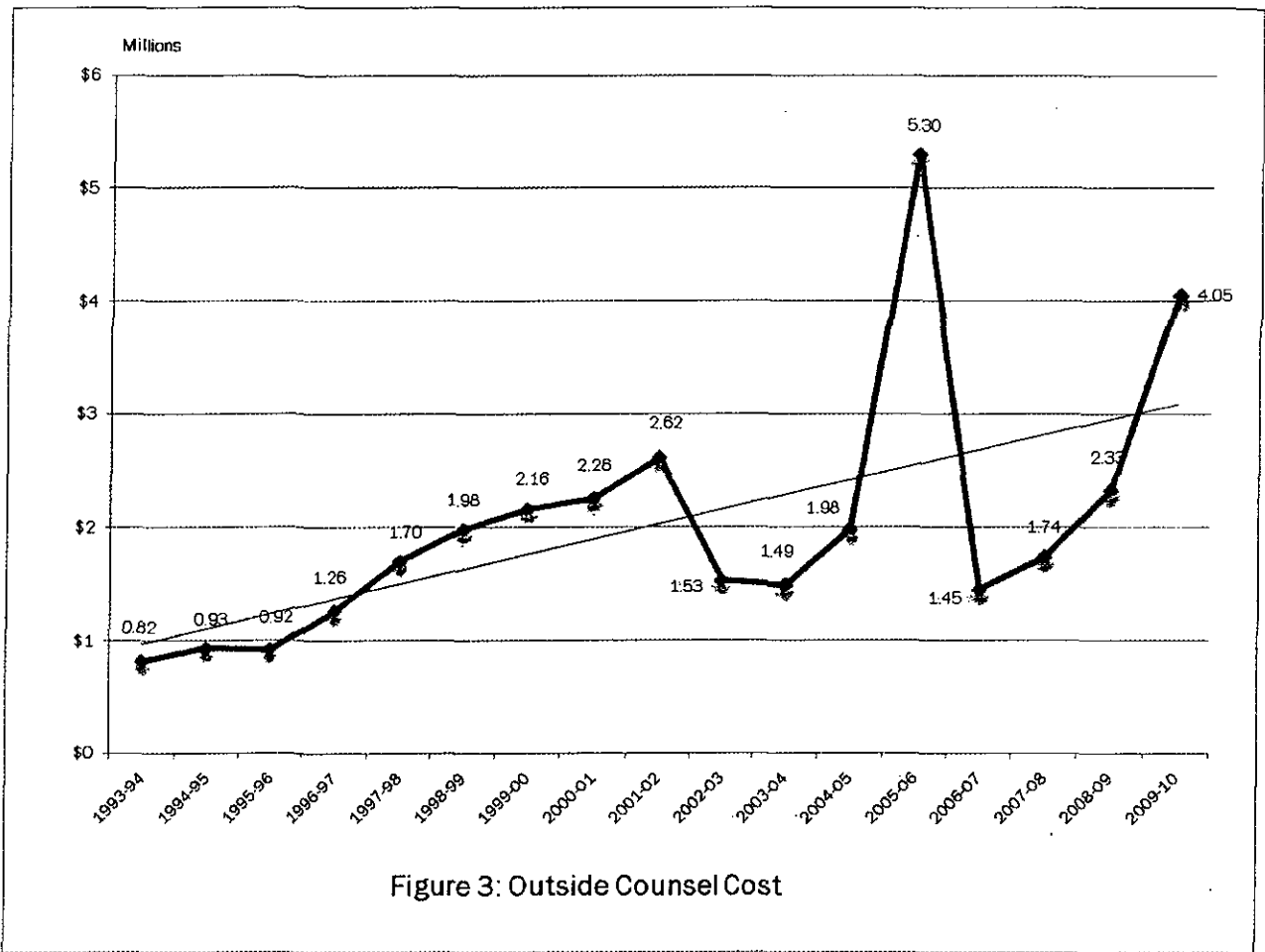


Figure 3: Outside Counsel Cost

Figure 3 shows the historic trend of outside counsel costs from FY93/94 to the present. Costs have increased in this category in recent years due to the loss of in-house attorneys. However, the City Attorney's Office has managed to limit outside counsel costs wherever possible, so the savings from staff reductions is still greater than the increase in this category.

2.1 Allocation of Legal Resources

Figure 4 shows how the City Attorney's Office is organized into practice areas to better serve our clients.

The designation of department counsels for the Oakland Police Department and the Department of Public Works has contributed to better risk management in two areas where the City has typically had greater exposure.

Office Profile FY09/10

The Oakland City Attorney's Office continued to be one of the most diverse legal teams in the country.

This year our office included:

39 attorneys – City Attorney, 2 Assistant City Attorneys, 9 litigation, 21 advice, 3 Neighborhood Law Corps and 3 criminal attorneys.

28 support staff – legal administrative assistants, paralegals, clerks, claims investigators and executive assistants.

7 operations staff – budget, accounting, information technology and support, communications, personnel administration, and an Open Government Coordinator.

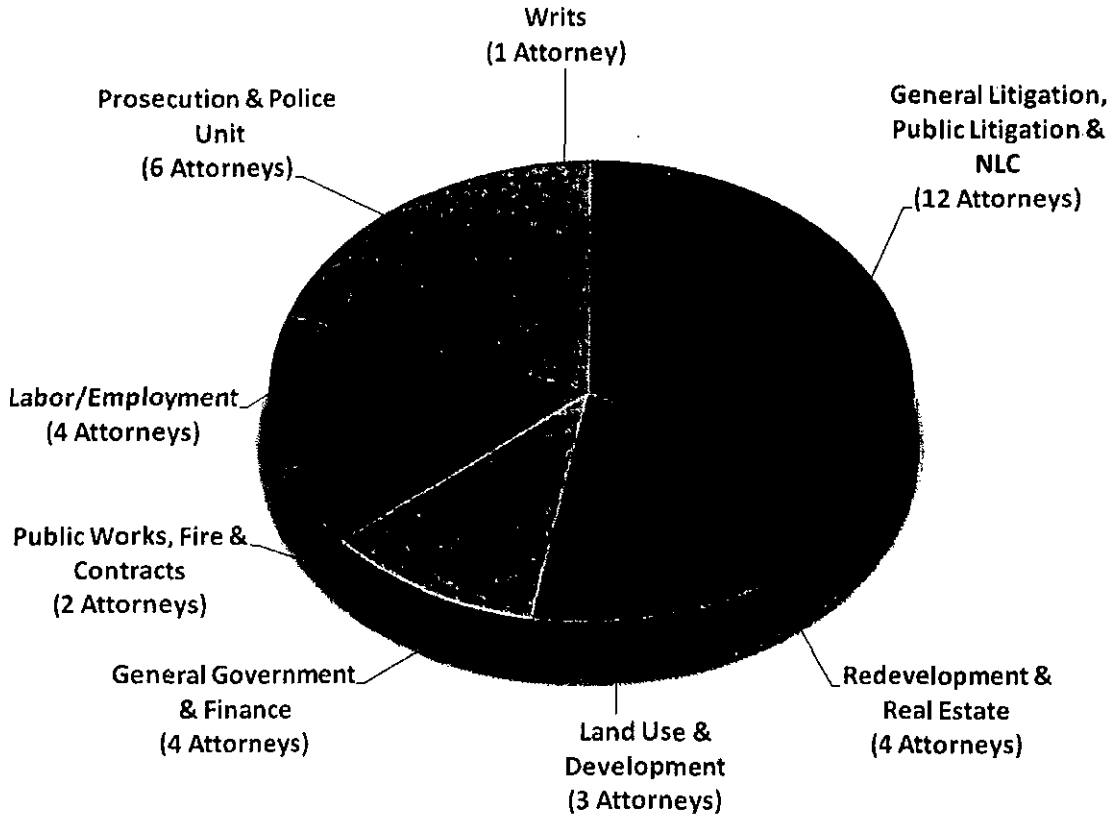


Figure 4: Allocation of Attorneys

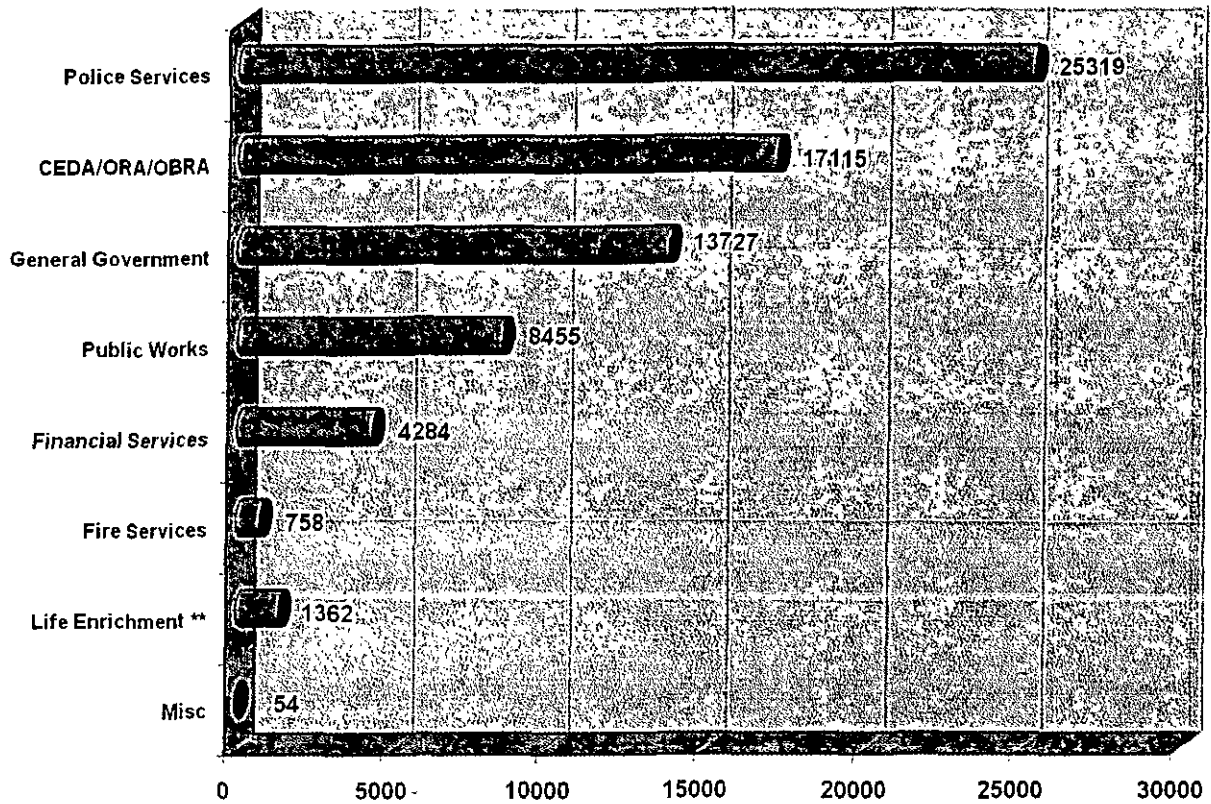


Figure 5: Billable Hours By Department

** Life Enrichment includes Parks & Recreation, Library, Museum and Health & Human Services

Figure 5 is a breakdown of billable hours by department. This does not include the City Attorney and the two Assistant City Attorneys. Although the City Attorney's Office does not bill time directly to departments, we closely track billable hours internally to manage resources and contain legal costs.

Year in Review: Claims & Litigation

- Number of claims paid: **111** (last year: 162)
 - Total payouts for claims: **\$427,138** (down from \$679,744 last year)
 - Percent claims resolved with no payment of money: **84%** (up from 71% last year)
 - Percent claims that never evolve into lawsuits: **91%**
 - Number of payouts for lawsuits: **49** (last year: 44)
 - Total payouts for lawsuits: **\$7,940,705** (up from \$4,713,479 last year)
 - Percent lawsuits resolved with no payment of money: **72%** (up from 68% last year)
 - Total payouts for claims & lawsuits: **\$8.3 million** (up from \$5.4 million last year)
 - Claims received: **623** (last year: 660)
 - Lawsuits received: **191** (last year: 153)
-

3.0 Management of Claims & Litigation

The Oakland City Attorney's Office uses strategic litigation techniques to protect taxpayer dollars.

Claims fall into three categories: municipal infrastructure (streets, sewers and sidewalks), police matters (conduct, towing, jail and property damage) and city vehicle accidents. Lawsuits primarily arise in the same three categories, with the addition of personnel/labor.

This year, the number of claims filed against the City dropped noticeably – from 660 to 623. However, the number of lawsuits filed against the City was significantly higher than in the previous fiscal year (**Tables 1 & 2** on the next page). The number of claims and lawsuits involving police matters dropped for the third year in a row.

We aggressively manage liability at the claims stage to reduce the number of claims that evolve into lawsuits. When there is clear liability, we seek to settle claims early to avoid the higher costs of defense and to discourage plaintiffs' attorneys from increasing fees through needless litigation.

The large majority of denied claims – more than 90 percent – never become lawsuits, underscoring the effectiveness of this strategy.

This year, more than four out of five claims (84 percent) were resolved with no payment of money, up from 71 percent the previous year.

When lawsuits are filed, we seek to reduce litigation costs and limit potential exposure by filing motions to dismiss defendants and causes of action, thereby narrowing the scope of defense.

In FY09/10, almost three out of four lawsuits (72 percent) were resolved with no payment of money, up from 68 percent the previous year.

While more claims and lawsuits were resolved with no payment of money this year, and while the total payout amount for claims dropped significantly (by 37 percent), payouts for lawsuits went up because of a handful of high-liability cases involving dangerous infrastructure conditions and police Use of Force and Wrongful Death complaints.

The City Attorney's Office also initiates legal action on behalf of the municipal corporation when the community's quality of life or economic interests are jeopardized.

3.1 Claims and Lawsuits Received

Table 1: Types of Claims Received

Category	2005-06	2006-07	2007-08	2008-09	2009-10	5-year average
Municipal Infrastructure	295	284	329	325	367	320
Police Matters	127	125	164	150	110	135
City Vehicle Accidents	69	83	91	109	79	86
Other	61	68	84	76	67	71
Total Claims/Year	552	560	668	660	623	613

Table 2: Types of Lawsuits Received

Category	2005-06	2006-07	2007-08	2008-09	2009-10	5-year average
Municipal Infrastructure	46	48	44	33	34	41
Police Matters	35	30	40	34	31	34

Personnel/Labor (non-lawsuits and lawsuits)	22	39	35	32	43	34
City Vehicle Accidents	11	8	11	8	9	9
Other	48	40	40	46	74	50
Total Lawsuits/Year	162	165	170	153	191	168

Although fewer claims were filed against the City of Oakland in FY09/10, lawsuits rose, especially in the "other" category. The 74 lawsuits in that category break down as follows:

- 25 City Government-Related (challenges to an ordinance, public records, administrative hearings)
- 25 Code Enforcement
- 8 Liens/Citations
- 7 Breach of Contract
- 4 Evictions/Rent
- 4 Miscellaneous
- 1 City-Hired Contractor

3.2 Police Claims & Lawsuits

There was a major decrease in the number of claims and lawsuits brought against the Oakland Police Department in FY09/10.

The number of claims and lawsuits against the Oakland Police Department has been on a downward trend in recent years. That number has declined by almost half (48 percent) since FY2002/03, when improved training, new oversight protocols and accountability reforms were implemented as a result of the lawsuit *Delphine Allen v. City of Oakland*, otherwise known as the "Riders" case.

The City entered into a Negotiated Settlement Agreement (NSA) on January 22, 2003 in response to allegations of police misconduct raised by plaintiffs in that lawsuit. The settlement was designed to bring a higher level of accountability and oversight to the police department. It included the appointment of an Independent Monitoring Team, which reviews police department operations and reports on the status of the department's compliance with the NSA.

Reports for FY09/10 can be found on the Oakland Police Department's Web site.

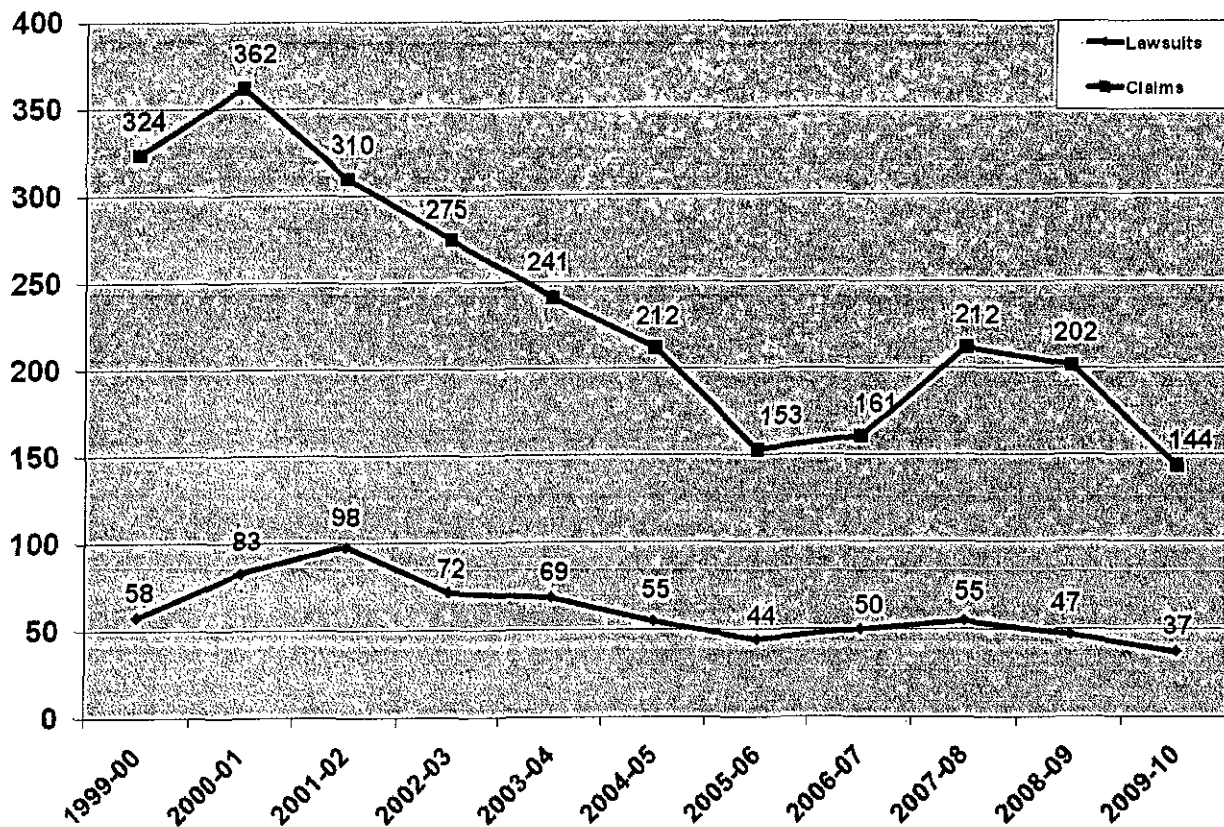


Figure 6: Trend of Police Claims and Lawsuits Filed

Note: this chart includes claims and lawsuits for police-related vehicle accidents and personnel/labor matters.

3.3 Claims and Lawsuits Results

This year, 84 percent of claims and 72 percent of lawsuits were resolved with no payment of money. This represents a substantial increase in the number of claims and lawsuits resolved with no payment.

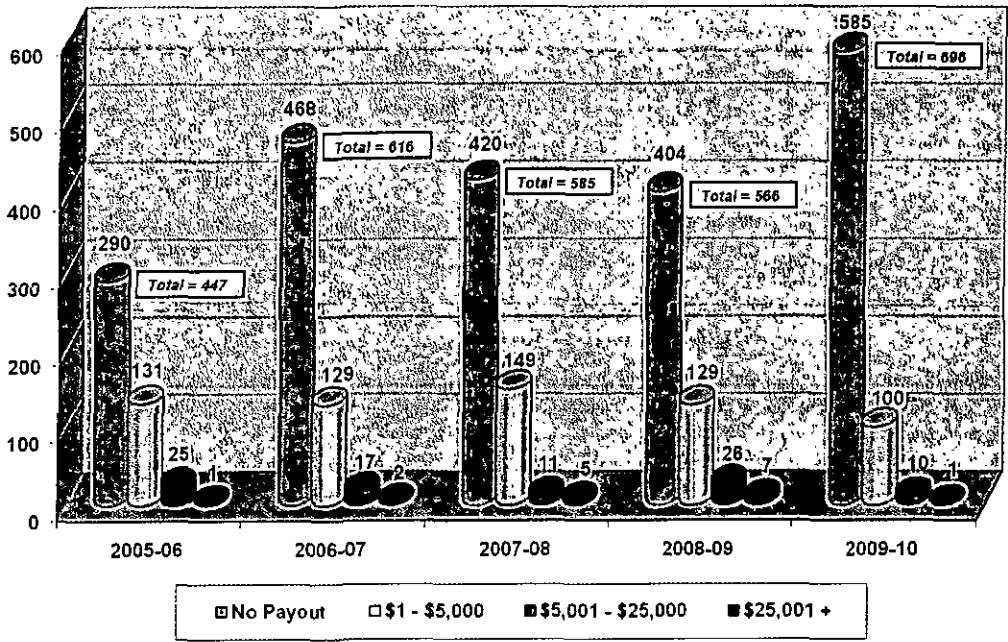


Figure 7: Claims Resolved Over 5 Years

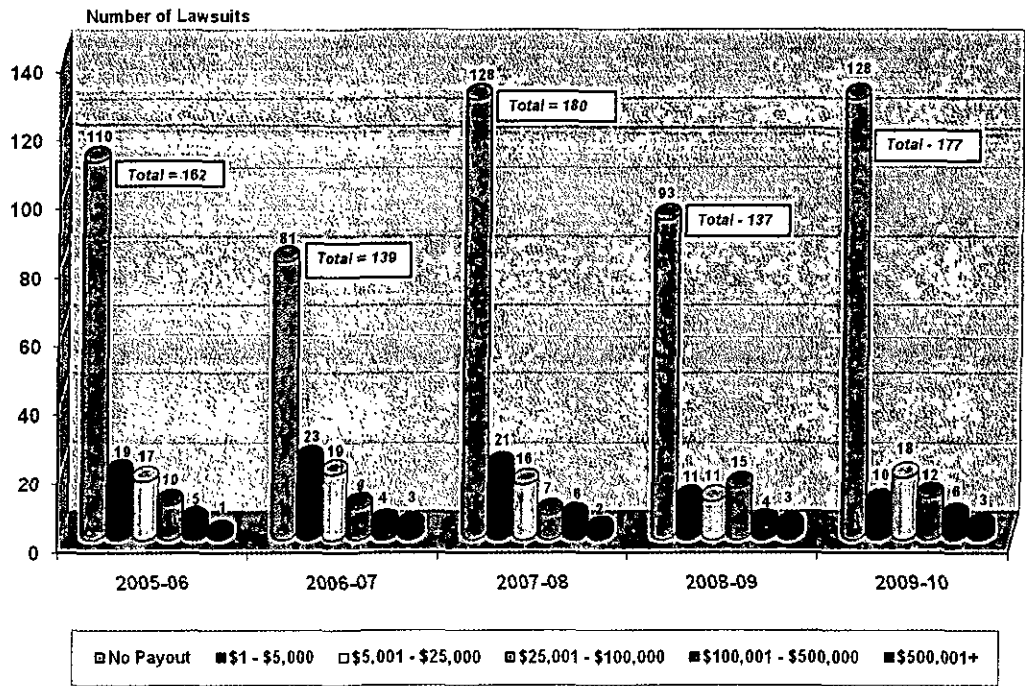
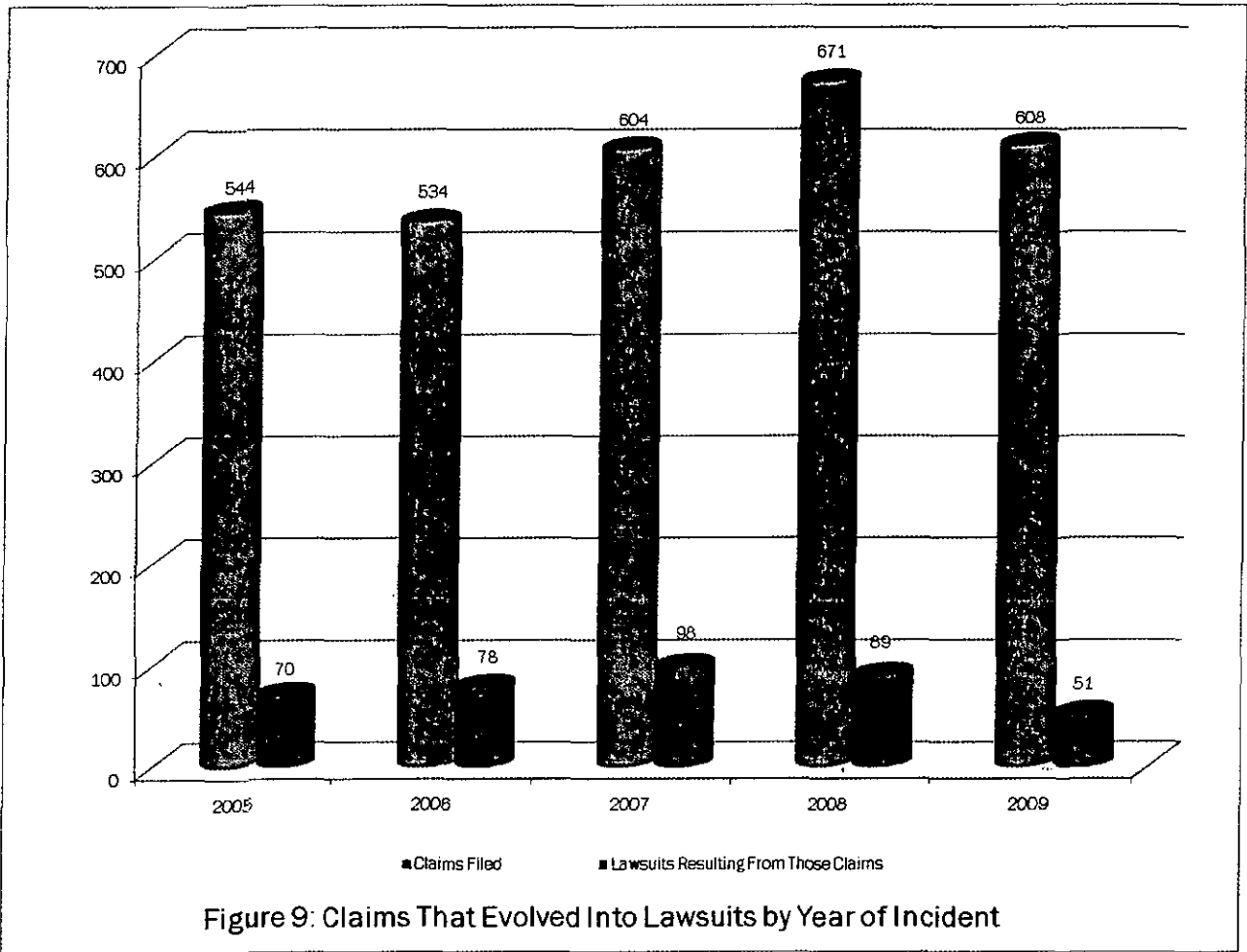


Figure 8: Lawsuits Resolved Over 5 Years

3.4 Claims that Evolve into Lawsuits



We aggressively manage liability at the claims stage to reduce the number of claims that evolve into lawsuits. When there is clear liability, we seek to settle claims early to avoid the higher costs of defense and to discourage plaintiffs' attorneys from increasing fees through needless litigation.

The large majority of denied claims – more than 90 percent – never become lawsuits, underscoring the effectiveness of this strategy.

3.5 Payouts of Claims and Lawsuits

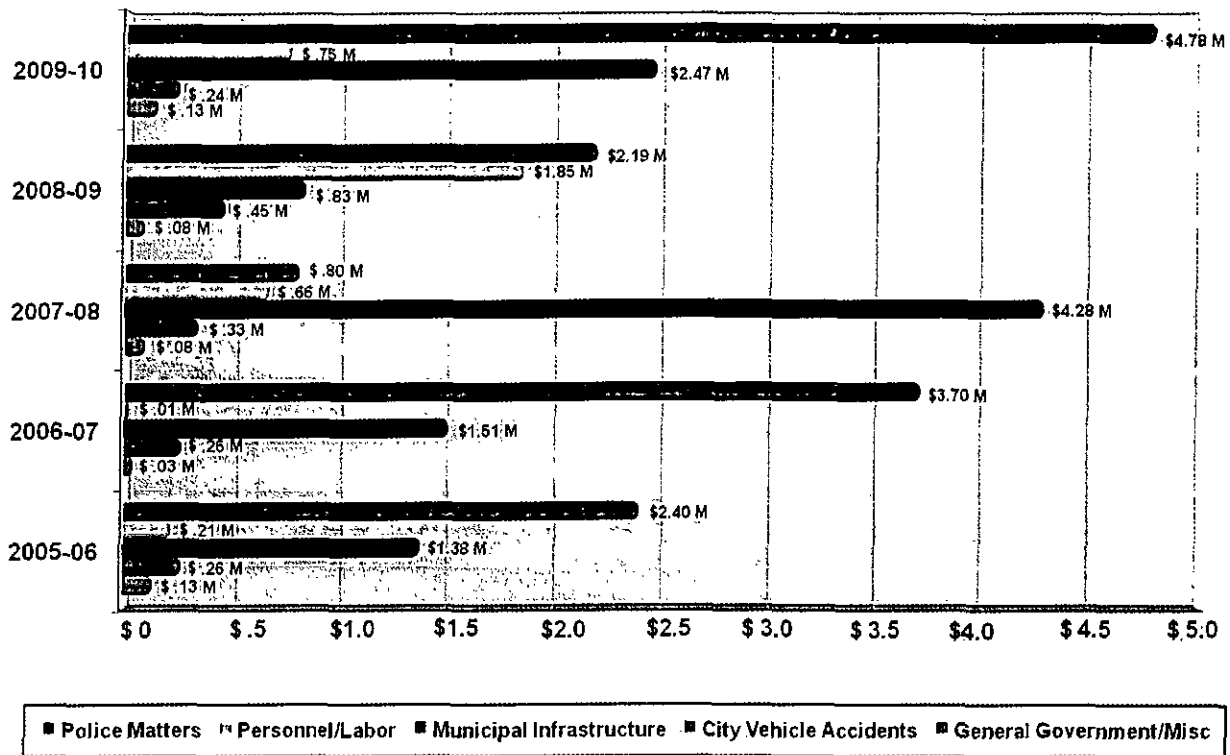


Figure 10: Total Payouts of Claims and Lawsuits by Category

Figure 10 and Figure 11 show payouts by City department and category. Last year, the category with the highest amount of payouts was Municipal Infrastructure. This year payouts were highest in the Police Matters category.

While the City has received fewer claims and lawsuits against the police department in recent years, payouts for lawsuits involving police matters more than doubled in FY09/10 mainly due to four catastrophic cases involving police Use of Force and Wrongful Death complaints (Table 7).

At the same time, the total amount of payouts in the category of Municipal Infrastructure tripled – from \$829,117 last year to \$2.46 million this year – mainly because of payouts in six high-liability cases involving dangerous road, sidewalk and sewer conditions (Table 4).

However, payouts in the categories of City Vehicle Accidents and Personnel/Labor were dramatically lower this year (Tables 5 & 6).

Payouts for claims and lawsuits vary year to year (Figure 12) depending on many factors, including the types of complaints brought against the City. The City Attorney’s Office closely monitors payouts to determine whether increases represent a statistical trend or a one-year spike. A continued increase in high-liability cases involving dangerous conditions and police Use of Force complaints would warrant a serious review of protocols and operations in those departments.

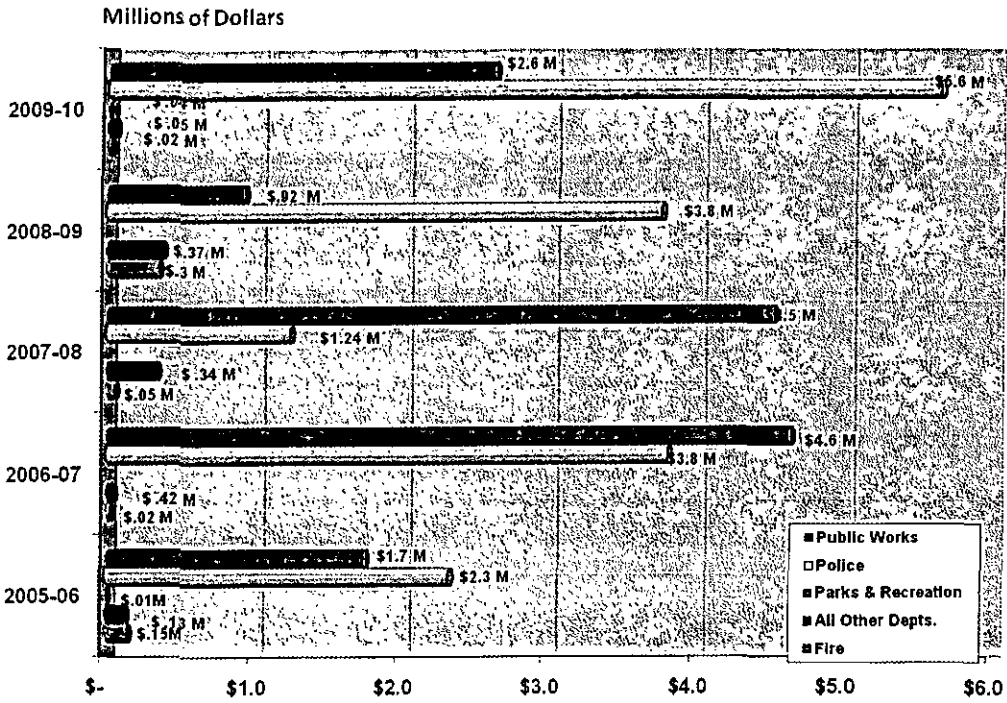


Figure 11: Payouts of Claims and Lawsuits by Department

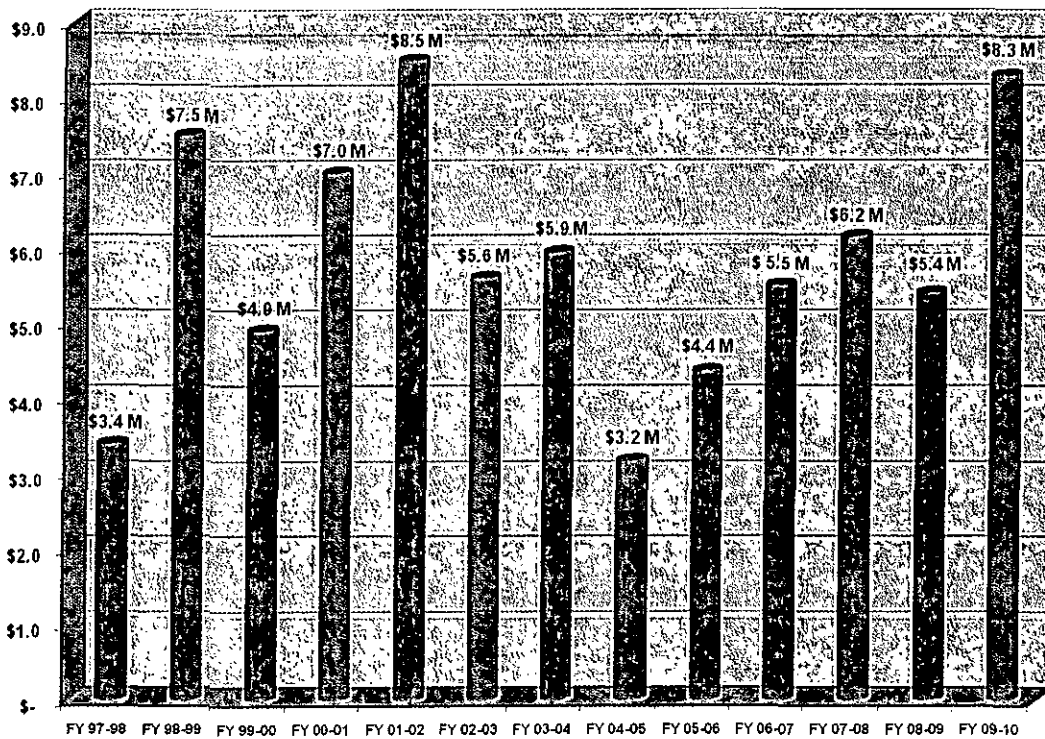


Figure 12: Total Payouts Over the Last 13 Years

Table 3: Payouts of Claims & Lawsuits - Police Matters

Category	2005-06	2006-07	2007-08	2008-09	2009-10	5-year average
Conduct: Suspect Chase	\$0	\$0	\$0	\$975,926	\$1,200,000	\$435,185
Alleged Use of Force	\$1,853,000	\$2,673,962	\$364,800	\$1,211,000	\$1,354,035	\$1,491,359
Conduct - Non-force	\$502,832	\$694,766	\$350,000	\$0	\$35,850	\$316,690
Alleged Wrongful Death	\$0	\$306,850	\$0	\$0	\$2,150,000	\$491,370
Vehicle Accidents	\$117,074	\$99,670	\$208,600	\$276,432	\$181,422	\$176,640
Property Loss/Miscellaneous	\$39,820	\$22,942	\$10,027	\$250	\$5,173	\$15,642
Towing	\$378	\$3,213	\$73,960	\$1,262	\$37,080	\$23,179
Personnel/Labor	\$85,000	\$0	\$232,875	\$1,290,828	\$673,333	\$456,407
Total Paid/Year	\$2,598,104	\$3,801,403	\$1,240,262	\$3,755,698	\$5,636,893	\$3,406,472

Table 4: Payouts of Claims & Lawsuits - Infrastructure

Category	2005-06	2006-07	2007-08	2008-09	2009-10	5-year average
Building & Park Maintenance	\$19,766	\$19,332	\$25,058	\$16,087	\$8,886	\$17,826
Sewers/Storm Drains	\$357,197	\$248,497	\$922,593	\$383,994	\$250,504	\$432,557
Sidewalks	\$145,303	\$300,492	\$167,646	\$209,522	\$432,005	\$250,994
Streets	\$761,039	\$123,063	\$1,858,295	\$188,433	\$1,745,614	\$935,289
Landslides	\$25,975	\$800,000	\$1,224,402	\$0	\$0	\$410,075
Trees	\$73,822	\$19,666	\$81,822	\$31,081	\$25,897	\$46,458
Total Paid/Year	\$1,383,102	\$1,511,050	\$4,279,816	\$829,117	\$2,462,906	\$2,093,198

Table 5: Payouts of Claims & Lawsuits - City Vehicle Accidents

Category	2005-06	2006-07	2007-08	2008-09	2009-10	5-year average
Police	\$117,074	\$103,465	\$208,600	\$276,432	\$181,422	\$177,399
Public Works	\$91,572	\$124,038	\$70,216	\$87,197	\$21,232	\$78,851
Parks & Recreation	\$6,864	\$0	\$0	\$0	\$0	\$1,373
Fire	\$25,439	\$22,654	\$48,261	\$17,312	\$15,486	\$25,830
Other Departments	\$18,243	\$5,600	\$2,018	\$69,091	\$17,574	\$22,505
Total Paid/Year	\$259,192	\$255,757	\$329,095	\$450,032	\$235,714	\$305,958

Table 6: Payouts of Claims & Lawsuits - Personnel/Labor

Category	2005-06	2006-07	2007-08	2008-09	2009-10	5-year average
Police	\$85,000	\$0	\$232,875	\$1,290,828	\$673,333	\$456,407
Parks & Recreation	\$0	\$0	\$0	\$0	\$40,000	\$8,000
General Government/Other	\$0	\$5,000	\$250,000	\$228,000	\$0	\$96,600
Public Works	\$0	\$1,750	\$175,000	\$4,500	\$41,000	\$44,450
Fire Services	\$120,000	\$0	\$0	\$325,000	\$0	\$89,000
Total Paid/Year	\$205,000	\$6,750	\$657,875	\$1,848,328	\$754,333	\$694,457

3.6 Major Payouts

Table 7: Payouts of Claims, Lawsuits & Arbitrations of more than \$100,000

Case	Type	Payout
<i>King, Gary</i>	Police Conduct – Wrongful Death	\$1.5 million
<i>Davis, Charles</i>	Police Conduct – Shooting Non-Fatal	\$1.2 million
<i>Smith, Jane</i>	Police Conduct – Force	\$1,000,000 (final payment)
<i>Woodfox Estate</i>	Police Conduct – Wrongful Death	\$650,000
<i>Valladon (Class Action)</i>	Fair Standards Labor Act – Donning & Doffing Uniforms Case	\$583,333
<i>Bushey, Douglas</i>	Dangerous Conditions – Uneven Road	\$500,000
<i>Serrano, Juan</i>	Dangerous Conditions – Street Grate	\$500,000
<i>Sopelario, Catalino</i>	Dangerous Conditions – Street Design	\$500,000
<i>Knapps, Uganda</i>	Police Conduct – Force/False Arrest	\$300,000
<i>Navarra, Carl</i>	Dangerous Conditions – Street Design	\$190,095 (final payment)
<i>Yetter, David</i>	Dangerous Conditions – Sewer	\$163,207
<i>Taylor, Monica</i>	Dangerous Conditions – Sidewalk Slip/Fall	\$150,000

NOTE: Does not include payments by insurance and department funds.

4.0 Special Programs

4.1 Neighborhood Law Corps

Oakland's Neighborhood Law Corps is a unit of newly licensed lawyers in the City Attorney's Office working to improve the quality of life in Oakland neighborhoods. The program, often described as "Legal Aid meets the Peace Corps," has been recognized with awards including the Gold Medal for Municipal Excellence from the National League of Cities.

This year the Neighborhood Law Corps also received the Making Democracy Work award from the League of Women Voters Oakland. The League of Women Voters Oakland gives the award every year to one organization that, in League tradition, has "helped to make Oakland strong, vibrant and fair."

The Neighborhood Law Corps hires highly qualified attorneys who could be making significantly more money in the private sector, but choose to dedicate two years to public service in Oakland at a salary commensurate to that of a first year teacher.

One Neighborhood Law Corps attorney is assigned to each of the three police Area Commands (North/West Oakland, Central Oakland and East Oakland). Working closely with the community, police and other agencies, the unit focuses on protecting Oakland consumers, abating public nuisances and removing sources of crime in Oakland neighborhoods.

Since its inception in 2002, the Neighborhood Law Corps has worked to improve or shut down dozens of nuisance liquor outlets contributing to blight, crime and other serious problems. Neighborhood Law Corps attorneys also work with police and neighbors to close drug houses, force slumlords to clean up substandard properties and prosecute businesses that act as havens for prostitution, including child prostitution.

Neighborhood Law Corps attorneys also focus on protecting the rights of Oakland renters. In numerous cases, the unit has forced landlords to clean up slum properties, stop unlawful eviction of vulnerable tenants, deal with crime and nuisance problems and comply with local and state laws. The Neighborhood Law Corps intervened in individual cases and prevented at least **100 illegal evictions** in FY09/10.

This year, the Neighborhood Law Corps added another target to its list: phony "consultants" who prey on Oakland families seeking legal residency in the U.S.

In January 2010, the Neighborhood Law Corps filed a lawsuit against American Legal Services, an Oakland company accused of defrauding immigrant families seeking legal advice. Evidence in the lawsuit shows that the company made a practice of scamming families by making false promises of citizenship, charging exorbitant fees up front and then routinely botching immigration applications – in some cases resulting in deportation proceedings. The ongoing lawsuit seeks restitution and damages for more than a dozen victims and civil penalties of at least \$8.2 million for unlawful practice of law and violations of the state Immigration and Consultants Act and California Penal Code.

The Neighborhood Law Corps also organized a successful Immigration Workshop at City Hall in February 2010. The unit arranged for dozens of volunteer immigration attorneys and translators to provide pro-bono legal consultations and anti-fraud training to about 100 Oakland residents speaking multiple languages.

The Neighborhood Law Corps also continued to prosecute civil cases against major banks, subsidiary companies and their agents for illegally evicting tenants from foreclosed properties in Oakland. The Neighborhood Law Corps filed five lawsuits in February and March 2009 after the banks and their agents

ignored repeated warnings about illegal eviction notices going to good tenants in foreclosed homes. Many of the defendants, including JPMorgan Chase, have agreed to settlements that include fines and an agreement to cease illegal evictions in Oakland.

Table 8: Neighborhood Law Corps Case Highlights

Case	Date	Summary
American Legal Services	Filed January 28, 2010	Lawsuit filed by the NLC accuses American Legal Services of swindling Oakland families seeking legal status in the United States. Evidence shows that the company made a practice of defrauding families by making false promises of citizenship, charging exorbitant fees up front and then routinely giving bad legal advice and botching immigration applications – in some cases resulting in deportation proceedings. The lawsuit is ongoing.
Lawsuits to Stop Illegal Evictions from Foreclosed Homes	Filed five lawsuits February & March 2009 – Four have settled	Cases settled & payments to City: JPMorgan Chase: \$38,000 Fidelity National Financial: \$21,000 Matthew Murphy/Keller Williams Realty: \$5,800 Percy Cheung/Smart Choice Realty: \$2,500 Ongoing: Lawsuit v. Kenneth Session/Session Real Estate.
8603 & 8701 Hillside Street	Settlement August 27, 2010	East Oakland apartment buildings (about 100 rental units) with a history of serious slum conditions and crime problems. Owners signed settlement agreement, hired security and fixed some substandard housing problems.
1725 & 1729 Seminary Avenue	Settlement October 22, 2010	Owner signed settlement agreement to clean up substandard housing conditions at East Oakland apartment buildings and rescind illegal evictions. Owners have made significant progress to rehab properties.
Park Village Apartments	Amended complaint filed November 13, 2010	Lawsuit first filed August 29, 2006 to preserve homes for dozens of senior citizens threatened with illegal eviction from the Park Village Apartments at 3761 Park Boulevard Way. NLC filed amended complaint in November 2009 and filed a summary adjudication motion to resolve many of the causes of action.
Avalon Properties	Judgment May 25, 2010	NLC first filed lawsuit June 4, 2009 against notorious landlord Hong Gardner for substandard housing conditions and serious code violations at multiple rental properties in Central and East Oakland. In May 2010, amended to include two additional properties and add a cause of action for unfair business practices with Alameda County District Attorney as co-plaintiff. Complaint includes total of four properties with more than 50 rental units. Stipulated judgment requires Gardner to hire property managers, fix all major substandard conditions, stop illegal threat of evictions against tenants, reimburse the City \$10,000 for tenant relocation costs and pay another \$10,000 to the City

		in penalties.
Safety-Kleen	Settlement June 30, 2010	The City accused Safety-Kleen of improperly closing its hazardous waste/materials facility located at 400 Market Street. The Oakland Fire Department issued an Administrative Enforcement Order and alleged that Safety-Kleen closed its facility without following Oakland Municipal Code requirements, failed to pay permit fees for several years and did not submit an updated business plan as required by state law. NLC negotiated a settlement – Safety-Kleen paid \$13,332.50 for past due fees and penalties.

4.2 Special Prosecution Team

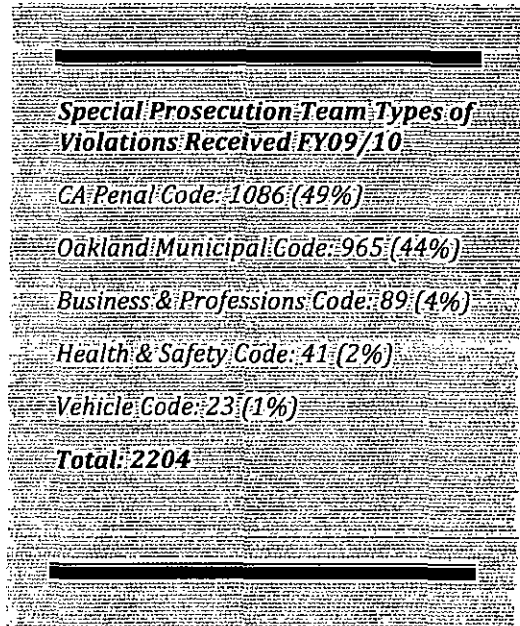
The Special Prosecution Team, a unit of criminal prosecutors in the City Attorney's Office, targets chronic misdemeanor crimes that degrade the social and economic life of our neighborhoods and invariably contribute to more serious crime and violence in Oakland. Working closely with the community, the unit focuses on prosecuting crimes such as prostitution, disturbing the peace, vandalism, cruelty to animals, illegal dumping, disorderly conduct and drug-related offenses.

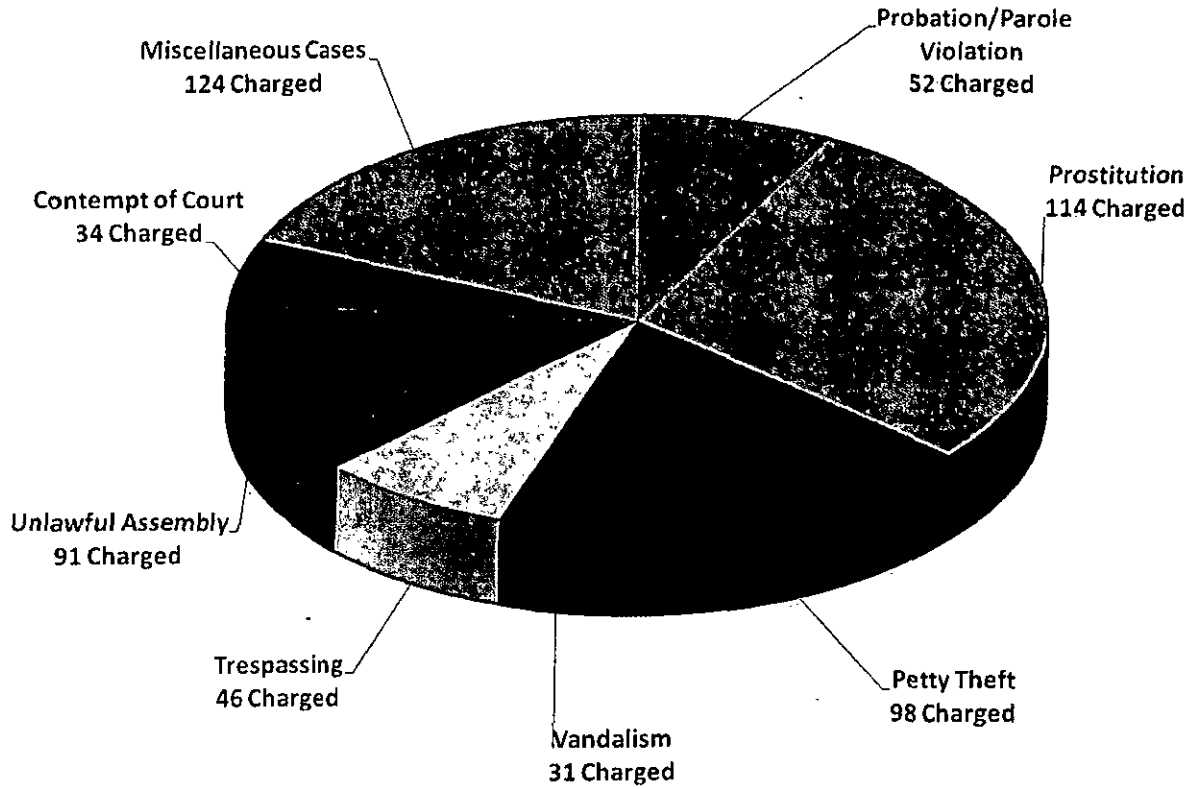
One prosecutor is assigned to each of the Oakland Police Department's three command areas. In addition to three criminal prosecutors, the team includes one civil attorney assigned to clean up or shut down nuisance liquor outlets.

In addition to reviewing, overseeing and prosecuting appropriate cases, the Special Prosecution Team responds to community inquiries, attends Neighborhood Crime Prevention Council and other community meetings, studies and analyzes hot spots and crime trends in Oakland and trains police officers on methodologies to improve investigations and documentation of evidence.

The unit works closely with the District Attorney's Office to charge and prosecute cases. City prosecutors presented several hundred criminal cases for charging in FY09/10 (**Sidebar**). Many of the defendants in those cases agreed to settlements or other resolutions, thereby avoiding a trial. City prosecutors employ intervention services and restorative justice programs in appropriate circumstances.

The Special Prosecution Team charged 590 CA Penal Code cases in FY09/10 (**Figure 13**).





**Figure 13: Special Prosecution Team
Penal Code Cases Charged FY 09/10**

4.3 Open Government Program

The City Attorney's Office created the Open Government Program to ensure transparency and accountability in city government. The program conducts ongoing training and monitoring of city boards and commissions to ensure that meeting agendas are properly noticed. The program also provides technical and legal assistance to city departments. In FY09/10, the City Attorney's Open Government Coordinator handled 256 public records requests.

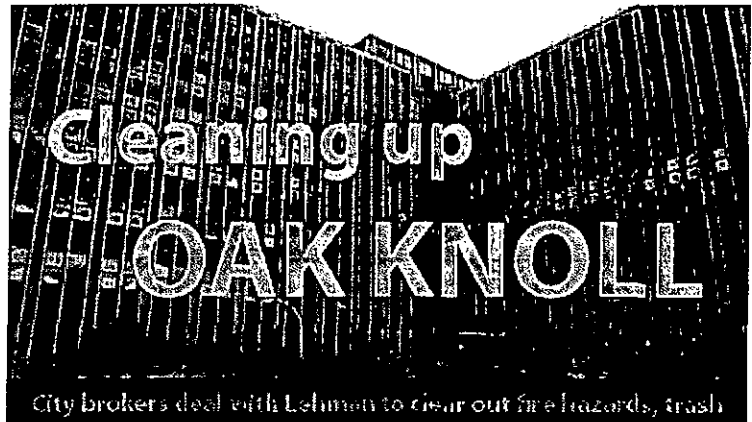
5.0 Initiatives

5.1 Oak Knoll

In January 2010, Oakland became the first municipal government in California – and probably in the entire nation – to secure money from failed Wall Street giant Lehman Bros. in bankruptcy proceedings.

Thousands of creditors are lined up to get cash from Lehman as it undergoes restructuring in the biggest bankruptcy case in U.S. history. Given the enormous number of claims, it is extraordinary that Oakland was able to secure a significant amount of funding.

After months of legal wrangling by the City Attorney's Office and organized effort by the community, Lehman agreed to release \$3.7 million to abate health and safety hazards at the former Oak Knoll Naval base. A U.S. Bankruptcy Court judge in Santa Ana, CA approved the deal on January 5, 2010.



The long-neglected base, a 167-acre property in the East Oakland hills that was formerly home to a U.S. Navy hospital, was set to be developed by SunCal Oak Knoll LLC with financial backing from Lehman. But after the collapse of Lehman and the subsequent bankruptcy of the SunCal Oak Knoll partnership, contractors walked away from the property leaving more than 90 half-demolished buildings, piles of asbestos, overgrown vegetation and other problems. The Oakland Fire Chief declared the property a major fire hazard in a city that, two decades ago, experienced one of the worst fire disasters in modern U.S. history.

After work on the development stalled, the City ordered the abatement of the nuisances on the property in June 2009. In late 2009, the City brought representatives from Lehman and SunCal Oak Knoll to the table and brokered the agreement ultimately approved by the judge.

By all accounts, Oakland was the first local government to secure this level of funding from the Lehman bankruptcy estate.

Lehman agreed to fund \$3.7 million to demolish ramshackle, World War II-era buildings, remove asbestos, clean up debris and secure the vacant Oak Knoll hospital. SunCal Companies is responsible for managing and directing the clean-up of the property.

5.2 Gang Injunctions

This year the City of Oakland introduced a new tool in the fight against gang violence and crime.

In February 2010, Police Chief Anthony Batts and City Attorney John Russo announced a lawsuit seeking the City's first gang injunction. Gang injunctions, already in use in many California cities, are civil court orders similar to restraining orders. They are designed to break up gang activity by imposing restrictions on gang members within a specific area called a "Safety Zone."

Oakland's first injunction, granted by Superior Court Judge Robert Freedman on June 2, 2010, sharply focuses on curbing violence and crime in the community while giving those responsible a day in court and an incentive to leave the criminal life. Within a 100 block area, it restricts a small group of adults who are deeply involved in dangerous activity. In no way does it endanger the civil liberties of anyone in the community. To the contrary, it protects residents from intimidation and violence.

Background:

In response to demands of residents and merchants in the area, the City Attorney's Office asked the court for an injunction against the North Side Oakland gang, an organization that had been involved with severe and escalating violence in the North Oakland area.

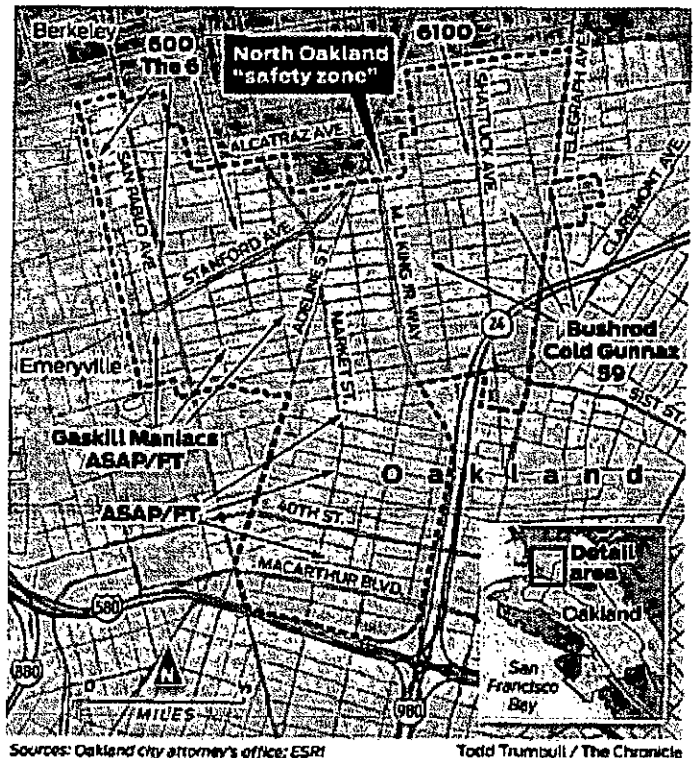
In 2007, there were three North Side Oakland-related incidents involving murder, shooting or gun possession. In 2008, that number rose to seven incidents. In 2009, that escalated to 18 incidents, including seven murders.

North Side Oakland gained widespread notoriety in May 2009 when four of its members allegedly murdered a man on the street in Berkeley – firing at least 17 rounds from high-powered assault weapons into a residential neighborhood – and then killed two more people when they sped through a stop sign in Oakland and crashed into another car. Those four members are in prison facing murder charges.

Many North Side Oakland members are also known as "bullet magnets" for their propensity to attract violence to the community. A number of members have themselves been targets of shootings. In one tragic incident, a 17-year-old student at Oakland Technical High School named Desiree Davis was killed by a stray bullet aimed at a North Side Oakland member.

As ordered by Judge Freedman, the injunction initially applies to 15 North Side Oakland members, who were included based entirely on their extensive records of criminal and nuisance behavior in the neighborhood. Among them they have convictions for armed robbery, felony drunk driving, drug sales, gun crimes, carjacking, grand theft, domestic battery, possession of an assault weapon and other major crimes, all committed within the Safety Zone. All evidence and court documents are posted on the City Attorney's Web site: www.oaklandcityattorney.org.

Only one of the 15 – Yancie Young – opposed the injunction in court and denied that he was involved in criminal activity. In September 2010, three months after the court ordered the injunction, Young was arrested after leading police on a high speed chase through North Oakland. When officers attempted to stop Young's car for speeding on San Pablo Avenue, he fled and eventually crashed into a median. Young then ran away from officers. He was caught after a short chase, and police recovered a stolen handgun and



ammunition. On the date of this report he faces a total of 15 felony charges from several prior incidents, including drug and gun crimes, domestic violence, possession of a silencer and resisting arrest. Young's attorney told ABC7 that her client has a "constitutional right" to be in a gang and "support gang activity."

Facts:

The injunction restricts 15 individuals within an area bordered by the 580 freeway, Telegraph Avenue and the Emeryville and Berkeley borders.

With exceptions for things like work, school and emergencies, it prevents them from hanging out together in public and being on the street between 10 p.m. and 5 a.m. Other restrictions include: stay away from drugs and firearms, do not assault or intimidate witnesses, no trespassing and no gang recruitment.

When members of the gang commit crimes, they are often together, and it is often during late night hours. The injunction is designed to break up the criminal organization by making it harder for them to plan and commit crimes and a group (or individually). It will not apply to anyone outside of this group, nor does it prevent anyone from working, attending school or going to religious activities within the Safety Zone.

Constitutional Protections:

The injunction goes well beyond what is required by the law to protect due process rights.

Unlike injunctions in many other cities, the injunction proposed by the Oakland City Attorney's Office requires any gang members added to the order to be named as individual defendants. This guarantees that any individual covered by the injunction will have the opportunity to argue his case in open court, and will be included only after approval from a judge based on

Op-Ed by Police Chief Anthony Batts & City Attorney John Russo - SF Chronicle May 26, 2010:

The proposed gang injunction in North Oakland is consistent with President Obama's call to get smart on crime, as opposed to just tough on crime.

The injunction is based on what many North Oakland residents have been demanding. It is a narrowly tailored tool to disrupt a criminal enterprise responsible for murders and dozens of robberies, shootings and other major crimes in the neighborhood in recent years.

Like a restraining order against an abusive stalker, the injunction is a civil court order. Within a 100-block area, it will restrain a small group of adults who are deeply involved in dangerous activity. In no way does it endanger the civil liberties of anyone else in our community. To the contrary, it protects community residents from intimidation and violence.

Opponents have been arguing against an injunction that doesn't exist - one that "criminalizes youth" and "profiles people of color." One vocal opposition leader - a Santa Rosa resident - told the Chronicle that the injunction would make North Oakland a "concentration camp." Not only is that offensive on many levels, it shows a serious disregard for facts.

Let's differentiate between the myth and reality of this injunction.

MYTH: *It's overly broad and will ensnare innocent people.*

REALITY: *The proposed order would initially apply to 15 adults (no minors will ever be included) based mainly on their convictions for armed robbery, carjacking, grand theft, drug sales and other felonies. With exceptions for things like work and emergencies, it would prevent them from hanging out together in public and from being on the street between 10 p.m. and 5 a.m.*

When members of this gang are caught committing crimes (or when they are victims of violence by other criminals) they are often together, and it is often during late night hours. The injunction is designed to break up the criminal organization by making it harder for them to plan and commit crimes as a gang. It will not apply to anyone outside this group.

MYTH: *It's unconstitutional.*

REALITY: *California's Supreme Court upheld injunctions as constitutional years ago. Constitutional safeguards - due process, court review, the right to appeal - are carefully protected. Importantly, anyone no longer associated with the gang can go through an "opt-out" process to be removed.*

MYTH: *Police can include anyone in the injunction for any reason.*

REALITY: *Any gang members added to the order will have the opportunity to argue their case in open court, and will be included only after approval from a judge based on extensive evidence of criminal/nuisance conduct. The burden of proof is always, as it should be, on the city. This conclusively precludes profiling.*

This injunction will empower residents, help take back our streets and reduce the number of bullets fired wildly in our neighborhoods. It defends the community's right to peace and safety, while safeguarding legal rights fundamental to our system of justice.

It is an opportunity to change a neighborhood and, perhaps, compel some gang members to change - and save - their own lives as well.

extensive evidence of criminal/nuisance conduct and gang membership. The burden of proof is always, as it should be, on the city.

Any enjoined gang member who has left the criminal life and is no longer associated with the gang can go through an administrative "opt-out" process to be removed from the injunction.

This is a civil law enforcement measure, as opposed to criminal. However, traditional safeguards against abuse – due process, court review and the right to appeal to a judge – are carefully safeguarded.

Next steps:

The City Attorney's Office will report to Judge Freedman on the status of the injunction, and intends to file more injunctions against different gangs in other parts of Oakland in FY10/11.

6.0 Conclusion

We are proud to represent a progressive and innovative city where the law can be a powerful tool for community empowerment and improvement. We are dedicated to defending Oakland's policies in court and initiating legal action when the community's quality of life or economic interests are jeopardized. Our commitment to accountability, fiscal responsibility and access to city government continues to be the cornerstone of our work.

A detailed summary of the work of the individual units of the City Attorney's Office during the 2009/10 fiscal year can be found in the attachments to this report. For more information, please visit <http://www.oaklandcityattorney.org/>.

Respectfully submitted,



John A. Russo
Oakland City Attorney

ATTACHMENT A**7.1 Land Use & Development**

- Advised on the preparation of master land use plans for three major planning areas of the City: Central Estuary, Broadway-Valdez and Lake Merritt BART Station.
- Advised on the environmental review and approval of Alta Bates Summit Medical Center Master Plan and Seismic Upgrade Project (new 309-bed hospital and related facilities).
- Advised on the environmental review and approval of the Unity Council's Fruitvale Transit Village project, including the Phase II approvals of 275 transit-oriented multi-family residential units adjacent to the Fruitvale BART station.
- Advised on the environmental review and approval of Bentley School (increase student enrollment to 360) and ongoing monitoring/enforcement.
- Advised on the environmental review and approval of federally-funded 100-unit affordable housing project located at 2100 Martin Luther King Jr. Way (Cathedral Gardens) and numerous other federally-funded projects requiring review under the National Environmental Policy Act and National Historic Preservation Act Section 106 review.
- Advised staff in the City's implementation of the Measure DD-funded public open space improvements.
- Advised on legal issues regarding potential new baseball stadium for Oakland A's.
- Advised staff, Planning Commission and City Council in numerous ongoing development project applications, including 325-7th Street (382 housing units); Kaiser Center Office (construction of 1.3 million square feet of new office space); Oakland Zoo expansion; St. Johns Sanctuary (construction of new church); various hillside residential subdivision projects (Pali Court and Skyline Ridge) and redevelopment of the Foothill Square Shopping Center and two Safeway locations in North Oakland.
- Advised staff in the preparation of the City's Draft Energy Climate Action Plan, compliance with state climate change legislation (including SB 375) and the Air District's new Air Quality regulations, including Greenhouse Gases.
- Assisted staff in preparation of various City protocols implementing the California Environmental Quality Act, including revised Thresholds of Significance and Standard Conditions of Approval.
- Advised staff, Planning Commission and City Council legal assistance for various activities at the former Oakland Army Base, including environmental review related to the Master Developer.
- Advised staff in updating and streamlining provisions of the Oakland Planning Code, including the adoption of new zoning regulations for Demolition Findings, and general plan mapping corrections.
- Advised staff in updating the City's Housing Element, including reviewing documents and related environmental review.
- Advised on potential legal action against the City of Alameda regarding Alameda Point Ballot Initiative and implications on Oakland/Alameda/Chinatown settlement agreement.

- Advised on draft regulations regarding Laundromats.
- Advised on draft temporary conditional use permit regulations.
- Staff all City Planning Commission meetings and provide ongoing legal advice to Commissioners, and planning staff.
- Advised in preparation of the extension and expansion of the Mills Act Program, which provides historic preservation tax incentives.
- Advised the Landmarks Preservation Advisory Board and attended Board meetings.
- Advised on various activities related to the MacArthur BART Transit Village, including the Phase 1 Final Development Plan.
- Reviewed documents and provided legal assistance regarding the Department of Toxic Substances Control's approval of clean up plans for the Oak to Ninth Project.
- Assisted in developing and preparing final Green Building Ordinance for Oakland including findings for California Building Standards Commission and California Energy Commission.
- Assisted in preparing final seismic soft story screening ordinance to help protect Oakland residents living in multi-family soft-story housing.
- Assisted in preparing final sewage overflow ordinance to protect Oakland residents from sewer surges related to antiquated systems.
- Assisted in reviewing final vacant properties registration ordinance to monitor vacant, foreclosed properties.
- Assisted in reviewing large-scale medical cannabis cultivation ordinance.
- Advised on federal, state and local telecommunications law, particularly with respect to distributed antenna system providers, such as NextG.
- Commented on City of Piedmont's Moraga Canyon Sports EIR and environmental impacts on City of Oakland.
- Advised on condominium conversion issues.
- Assisted in drafting amendments to Oakland's condominium conversion ordinance.
- Prepared final comment letters on California Department of Food & Agriculture's Light Brown Apple Moth Spraying Programmatic EIR, which resulted in state agreeing to forego aerial spraying in Oakland.
- Advised on proposed municipal ID program.
- Advised on a variety of Subdivision Map Act issues relating to stalled developments.
- Advised on a variety of Building Services matters, including code violations, abatements and liens on foreclosed properties.

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ATTACHMENT B

7.2 General Government & Finance Group

- Negotiated agreements with Alameda County, City of Berkeley, and City of San Leandro for historic implementation of Ranked Choice Voting.
- Wrote legislative amendments for historic implementation of Ranked Choice Voting.
- Negotiated \$4.3 million dollars from the bankruptcy estate of Lehman Brothers for the clean up at Oak Knoll.
- Brought litigation against online retailers of hotel rooms based on their underpayment of the City's Transient Occupancy Tax.
- Supervised City's litigation against municipal bond guaranteed investment contract brokers and issuers for bid-rigging.
- Supervised City's litigation against municipal bond insurers.
- Defended City against pro-gun organization's attempt to obtain information, which disclosure would have endangered the investigation of the purveyors of guns to the killer of four police officers.
- Issued Public Legal Opinions on Minimum Budget Requirements for City Auditor's Office Under the Oakland City Charter; Adoption of City of Oakland Fiscal 2010-11 Budget Based on Passage of a Future Tax Increase; Analysis of Change to Contribution Limit for Candidates Who Agree to Voluntary Expenditure Limit, and; Advisory on Case on Ballot Measure Campaigning.
- Drafted Measure W, the telephone access line tax.
- Drafted Measure X, the public safety and violence prevention tax.
- Drafted Measure BB, amending the Violence Prevention and Public Safety Act of 2004.
- Drafted other tax measures that the City Council subsequently decided not to use.
- Represented City in the issuance of the City's 2010-2011 \$100,000,000 Tax and Revenue Anticipation Notes.
- Represented the City in the issuance of the City's 2009 \$64,545,000 Measure DD General Obligation Bonds.
- Represented the City in the issuance the City's Piedmont Pines Utility Underground Assessment District \$3,148,482 Limited Obligation Improvement Bonds.
- Negotiated new contract with San Jose Arena Management (Sharks) for the operation and management of the Oakland Ice Center.
- Negotiated contract with for the first installment of the monument by Mario Chiodo.
- Drafted a \$1.5 million dollar Agreement with CAL TRANS, the City, the Museum and the Museum Foundation for a first ever major exhibit regarding the Bay Bridge and surrounding environment.

- Negotiated a new parking citation administration system contract and a new parking boot enforcement contract.
- Drafted two ordinances for sale and taxation of medical marijuana.
- Negotiated settlement with City and Zoo and neighborhood associations regarding trees that were improperly cut down by the Zoo.
- Reviewed hundreds of contracts, grant agreements, staff reports, ordinances and resolutions. This includes 98 contracts for grants for cultural arts funding, approximately 35 large professional service agreements for public art installation, contracts for the Art and Soul Festival, 143 Kids First grant agreements, and over 40 services contracts and grant agreements for programs for children & families, youths and adults & seniors.
- Provided regular verbal and written advice to over 30 departments, commissions, divisions and agencies.

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ATTACHMENT C

7.3 Public Safety, Risk Management, Contracts & Purchasing

- Advised and coordinated City's response litigation by the U.S. Environmental Protection Agency ("EPA")/ California State/Regional Water Board ("Water Board") and Environmental Groups' (Our Children's Earth, Bay Keeper) involving Oakland's aging sewer collection system.
- Advised and coordinated City's response to administrative actions by EPA and the State Water Board concerning condition of Oakland's sewer system, sewer discharge (NPDES) permit, Cease and Desist Order and City's appeal of permit conditions and response to Environmental Groups' opposition to Oakland's permit conditions.
- Advised and coordinated City's response in Water Board Civil Administrative Liability action for sewer collection system spills and City alleged deficient reporting to the State of these spills.
- Advised and reviewed new Oakland Sewer Service Fee ordinance, which will raise revenues needed for improvements to the City's sewer collection systems mandated by EPA and the State Water Board, including flow monitoring, increased cleaning of sewers, sewer pump upgrades and other sewer infrastructure capital improvements.
- Advised the City Administrator and Public Works Department on sewer lateral ordinance, which will help resolve infiltration and flow problems related to residential, commercial and industrial sewer pipes.
- Arranged and provided training and briefings to the City Council, City Administrator, Public Works Department, and City Attorney's Office on legal and technical issues related to the EPA sewer litigation and Water Board permit and other environmental regulatory matters.
- Advised and co-authored request for a Federal Communications Commission waiver that allows Oakland, San Francisco, San Jose and all the surrounding Bay Area counties to establish their own 700MHz Broadband network for public safety communications, which will greatly expand wireless broadband service to emergency responders and other public safety agencies during emergencies.

- Provided the Department of Information Technology and the Mayor's Office transaction and legal advice on federal stimulus grant applications to obtain funds for Broadband infrastructure projects that would greatly expand affordable wireless broadband services to the City, Oakland community anchor institutions such as libraries and schools, and residential and business end users.
- Advised the Office of Information Technology and the Office of Emergency Services on Urban Area Security Initiative Regional Board Project Plan Approval process for funding and to include City locations in Project Cornerstone and other regional projects.
- Counseled City staff with respect to Ice Center Solar Panel service issues involving the installation contractor.
- Advised the Department of Information Technology and the Oakland Police Department on numerous public safety computer software systems agreements including SAP (records management), Speedtrack (Police crime reporting/deployment software system) and Police Resource Optimization System ("PROS") (police deployment analysis software system) and Automatic Vehicle Location and Global Positioning (via satellite) System, or "AVL/GPS" and P25 Radio Upgrade Project contract, and Microwave Backbone System Project contract.
- Drafted new policy and solicitation provisions and reviewed new contract Schedule requiring potential contractors to advise the City and Oakland and Redevelopment Agency of all pending claims against these entities prior to entering into a new contract.
- Drafted solicitation and contract provisions and reviewed new contract Schedule for the City's Arizona-based business policy.
- *Advised the Fire Department and prepared ordinance to recover Fire Department emergency response costs from out-of-town drivers.*
- Advised and represented Contracting and Purchasing on Living Wage appeal involving application of living wage requirements to concessionaire.
- Prepared clarifying, draft amendments to the Living Wage Ordinance.
- Advised the Office of Finance, Parking Division on parking system bidding dispute, records request, etc.
- Advised the Office of the City Auditor on public records disclosure requirements of state law and the Sunshine Ordinance in connection with the audit of the parking system dispute.
- Prepared clarifying, draft amendments to the Sunshine Ordinance in connection with recommendations of the City Auditor.
- Advised the Office of the City Clerk, Council aides and the City Administrator on Municipal Identification request for proposals process.
- Advised staff on contractor bankruptcy and procedures to complete the 81st Street Library Project.
- Prepared specialized amendment to Children's Fairyland Operation and Management Agreement for the design and project management of improvements to be paid for with East Bay Regional Park District Measure WW funds.
- Prepared specialized amendment to the Scotlan Convention Center Operation and Management agreement for improvements on behalf of the Oakland Redevelopment Agency.

ATTACHMENT D

7.4 Labor & Employment Group

- *Advised City administration, agencies, departments and managers concerning City legal obligations and employee rights.*
- *Ensured that the City fully complied with its obligations in the area of disability access.*
- *Supervised the defense of all employment litigation and successfully resolved significant pending litigation.*
- *Advised City administration, agencies, departments and managers concerning compliance with the Equal Access Ordinance requiring that the City provide limited English speakers with equal access to City services.*
- *Supervised the implementation and defense of the City's "bubble ordinance," protecting patient access to reproductive health clinics.*
- *Provided legal advice in connection with negotiation of successor Memoranda of Understanding with City unions.*
- *Resolved individual disciplinary matters and contractual disputes.*
- *Provided legal training on personnel related issues, such as sexual harassment and the Firefighters' Bill of Rights.*
- *Provided assistance to the Police Department in complying with its obligations under the Negotiated Settlement Agreement.*
- *Provided legal advice to Council and City Administrator on legal issues arising out necessity for layoffs and other measures implemented to address City's financial crisis.*
- *Provided legal advice in connection with responding to Public Records Act requests.*
- *Provided legal advice to the Civil Service Board and other employment-related Boards.*

ATTACHMENT E

7.5 Redevelopment & Real Estate Unit

- *Advised Agency staff and reviewed contracts for services at the Army Base.*
- *Advised Redevelopment Agency staff on the management of the Army Base Leasing Program.*

- Negotiated and finalized an Exclusive Negotiating Agreement with the proposed Master Developer on the Redevelopment Agency's portion of the former Oakland Army Base.
- Continued negotiations with Oakland Maritime Support Services for a development site at the former Oakland Army Base.
- Continued to pursue additional phase of the tidelands trust exchange at the former Oakland Army Base, which will allow certain portions of the base to be developed free of trust restrictions.
- Staffed the City-Port Liaison Committee on behalf of the City Attorney's Office. Reviewed staff reports generated for the Committee.
- Provided legal counsel to the Oakland Rent Board.
- Drafted amendments to condominium conversion ordinance (not adopted by Council).
- Defended Rent Board regulation on illegal unit evictions (pending).
- Advised and negotiated contracts and loans for the Fox Theater.
- Handled litigation regarding the Fox Theater project.
- Handled administrative writs contesting Rent Board decisions.
- Monitored potential litigation brought by environmental group against an Agency tenant.
- Drafted development agreements for City Center T-12 development site.
- Defeated attorney's fees motion requesting nearly \$1 million in rent board dispute.
- Continued to negotiate with the Port of Oakland over former Oakland Army Base environmental remediation costs.
- Continued complex negotiations with the Army, Department of Toxic Substances Control and the Regional Water Quality Control Board over funding of environmental remediation oversight costs at the former Oakland Army Base.
- Negotiated with Port of Oakland over funds due from services provided by the City.
- Closed transfer of the stalled CityWalk residential project in Downtown Oakland to new ownership, as well as Redevelopment Agency financing, for completion of construction.
- Closed transfer of City property interests for the BART Airport Connector project.
- Advised staff and negotiated with developer and lender attorneys on transfer of several affordable housing projects owned by defunct Oakland Community Housing, Inc., to new ownership.
- Closed affordable housing development loans on several projects, including Oakland Community Land Trust's acquisition and rehabilitation of foreclosed single family homes in East and West Oakland, rehabilitation of Slim Jenkins Court and Drachma rental projects, and development of St. Joseph's Family Homes project.
- Drafted and negotiated lease documents for Fox Theater spaces.

- Drafted and negotiated documents for development and parking for 1100 Broadway project.
- Closed Redevelopment Agency financing for Highland Hospital rehabilitation.
- Closed predevelopment financing for Phase Two of Fruitvale Transit Village.
- Provided legal advice to Project Area Committees for Central City East, West Oakland, and Broadway/MacArthur/San Pablo redevelopment project areas.
- Provided legal services to Oakland Workforce Investment Board, and negotiated contracts to provide workforce development services.
- Provided legal advice and services on pending major redevelopment plan amendments to Central District and Broadway/MacArthur/San Pablo redevelopment projects.
- Completed negotiation of security and affordable housing agreements and executed Owner Participation Agreement for MacArthur Transit Village.
- Negotiated amendment to Exclusive Negotiating Agreement with Oakland Economic Development Corporation for Coliseum BART Transit Village.
- Site at 66th Ave. and San Leandro St.: Negotiated and executed agreements and acquired a property from AC Transit and obtained Agency authorization for an Exclusive Negotiating Agreement with Ralphs/Food 4 Less to explore acquisition of a portion of the site for development of a supermarket and gas station.
- Drafted legislation; negotiated and executed amendments to and subordination of loan agreements regarding Lions Creek Crossing development.
- Drafted legislation; negotiated and executed agreements for a number of housing projects including Project Pride, Paul Wang, Edes Ave., and Byron Ave.
- Drafted legislation; negotiated and executed documents for acquisition of a number of properties in the Coliseum Area (e.g. 796 66th Ave., 7001 San Leandro St.; Cruise America site) and in Central East Oakland.
- Drafted legislation and necessary documents for Agency acquisition of a number of City properties (e.g. 73rd Ave. and International Blvd.).
- Drafted legislation, negotiated, drafted and executed purchase and sale document and easement documents for acquisition on 64 acre parcel at Dunsmuir Ridge.
- Drafted legislation; negotiated and executed documents for sale of several City properties (e.g. Grand View Lots).
- Negotiated, revised and executed a number of leases (e.g. Tully's, Piedmont Ave. Library, Malonga Center).
- Negotiated, drafted/revised, and executed leases for a number of Head Start programs.
- Negotiated, drafted, and executed many rights of entry (e.g. 615 High St., Ascot Dr., 633 Hegenberger Road).

- Negotiated, drafted and executed a number of licenses, including Head Start Program licenses (e.g. 2008 Park Blvd.).
- Drafted legislation and obtained Council approval for an Exclusive Negotiating Agreement with Peralta College District regarding the Henry J. Kaiser Convention Center.
- Drafted legislation; negotiated, drafted and executed sublease agreement for Agency to sublease the Scotlan Convention Center from the City, providing City with \$4 million for fiscal years 2009-10 and 2010-11.
- Negotiated, drafted and executed documents for new commercial loans, loan amendments, and loan restructurings (e.g. Gazzali's, Noha Abeolata, Lake Merritt Bakery).
- Negotiated, drafted, executed loan commitments, amendments and other loan documents for the CalReUSE program (e.g. Dogtown Developers), and for the BCRLF (Brownfields Revolving Loan Fund) program.
- Negotiated settlement and settlement agreement with Port for City contribution for environmental monitoring at Spunkmeyer Field.
- Staffed regular and special meetings of the Community and Economic Development Committee, and attended City Council meetings on numerous real estate and redevelopment matters.
- Negotiated and finalized several agreements with outdoor advertising companies to construct new signs in return for demolition of numerous billboards throughout the City and for substantial monetary contributions to the City's General Fund.
- *Assisted the City in connection with a business tax incentive program to encourage new businesses to relocate to Oakland.*

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