

CITY OF OAKLAND

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COUNCIL AGENDA REPORT

TO: Finance and Administrative Services Committee
ATTN: Chairperson, Danny Wan
FROM: John Russo, City Attorney
DATE: May 25, 2004
RE: Report on Ten Year Outside Counsel Expenditures (1994—2004)

SUMMARY

This is an informational report to update the City Council on the history of outside counsel expenditures over the past ten years.

DISCUSSION

The Office of the City Attorney provides legal services using in-house attorneys whenever possible. Still, outside counsel must be retained to handle conflict-of-interest matters, when the day-to-day demand for legal services exceeds in-house capacity, and when staff attorneys do not have the highly specialized expertise necessary to handle the matter. As a matter of course, we assign a staff attorney to work closely with the outside counsel so that our office builds as much of the specialized expertise as possible.

Attachment 1 outlines outside counsel expenditures over the past 10 years, categorized by the following matter types:

- Breach of contract
- Infrastructure/dangerous conditions (streets , sidewalks, trees, sewers & inverse condemnation)
- Vehicle accidents
- Land use
- Labor/employment
- Revenue & taxation (collections & tax issues)
- Contract/construction
- Police matters
- Police conflict matters
- Other conflicts(Public Ethics Commission, certain legal opinions and some employment matters)
- Legislative support & government administration (i.e., predatory lending, census litigation, Chabot Space & Science Center, ANG Newspapers,

5

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MAY 25 2004

billboard ordinance, living wage, rent control, creek protection, cable franchise)

- Redevelopment & housing

Attachments 2 through 13 highlight the trend lines for the last 10 years by each category or matter type.

The Office of the City Attorney's (OCA) Annual Report for 2000-01 reported that the expenditures of outside counsel had nearly doubled since 1996, rising an average of 20% per year. To curb this upward trend, OCA implemented the cost-containment strategy of hiring in-house attorneys.

Our strategy proved to be effective: in fiscal year 2002-03, OCA achieved a 42% reduction in outside counsel costs over the previous year. Although we were required to lay off 5 attorneys this fiscal year (2003-04), outside counsel is projected to cost \$1.5 million, a 2% reduction from fiscal year 2002-03.

CONCLUSION

It is far more cost-effective to utilize in-house attorneys whenever possible since their average billable rates are 50% lower than outside counsel. We also recognize that the Office of the City Attorney will always have the need to retain outside counsel at some level. However, had we been able to retain staffing levels that were authorized in fiscal year 2001-02, we are confident that outside counsel expenditures would have continued to decline.

Respectfully submitted,

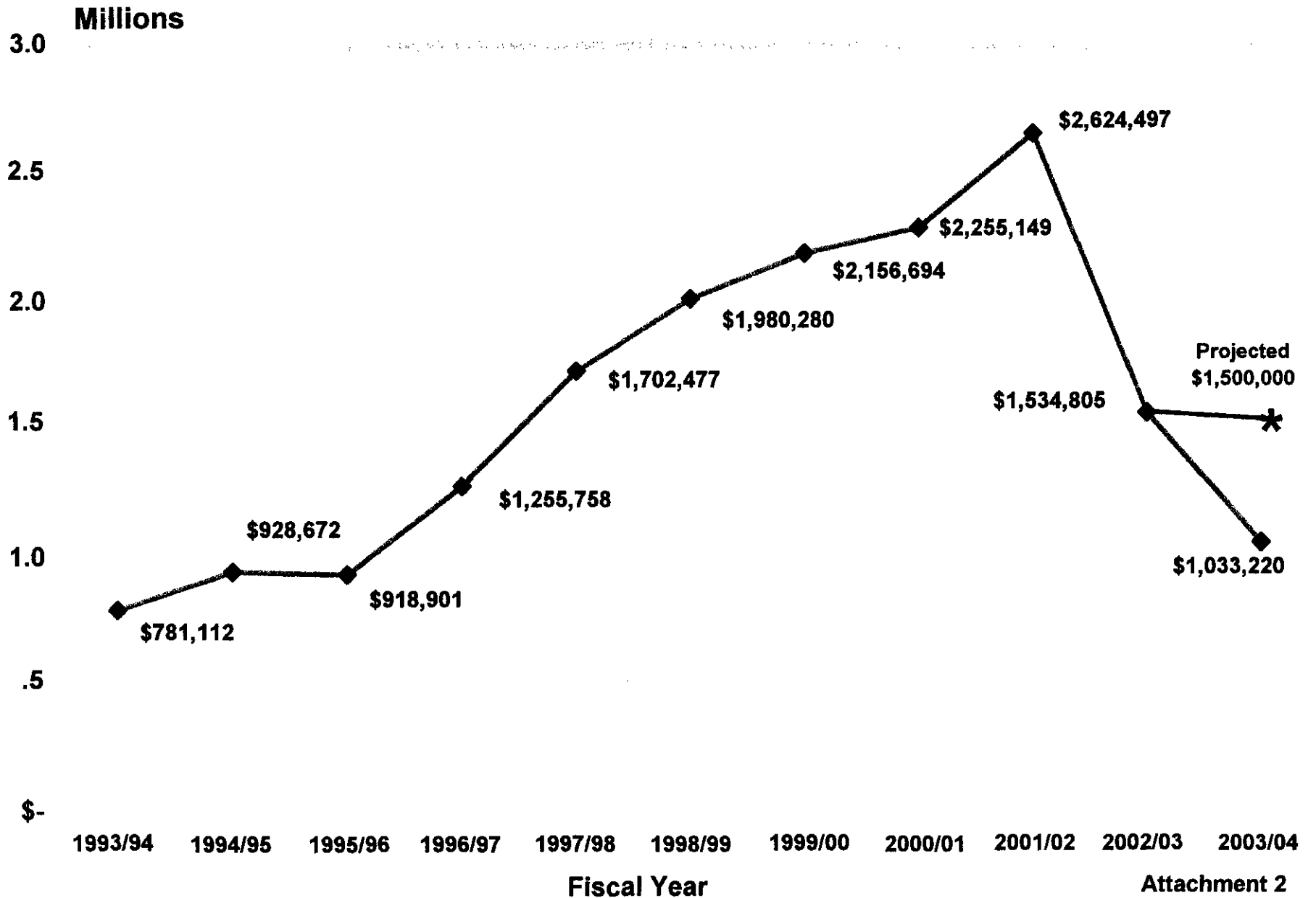


John A. Russo
City Attorney

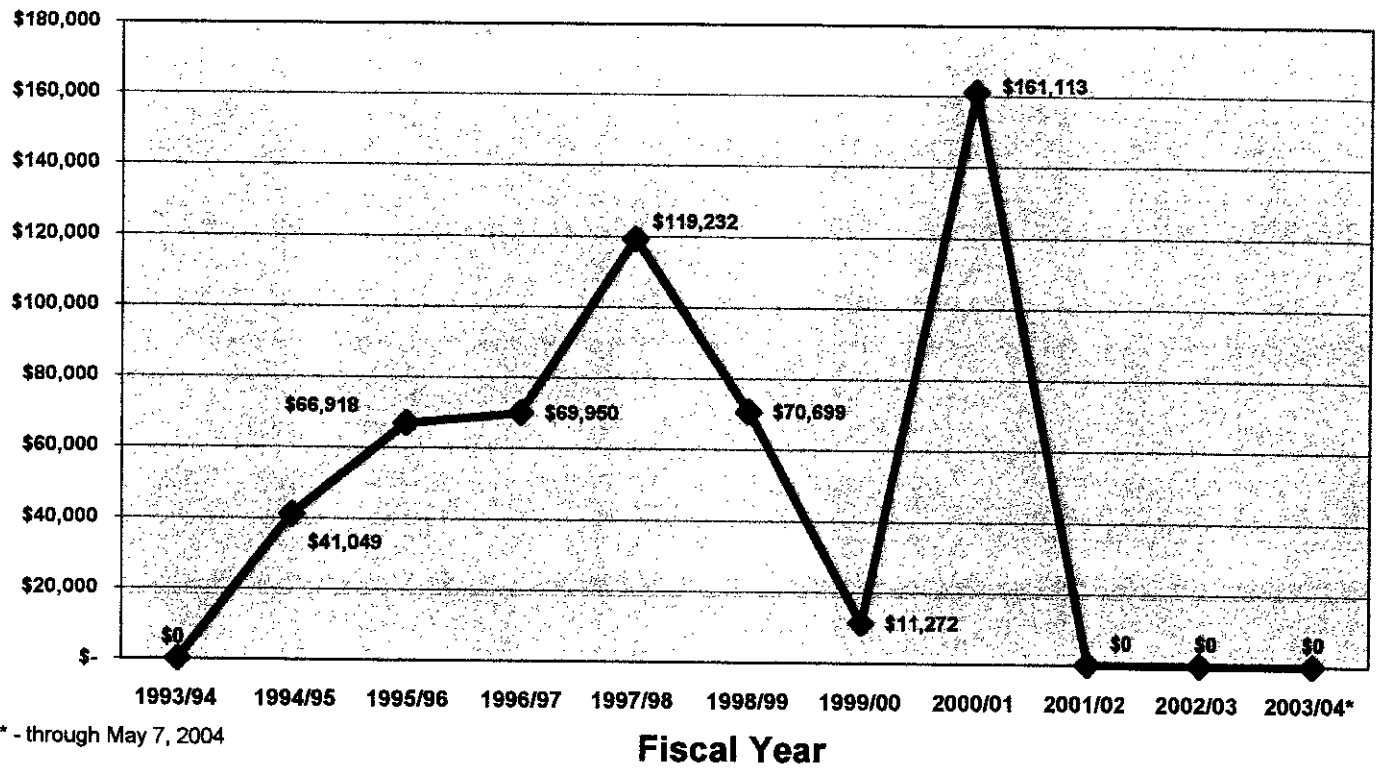
OUTSIDE COUNSEL COSTS BY MATTER TYPE BY YEAR

<u>MATTER TYPE</u>	<u>1993-94</u>	<u>1994-95</u>	<u>1995-96</u>	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u> thru May 7
Breach of Contract	0	41,049	66,918	69,950	119,232	70,699	11,272	161,113	0	0	0
Infrastructure/Dangerous Cond.	274,145	237,571	160,806	80,297	35,682	71,268	1,158	39,607	10,485	0	532
Vehicle Accidents	0	0	0	0	0	0	0	0	0	0	171
Land Use	15,863	179,772	122,849	0	0	56,103	257,649	506,977	222,838	14,824	0
Labor/Employment	169,878	97,343	287,357	112,465	392,405	513,400	715,164	302,839	205,188	192,760	200,803
Revenue & Taxation	0	12,318	441	0	39,309	119,337	103,200	167,957	692,055	456,229	10,420
Contract/Construction	0	0	0	0	0	0	0	58,791	320,372	254,324	213,057
Police Matters	88,571	59,991	23,282	134,971	360,608	289,734	46,083	29,661	572,521	82,194	242,900
Police Conflict	106,457	55,322	72,517	34,435	66,007	55,158	106,220	112,350	54,051	69,699	200,265
Other Conflicts	8,265	32,388	44,354	123,710	180,152	232,389	165,190	142,266	100,653	242	5,000
Legislative Support & Govt. Admin.	54,123	45,125	12,463	149,424	179,385	183,976	383,522	559,003	336,728	425,467	42,500
Redevelopment & Housing	63,810	167,793	127,915	550,506	329,697	388,216	367,236	174,585	109,606	39,066	117,572
Total	781,112	928,672	918,901	1,255,758	1,702,477	1,980,280	2,156,694	2,255,149	2,624,497	1,534,805	1,033,220
Projected											1,500,000
% Increase Per Year		19%	-1%	37%	36%	16%	9%	5%	16%	-42%	-2%

Total Outside Counsel Costs by Fiscal Year (through May 7, 2004)

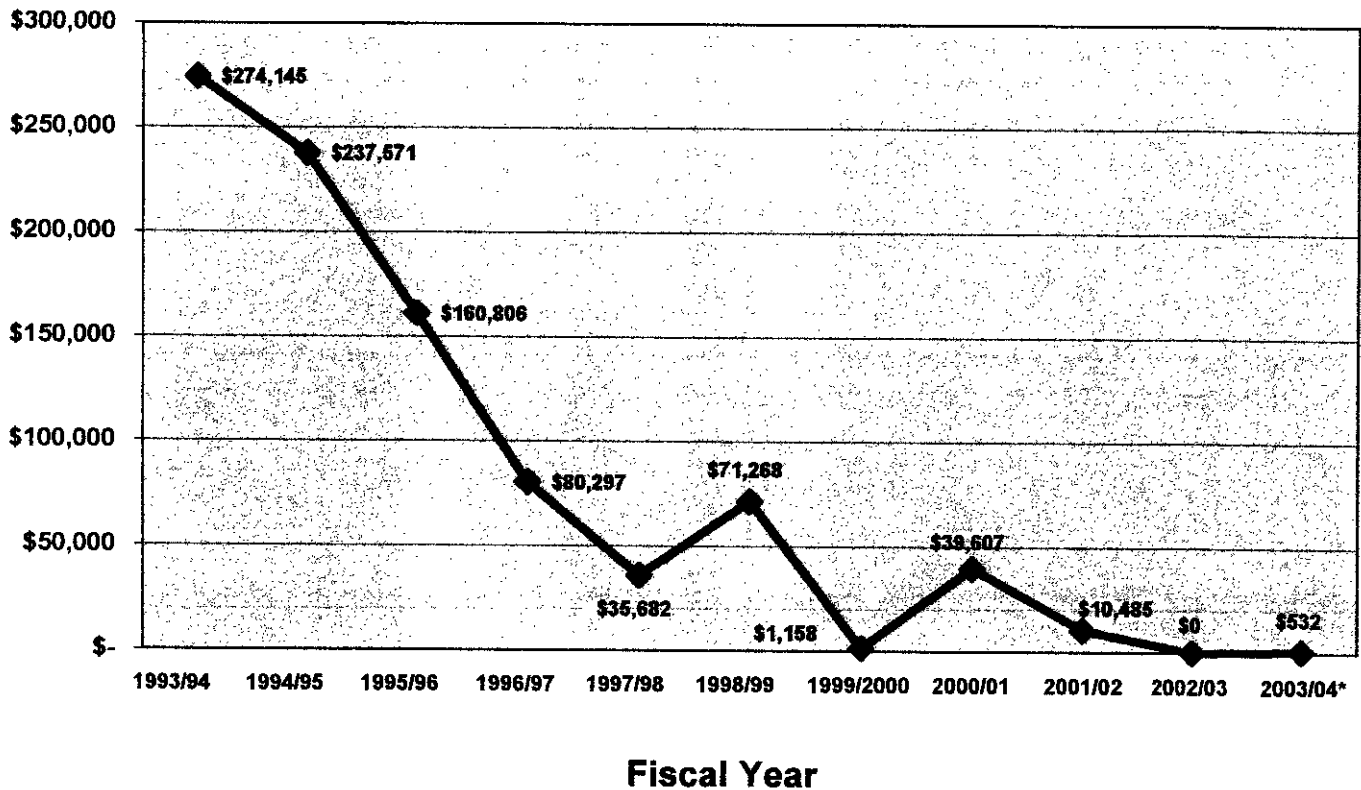


Outside Counsel Costs by Fiscal Year (Breach of Contract)



Increase in 2000-01 is related to the Cordoba breach of contract issue
(related to Oracle software installation)

Outside Counsel Costs by Fiscal Year (Infrastructure/Dangerous Condition)



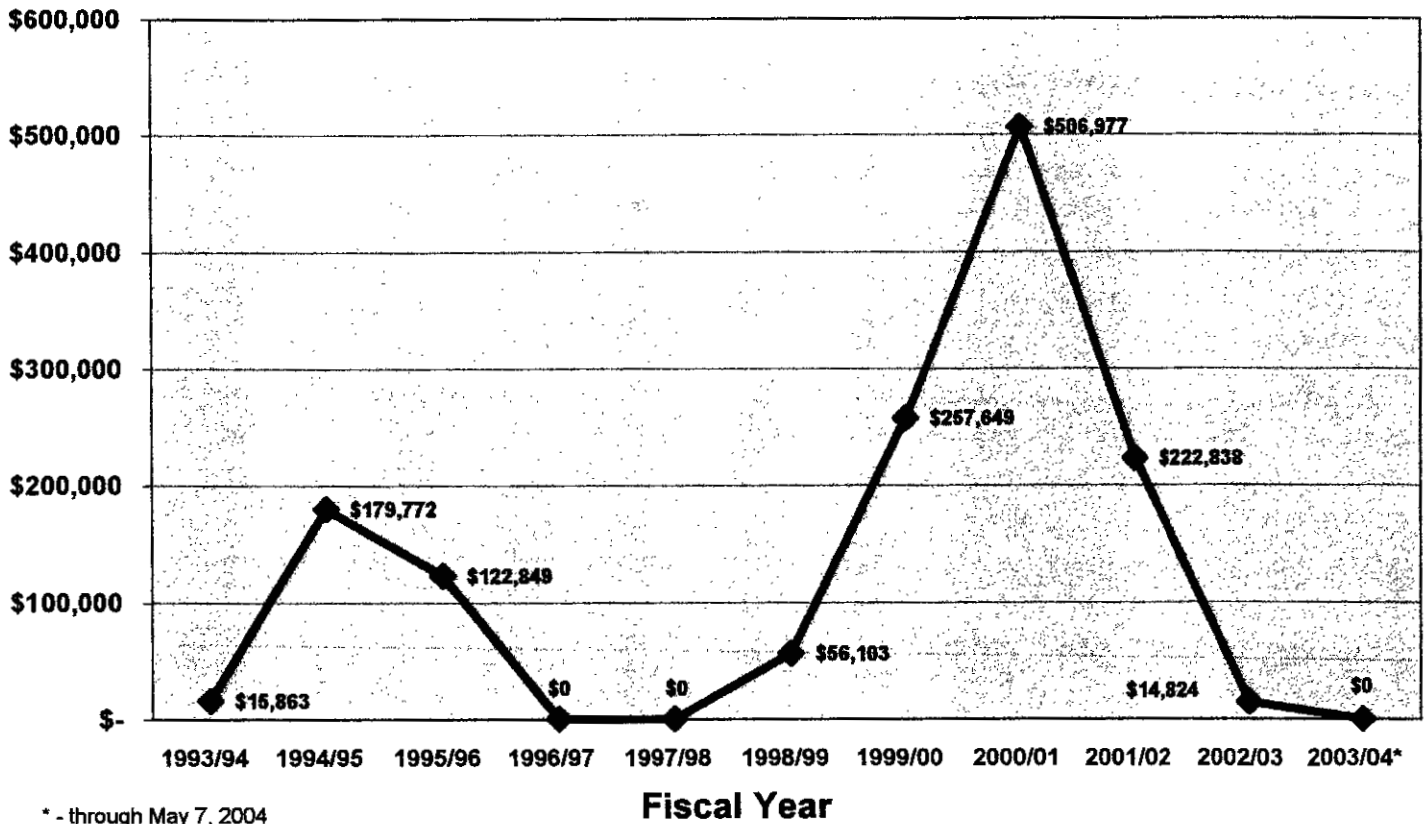
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Increase in 1993-94 and 1994-95 is related to two significant dangerous condition matters:

Scott Sterling (motorist lost control at Claremont curve)

Firestorm Litigation

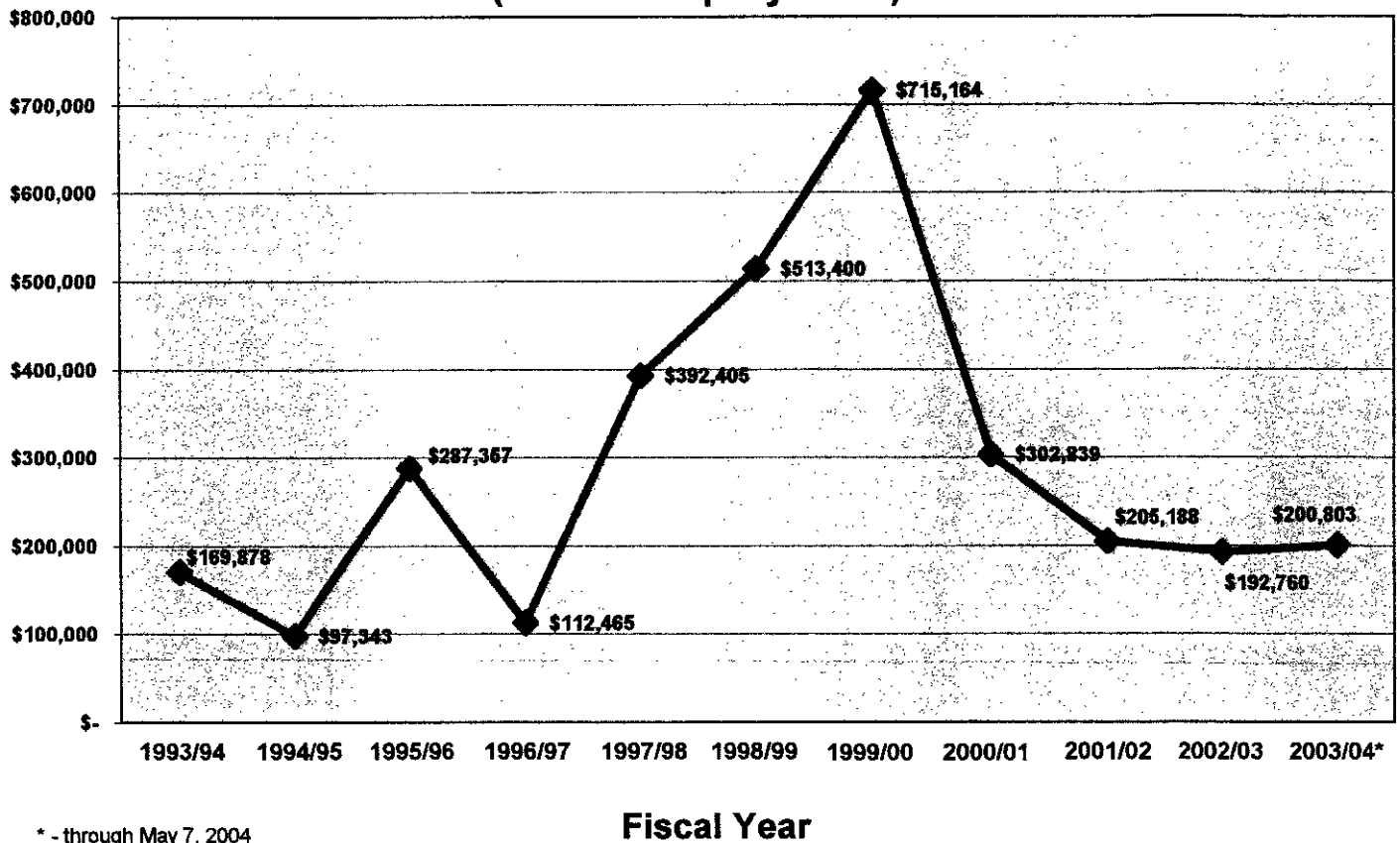
Outside Counsel Costs by Fiscal Year (Land Use)



* - through May 7, 2004

Increase in 1999-00, 2000-01 and 2001-02 is for the eminent domain actions associated with the Airport Widening Project. Designated highway funds were used to pay for these expenditures

Outside Counsel by Fiscal Year (Labor/Employment)



Increase in 1999-00 and 2000-01 is related to:

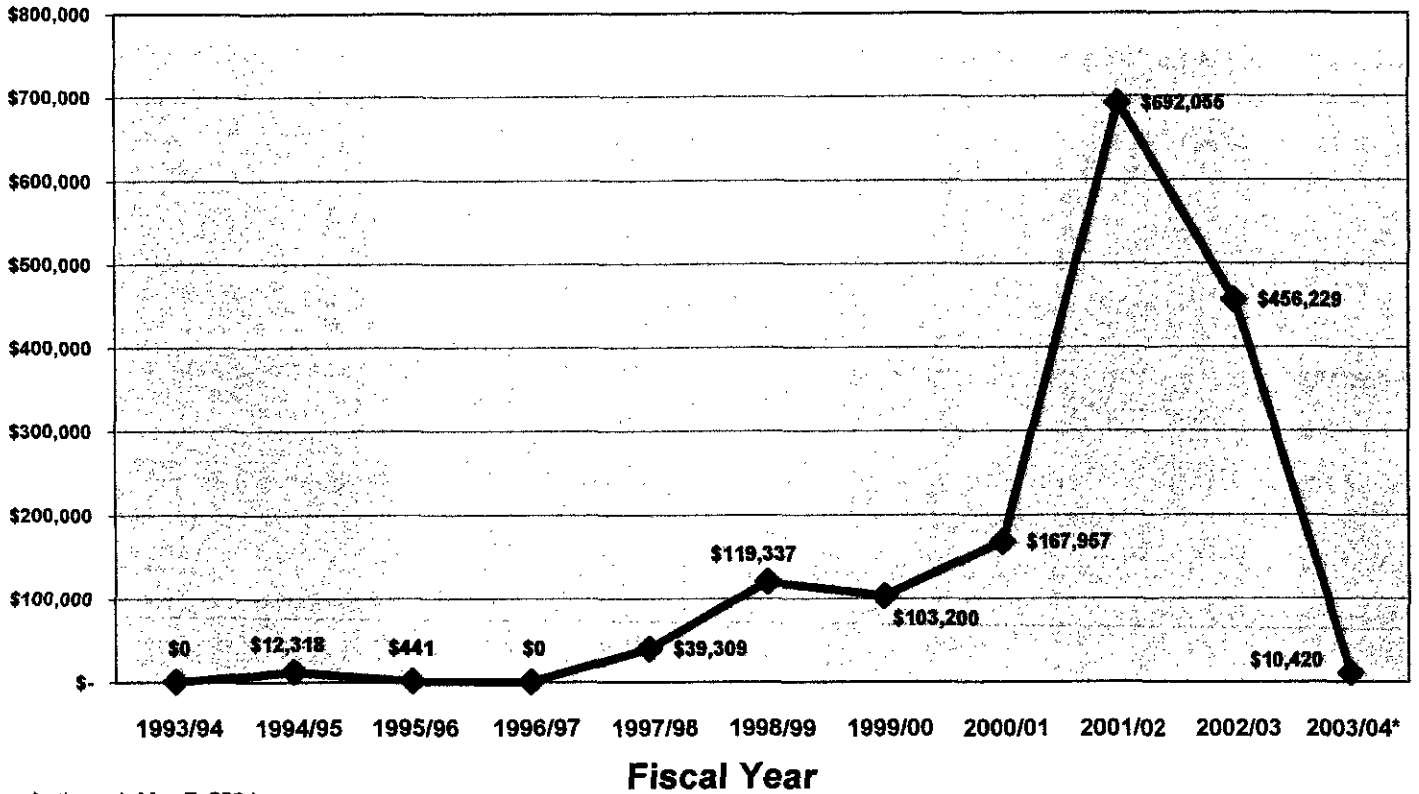
Several personnel issues associated with Parks and Recreation employee Clayton Collins

Firefighters arbitration

Iris Payne (sexual harassment allegations in the Public Works Agency)

Don Zottola (alleged employment discrimination due to race and age in the Fire Department)

Outside Counsel Costs by Fiscal Year (Revenue & Taxation)



* - through May 7, 2004

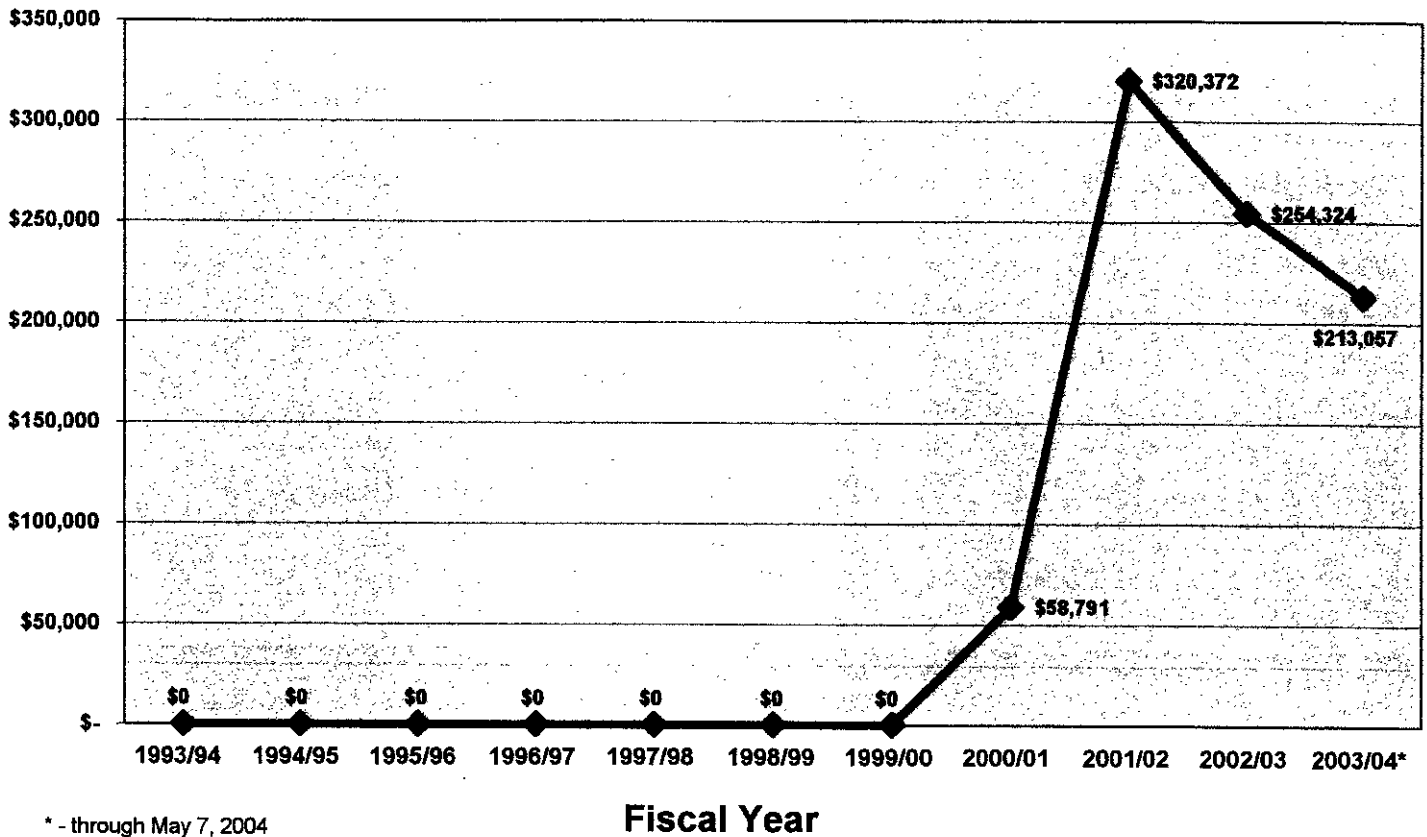
Increase in 2001-02 and 2002-03 is related to:

The Business license issue with Kaiser Aluminum and Pacific Bell

PG & E Bankruptcy

Increased collections efforts on loans and taxes. We currently have in-house attorneys handling this type of work

Outside Counsel by Fiscal Year (Contract/Construction)



* - through May 7, 2004

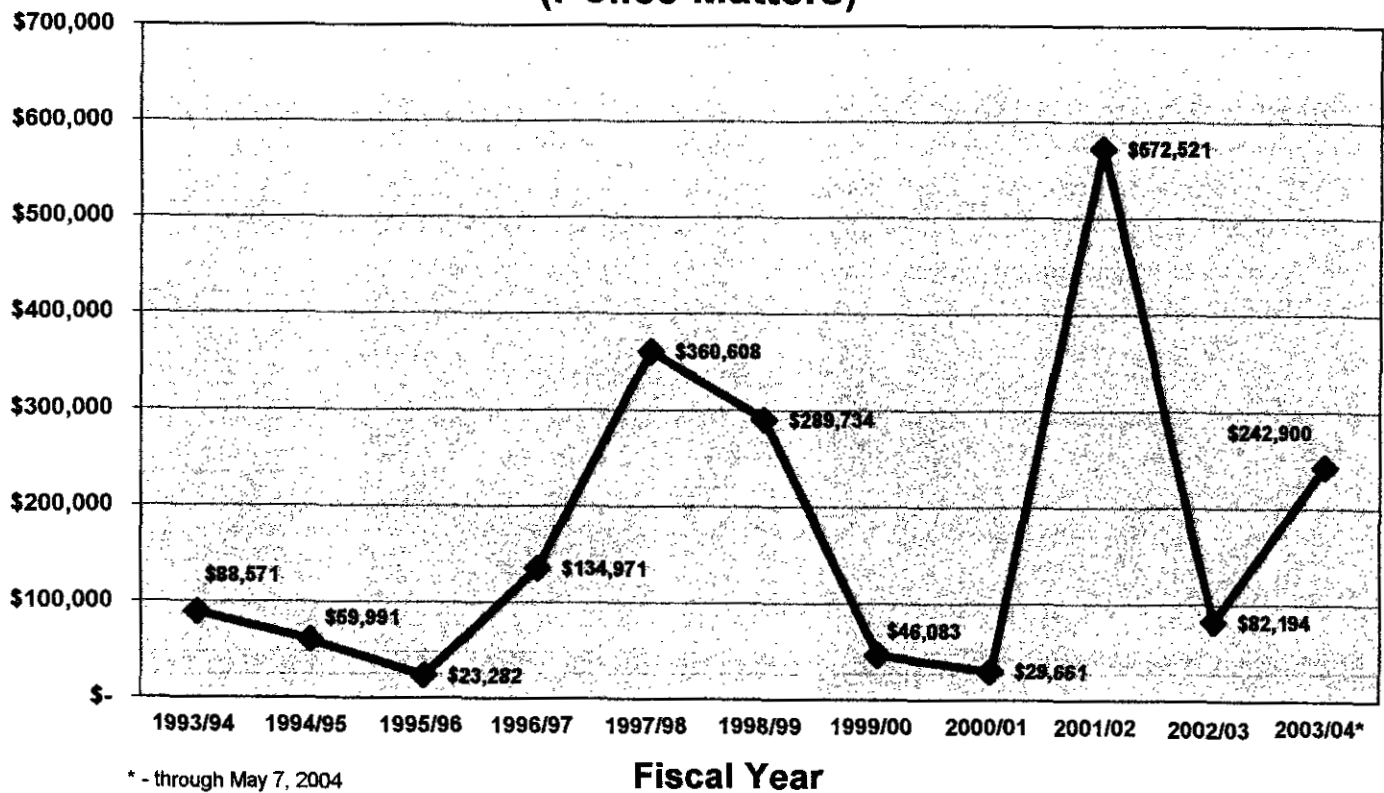
Increase in 2001-02, 2002-03 and 2003-04 is related to:

Plaza Building seismic safety litigation

Technology contract negotiations

- Motorola
- Permit tracking
- Fleet management
- Oracle upgrade
- Sun Microsystems

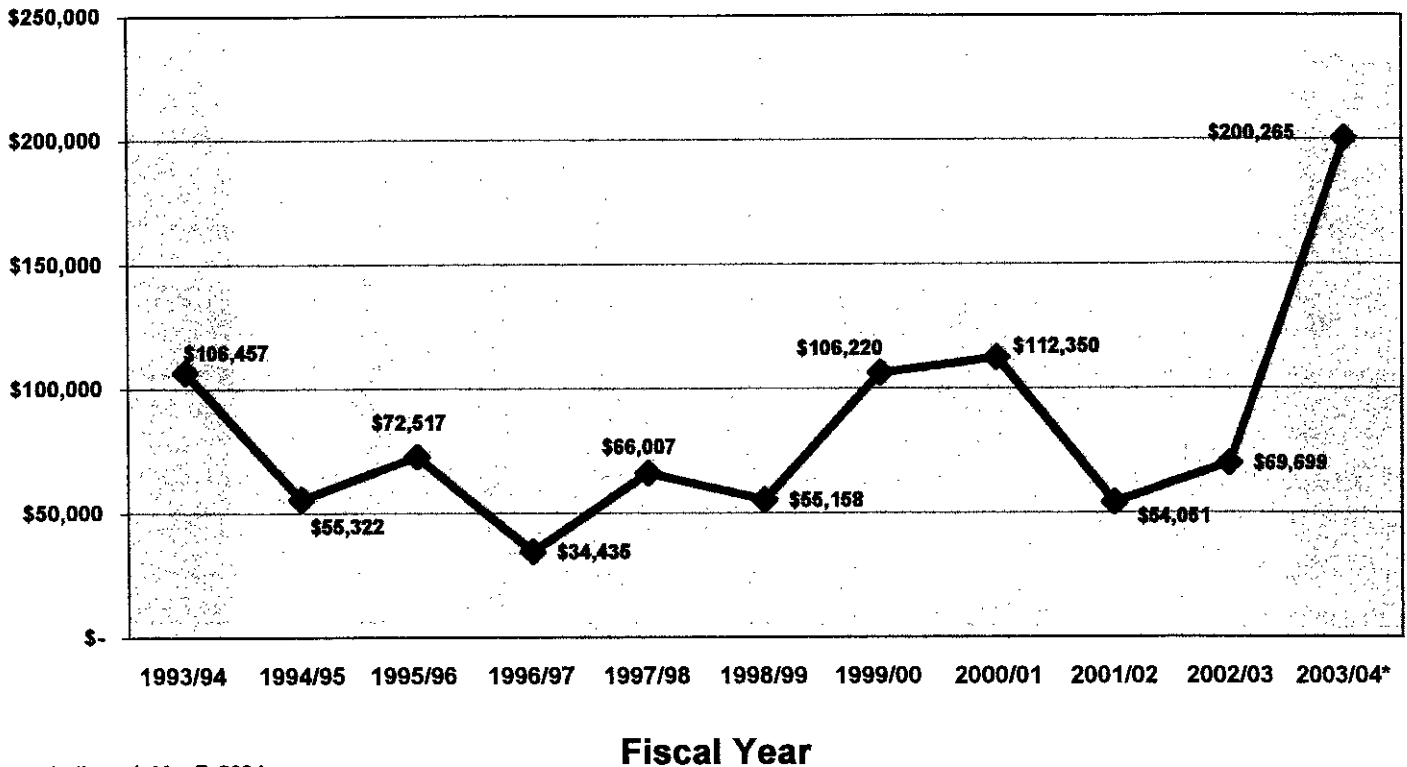
Outside Counsel by Fiscal Year (Police Matters)



Increase in 2001-02 is related to the Riders civil litigation

Upward trend in 2003-04 is a result of losing four (4) litigators in 2002-03 budget reductions

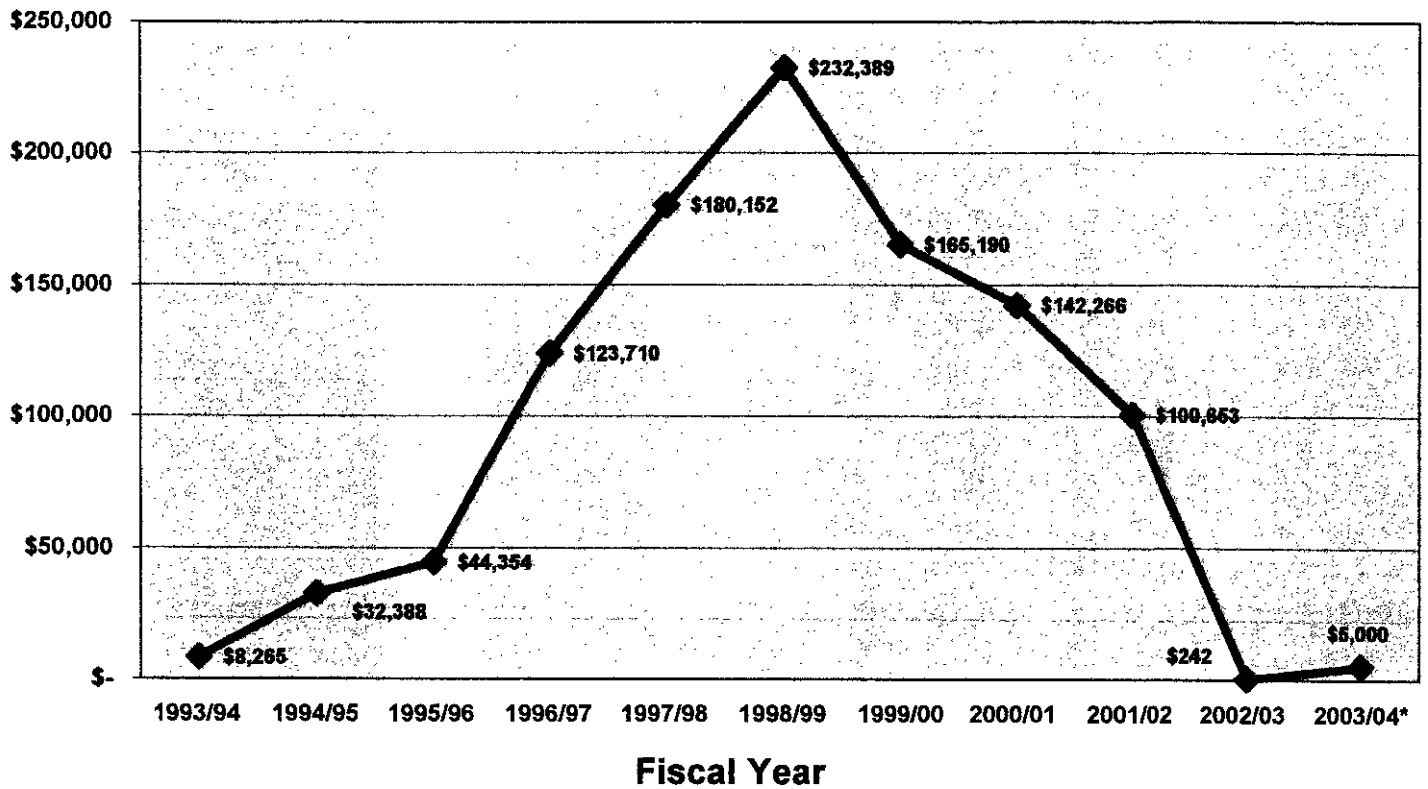
Outside Counsel Costs by Fiscal Year (Police Conflict)



* - through May 7, 2004

The City is required by law to provide separate outside counsel to defend employees whose interest is in conflict with the City. An example of a conflict of interest that requires the retention of conflict outside counsel is where the City Attorney's Office provided disciplinary advice against a police officer and that officer is subsequently sued in a civil action along with the City. In such a case, the City Attorney's Office is precluded by law from defending that officer in the civil action because we provided advice adverse to the officer's interest. The City effectively has little control over the manner in which "Conflict Counsel" elects to defend the officer. The large increase in 2003-04 is a result of decisions by "Conflict Counsel" to litigate more vigorously cases brought against officers.

Outside Counsel Costs by Fiscal Year (Other Conflicts)



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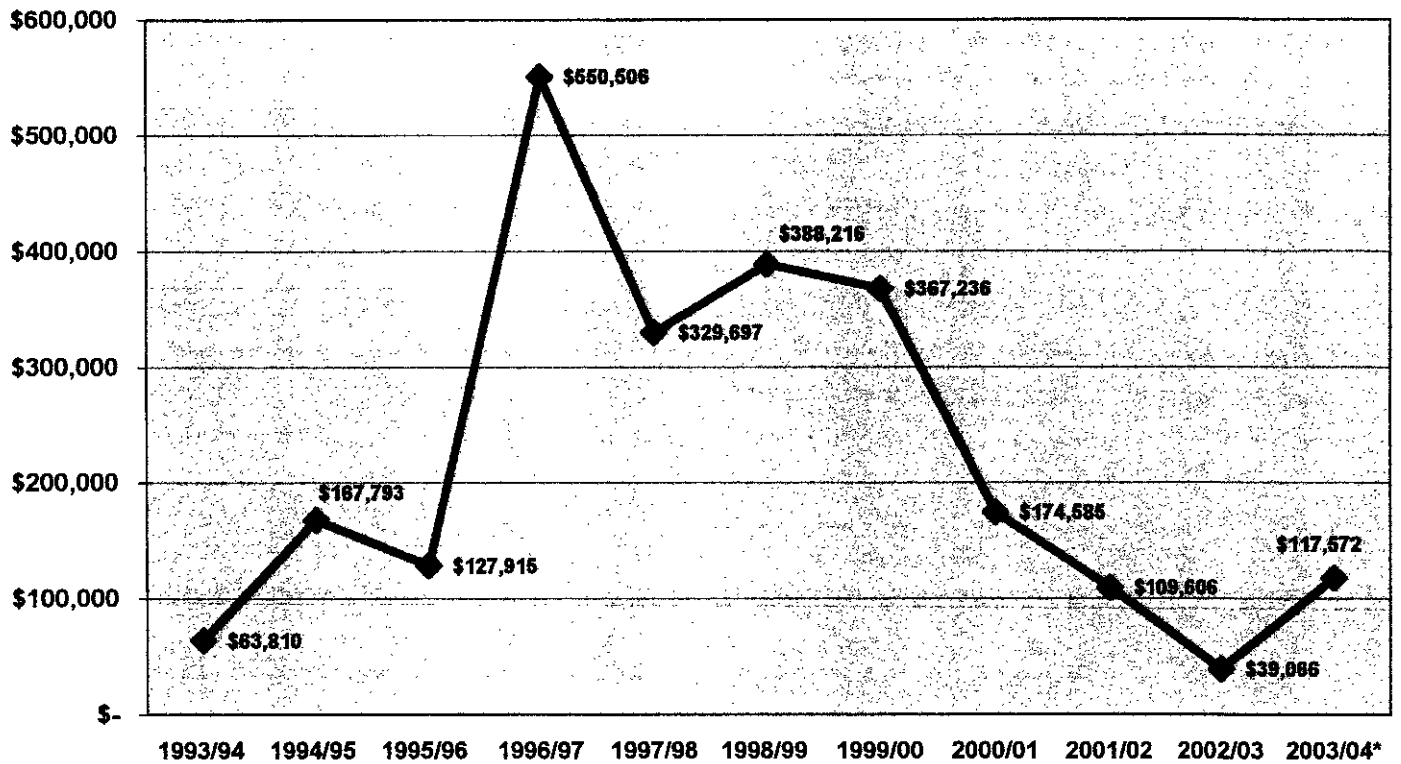
Increase in 1997-98, 1998-99 and 1999-00 is related to:

Sexual harassment allegations arising out of the Office of the City Council

Sexual harassment allegations arising out of the Office of the Mayor

Several Public Ethics Commission conflicts

Outside Counsel Costs by Fiscal Year (Redevelopment & Housing)



Fiscal Year

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Increase in 1996-97 is related to:

Gestalt litigation

Ice Ventures bankruptcy

Uptown retail

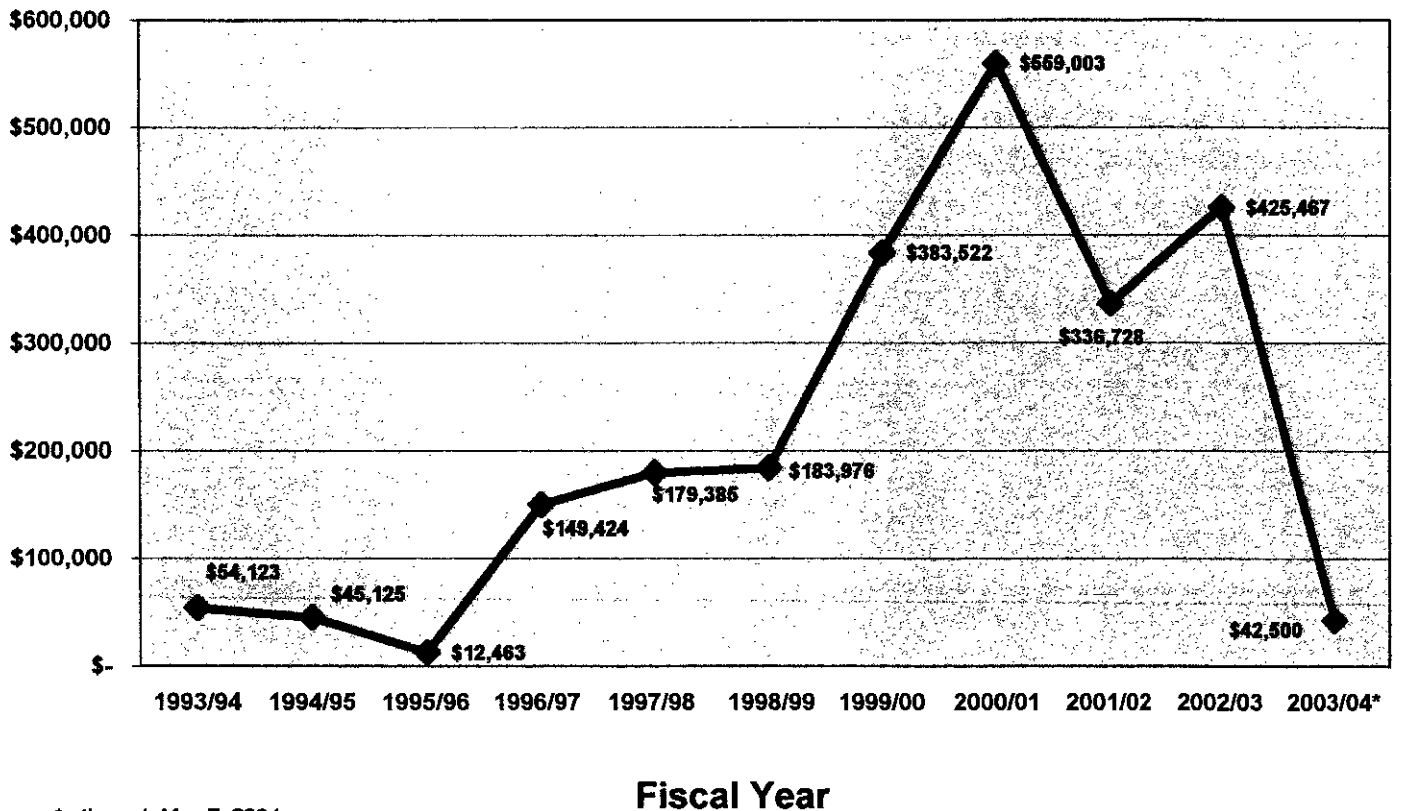
Montgomery Ward historic preservation litigation

Warriors training facility

University of California Office of the President

The decline starting in 2001-02 is a result of hiring in-house attorneys to handle redevelopment, planning and housing projects

Outside Counsel Costs by Fiscal Year (Legislative Support & Government Admin.)



* - through May 7, 2004

Increase in 2000-01 is related to:

- Billboard ordinance
- Chabot Space and Science Center
- Rent ordinance litigation

5

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