

**CITY OF OAKLAND**  
*COUNCIL AGENDA REPORT*

**TO:** Finance and Administrative Services Committee  
**ATTN:** Chairperson, Danny Wan  
**FROM:** John Russo, City Attorney  
**DATE:** September 28, 2004  
**RE:** Office of the City Attorney's Annual Report, Fiscal Year 2003-2004

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## **1.0 INTRODUCTION**

Our philosophy—**law in service of the public**—guides how we provide legal services to the City of Oakland. We believe that the law should be applied in an innovative and community-oriented manner. As a team, we are committed to providing top-notch legal services that are cost-effective, streamlined, efficient and accessible.

This annual report summarizes the financial results of the Office of the City Attorney, outlines claims and litigation trends and highlights our ongoing community-impact initiatives during the last fiscal year.

### **1.1 The Year in Review**

Three years ago we initiated a long-term cost-containment strategy to stem the ballooning cost of legal services. Specifically, the goal was to enhance in-house legal expertise, reduce reliance on costly outside counsel and aggressively manage the City's risk and liability.

Due to the California state budget crisis and the resulting financial uncertainty for local governments, the success of this cost-containment strategy is even more imperative. A review of the data presented in this report shows that our aggressive tactics are working. For example,

- Outside counsel costs, which had been cut by 42 percent in the 2002-03 fiscal year, declined even further this year. This conclusively ends a six-year trend of 20 percent cost increases per year.
- Outside counsel costs (\$1.49 million) are at the lowest level since 1996.
- The City is no longer viewed as such a “deep pocket” to potential plaintiffs — the number of claims filed against the City has dropped 21 percent and the number of lawsuits filed has dropped 25 percent.
- The number of personnel cases and lawsuits related to city fleet vehicle accidents has declined significantly as a result of enhanced risk management efforts citywide.

In addition to achieving our financial goals in 2003-04, we are proud to have received local, state and national awards in recognition of our commitment to open government,

dedication to our goal of “law in service of the public” and innovation in public law while saving taxpayer money (see Section 7.0 Award-Winning Results).

## 1.2 Office Profile

As the fifth largest law firm in Oakland with one of the most diverse legal teams in the country, the Office of the City Attorney is proud of its efforts to reflect the diversity of the community we serve. Our 78-member team of dedicated professionals includes:

- 41 attorneys—City Attorney, 2 Assistant City Attorneys, 35 Deputy City Attorneys, 3 Neighborhood Law Corps Attorneys (funded by private donations)
- 31 support staff—legal secretaries, paralegals, clerks, claims investigators, executive assistants
- 6 operations staff—budget, accounting, information technology, communications, personnel administration, Open Government Program coordination

## 2.0 FINANCIAL ANALYSIS

### 2.1 Cost of Legal Services

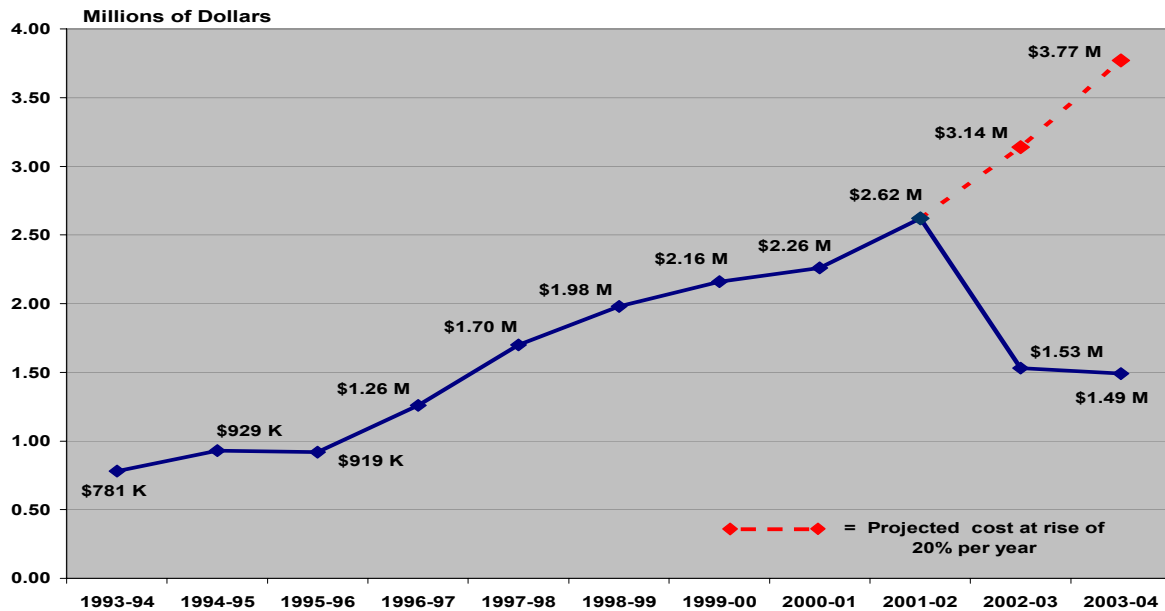
In 2003-04, it cost \$18.9 million (including claims and lawsuit payouts, settlements and judgments) to provide legal services to the City of Oakland, a 3 percent (\$0.5 million) increase from the prior fiscal year, as shown in **Table 1**. This increase is primarily due to cost-of-living and benefit increases negotiated in citywide labor agreements. Total litigation expenses, including payouts, remained essentially even, as did the cost of hiring outside counsel.

<b>Expense Type</b>	<b>FY 2003-04</b>	<b>FY 2002-03</b>
Operating costs <i>(i.e., salaries, equipment, overhead)</i>	<b>\$10.6 million</b>	\$10 million
Litigation expenses <i>(i.e., expert witnesses, depositions, exhibits)</i>	<b>\$0.95 million</b>	\$1.4 million
Payouts of claims and lawsuits	<b>\$5.9 million</b>	\$5.5 million
Outside counsel costs	<b>\$1.49 million</b>	\$1.53 million
<b>TOTAL</b>	<b>\$18.9 million</b>	\$18.4 million

## 2.2 Driving Down Legal Costs

The fact that outside counsel costs declined demonstrates that the cost-reduction strategy we initiated three years ago is succeeding. Our 2000-01 Annual Report revealed that the cost to hire outside counsel had nearly doubled since 1996, rising an average of 20 percent per year. To curb this sharp rise and contain costs, we hired in-house attorneys in specialized practice areas whose average billable rates are 50 percent lower than outside counsel.

As shown in **Figure 1**, the strategy worked. Last year (2002-03), we achieved a 42 percent reduction in outside counsel costs from the previous fiscal year, and this year we shaved off another 3 percent. Outside counsel costs are at their lowest since 1996.

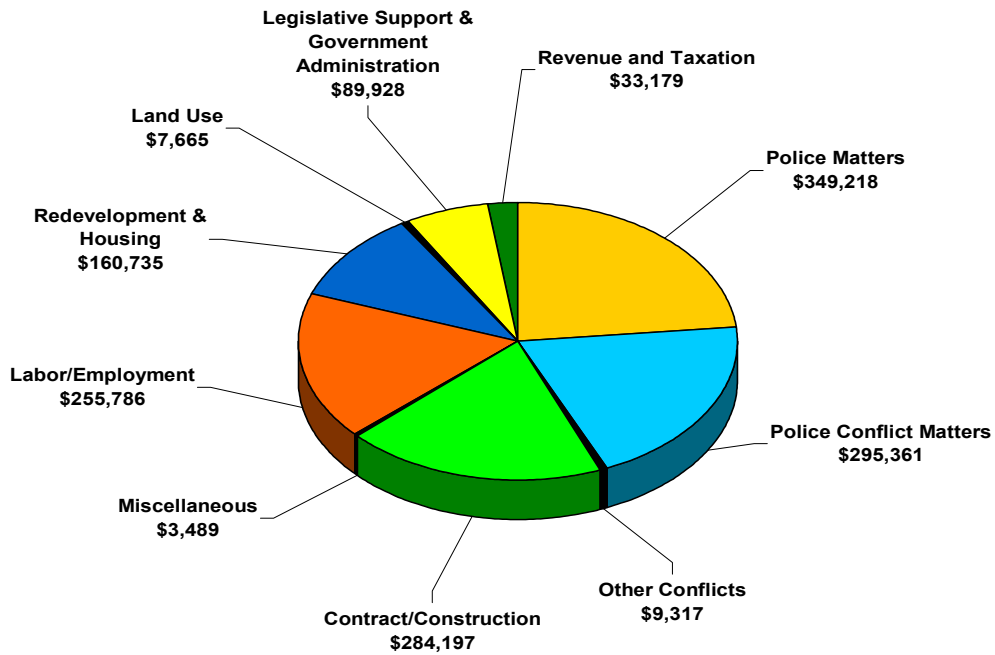


**Figure 1: Trends in Outside Counsel Costs**

Without the intervention of our cost-saving strategy, outside counsel costs could have reached \$3.8 million this year. The actual cost was only \$1.5 million—a \$2.3 million savings to the City’s General Fund. To put that statistic in perspective, the savings could fund the City’s entire tree-maintenance budget for a year (\$2.4 million) or cover the cost to run the Main Library (\$2.1 million).

**These results are particularly significant given that last fiscal year we were required to lay off seven full-time attorneys due to the City’s severe budget shortfall.** Had we been able to retain the staffing levels that were authorized two years ago, outside counsel costs would have declined even more sharply.

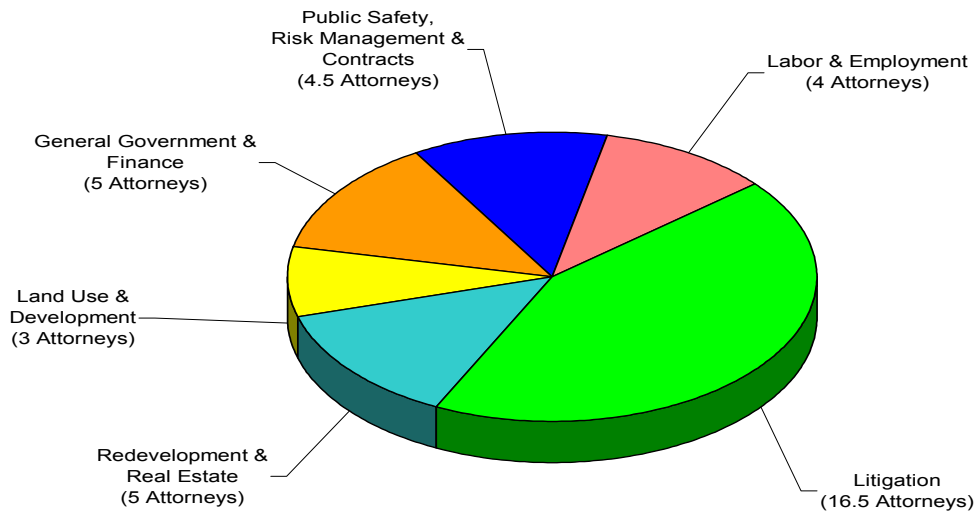
Not only are in-house attorneys less expensive than outside counsel, having legal experts in key practice areas has enhanced our capacity to handle complex and recurring issues in a cost-effective manner. This in-house capacity not only saves money on tomorrow’s legal matters today, having subject-area experts advise clients at the outset of projects helps the City avoid legal problems in the first place. **Figure 2** depicts the types of matters requiring outside counsel in 2003-04.



**Figure 2: Outside Counsel Costs by Category 2003-04**

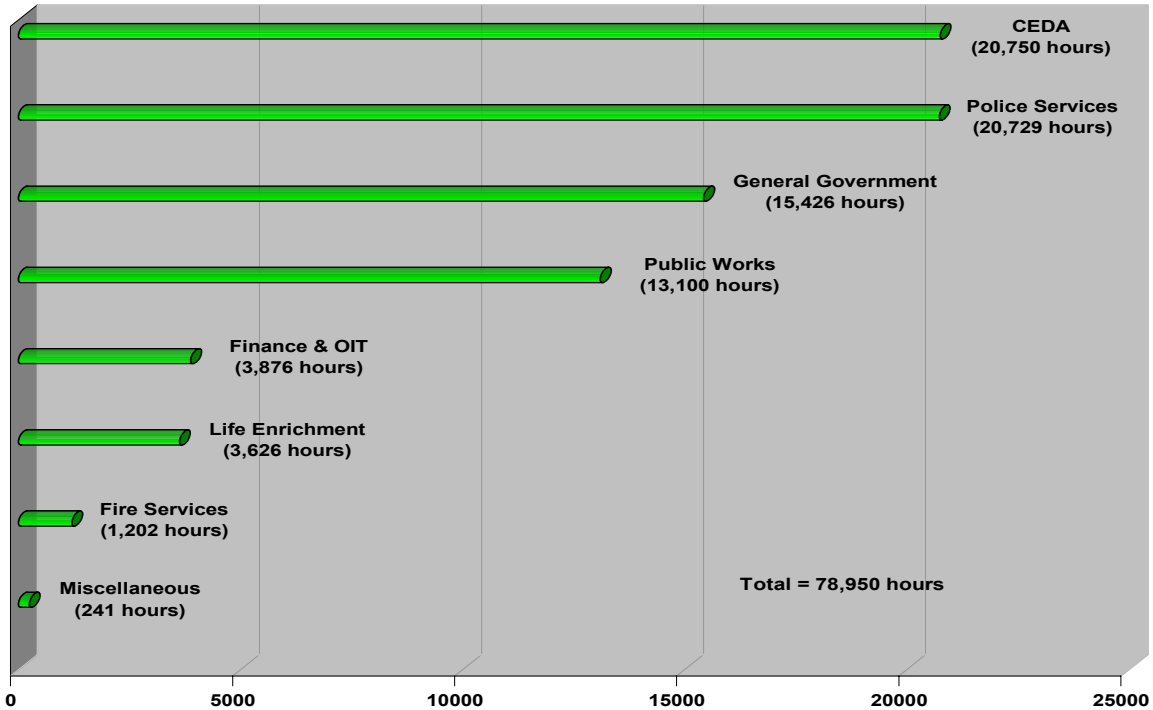
### 3.0 ALLOCATION OF LEGAL RESOURCES

The Office of the City Attorney is organized into practice areas to better serve our clients' needs. **Figure 3** shows the number of attorneys assigned to each practice area.



**Figure 3: Allocation of Legal Resources**

In keeping with City Council priorities and to meet the demand for legal services, in-house attorneys, paralegals and investigators spent approximately 78,950 staff hours delivering legal services to City departments, as shown in **Figure 4**. Although we do not directly bill time to these departments, we closely track billable hours to effectively manage resources and contain legal costs.



**Figure 4: Billable Hours by Department - 2003-04**

#### 4.0 MANAGEMENT OF CLAIMS AND LITIGATION

Because the City is self-insured, every dollar spent on claims and lawsuits is a dollar that is not available for other community services. Our claims investigators and attorneys have become more aggressive in protecting taxpayer money.

##### 4.1 Claims

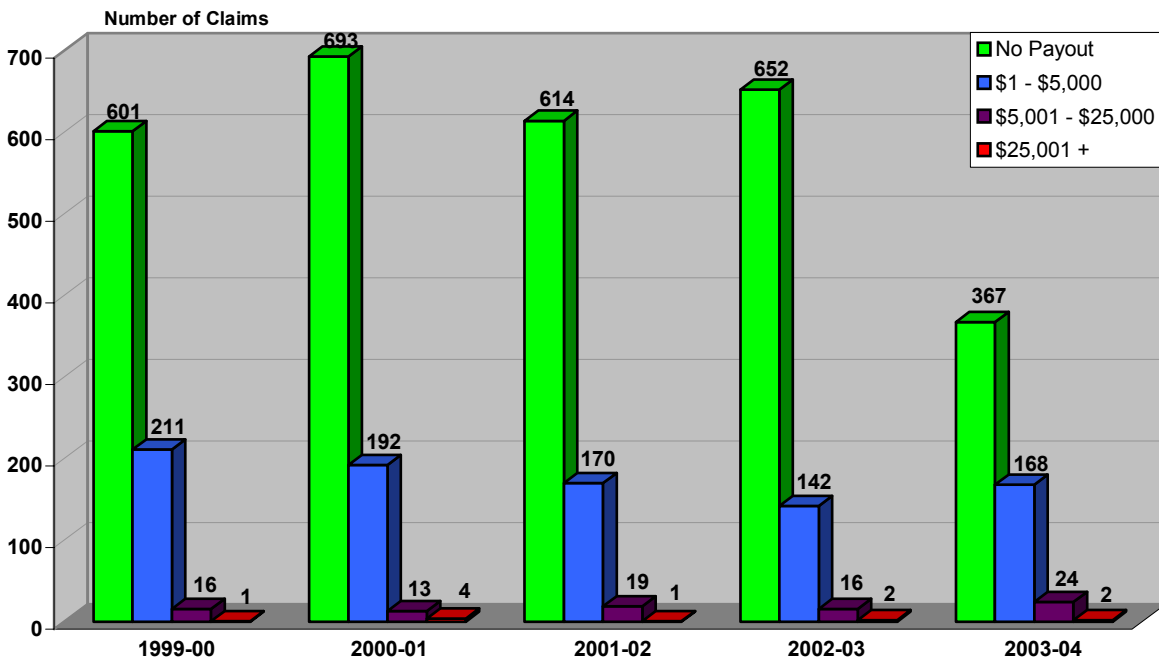
In 2003-04, 669 claims were filed against the City—about one claim every three business hours. Claims fall into three primary categories: municipal infrastructure (streets, sewers and sidewalks), police matters (towing, jail and property damage) and accidents involving City vehicles.

The sharp decline in claims against the City is significant. In 2000-01, the first year of this administration, the number of claims filed was 55 percent higher than in 2003-04; the five-year average is 35 percent higher than this year, as shown in **Table 3** below. Clearly, word has gotten out that filing claims against the City is not lucrative.

<b>Table 3: Types of Claims Received</b>	<b>1999-00</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>5-year average</b>
Municipal Infrastructure	467	458	415	427	300	413
	46%	44%	44%	50%	45%	46%
Police Matters	233	288	210	221	176	226
	23%	28%	22%	26%	26%	25%
City Vehicle Accidents	164	151	152	101	116	137
	16%	15%	16%	12%	17%	15%
<b>Total Claims/Year</b>	<b>1012</b>	<b>1034</b>	<b>945</b>	<b>852</b>	<b>669</b>	<b>902</b>

As shown in **Figure 5**, of the 561 claims resolved in 2003-04:

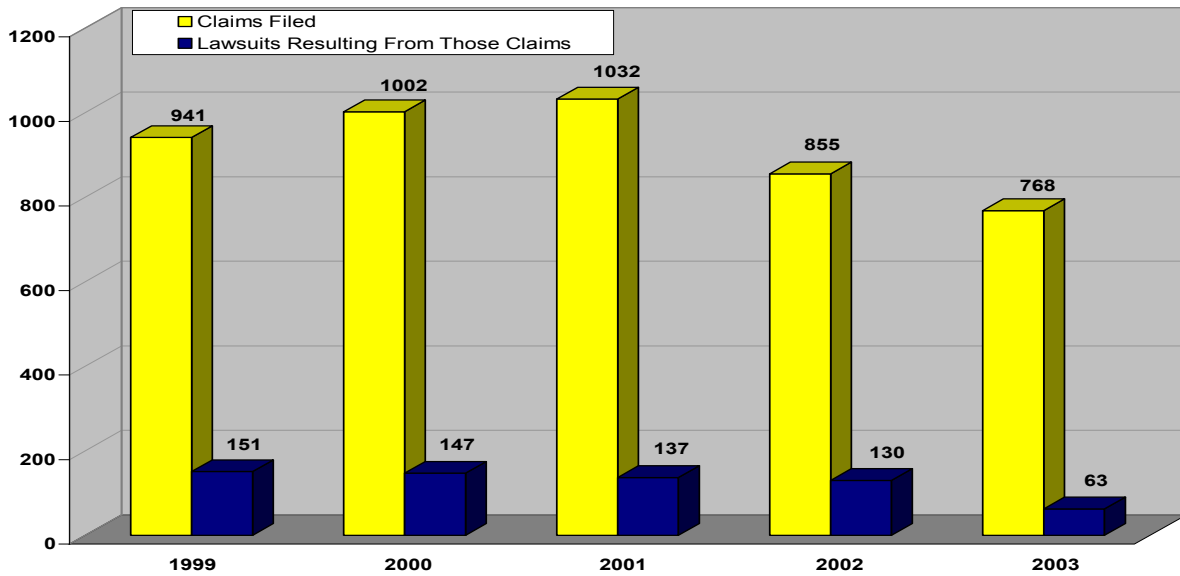
- 65 percent (or 367) were denied with zero payout.
- Fewer than 5 percent of the claims (26) resulted in payouts of more than \$5,000.



**Figure 5: Claims Payouts Over 5 Years**

We aggressively manage potential liability at the claims stage to reduce the number that evolve into lawsuits, thereby avoiding the significant costs required to litigate a case, such as expert witnesses, depositions, research, court costs and attorney time.

As shown in **Figure 6**, the majority (85 percent) of denied claims never evolve into lawsuits, underscoring the effectiveness of our strategy to thoroughly investigate and adjust claims in a fair, timely and aggressive manner.



**Figure 6: Claims That Evolved Into Lawsuits by Year of Incident**

## 4.2 Lawsuits

**Myth:** *The City of Oakland is an easy mark to sue because, like any public agency, it has “deep pockets” of taxpayer dollars.*

**Fact:** *The majority of individuals who sue Oakland walk away with zero dollars.*

The Office of the City Attorney vigorously protects taxpayer dollars by using aggressive litigation strategies including:

- Settling claims early when there is clear liability as a way to avoid higher costs of defense and to discourage plaintiffs’ attorneys from needlessly litigating to increase their fees.
- Filing motions to dismiss defendants and causes of action, thereby narrowing the scope of the defense; this tactic reduces litigation costs and limits potential exposure.

Lawsuits primarily arise in four categories: municipal infrastructure/dangerous conditions (streets, sewers, storm drainage, sidewalks, trees), police conduct, personnel/labor and accidents involving City fleet vehicles.

In keeping with claims trends, the number of lawsuits filed against the City has also decreased significantly, as shown in **Table 4**. Fiscal year 2003-04 marked a 25 percent drop in the number of cases filed compared to the previous fiscal year and the five-year average. Specifically, 28 percent fewer municipal infrastructure cases were filed. Looking at trend lines, the number of lawsuits related to personnel issues and vehicle accidents

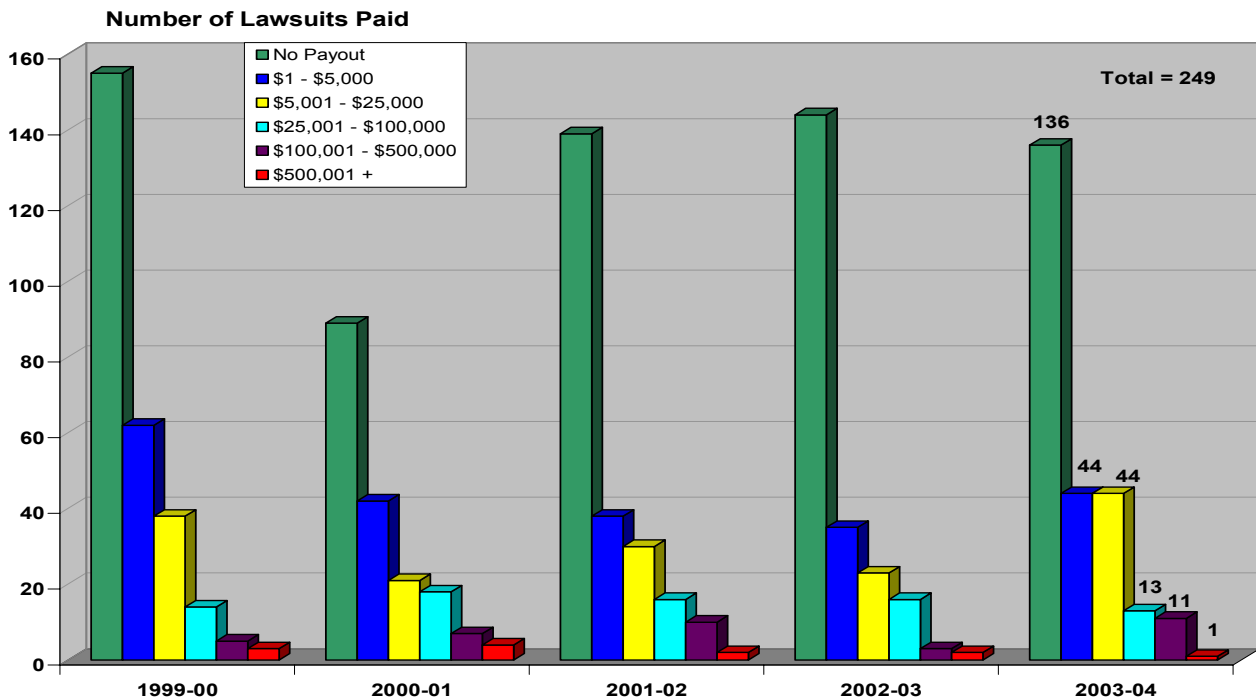
has declined significantly during the past five years as a result of enhanced risk management and mandatory city-wide driver safety training.

**Table 4: Types of Lawsuits Received in 2003-04**

Category	1999-00	2000-01	2001-02	2002-03	2003-04	5-year average
Municipal Infrastructure	72 29%	46 22%	56 26%	61 29%	44 28%	56 27%
Police Matters	50 20%	74 36%	52 24%	50 24%	50 32%	55 27%
Personnel/Labor	40 16%	24 12%	32 15%	19 9%	18 12%	27 13%
City Vehicle Accidents	17 7%	19 9%	20 9%	9 4%	8 5%	15 7%
<b>Total Lawsuits/Year</b>	<b>247</b>	<b>208</b>	<b>214</b>	<b>207</b>	<b>155</b>	<b>206</b>

As shown in **Figure 7**, our hard-line litigation strategies are paying dividends. Of the 249 lawsuits resolved in 2003-04:

- More than half (53 percent) resulted in zero payout.
- Almost three-quarters (72 percent) were resolved for less than \$5,000.
- In only 5 percent of the lawsuits (12), the City paid more than \$100,000 (see **Table 5**).



**Figure 7: Lawsuit Payouts Over 5 Years**



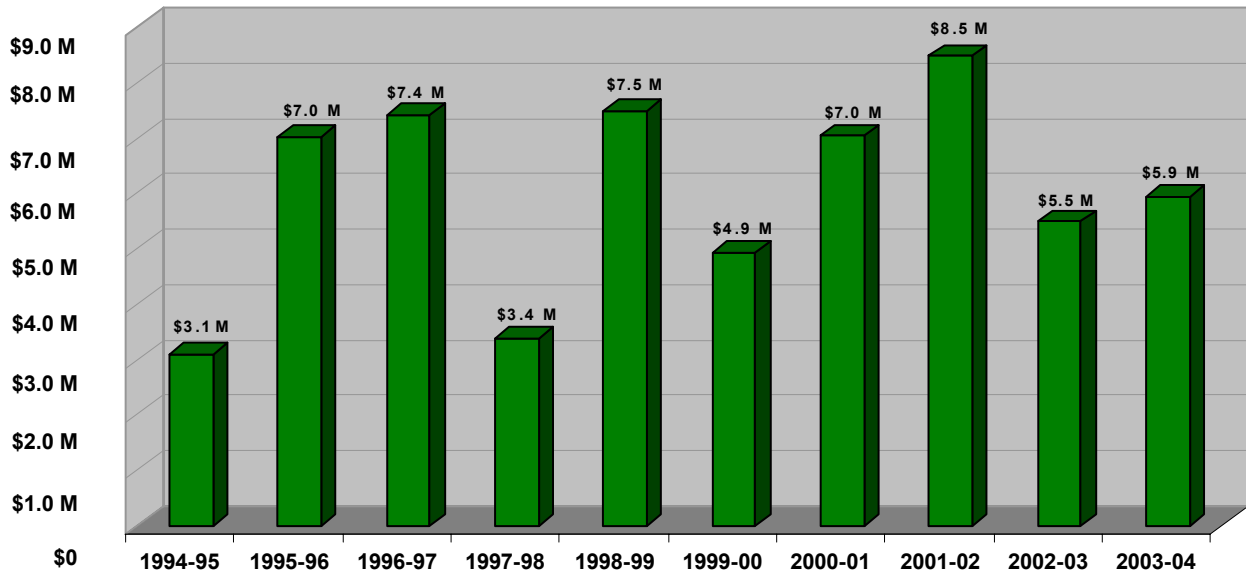
**Table 5. Payouts of Claims and Lawsuits of More Than \$100,000 in 2003-04**

Case	Type	Payout
<i>Watson v. City of Oakland, et al</i>	Landslide	\$517,328
<i>Bari v. City of Oakland, et (Earth First!)</i>	Police conduct—non-force	\$500,000 * * First of four annual payments to total \$2M
<i>Fuentes, et al v. City of Oakland, et al</i>	Police conduct—force	\$450,000
<i>West Bay Builders v. City of Oakland</i>	City-hired contractor	\$414,483
<i>Silveira, et al v. City of Oakland, et al</i>	Landslide	\$325,000
<i>Jones, et al v. City of Oakland, et al</i>	Landslide	\$304,927
<i>Jackson v. City of Oakland, et al</i>	Police conduct—force	\$250,000
<i>Yuen, et al v. City of Oakland, et al</i>	Sewer back-up	\$225,000
<i>Black, et al v. City of Oakland, et al</i>	City vehicle	\$200,000
<i>Pope v. City of Oakland, et al</i>	Police conduct—force	\$195,000
<i>Kimbrell v. City of Oakland, et al</i>	Slip and fall on sidewalk	\$167,876
<i>Davis v. City of Oakland, et al</i>	Police conduct—force	\$110,000
<b>Total Number Resolved: 249</b>		

A common misperception is that the City pays to settle police conduct cases rather than defend them. The facts debunk this myth. Since the start of this administration (September 2000):

- Ninety-three percent (93%) of **all** claims and lawsuits filed against the Police Department (1,348 out of 1,449 total) were resolved for less than \$5,000. Eighty percent (80%) of these matters were closed with zero payout.
- Looking at police conduct/use-of-force cases alone, the statistics reflect a similar trend—nine out of 10 use-of-force claims and lawsuits (523 out of 581 total) were resolved for less than \$5,000. Of these (480), 92 percent were resolved for zero payout.

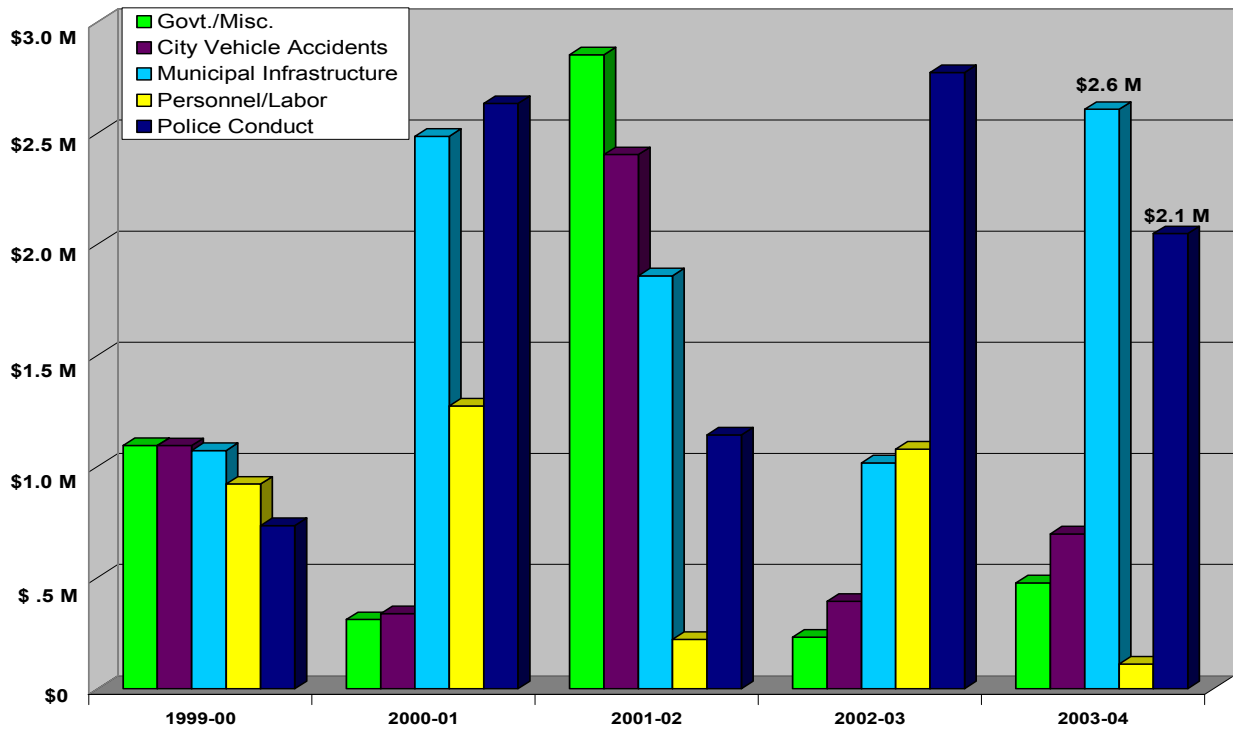
As shown in **Figure 8**, the total payout of claims and lawsuits in 2003-04 was \$5.9 million, 7 percent (\$400,000) more than the previous fiscal year, but still significantly less than the previous two fiscal years.



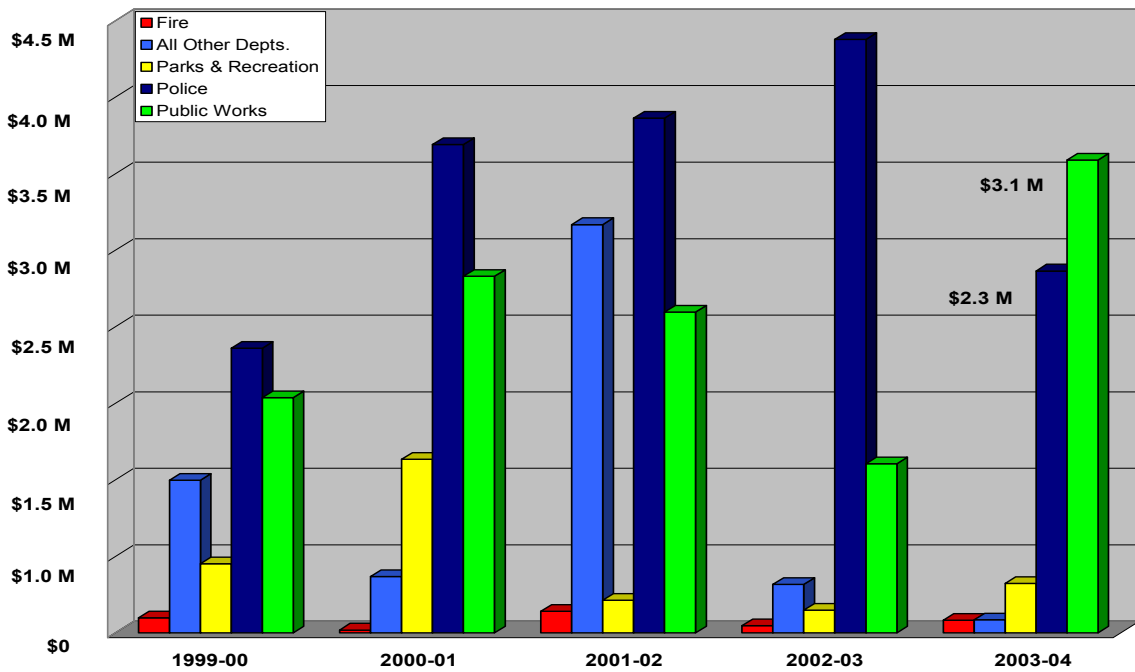
**Figure 8: Payout Trend Over 10 Years - Claims and Lawsuits**

**Figures 9 – 10** and **Tables 6 – 9** provide a detailed breakdown from several perspectives of the total payouts to settle claims and lawsuits during the past five years:

- Payouts by cause category (Figure 9)
- Payouts by City department (Figure 10)
- Payouts related to police matters (Table 6)
- Payouts related to municipal infrastructure by category (Table 7)
- Payouts for accidents involving City vehicles by City department (Table 8)
- Payouts related to personnel/labor matters by department (Table 9)



**Figure 9: Total Payouts of Claims and Lawsuits by Category**



**Figure 10: Payouts by Department**

**Table 6. Payouts Related to Police Matters**

<b>Police Matters</b>	<b>1999-00</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>5-year average</b>
Alleged use of force	\$361,500	\$204,036	\$155,175	2,571,000	\$1,380,775	\$934,497
Conduct—non-force	\$165,287	\$1,610,534	\$671,139	\$35,570	\$649,618	\$626,430
Alleged wrongful death	\$200,000	\$800,216	\$291,868	\$166,000	\$4,000	\$292,417
Vehicle Accidents	\$262,273	\$189,548	\$2,194,962	\$197,953	\$315,574	\$632,062
Property Loss	\$10,736	\$167,935	\$13,928	\$13,389	\$7,316	\$42,661
Towing	\$1,051	\$706	\$10,367	\$56,484	\$6,838	\$15,089
Personnel/Labor	\$838,608	\$216,880	\$24,900	\$836,432	\$0	\$383,364
<b>Total Paid/Year</b>	<b>\$1,839,455</b>	<b>\$3,189,855</b>	<b>\$3,362,339</b>	<b>\$3,876,828</b>	<b>\$2,364,121</b>	<b>\$2,926,520</b>

**Table 7. Payouts for Municipal Infrastructure/Dangerous Conditions**

<b>Infrastructure</b>	<b>1999-00</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>5-year average</b>
Building Maintenance	\$10,364	\$9,506	\$20,836	\$3,729	\$4,382	\$9,763
Sewers/Storm Drains	\$401,555	\$343,027	\$442,319	\$194,612	\$608,220	\$397,947
Sidewalks	\$211,698	\$230,394	\$208,031	\$491,240	\$568,970	\$342,067
Streets	\$125,999	\$1,562,179	\$398,731	\$96,659	\$245,966	\$485,907
Landslides	\$137,500	\$130,000	\$492,032	\$127,500	\$1,089,706	\$395,348
Parks & Rec. Maintenance	\$35,830	\$116,434	\$72,406	\$26,234	\$14,229	\$53,027
Trees	\$92,683	\$93,849	\$92,295	\$71,323	\$76,255	\$85,281
<b>Total Paid/Year</b>	<b>\$1,015,629</b>	<b>\$2,485,389</b>	<b>\$1,726,650</b>	<b>\$1,011,297</b>	<b>\$2,607,728</b>	<b>\$1,769,339</b>

**Table 8. Payouts for Accidents Involving City Vehicles by Department**

<b>City Vehicle Accidents</b>	<b>1999-00</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>5-year average</b>
Police	\$262,273	\$189,548	\$2,194,962	\$197,953	\$315,574	\$632,062
Public Works	\$745,205	\$101,915	\$123,075	\$118,814	\$73,351	\$232,472
Parks & Recreation	\$51,522	\$17,748	\$18,834	\$37,099	\$220,750	\$69,191
Fire	\$22,809	\$16,438	\$57,590	\$27,646	\$76,211	\$40,139
Other Departments	\$12,033	\$12,447	\$6,882	\$11,654	\$11,142	\$10,832
<b>Total Paid/Year</b>	<b>\$1,093,842</b>	<b>\$338,096</b>	<b>\$2,401,343</b>	<b>\$393,166</b>	<b>\$697,028</b>	<b>\$984,695</b>

**Table 9. Payouts for Personnel/Labor Matters by Department**

<b>Personnel/Labor</b>	<b>1999-00</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>5-year average</b>
Police	\$838,608	\$216,880	\$24,900	\$836,432	\$0	\$383,364
Parks & Recreation	\$0	\$830,000	\$0	\$0	\$9,000	\$167,800
General Government/Other	\$10,500	\$203,556	\$65,000	\$227,961	\$15,000	\$104,403
Public Works	\$0	\$0	\$55,000	\$0	\$87,500	\$28,500
Fire Services	\$72,000	\$0	\$81,800	\$14,000	\$0	\$33,560
<b>Total Paid/Year</b>	<b>\$921,108</b>	<b>\$1,250,436</b>	<b>\$226,700</b>	<b>\$1,078,393</b>	<b>\$111,500</b>	<b>\$717,627</b>

**5.0 COMMUNITY-IMPACT INITIATIVES**

We fulfill our motto—**law in service of the public**—by defending Oakland’s progressive policies in court and initiating legal action when the community’s quality of life or economic interests are violated. Our attorneys look for ways to use the law as a powerful problem-solving tool and as a means to serve the community’s best interests. These community initiatives illustrate our commitment to accountability, access to City government and enhanced legal services at the neighborhood level.

## 5.1 Neighborhood Law Corps

The Office of the City Attorney's innovative community lawyering program continues its commitment to respond to residents and solve neighborhood problems. The Neighborhood Law Corps works to empower the community to tackle problem liquor outlets, bars, drug houses, blight and inhumane housing conditions. Neighborhood Law Corps attorneys use legal and community-based tools to achieve their goal of improved neighborhoods. This year, the Neighborhood Law Corps:

- Achieved a significant increase in drug nuisance abatement actions – from 17 in 2001 to 30 last year.
- Significantly increased the number of alcohol-related nuisance suits filed – from one in 2001 to 8 last year.
- Issued Oakland's first Report Card on liquor stores titled *The Good, The Bad and The Ugly*, prompting the City to take vigorous enforcement action against problem outlets. This focused, coordinated effort will continue next year.
- Used the City's new nuisance abatement ordinance, in coordination with the City Administrator's Office, to revoke land use permits and shut down a problem liquor store in West Oakland.
- Filed Oakland's first unfair business practice lawsuit for \$4 million against a negligent landlord of two apartment buildings. The settlement resulted in complete renovations of every apartment unit. Similar actions against problem property owners are planned for the coming year.
- Components of the Neighborhood Law Corps program are being modeled by local governments around the state, including Riverside, Modesto and Alameda County.

*This a quick note to say I am in shock, and most pleased, that you have done the impossible. . . . You and the police removed a house of crack and prostitution from a community on the crime fringe, and that the mayhem and nuisance and fear are gone. Moreover, the task was done safely, quietly, and with correct family support, and the elderly owner is being cared for...not exploited. You are amazing!*

—Letter of gratitude to a Neighborhood Law Corps attorney from a North Oakland resident following a successful drug nuisance abatement action.

*We want to thank the City Attorney's Office and the Neighborhood Law Corps for its work with tenants and the Code Enforcement division in order to improve the quality of housing for families at both properties . . . . (The families) expressed tremendous gratitude for all of the recent repairs and improvements with the property management. The families feel that they are living in a safer, cleaner and healthier environment and are grateful that the city has listened and responded to their concerns.*

—Letter from residents and a community organization to the Neighborhood Law Corps regarding a code-enforcement action to resolve inhumane living conditions at an apartment building in Fruitvale.

## **5.2 Open Government Program**

Unlike any other city, the Office of the City Attorney has an Open Government Coordinator who serves as an ombudsperson to track requests for public records and act as an advocate for citizens. During the last fiscal year, the Open Government program:

- Handled 236 public records requests.
- Conducted trainings on the Sunshine Ordinance and the Brown Act for the new Wildfire Prevention Assessment District, the Community Action Partnership and the Oakland Citizens' Academy.
- Advised City boards and commissions staff on the conduct of open meetings.

## **5.3 Union Pacific Railroad**

Many problems Oakland faces—like the chronic issue of illegal dumping and littering along railroad tracks—are complex, recurring and incredibly resource-intensive. It takes a potent combination of creativity, innovation and partnership to affect real change and actually solve a complex problem.

After years of wrangling with the severe problem of illegal dumping on railroad property, we crafted a legal agreement with one of the nation's largest railroads—Union Pacific—that is a model for what the City wants from its property owners: commitment to a clean, safe and healthy environment, stewardship of their property and partnership in the effort to beautify Oakland.

In November 2003, the City of Oakland and Union Pacific officials signed an unprecedented 10-year Inspection and Maintenance Agreement, the first of its kind in California, in which Union Pacific agreed to clean up the hundreds of tons of debris and trash that accumulate annually on its 20 miles of railroad right-of-way in Oakland.

This agreement saves the City hundreds of thousands of dollars in clean-up costs. It provides that Union Pacific will install anti-littering signs, construct fences at designated locations and work with the City to aggressively investigate and prosecute illegal dumpers.

## **5.4 Petition to Stop Postal Profiling—An Update**

Drivers should be charged insurance rates based on how they drive, not where they live. Yet thousands of drivers pay higher auto insurance premiums because of the neighborhood they live in, even though they have good or even excellent driving records.

Our office joined the City Attorneys of San Francisco and Los Angeles and a powerful consumer coalition to end a common insurance practice of ZIP code profiling, which unfairly discriminates against the poor by charging rates based on ZIP code rather than driving record as mandated by voters in 1988 under Proposition 103.

Last year this coalition petitioned Insurance Commissioner John Garamendi to require insurance companies' compliance with Proposition 103. Garamendi granted the petition and in winter 2004 he held a series of workshops throughout California seeking public review of the regulations. The Office of the City Attorney and the consumer coalition continue to press the Insurance Commissioner to do the right thing: revise the regulations to favor driving record over ZIP Code in setting insurance rates and treat ratepayers in California with fairness and equity.

## **5.5 Oak Knoll**

The Office of the City Attorney filed suit on behalf of the Oakland Base Reuse Authority and Oakland Redevelopment Agency against the federal government and the Departments of Navy and Defense to recover property at the former Oak Knoll Naval Hospital site. Under base reuse laws, the property was required to be turned over to the City as part of an accommodation to a local homeless collaborative. The government refused, instead attempting to sell the property as part of the Oak Knoll site to a private developer. The United States District Court ruled in favor of the City and ordered the government to transfer the property. Ultimately the federal government decided to pay the City more than \$2 million in lieu of turning over the property.

## **5.6 Billboard Litigation**

Longstanding City ordinances in the Oakland Sign Code control the placement of billboards along freeways. In an effort to curtail the proliferation of billboards in Oakland and reduce visual blight, in 1997 the City Council adopted additional controls prohibiting new billboards.

In blatant violation of our law, one billboard company, Desert Outdoor, has used unfair business practices to put up new billboards and has intentionally misrepresented Oakland's rules to unwitting property owners to get leases for future billboards. The City sued Desert Outdoor to stop these unlawful practices and to send the message to other advertisers that unfair and deceptive business practices will not be tolerated in Oakland. The lawsuit also seeks a refund of the ill-gotten profits Desert Outdoor has made from advertisements on any billboard put up under false pretenses. This lawsuit is ongoing.

## **5.7 Predatory Lending**

In September 2003, in a landmark decision, the California Court of Appeal upheld Oakland's anti-predatory lending ordinance. The ordinance prohibits abusive lending terms and practices and requires borrowers to receive independent loan counseling before closing a high-cost home loan. Cities throughout the nation that are trying to protect homeowners from unethical mortgage lending practices benefit from Oakland's leadership on this issue. The American Financial Services Association, a trade organization for what are called "subprime" lenders, had filed suit against the ordinance, contending that it was preempted by state lending laws. The Court of Appeals threw out the challenge, confirming that it is up to Oakland, not Sacramento or Washington, D.C., to determine what is needed to protect Oakland residents from unscrupulous business practices that lead to foreclosures, bankruptcies and urban blight. The case is currently on appeal to the California Supreme Court.



## 5.8 Energy Settlements—Update

When electricity prices exploded in California three years ago, out-of-state energy providers raked in obscene profits while our state economy sank into recession. In 2002, Oakland joined San Francisco in a class-action lawsuit that accused 13 wholesale energy suppliers of market manipulation, conspiracy and collusion and demanded return of the profits stolen from ratepayers. As a result, the Federal Energy Regulatory Commission ruled that California is owed \$3.3 billion in refunds from energy providers.

Working with the California Attorney General's Office, the City will receive \$500,000 from Duke Energy as a result of a settlement negotiated in July 2004. This is in addition to a previous settlement resulting in the City receiving \$4.5 million from Williams Energy. Litigation against and negotiations with other energy providers is continuing.

## 5.9 Update on Port Protest Litigation

The City and several police commanders have been sued by approximately 57 people claiming that their civil rights were violated by Oakland Police officers trying to disperse a crowd of anti-war protesters at the Port of Oakland on April 7, 2003. The plaintiffs are seeking monetary damages in excess of \$7 million and are demanding that Oakland discontinue the use of “less-lethal” munitions to control crowds and to stop the practice of using motorcycles to “bump” protesters. The parties are actively engaged in settlement discussions regarding the damage and the crowd control issues. The crowd control issues are close to being resolved and a good faith effort is being made to address the damages issues.

## 6.0 PROJECT HIGHLIGHTS

OCA attorneys provide legal services in nearly every aspect of municipal affairs. They negotiate contracts, advise on housing and economic development projects, draft new legislation, advise clients about labor and personnel issues, negotiate real estate transactions, issue municipal bonds, provide advice about municipal elections and ethics, defend the City's ordinances against challenges in court and initiate legal proceedings to address public nuisance problems in Oakland's neighborhoods. The following is a brief summary of highlights from 2003-04.

### 6.1 Redevelopment & Real Estate

#### **OCA Attorneys:**

- Assisted in a much-needed rehabilitation of the West Oakland Jack London Gateway Shopping Center by closing the deal to transfer the center to a group led by the East Bay Asian Local Development Corporation and the West Oakland Marketplace Advancement Company.
- Helped preserve offices for nonprofits by closing the sale of Preservation Park in downtown Oakland to the East Bay Asian Local Development Corporation. The agreement required the buyers to lease the property to non-profit organizations.

- Helped the City increase new housing by closing the sale of the old City animal shelter site in Fruitvale to Signature Properties for residential redevelopment.
- Created new opportunities for economic development by helping create two new redevelopment project areas in West Oakland and Central City East.
- Finalized complex negotiations with Forest City to complete 700 housing units, retail space and a new public park in downtown Oakland.
- Successfully oversaw the transfer of the closed Oakland Army Base to the City for future redevelopment.

## **6.2 General Government & Finance**

### **OCA Attorneys:**

- Drafted a ballot measure that will bring in an additional \$5.6 million to the City's public libraries (Measure Q).
- Drafted a ballot measure for November 2004 election that would authorize tax revenue to fund violence prevention programs and hire additional police officers.
- Issued \$71.5 million in bonds to clean up and improve Lake Merritt (Measure DD).
- Assisted in the completion of Oakland Housing Authority's Coliseum Gardens Hope VI Project - Phase 1 to provide low-income rental housing, ownership and mixed use in the Coliseum Gardens area. More than 300 housing units will be constructed during the course of the project. The project will also provide a reconstructed public park as its centerpiece.
- Helped form the Temescal/Telegraph Avenue Business Improvement District, which will attract more businesses by improving and maintaining local amenities, such as sidewalks and street furniture, above and beyond those provided by the City.
- Resolved a case before the State Board of Equalization resulting in the recovery of more than \$100,000 in sales tax revenue for the City of Oakland.
- Drafted ordinances protecting Oakland's street trees and homeowner views.

## **6.3 Public Safety, Risk Management & Contracts**

### **OCA Attorneys:**

- Completed development and construction agreements with nonprofit developers such as the Trust for Public Land for Union Point Park, Willow Park and Bertha Port.
- Finalized long-term renewal agreements for operations and/or improvements at the Oakland Zoo, Children's Fairyland and the Jack London Aquatic Center.
- Entered into development, clean-up and construction agreements for the Fox Theater.

- Drafted a public nuisance abatement ordinance authorizing the City to take administrative action against owners who maintain property nuisances, which will result in more expeditious abatement of properties that significantly detract from the quality of life in neighborhoods.
- Developed and drafted an ordinance to establish a permitting system and operation guidelines for medical cannabis dispensaries in Oakland. The program assures safe and affordable medical cannabis to patients whose doctors have recommended this medicine to alleviate pain and suffering from maladies such as cancer, multiple sclerosis and AIDS.
- Negotiated agreements for improvements to the Oakland Museum.
- Facilitated complex negotiations for the City's Building Services Division with multiple vendors for the acquisition of an on-line construction and land-use permit-tracking system.
- Asserted the City's legal rights in the placement and eventual relocation of state-defined "sexually violent predator" Cary Verse.

#### **6.4 Land Use & Development**

##### **OCA Attorneys:**

- Drafted the Nuisance Eviction ordinance that requires owners of rental property to evict drug dealers and tenants involved in illegal activities and authorizes the City to evict tenants if property owners cannot.
- Provided legal counsel for Oakland's evaluation and approval of a major destination-retail, dining and entertainment mixed-use project in Jack London Square.
- Expanded Oakland's ability to obtain community benefits from development projects by negotiating the City's first adopted development agreement.
- Resolved litigation over the complex Leona Quarry development project, enabling conversion of a blighted mining site to housing and open-space uses while rectifying community health and safety concerns.
- Obtained significant traffic improvement funding commitments from the City of Alameda by initiating and settling litigation challenging the Alameda Point General Plan Amendment.
- Facilitated new housing development by assisting with the City's overdue update to the General Plan Housing Element.
- Successfully defended litigation challenging development of a 76-unit affordable housing project at 14<sup>th</sup> Street and Madison.
- Provided legal assistance to prevent conversion of an established neighborhood business to a national fast-food chain restaurant.

## **6.5 Labor & Employment**

### **OCA Attorneys:**

- Resolved numerous individual disciplinary matters. In three of five individual disciplinary matters resolved through arbitration, the City's case was upheld in three and the arbitrator found significant disciplinary action was warranted in the other two.
- Provided anti-sexual harassment training to police sergeants and nondiscrimination and anti-harassment training to the Citizens' Police Review Board and fire, police, library and public works personnel.
- Prevented Equal Employment Opportunity lawsuits—for example, since 2001, only \$5,000 paid out for lawsuits based on disability in instances in which our attorneys were consulted.
- Coordinated efforts of multiple departments to resolve longstanding Americans with Disability Act access complaint.
- Drafted legal advisories on Family Medical Leave, Pregnancy Disability Leave and Paid Family Leave.

## **7.0 AWARD-WINNING RESULTS**

Fiscal year 2003-04 was a banner year for receiving recognition and accolades for our results-driven achievements. The following summarizes the four awards we received.

### **Beacon Award for Open Government**

In November 2003, the California First Amendment Coalition, a nonprofit organization dedicated to promoting and defending the people's right to know, awarded City Attorney John Russo with the prestigious "Beacon Award" in recognition of his dynamic leadership and commitment to promoting public access to government at the local and state level. According to CFAC, "Beacon awards are given to individuals or organizations that have done exemplary work in the area of keeping government meetings or records open to the public" and those "who have gone above and beyond the norm to assure government transparency."

### **Law Firm Distinguished Service Award**

At its annual awards dinner in January 2004, the Alameda County Bar Association presented OCA with the "Law Firm Distinguished Service Award" in recognition of the office's "unselfish and dedicated service to the ACBA and the community." This award was particularly meaningful since it is not often that a municipal legal office is recognized on par with private-sector law firms. In presenting the award, ACBA especially recognized the work of the Neighborhood Law Corps, "which works to prevent or quickly address problems before they become long-term, embedded dilemmas," and acknowledged that "the Office of the City Attorney lives by its motto: law in service of the public."

## California Lawyer of the Year

In its March 2004 issue, California Lawyer Magazine named John Russo as Attorney of the Year for Government/Public Policy. The prestigious CLAY Award recognized Russo for his advocacy and innovation in public law while saving taxpayer money. "As lead defense counsel for the city of Oakland, Russo settled a civil suit alleging widespread police misconduct for \$10.8 million, only \$2.2 million of which came from taxpayers, with the rest paid by excess insurers. Despite this payout, he managed to reduce city spending on lawyers and lawsuits by \$3.5 million compared with the previous fiscal year." The award also recognized the "innovative, privately funded Neighborhood Law Corps" and the "agreement with Union Pacific to clean up illegally dumped trash along railroad tracks, which will save the city hundreds of thousands of dollars in cleanup costs over the ten-year period of the agreement."

## Best Law Firm Publication

In an awards ceremony held at the Library of Congress in Washington, D.C. in June 2004, OCA was honored with a second-place Burton Award for "Best Law Firm Publication" for the Community Report Card for FY 2002-03. "The purpose of the award," said the presenter, "was to select a communication piece that reflected the highest standards of professionalism. Content, presentation, writing, clarity and technique were considered." The Burton Awards program is dedicated to refining and enriching legal writing. The objective is to reward talented legal writers who use plain, modern language in place of archaic, stilted legalese.

## 8.0 CONCLUSION

In the Office of the City Attorney we are proud to represent a progressive and innovative City. It is especially gratifying that after several years of focused work our efforts are paying off. Our cost-containment strategy has saved the City millions of dollars in legal costs, making more money available in the General Fund for vital City services like fire trucks and library books. And our dedication to using the law as a tool for community empowerment and neighborhood improvement is making a tangible difference to the citizens and business owners of Oakland.

Respectfully submitted,



John A. Russo  
City Attorney