

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

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TO: Finance and Administrative Services Committee
ATTN: Chairperson, Danny Wan
FROM: John Russo, City Attorney
DATE: September 23, 2003
RE: Office of the City Attorney's Annual Report, Fiscal Year 2002-2003

1.0 INTRODUCTION

In the Office of the City Attorney, our guiding philosophy—**law in service of the public**—shapes our approach to providing 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.

The purpose of this Annual Report is to summarize the financial results of the Office of the City Attorney (OCA) during the last fiscal year (FY 2002-2003) and to highlight our ongoing community-impact initiatives.

1.1 The Year in Review

FY 2002-03 marked the second full year of operation under an elected City Attorney. Two years ago, the Office of the City Attorney (OCA) initiated a long-term cost reduction strategy to stem the rising cost of providing legal services to the City of Oakland.

The unprecedented financial crisis in California and ballooning City budget deficits this past year underscored the relevance and urgency of this strategy, which focuses on enhancing in-house legal expertise and reducing reliance on costly outside counsel.

Aggressive cost containment strategies paid significant dividends:

- OCA cut outside counsel costs by **\$1.1 million**—a 42% cost reduction, and the first downward trend in years. Outside counsel costs (\$1.5 million) have not been this low since 1996
- Reduced liability payouts by **\$3 million**, even with the \$2.5 million payout for the "Riders" case
- Payouts for claims and lawsuits are down 35% compared to last year
- Total reduction in the overall cost of providing legal services: **\$3.5 million**

These results are particularly remarkable considering our shrinking resources due to budget cutbacks (a 20% staff cut eliminated six full-time attorneys), and the settlement of the 'Riders' case—the most costly liability payout in Oakland's history.

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1.2 Office Profile

We are proud to be one of the most diverse legal teams in the country, reflecting the diversity of the community we serve. Our 74-member team of dedicated professionals includes:

- 37 attorneys—City Attorney, 2 Assistant City Attorneys, 34 Deputy City Attorneys
- 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 FY 2002-03, it cost \$18.4 million to provide legal services to the City of Oakland, a 16% (\$3.5 million) decrease over the \$21.9 million cost in FY 2001-02, as shown in **Table 1**:

Expense Type	FY 2002-03	FY 2001-02
Operating costs <i>(i.e., salaries, equipment, overhead)</i>	\$10 million	\$9.2 million
Litigation expenses <i>(i.e., expert witnesses, depositions, exhibits)</i>	\$1.4 million	\$1.6 million
Outside counsel costs	\$1.5 million	\$2.6 million
Payouts of claims and lawsuits	\$5.5 million	\$8.5 million
TOTAL	\$18.4 million	\$21.9 million

2.2 Cost-Reduction Strategy

Two years ago, OCA initiated a long-term cost-containment strategy to:

- enhance in-house legal expertise
- more aggressively manage risk and liability
- streamline service delivery to clients

The most pressing objective was to curb the mounting cost of hiring outside counsel to handle the City's legal business. To reverse the trend, OCA hired additional legal specialists in land use, real estate, municipal finance, labor/personnel, and complex litigation. **Figure 1** depicts success of this strategy.

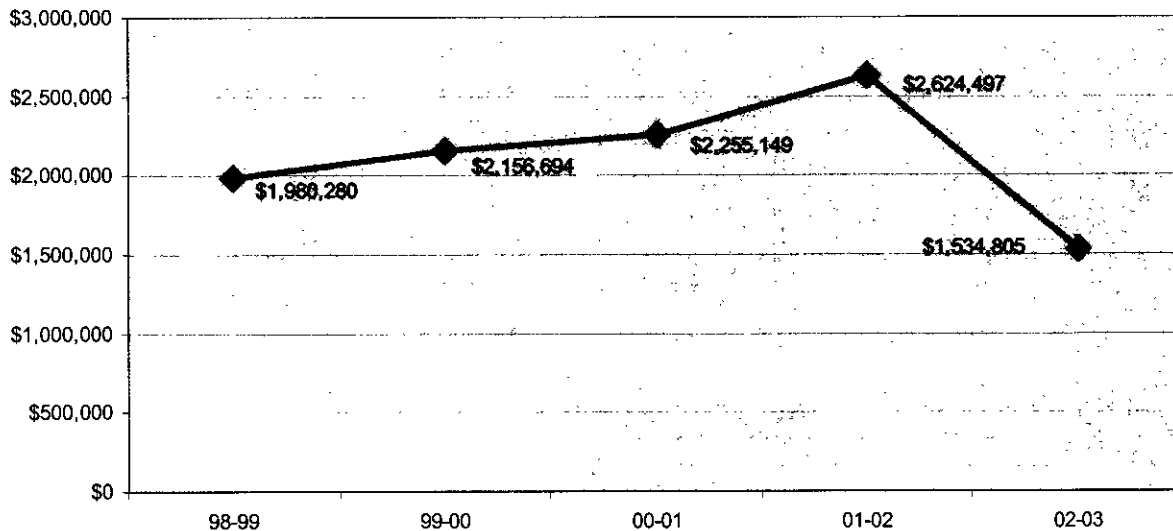


Figure 1: Five-Year Trend in Outside Counsel Costs

By hiring additional in-house specialists whose billable rates are almost half the rate of outside attorneys, OCA slashed **\$1.1 million** off its outside counsel bills and enhanced its capacity to handle complex and recurring issues in a cost-effective manner. This in-house capacity not only saves money on legal matters today, it also helps the City avoid legal problems in the first place.

In FY 2002-03, outside counsel costs are down in every practice area. The cost to retain outside land use services alone has plummeted: from \$500,000 in 2000-01 to less than \$15,000 this year. In redevelopment and housing, outside counsel cost \$39,000 this year compared to \$175,000 two years ago. **Figure 2** depicts the types of matters requiring outside counsel in FY 2002-03.

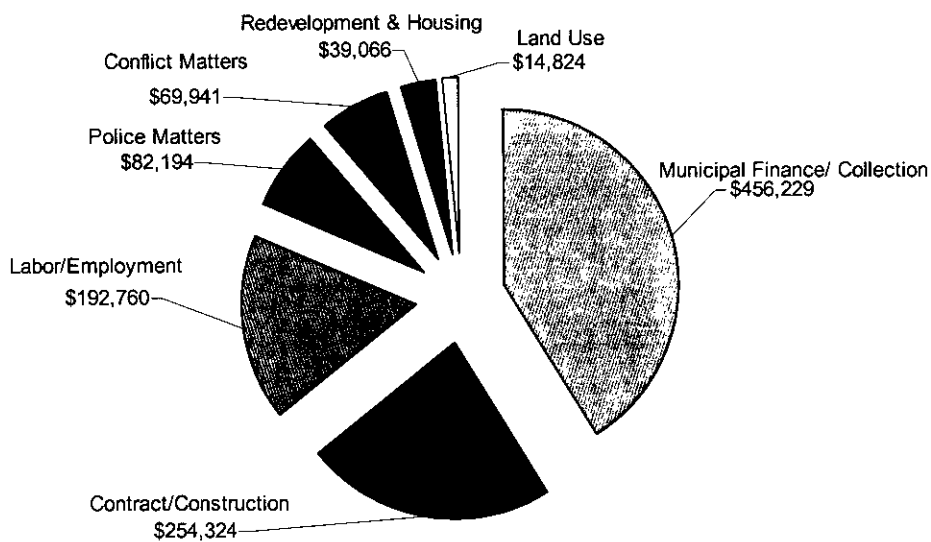


Figure 2: Outside Counsel Costs by Category 2002-03

3.0 ALLOCATION OF LEGAL RESOURCES

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

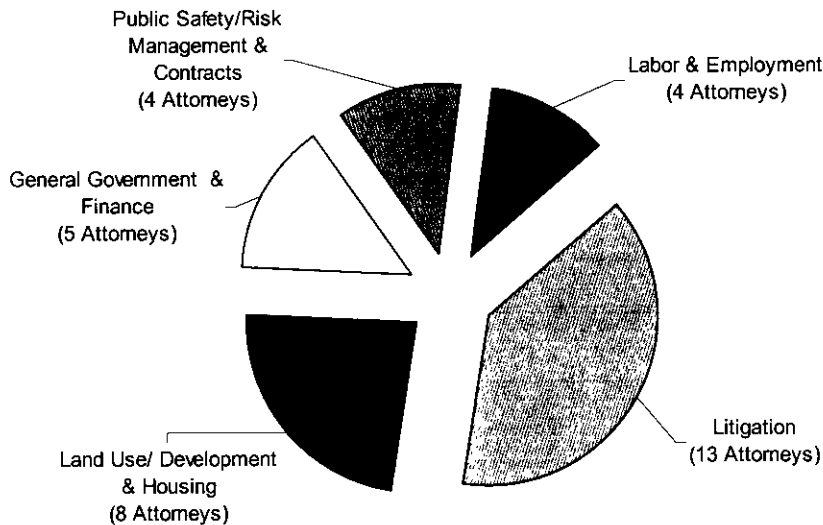


Figure 3: Allocation of Legal Resources

In keeping with City Council priorities and to meet the demand for legal services, in-house attorneys, paralegals and investigators spent approximately 83,506 staff hours delivering legal services to City departments, as shown in **Figure 4**. Although OCA does not directly bill time to these departments, internally we closely track billable hours to manage our resources more effectively and contain legal costs.

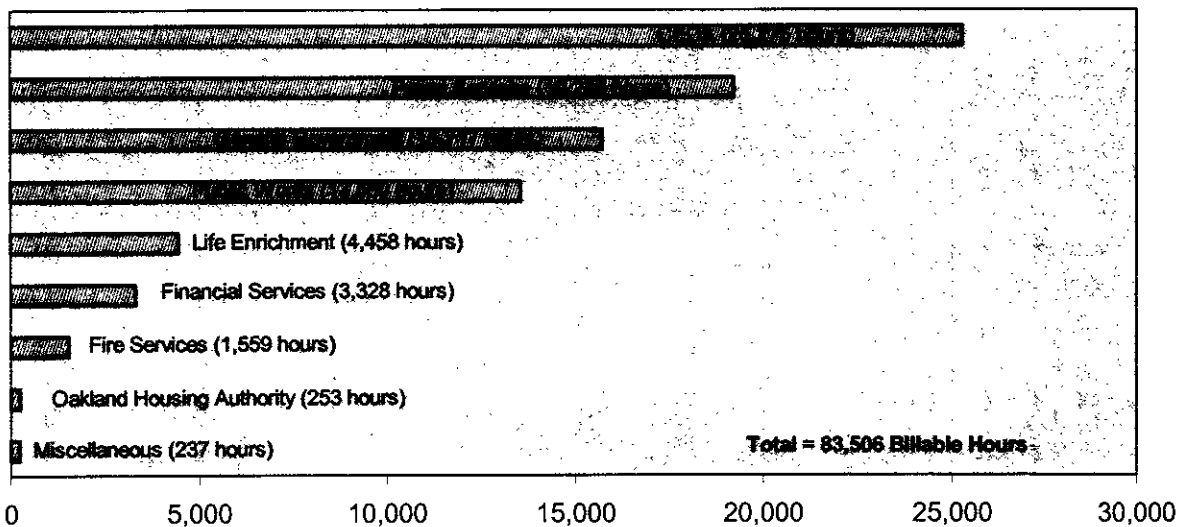


Figure 4: Billable Hours by Department - 2002-03

4.0 MANAGEMENT OF CLAIMS AND LITIGATION

OCA's claims investigators and attorneys aggressively defend the City's legal interests to meet one of our top priorities: saving taxpayer money. Because the City of Oakland is self-insured, every dollar spent on claims and lawsuits is a dollar that is not available for other community services.

4.1 Claims

In FY 2002-03, 852 claims were filed against the City of Oakland—that's about one claim every 2 business hours. Claims fell into three primary categories: municipal infrastructure (streets, sewers, sidewalks), police matters (primarily conduct cases) and accidents involving City vehicles. The percentage of claims received in each category during FY 2002-03 is consistent with claims trends over the past five years, as shown in **Table 2**:

Table 2: Type of Claims Received	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	5-year average
Municipal Infrastructure	450 45%	446 48%	467 46%	458 44%	415 44%	427 50%	447 45%
Police Matters	200 20%	227 25%	233 23%	288 28%	210 22%	221 26%	232 24%
City Vehicle Accidents	142 14%	132 14%	164 16%	151 15%	152 16%	101 12%	148 15%
Total Claims/Year	1005	926	1012	1034	945	852	984

As shown in **Figure 5**, of the 882 claims resolved in FY 2002-03:

- 82% (or 721) were denied with zero payout
- Fewer than 2% of the claims resulted in payouts over \$5,000

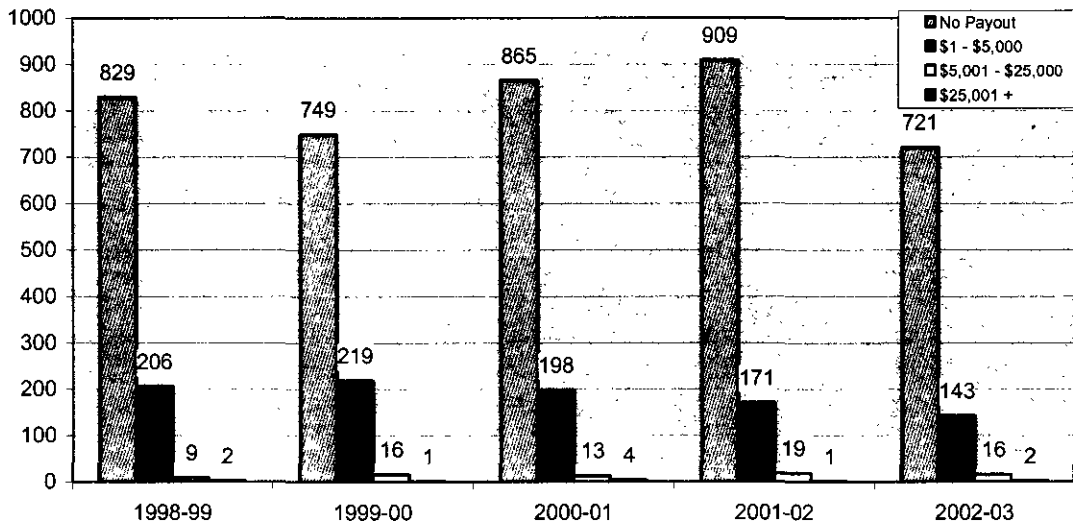


Figure 5: Claims Results Over 5 years

Another reason OCA aggressively manages potential liability at the claims stage is to reduce the number of claims that evolve into lawsuits, thereby avoiding the significant costs involved in litigating a case, such as expert witnesses, depositions, research, court costs and attorney staff time.

As shown in Figure 6, of the 1,032 claims arising from incidents that occurred in 2001, only 128, about 12%, evolved into lawsuits. Compared to an average of 15.5% over the previous three years, this marks a steady downward trend in the number of claims that become lawsuits, reflecting the success of our strategy to thoroughly investigate and adjust claims in a fair, timely and aggressive manner, driving down the overall cost of providing legal services.

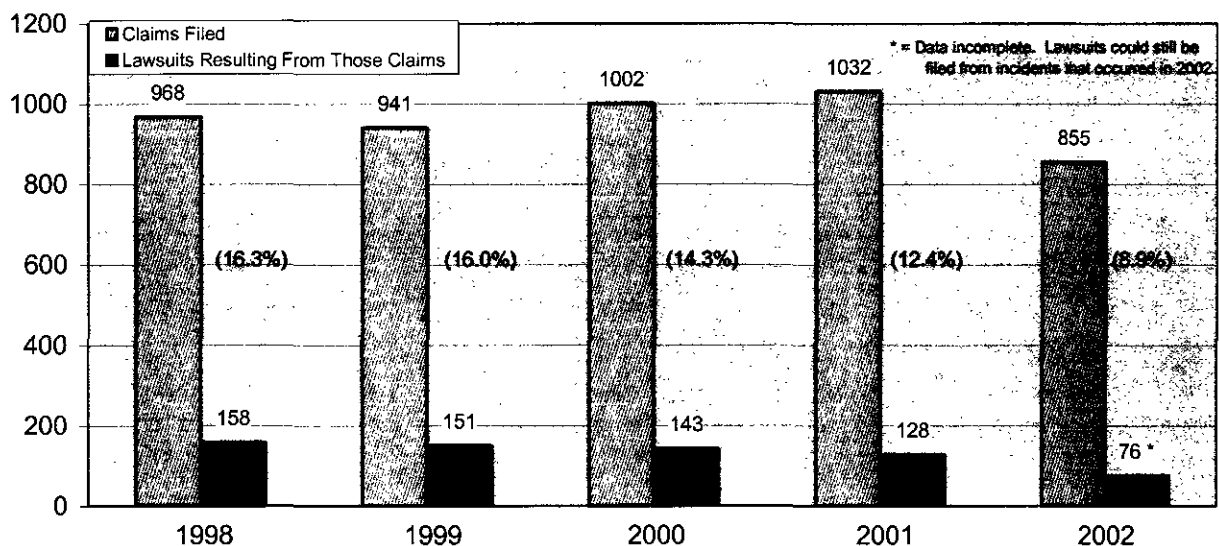


Figure 6: Claims Which Evolved Into Lawsuits By Year of Incident

4.2 Lawsuits

Once a claim becomes a lawsuit, winning cases is only one measure of success. Our legal team moves aggressively to limit the City's financial exposure. Tactics include:

- settling meritorious claims where there is clear liability early to avoid higher costs of defense and discourage plaintiffs' attorneys from needlessly litigating to increase their fees, and
- filing motions to dismiss defendants and causes of action, thereby narrowing the scope of the defense and reducing litigation costs and potential exposure.

In FY 2002-03, 207 lawsuits were filed against the City of Oakland. Lawsuits primarily arise in four categories: municipal infrastructure/dangerous conditions (streets, sewers, storm drainage, sidewalks, trees), police conduct, personnel/labor, and accidents involving City vehicles, as shown in **Table 3** below:

Table 3: Type of Lawsuits Received	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	5-year average
Municipal Infrastructure	96 37%	66 32%	72 29%	46 22%	56 26%	61 29%	67 30%
Police Matters	39 15%	32 15%	50 20%	74 36%	52 24%	50 24%	49 22%
Personnel/Labor	53 20%	28 14%	40 16%	24 12%	32 15%	19 9%	35 15%
City Vehicle Accidents	13 5%	17 8%	17 7%	19 9%	20 9%	9 4%	17 7%
Total Lawsuits/Year	259	207	247	208	214	207	227

As shown in **Figure 7**, our hard-line litigation strategies have paid dividends. Of the 223 lawsuits resolved in FY 2002-03:

- Seven out of 10 resulted in zero payout.
- Two out of 10 were resolved for under \$5,000.
- Only about 1 in 10 lawsuits was resolved with a payout over \$5,000.
- In only about 2% of the lawsuits, the City paid over \$100,000 (see **Table 4**).

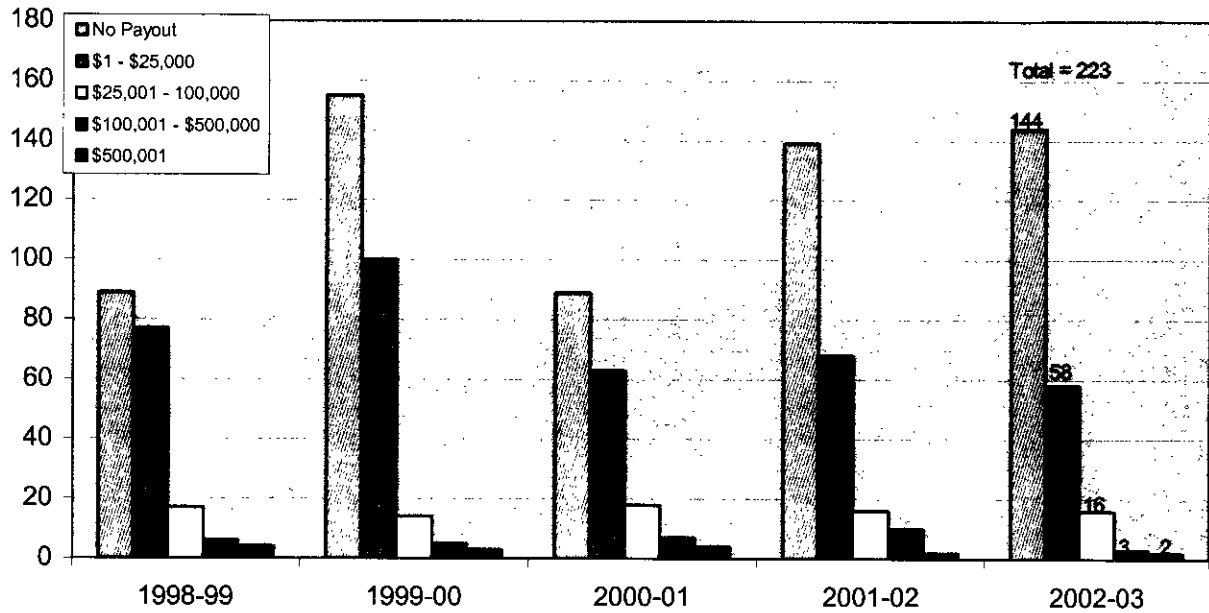


Figure 7: Lawsuit Results Over 5 Years

Table 4. Payouts of Claims and Lawsuits Over \$100,000 for FY 2002-03

Case	Type	Payout
<i>Allen et al. v. City of Oakland</i> (a.k.a. "The Riders")	police conduct	\$2,300,000
<i>Hoey-Custock v. City of Oakland</i>	personnel	\$824,000
<i>Amy v. City of Oakland</i>	trip and fall	\$198,000
<i>Esters v. City of Oakland</i>	police conduct	\$166,000
<i>Hurley v. City of Oakland</i>	personnel	\$160,000
Total Number Resolved: 1,105		

As shown in **Figure 8**, the total payout of claims and lawsuits in FY 2002-03 was \$5.5 million, \$3 million less than the previous fiscal year—and this includes the “Riders” settlement of \$2.3 million. This means that OCA resolved 882 claims and the remaining 222 lawsuits (other than the Riders case) for less than \$3.2 million.

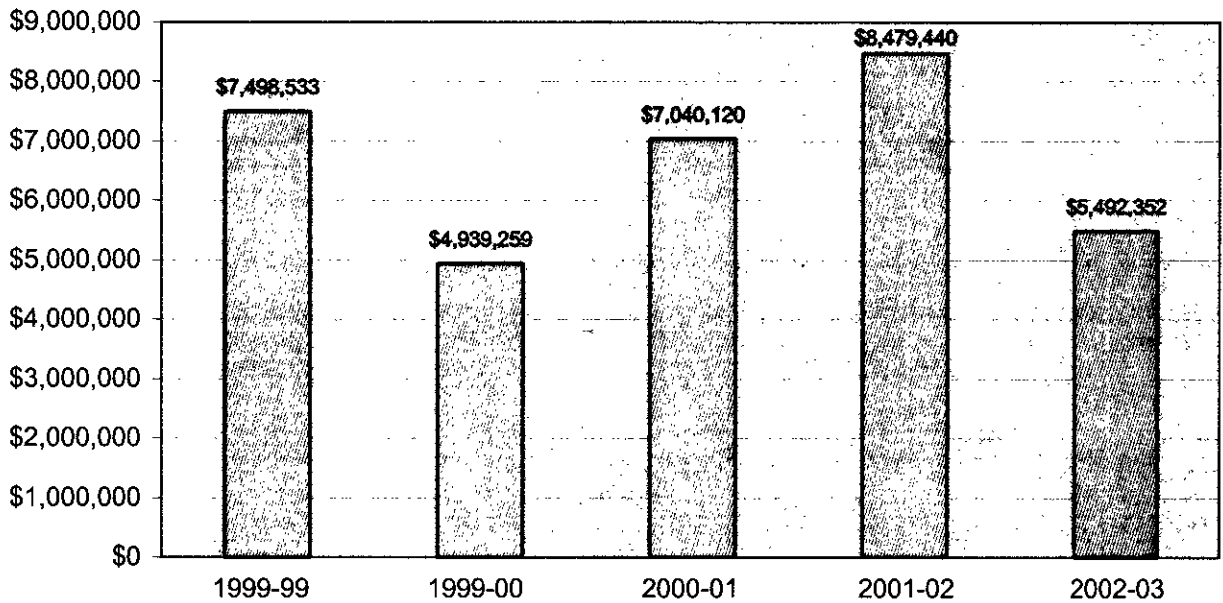


Figure 8: Payout Trend Over 5 Years

Figures 9 – 10 and **Tables 5 – 7** provide a more detailed breakdown of the total payouts to settle claims and lawsuits over the past five years from several perspectives. **Figure 9** shows payouts by cause category. **Figure 10** depicts payouts by City department. **Table 5** shows payouts related to accidents involving City vehicles by City department. **Table 6** shows payouts related to municipal infrastructure/dangerous condition by category (the Parks and Recreation category includes trees and sidewalks). **Table 7** shows payouts related to personnel/labor matters by department.

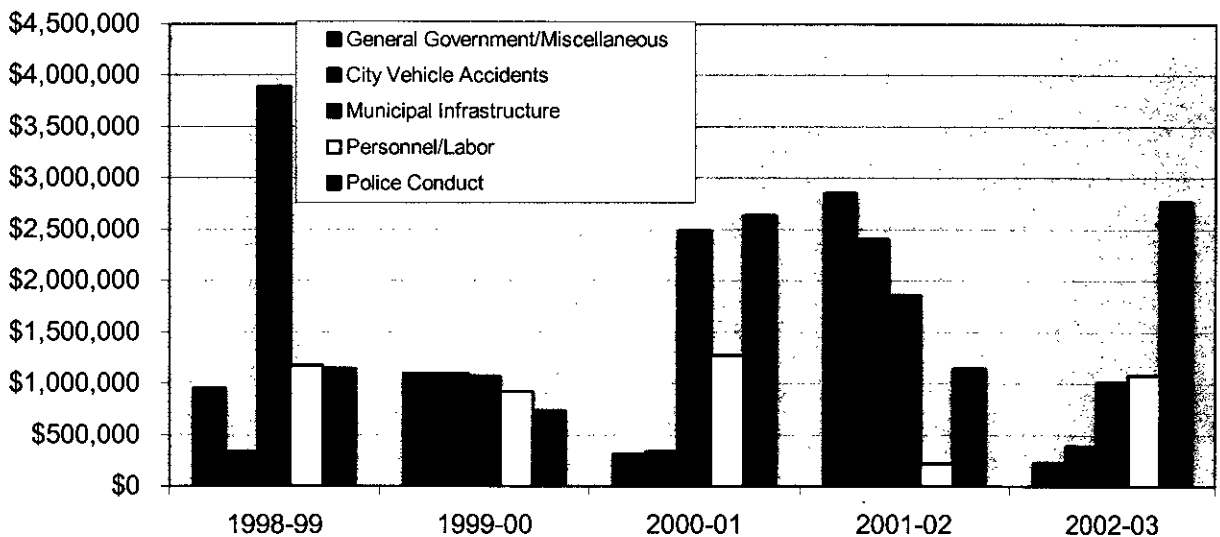


Figure 9: Total Payouts of Claims and Lawsuits by Category

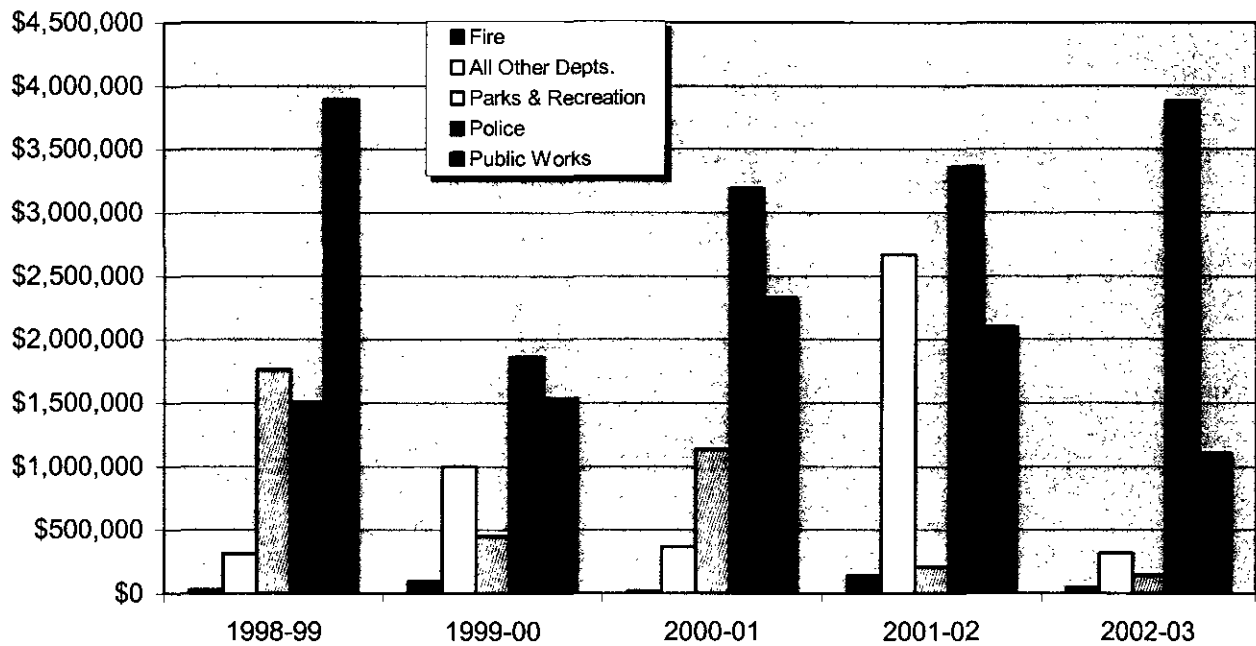


Figure 10: Payouts by Department

Table 5. Payouts for Accidents Involving City Vehicles by Department

City Vehicle Accidents	1998-99	1999-00	2000-01	2001-02	2002-03	5-year average
Other Departments	\$6,077	\$12,033	\$12,447	\$6,882	\$11,654	\$9,819
Fire	\$24,123	\$22,809	\$16,438	\$58,965	\$27,646	\$29,996
Parks & Recreation	\$57,249	\$51,522	\$17,748	\$18,834	\$37,099	\$36,490
Police	\$196,831	\$262,273	\$189,548	\$2,194,962	\$197,953	\$608,313
Public Works	\$49,866	\$745,205	\$101,801	\$123,075	\$118,814	\$227,752
Total Paid/Year	\$334,146	\$1,093,842	\$337,982	\$2,402,718	\$393,166	\$912,371

Table 6. Payouts for Municipal Infrastructure/Dangerous Conditions

Municipal Infrastructure	1998-99	1999-00	2000-01	2001-02	2002-03	5-year average
Sidewalks	\$184,081	\$211,698	\$230,394	\$208,301	\$482,740	\$263,443
Sewers/Storm Drains	\$169,458	\$398,055	\$348,142	\$435,319	\$194,612	\$309,117
Parks & Recreation	\$192,605	\$128,512	\$205,283	\$171,851	\$105,271	\$160,704
Streets	\$2,169,752	\$129,499	\$1,562,179	\$398,731	\$105,159	\$873,064
Inverse Condemnation	\$1,150,197	\$193,500	\$130,000	\$623,701	\$127,500	\$444,980
Total Paid/Year	\$3,866,093	\$1,061,264	\$2,475,998	\$1,837,903	\$1,015,282	\$2,051,308

Table 7. Payouts for Personnel/Labor Matters by Department

Personnel/Labor	1998-99	1999-00	2000-01	2001-02	2002-03	5-year average
General Government/Other	\$186,674	\$10,500	\$203,556	\$107,961	\$227,961	\$147,330
Fire Services	\$0	\$72,000	\$0	\$81,800	\$14,000	\$33,560
Parks & Recreation	\$825,000	\$0	\$852,000	\$7,000	\$0	\$336,800
Police	\$165,000	\$838,608	\$216,880	\$24,900	\$836,432	\$416,364
Total Paid/Year	\$1,176,674	\$921,108	\$1,272,436	\$221,661	\$1,078,393	\$934,054

5.0 HIGHLIGHTS OF MAJOR PROJECTS AND SIGNIFICANT CASES

5.1 Kaiser Tax Victory

In March 2003, the City won a significant legal victory in *Kaiser Aluminum & Chemical Corporation v. City of Oakland* in which Kaiser sought a \$3 million refund of business taxes it paid between 1994 and 2000 and challenged the constitutionality of the City's business tax.

The court's decision in our favor affirmed that the City's business tax ordinance properly taxes anyone who derives revenue and benefits from a business activity in the City of Oakland. As an immediate impact, the City avoided a \$3 million liability payment to Kaiser. More significantly, we closed the door on further claims by other similarly situated corporations. Given the three-year statute of limitations, this victory may have saved the City \$20 million per year over three years, or about \$60 million total.

5.2 'Riders' Case

In February 2003, Oakland turned the page on a bleak chapter in our City's history by reaching global settlement of the 'Riders' police cases. The monetary payout to 119 individual plaintiffs is the largest in the City's history--\$10.9 million. About 80% of the monetary settlement was paid by the City's insurance companies and 20%, about \$2.5 million, was paid from the City's public liability fund (reserve monies used to pay claims and lawsuits).

The settlement agreement also included institutional and operational reforms that represent the recommended best practices in law enforcement. An independent monitor will oversee the reforms over five years and regularly report progress to the Federal Court.

The Riders settlement is unique—many say unprecedented—for three reasons:

- **The settlement was voluntary.** Unlike many cities that have faced similar allegations of police misconduct, Oakland did not deny, hide or retreat from the allegations. Nor did we wait for the Department of Justice to force us into a court-ordered consent decree. Our aggressive posture from the outset to control litigation costs and our voluntary willingness to engage in reforms saved taxpayers tens of millions of dollars.
- **The process was collaborative.** For 15 months, the Office of the City Attorney and the Police Department collaborated with the plaintiffs' attorneys and the Federal Court to develop systemic reforms based on the experience of other cities across the country.
- **The result was comprehensive.** This voluntary collaboration led to a global settlement agreement that would have resulted in 24 separate trials (in groups of five plaintiffs at a time) at enormous cost to the taxpayers of Oakland. We estimate that each trial would have cost at least \$500,000 getting to a jury verdict, not including potential damages and attorney's fees.

5.3 Other Highlights of Fiscal Year 2002-03

The Office of the City Attorney provided legal analysis and advice related to:

- The recovery of \$2.9 million in defaulted loans
- Obtaining state loans for environmental clean-up at the MacArthur, Fruitvale and West Oakland transit villages
- Construction expansion at Children's Fairyland

- Drafting ballot measures: 1) to require an election to fill mayoral vacancies, 2) bond measure to improve Lake Merritt, 3) clarification of business license tax requirements
- Approval of 824 units of residential housing in downtown Oakland
- Establishment of two new redevelopment projects: Chestnut Court City East and Mandela Gateway
- Replacement of 178 Coliseum Gardens public housing units with 480 residential units and 365 rental apartments and townhouses
- Negotiations for Union Point Park, Bertha Port, and Willow Park

This office also:

- Completed multi-year negotiations to transfer the Oakland Army Base to the City of Oakland for 364 acres of waterfront property
- Issued bonds to improve Oakland Museum, Chabot Space and Science Center and Oakland Zoo
- Drafted amendments to the City's Rent Ordinance in light of the passage of the Just Cause initiative

6.0 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. These community initiatives illustrate our commitment to accountability, access to City government, and enhanced legal services at the neighborhood level.

6.1 Petition to Stop 'Postal Profiling'

Drivers should be charged insurance rates based on how they drive, not where they live. Yet a young, single man living in Fruitvale would pay \$1,000 more for auto insurance each year than he would if he moved to Montclair.

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.

In May 2003, this coalition petitioned Insurance Commissioner John Garamendi to require insurance companies' compliance with Proposition 103. Garamendi immediately approved the petition and agreed to a public review of the regulations in Fall 2003.

6.2 Williams Energy Settlement

When electricity prices exploded in California two 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. The Federal Energy Regulatory Commission ruled that California is owed \$3.3 billion in refunds.

In November 2002, a \$417 million settlement was reached with Williams Energy Marketing & Trading; as part of this class-action resolution, Oakland received \$1 million to fund alternative energy and energy efficiency retrofitting projects in the city. Settlement is anticipated with the remaining 12 energy companies.

6.3 Neighborhood Law Corps

Inspired by direct-service models like the Peace Corps and legal aid, Oakland's Neighborhood Law Corps (NLC) provides legal services straight to the neighborhoods where the problems are most severe. Community members and NLC lawyers work together to prioritize the worst problems plaguing their neighborhoods and tackle cases of blight, public nuisances, drug houses and substandard housing. Funded by a non-profit corporation, the NLC uses a wide array of legal and community-based tools to achieve its goal of improved neighborhoods.

Highlights:

Beacon Gas—Besieged for nearly a decade by wreckless “sideshows,” drug dealing, late-night noise, drinking and public urination from a 24-hour gas station and mini mart that generated 800 calls for police service, a group of East Oakland neighbors and the NLC compiled evidence and testified at a hearing. As a result, the City was able to impose severe restrictions and forced the owner to reduce hours, improve security and clean up the property. *Neighbors report drastic improvement.*

Community Partnership Pledge—Following the community's victory at Beacon Gas, word spread that neighbors and the City were getting tough on nuisance liquor stores. A grocers' association representing 300 small markets throughout the City approached the NLC about facilitating dialogue with neighbors to improve community relations. As a result, over 100 neighborhood grocers volunteered to sign an innovative pledge to close by midnight, eliminate the sale of fortified wine and drug paraphernalia, and attend regular community meetings. This unique pledge illustrates the strength of voluntary rather than coerced compliance.

Hillcrest Motel—Neighbors of this long-standing nuisance property suffered for over a decade from severe criminal and nuisance activity at the hotel, including fires, filth, noise, drug dealing, prostitution, violent assaults and child abuse. Armed with ample evidence and bolstered by the testimony of over a dozen neighbors, our office and the NLC convinced a hearing officer to impose significant restrictions on the property.

These examples demonstrate the power of community lawyering. We bring the legal power of the City to bear on problems identified at the grassroots level and provide residents a forum for their voices to be heard, resulting in safer and healthier neighborhoods.

6.4 Open Government Program

Governing in the open not only builds public confidence in the democratic process, it produces better policy and more sustainable results. The Open Government Program ensures that the business of city government is conducted in the light of day.

Highlights:

- Translated the *Citizens' Open Government Bill of Rights and Guide to Open Government* handbook into Chinese, Spanish and Vietnamese
- Handled 275 public records requests
- Vigorously and successfully advocated to retain the 10-day public notice requirement during modifications to the Sunshine Ordinance

7.0 CONCLUSION

Dedicated to our vision of "law in service of the public," in the Office of the City Attorney we are proud to represent a progressive and innovative City. We are especially pleased that in FY 2002-03 the cost containment strategies enacted two years ago are bearing fruit and producing clear results—a total reduction of \$3.5 million in the cost to provide legal services to the City over the previous fiscal year. These results are important during this financially challenging period for the City of Oakland.

Respectfully submitted,



John A. Russo
City Attorney

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September 23, 2003