

**CITY OF OAKLAND**  
**COUNCIL AGENDA REPORT** OFFICE OF THE CITY CLERK  
OAKLAND

**TO:** Finance and Administrative Services Committee  
**ATTN:** Chairperson, Councilmember Jean Quan  
**FROM:** John Russo, City Attorney  
**DATE:** October 23, 2007  
**RE:** Office of the City Attorney Annual Report, Fiscal Year 2006-2007

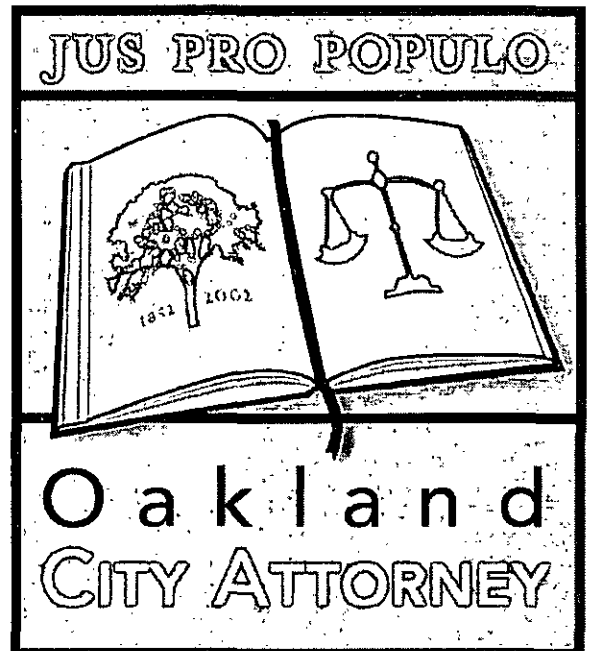
07 OCT 11 AM 11:33

## 1.0 INTRODUCTION

The philosophy of the Office of the City Attorney – *law in service of the public* – guides 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 by initiating legal action when the community's quality of life or economic interests are jeopardized. These initiatives are driven by our commitment to transparency in government, accountability and enhanced legal services at the neighborhood level.

This Annual Report outlines claims and litigation trends, highlights ongoing community-impact initiatives and summarizes financial results for the fiscal year from July 1, 2006 to June 30, 2007.



### 1.1 The Year in Review – Claims and Litigation

The Office of the City Attorney (OCA) handled hundreds of claims and lawsuits in FY06-07. OCA attorneys made more than 300 court appearances, filed 123 motions and took almost 200 depositions.

The best lawsuit is the one that's never filed, so the OCA aggressively manages potential liability at the claims stage to limit the number of claims that evolve into lawsuits. The vast majority of claims – more than 90 percent – never become lawsuits, underscoring the effectiveness of this strategy.

The OCA uses aggressive and strategic litigation techniques in and out of court to protect taxpayer dollars. Of all claims and lawsuits resolved in FY06-07, almost 3 out of 4 were resolved with no payment of money.

As in past years, the OCA spent the largest percentage of its time on police matters, which include conduct, vehicle accidents, towing, jail and property damage issues. Since 2001-02, the number of claims and lawsuits filed against the Oakland Police Department has declined by almost 50 percent, although a small increase occurred in the number of both claims and lawsuits involving police matters in FY06-07.

The OCA also initiated legal action in FY06-07 as part of our mission to represent the municipal interest.

Noteworthy cases in FY06-07 included:

- In January 2007 the OCA filed a public nuisance action against the East Bay Municipal Utility District in Alameda County Superior Court. The suit was filed after leaks in the 100-year-old, 164 million gallon Central Reservoir, owned by EBMUD, led to a landslide in May 2006 that seriously damaged homes in Oakland's Dimond District. Through a public records request, city attorneys reviewed recordings of underwater dives inspecting the integrity of the reservoir walls. Evidence of leaks and patchwork repairs were clearly displayed. The City is asking the court to compel EBMUD to repair the reservoir and to pay for other repairs in the area damaged by the slide.
- In February 2007 the OCA filed a lawsuit against the Oakland Housing Authority, one of the city's largest landlords, for failing to maintain safe, habitable and humane conditions for tenants. The suit, now in the discovery phase, was filed after City leaders exhausted all other available options in their efforts to compel the OHA to maintain and repair properties plagued by criminal activity, housing code violations, unsafe living conditions, accumulation of garbage and other issues.
- The Neighborhood Law Corps, the City's community lawyering unit, continued to file lawsuits against negligent landlords in FY06-07. In October 2006 the NLC sued to prevent the wrongful eviction of 72 senior citizens living in an apartment building on Park Boulevard Way. Another suit was filed in the same month to force the owner of 51 apartments on 13 properties in North and West Oakland to provide humane living conditions for tenants. In January 2007 the NLC sued landlords who failed to address longstanding tenant complaints about broken windows, broken heaters and cockroach infestations at a 50-unit apartment complex on Foothill Boulevard.

## 1.2 The Year in Review – Financial Results

The overall cost to provide legal services to the City of Oakland decreased from \$23.93 million in FY05-06 to \$21.85 million in FY06-07, in large part because of lower outside counsel costs.

- The cost of outside counsel fell significantly – from \$5.30 million in FY05-06 to \$1.45 million in FY06-07. This is the lowest amount spent on outside counsel in the last 10 years.
- Expenditures increased in two areas: operating costs (\$12.95 million to \$14.14 million) and payouts (\$4.35 million to \$5.50 million). Operating costs increased solely due to City-wide cost-of-living increases and increases in the cost of benefits.
- Litigation costs fell from \$1.31 million to \$0.76 million.

### OFFICE PROFILE

The Oakland City Attorney's Office continues to be one of the most diverse legal teams in the country with 78 percent women and 65 percent people of color on staff.

Our 78-member team includes:

41 attorneys – City Attorney, 2 Assistant City Attorneys, 36 Deputy City Attorneys and 2 Neighborhood Law Corps Attorneys

30 support staff – legal secretaries, paralegals, clerks, claims investigators and executive assistants

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

## 2.0 FINANCIAL ANALYSIS

The total cost to provide legal services to the City of Oakland in the last fiscal year was \$21.85 million, including staff and operating costs, outside counsel costs and payouts for claims, lawsuit settlements and judgments (Figure 1). This represents an 8.7 percent decrease from the prior fiscal year (Figure 2).

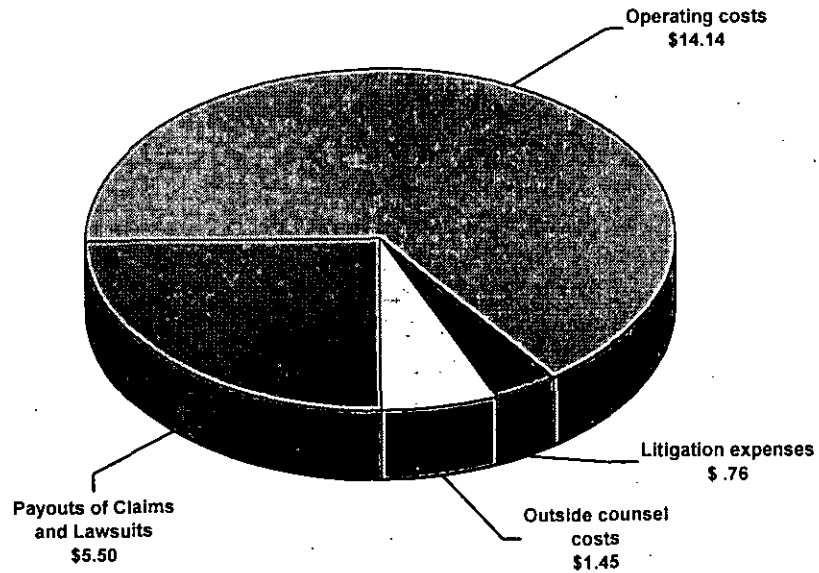


Figure 1: Cost to Provide Legal Services for FY 2006-07

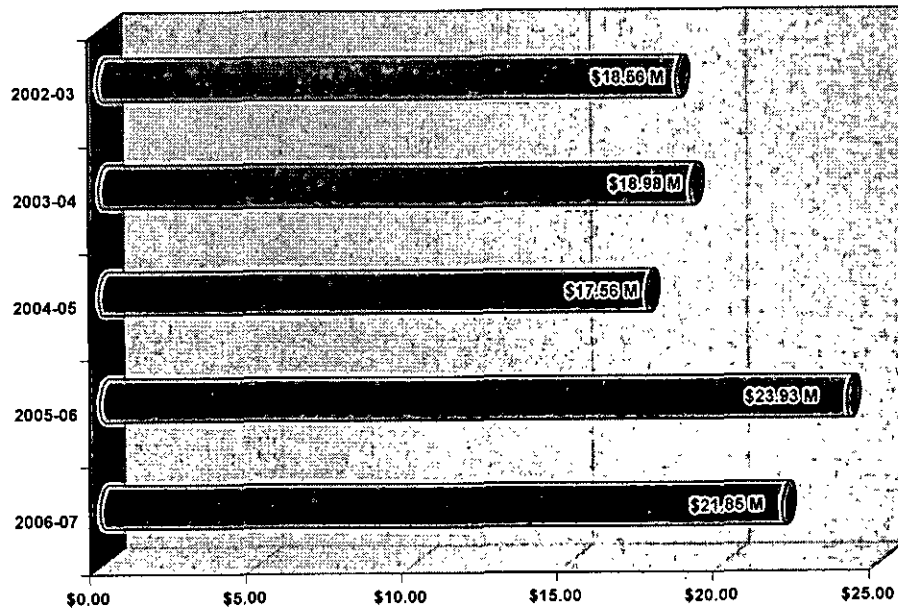


Figure 2: Cost of Legal Services

### 2.1 Cost of Outside Counsel

The cost of outside counsel fell from \$5.30 million in FY05-06 to \$1.45 million in FY06-07. This is the lowest amount spent in this category in the last 10 years (Figure 3).

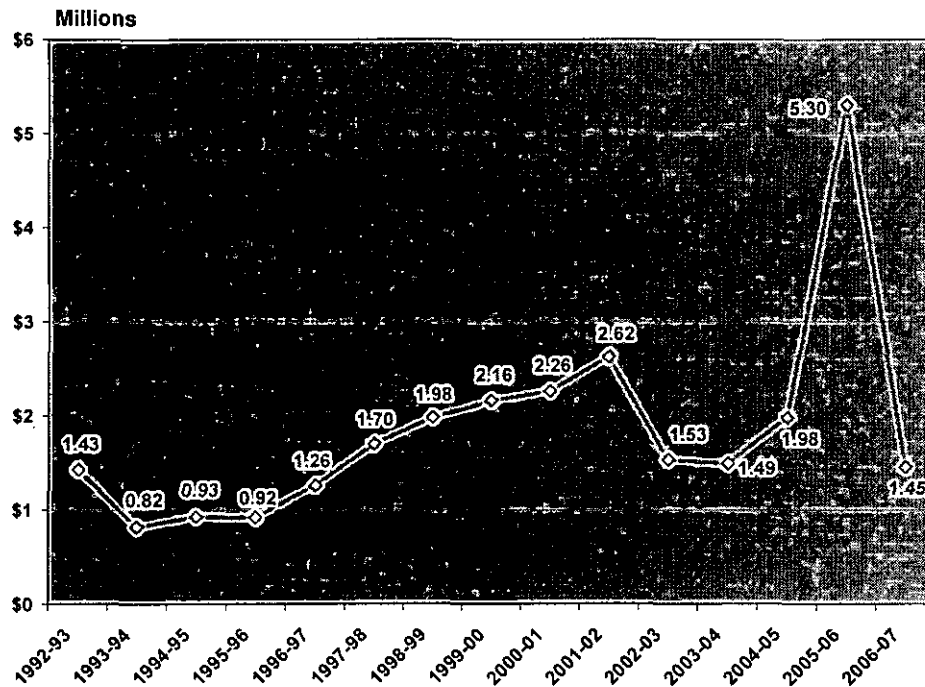


Figure 3: Outside Counsel Cost

### 3.0 ALLOCATION OF LEGAL RESOURCES

The Office of the City Attorney is organized into practice areas to better serve our clients (Figure 5).

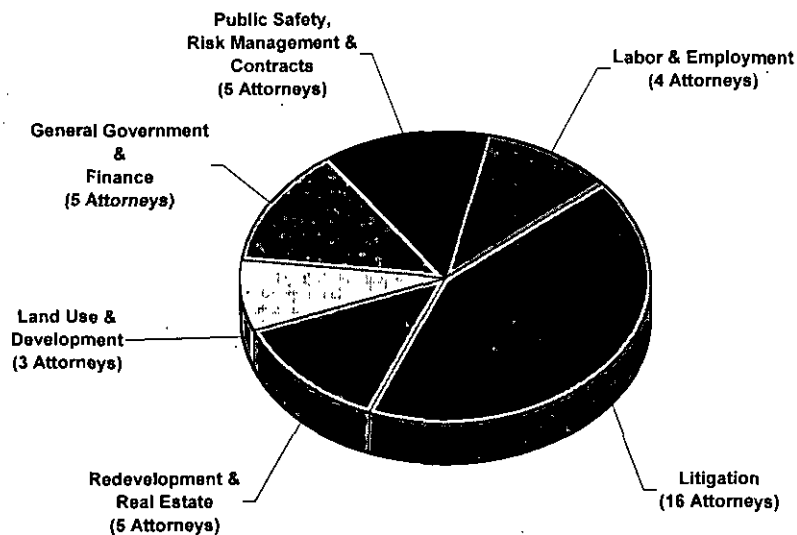


Figure 5: Allocation of Attorneys

In-house attorneys, paralegals and investigators spent 75,157 staff hours delivering legal services to City departments (**Figure 6**). Although the OCA does not directly bill time to these departments, we closely track billable hours internally to effectively manage our resources and contain legal costs. The designation of our Departmental Counsels for Police (Rocio Fierro) and for Public Works (Patrick Tang) has contributed to better risk management in two departments in which the City has typically had greater exposure.

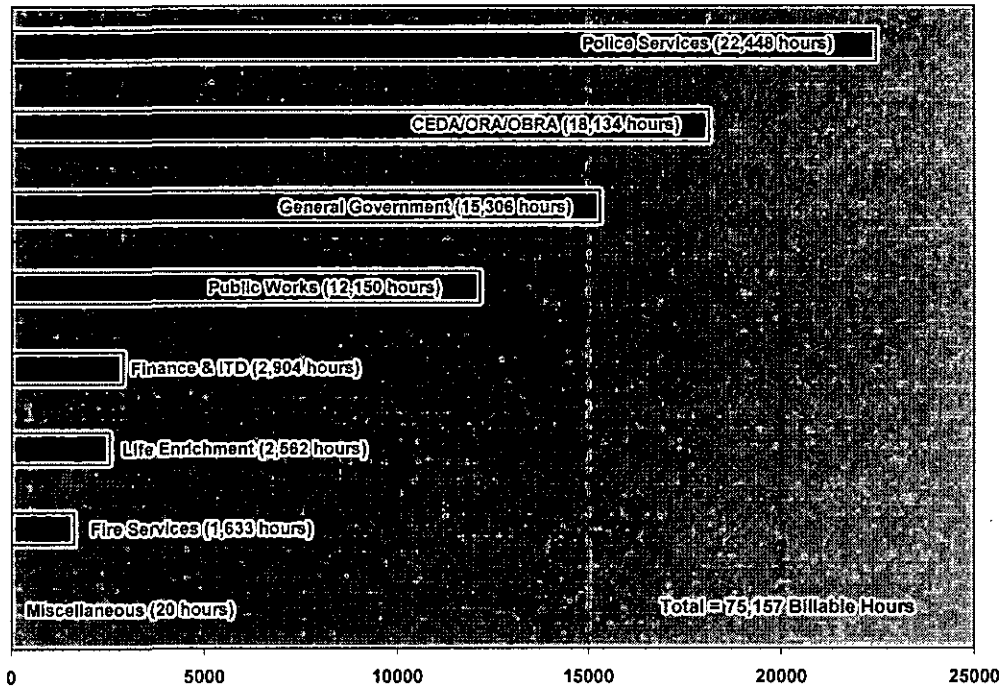


Figure 6: Billable Hours by Department - 2006-07

## 4.0 MANAGEMENT OF CLAIMS & LITIGATION

### 4.1 Claims Received

Claims fall into three primary categories: municipal infrastructure (streets, sewers and sidewalks), police matters (conduct, towing, jail and property damage) and accidents involving City vehicles. In FY06-07, 558 claims were filed against the City of Oakland – an increase of 11 claims (2 percent) from the previous year. While there was a small increase in the number of claims filed in FY-06-07, overall the number of claims filed against the City has decreased by 35 percent over the past five years.

Claims in the police and municipal infrastructure categories continued to drop in FY06-07, but claims involving City vehicle accidents increased slightly (by 16) after declining for the previous two years (**Table 1** on the next page).

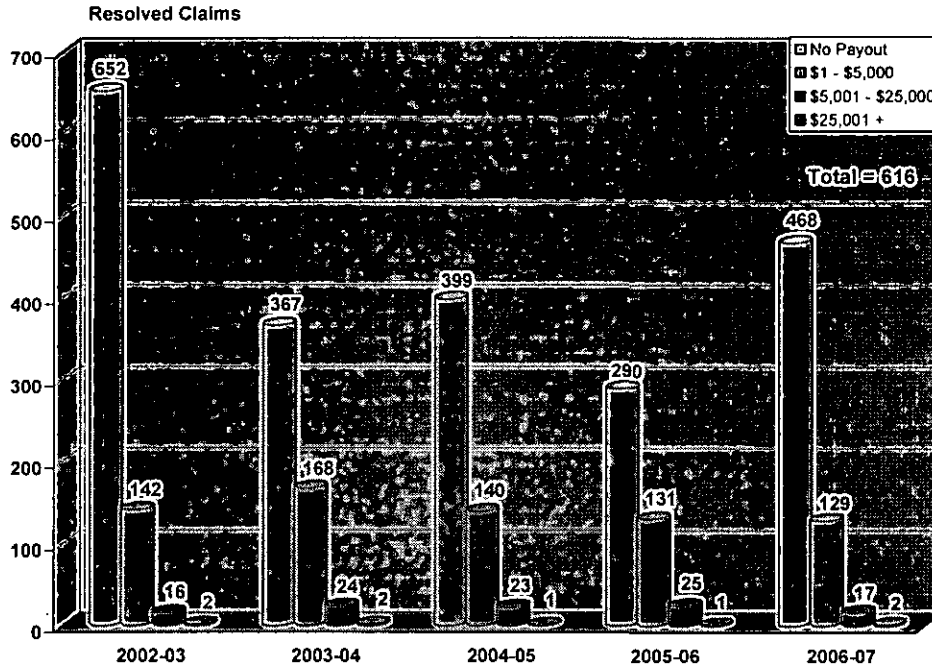
**Table 1: Types of Claims Received**

Category	2002-03	2003-04	2004-05	2005-06	2006-07	5-year average
Municipal Infrastructure	431	304	314	295	285	326
Police Matters	224	183	174	127	124	166
City Vehicle Accidents	103	116	76	68	84	89
Other*	101	70	46	57	65	68
<b>Total Claims/Year</b>	<b>859</b>	<b>673</b>	<b>610</b>	<b>547</b>	<b>558</b>	<b>649</b>

(\*Breach of Contract, City Government [Land Use, Ordinance, Charter & Policy Challenges], Code Enforcement, Claims due to City-hired Contractors, Fire Department/fire response-related damages, Liens, Rent Arbitration and Personnel claims)

**4.2 Claims Resolved**

Of the 616 claims resolved in FY06-07, 3 out of 4 resulted in no payment of money (76 percent in FY06-07 compared to 65 percent the previous year). Only 3 percent (19 claims) resulted in payouts of more than \$5,000. Only 2 of the 616 resolved claims resulted in payouts of more than \$25,000 (Figure 7).



**Figure 7: Claims Resolved Over 5 Years**

### 4.3 Management of Claims

We aggressively manage potential liability at the claims stage to reduce the number that evolve into lawsuits, thereby avoiding the significant costs of litigating a case, such as expert witnesses, depositions, research, court costs and attorney time. The large majority of denied claims (90 percent) never become lawsuits, underscoring the effectiveness of this strategy (Figure 8).

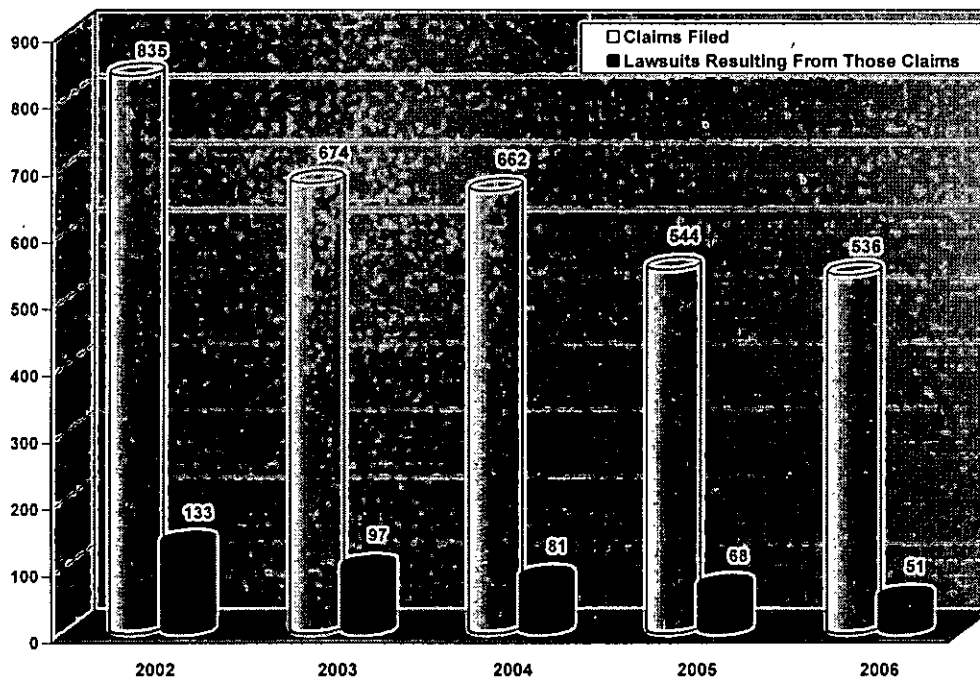


Figure 8: Claims That Evolved Into Lawsuits by Year of Incident

### 4.4 Lawsuits Received

The OCA uses strategic litigation techniques in an effort to protect taxpayer dollars. When there is clear liability, we seek to settle claims early as a way to avoid higher costs of defense and to discourage plaintiffs' attorneys from increasing fees through needless litigation. We also reduce litigation costs and limit potential exposure by filing motions to dismiss defendants and causes of action, narrowing the scope of the defense.

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.

Last year 162 lawsuits were filed against the City. Of note is the decline in lawsuits for police matters for a fourth year in a row and a small decline in suits for vehicle accidents (Table 2 on the next page).

**Table 2: Types of Lawsuits Received**

Category	2002-03	2003-04	2004-05	2005-06	2006-07	5-year average
Municipal Infrastructure	63	54	32	46	48	49
Police Matters	62	58	45	34	30	46
Personnel/Labor*	18	20	17	22	39	23
City Vehicle Accidents	14	10	11	11	8	11
Other**	53	35	38	46	37	42
<b>Total Lawsuits/Year</b>	<b>210</b>	<b>177</b>	<b>143</b>	<b>159</b>	<b>162</b>	<b>170</b>

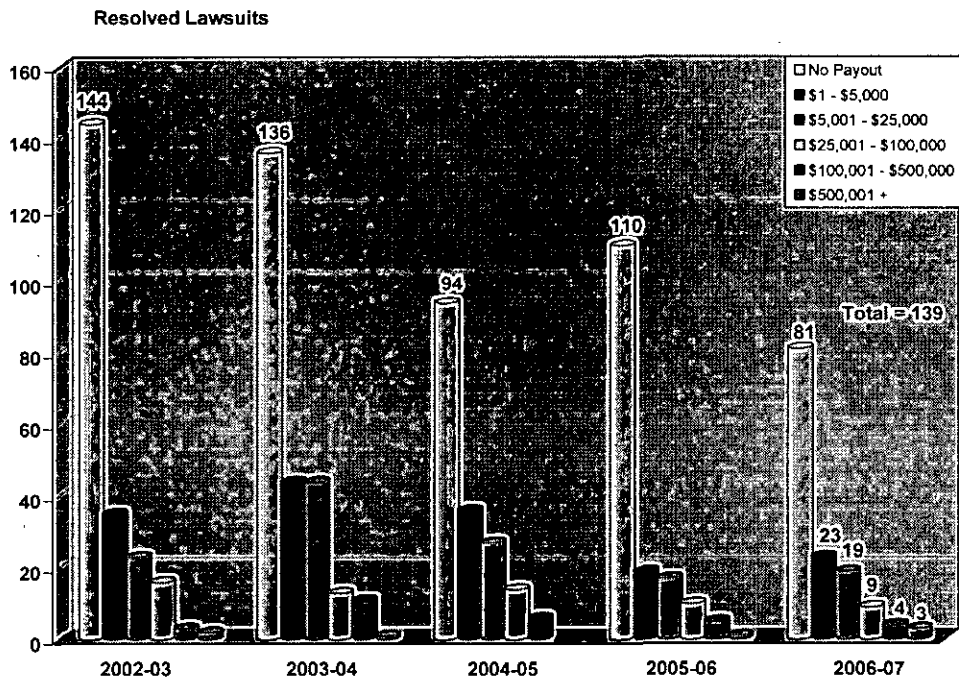
(\*Includes administrative proceedings, mediations and lawsuits)

(\*\*Breach of Contract, City Government [Land Use, Ordinance, Charter & Policy Challenges], Code Enforcement, Lawsuits Due to City-hired Contractors, Fire Department/fire response-related damages, Liens and Personnel)

**4.5 Lawsuits Resolved**

Of the 139 lawsuits resolved in FY06-07 (Figure 10):

- 81 lawsuits (58 percent) resulted in no payment of money
- Of the remaining 58 lawsuits, 23 resulted in payment between \$1 to \$5,000
- Only seven lawsuits resulted in a payout of more than \$100,000 (Table 3)



**Figure 10: Lawsuits Resolved Over 5 Years**

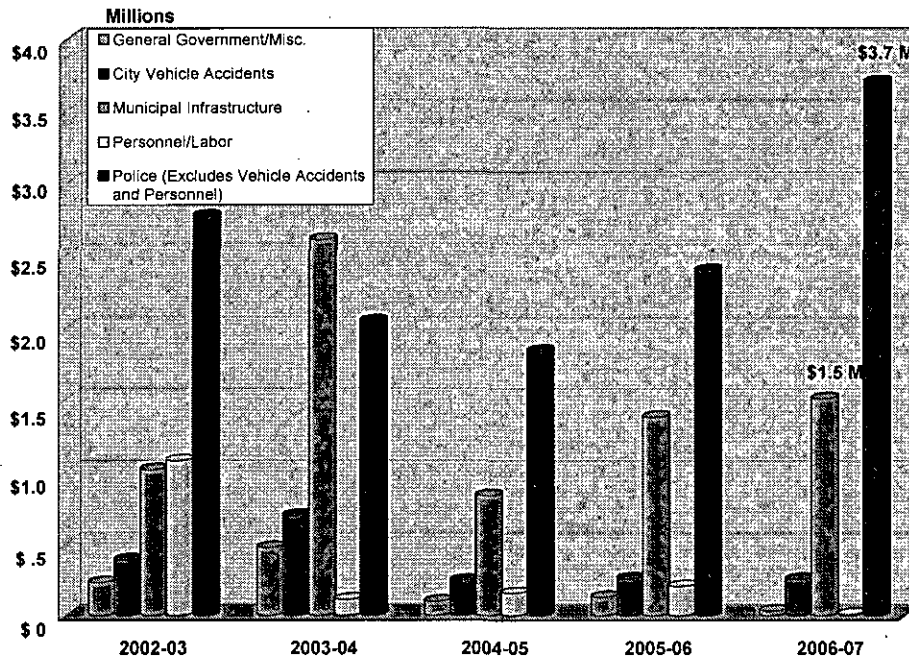


**Table 3: Payouts of Claims and Lawsuits More Than \$100,000 in 2006-07**

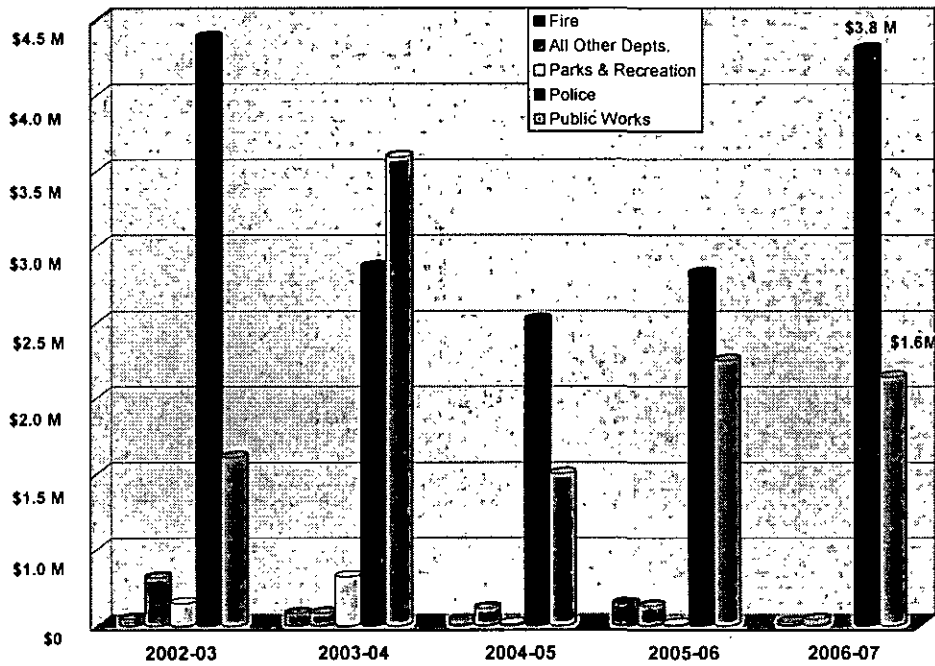
Case	Type	Payout
<i>Murphy v. City of Oakland</i>	Police Conduct - Force	\$1,500,000
<i>Silveira v. City of Oakland</i>	Inverse Condemnation	\$800,000 (partial payment)
<i>Port Anti-War Demonstration</i>	Police Conduct - Force	\$623,212
<i>Bari v. City of Oakland</i>	Police Conduct - Force	\$500,000 (final payout of four annual payments to total \$2 mil.)
<i>Lee-Christian v. City of Oakland</i>	Police Conduct - Wrongful Death	\$306,850
<i>Wrigley v. City of Oakland</i>	Police Conduct - Force	\$300,000
<i>Doe v. City of Oakland</i>	Police Conduct - Force	\$190,000

**4.6 Payouts to Settle Claims and Lawsuits**

Figures 11 & 12 provide a breakdown of the payouts to settle claims and lawsuits during the past five years. The first graph shows payouts by cause category and the second shows payouts by City department.



**Figure 11: Total Payouts of Claims and Lawsuits by Category**



**Figure 12: Payouts by Department**

NOTE: The amount in payouts for the Police Department in Figure 12 includes payouts for police-related vehicle accidents.

Tables 4 & 5 provide a breakdown of payouts for police and infrastructure matters:

**Table 4: Payouts of Claims & Lawsuits**

Police Matters	2002-03	2003-04	2004-05	2005-06	2006-07	5-year average
Alleged Use of Force	\$2,571,000	\$1,380,775	\$992,040	\$1,853,000	\$2,673,962	\$1,894,155
Conduct - Non-force	\$35,570	\$649,618	\$735,900	\$502,832	\$694,766	\$523,737
Alleged Wrongful Death	\$166,000	\$4,000	\$50,000	\$0	\$306,850	\$105,370
Vehicle Accidents	\$197,953	\$315,574	\$111,434	\$117,074	\$99,670	\$168,341
Property Loss/Miscellaneous	\$13,389	\$7,316	\$63,120	\$39,820	\$22,942	\$29,317
Towing	\$56,484	\$6,838	\$0	\$378	\$3,213	\$13,383
Personnel/Labor	\$836,432	\$0	\$63,000	\$85,000	\$0	\$196,886
<b>Total Paid/Year</b>	<b>\$3,876,828</b>	<b>\$2,364,121</b>	<b>\$2,015,494</b>	<b>\$2,598,104</b>	<b>\$3,801,403</b>	<b>\$2,931,190</b>

**Table 5: Payouts of Claims & Lawsuits**

<b>Infrastructure</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>5-year average</b>
Building & Park Maintenance	\$29,963	\$18,611	\$17,343	\$19,766	\$19,332	\$21,003
Sewers/Storm Drains	\$194,612	\$833,220	\$216,866	\$357,197	\$248,497	\$370,078
Sidewalks	\$491,240	\$568,970	\$287,222	\$145,303	\$300,492	\$358,645
Streets	\$96,659	\$245,966	\$206,164	\$761,039	\$123,063	\$286,578
Landslides	\$127,500	\$864,706	\$23,957	\$25,975	\$800,000	\$368,428
Trees	\$71,323	\$76,255	\$83,967	\$73,822	\$19,666	\$65,007
<b>Total Paid/Year</b>	<b>\$1,011,297</b>	<b>\$2,607,728</b>	<b>\$835,519</b>	<b>\$1,383,102</b>	<b>\$1,511,050</b>	<b>\$1,469,739</b>

**Tables 6 & 7** provide a breakdown of payouts for City vehicle accidents and personnel/labor matters:

**Table 6: Payouts of Claims & Lawsuits**

<b>City Vehicle Accidents</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>5-year average</b>
Police	\$197,953	\$315,574	\$111,434	\$117,074	\$103,465	\$169,100
Public Works	\$118,814	\$73,351	\$92,617	\$91,572	\$124,038	\$100,078
Parks & Recreation	\$37,099	\$220,750	\$3,833	\$6,864	\$0	\$53,709
Fire	\$27,646	\$76,211	\$34,817	\$25,439	\$22,654	\$37,353
Other Departments	\$11,654	\$11,142	\$1,502	\$18,243	\$5,600	\$9,628
<b>Total Paid/Year</b>	<b>\$393,166</b>	<b>\$697,028</b>	<b>\$244,203</b>	<b>\$259,192</b>	<b>\$255,757</b>	<b>\$369,869</b>

**Table 7: Payouts of Claims & Lawsuits**

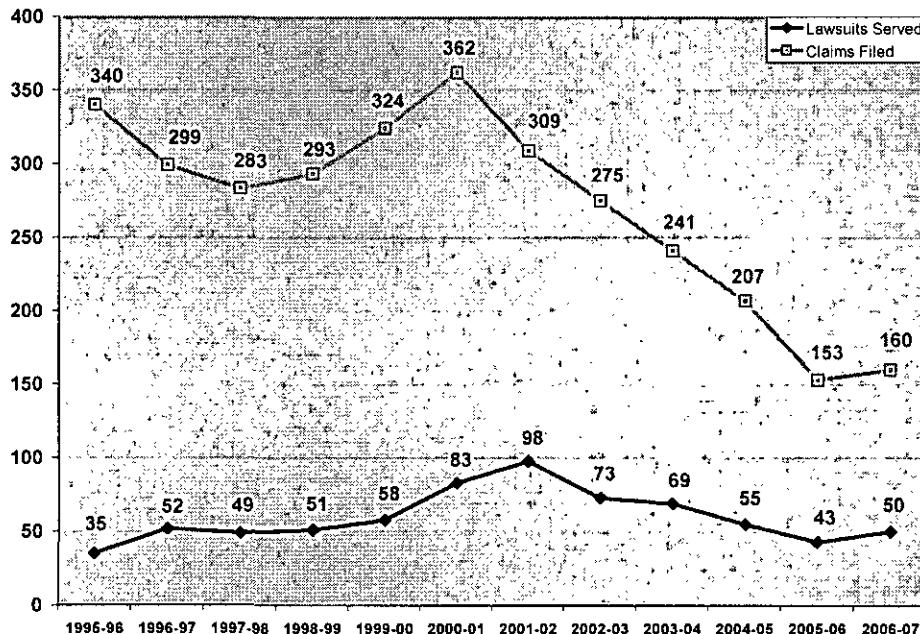
Personnel/Labor	2002-03	2003-04	2004-05	2005-06	2006-07	5-year average
Police	\$836,432	\$0	\$63,000	\$85,000	\$0	\$196,886
Parks & Recreation	\$0	\$9,000	\$0	\$0	\$0	\$1,800
General Government/Other	\$227,961	\$15,000	\$92,000	\$0	\$5,000	\$67,992
Public Works	\$0	\$87,500	\$0	\$0	\$1,750	\$17,850
Fire Services	\$14,000	\$0	\$0	\$120,000	\$0	\$26,800
<b>Total Paid/Year</b>	<b>\$1,078,393</b>	<b>\$111,500</b>	<b>\$155,000</b>	<b>\$205,000</b>	<b>\$6,750</b>	<b>\$311,329</b>

**5.0 THE YEAR IN REVIEW – POLICE MATTERS**

**5.1 Claims and Litigation**

Over the last five years, the number of claims and lawsuits related to Oakland police matters have declined by nearly 50 percent.

Examining ten years of data shows that claims brought against the Police Department began declining at the same time the oversight and accountability reforms detailed in the Negotiated Settlement Agreement (NSA) resolving the “Riders” litigation were implemented. The NSA has resulted in improved training for officers and a subsequent decline in claims and lawsuits (Figure 9).



**Figure 9: Trend of Police Claims and Lawsuits Filed**

**NOTE:** Since 2000, the OCA has successfully resolved 84 percent of all claims filed against the Oakland Police Department for no payment of money. A review of police conduct/use of force and wrongful death lawsuits alone shows that more than half (52 percent) were resolved for no payment of money.

Noteworthy police cases in FY06-07 included:

- In June 2007, the City obtained a defense verdict in federal court in a case stemming from the City's 4th of July fireworks show near Jack London Square in 2003. Officers tried to disperse a large crowd after several stores were vandalized. Officers testified that one of the plaintiffs ran toward an officer, slapped him and grabbed his baton, apparently in an attempt to get through the skirmish line. After a short struggle, he was taken into custody for assaulting a police officer. The second plaintiff was arrested after refusing to disperse. The plaintiffs, who claimed they were struck by police batons and arrested without cause, gave conflicting and contradictory testimony. The four defendant officers testified credibly about the reasons for the arrest and the reasonableness of the force used.
- The City is litigating a case filed in FY06-07 involving serious allegations of police misuse of strip searches. The case is challenging because it involves multiple plaintiffs who have joined the litigation asserting similar claims. Plaintiffs claim the Oakland Police Department's strip search policy is unconstitutional. At the time of the writing of this report, the OCA anticipates a court ruling on the validity of the City's policy.

## **5.2 Law Enforcement Partnerships**

For years the Oakland Police Department has wanted more vigorous prosecution of chronic low-level crime to provide some relief to Oakland neighborhoods. The City realizes that the Alameda County District Attorney's Office is unable to prosecute all infractions and misdemeanors due to the high number of serious crimes it handles and the heavy work loads of its attorneys. State law does not permit the OCA to prosecute these crimes absent the consent of the Alameda County District Attorney.

In FY06-07, the Oakland City Attorney, working with Mayor Ron Dellums and Police Chief Wayne Tucker and their staff, met with Presiding Judge George Hernandez and District Attorney Tom Orloff and reached an agreement. In this preliminary agreement the District Attorney agreed to deputize City attorneys to prosecute low-level crimes. Assuming budget approval in the future, the OCA is ready to hire experienced criminal attorneys to work in partnership with the Police Department and the Mayor's Office to build a program that permits the aggressive prosecution of crimes while providing the appropriate measure of restorative justice to deserving individuals.

The OCA also worked with the Oakland Police Department in FY06-07 to help the department reach two critical milestones in the area of police reform. First, the OCA worked with the Police Department to complete all policy and training work required by the Negotiated Settlement Agreement. Second, the OCA partnered with the Police Department to begin the process of obtaining national certification of the City's police practices through the Commission on Accreditation of Law Enforcement Agencies (CALEA). This work will continue to result in a reduction of lawsuits and claims for allegations of police misconduct, better policing practices and a better relationship between the City's police officers and Oakland residents.

## 6.0 COMMUNITY IMPACT INITIATIVES

The OCA looks for ways to use the law as a powerful problem-solving tool and as a means to serve the community's best interests.

### 6.1 Neighborhood Law Corps

The City's innovative community lawyering unit works to improve neighborhoods block by block by tackling drug houses, problem liquor outlets, blight and inhumane housing conditions. In 2005, the NLC received the Helen Putnam Award for Excellence from the California League of Cities. This year the Neighborhood Law Corps won the prestigious Gold Award for Municipal Excellence from the National League of Cities. This is the first time the City of Oakland has won this award.

Neighborhood Law Corps (NLC) attorneys continued to work aggressively in conjunction with the Oakland Police Department's Alcoholic Beverage Action Team in FY06-07 to improve or shut down problem liquor stores and other liquor-selling businesses contributing to public nuisances, blight and violent crime in Oakland neighborhoods. Significant work improved a number of sites including the following (Table 8):

**Table 8: Abatement of Problem Liquor Outlets – FY06-07**

Business	Address	Ending Liquor Sales at Site	Result
Saleh's liquor	2348 11 <sup>th</sup> Street	Yes	Now a neighborhood convenience store
Pennysaver liquor	4800 Foothill Blvd.	No	Agreement reached with property owner to impose stricter operating conditions*
Plucky's liquor	6415 International Blvd.	Yes	Closed – now vacant
Foodtown liquor	6421 International Blvd.	No	Eviction of tenant pending – stricter operating conditions will be imposed on new tenant
Endzone Bar	1466 High Street	Yes	Closed – now vacant
400 Club	400 29 <sup>th</sup> Street	No	Voluntarily converted bar to restaurant
Mingles Bar	370 Embarcadero	No	Eviction of tenant pending – stricter operating conditions will be imposed on new tenant

\*Stricter operating conditions often include shorter operating hours, end to sale of drug paraphernalia, end to sale of fortified and/or malt liquor and improved security measures such as better lighting, fencing and video cameras.

The Neighborhood Law Corps continued to respond to community complaints and police reports of chronic prostitution, drug dealing and other crime at hotels and motels in FY06-07. Cases included the following (**Table 9**):

**Table 9: Neighborhood Law Corps Hotel/Motel Cases and Outcomes – FY06-07**

Name	Address	Problems	Outcome
MacArthur/Broadway Motor Inn	430 West MacArthur Blvd.	Neighbor complaints and police reports about crime including drug dealing, prostitution, arson	Stricter operating conditions imposed June 2006*
Capri Motel	722 West MacArthur Blvd.	Neighbor complaints and police reports about crime including drug dealing, prostitution, robbery	Stricter operating conditions imposed June 2006
Value Inn	370 West MacArthur Blvd.	Neighbor complaints about crime including drug dealing, prostitution	Property owner contacted – police reports dropped substantially
National Lodge	1711 International Blvd.	Neighbor and business complaints, police reports about drug dealing, prostitution and frequent fights	Stricter operating conditions imposed June 2007
Coliseum Inn	4801 Coliseum Way	Serious prostitution issues – multiple police reports, some involving minors	Stricter operating conditions imposed, owners posted \$50,000 bond – no subsequent police or community complaints to the NLC
Bay Breeze Motel	4919 Coliseum Way	Agreement reached with previous owner regarding longstanding prostitution and drug activity	New owner has agreed to security measures – no new complaints to the NLC

\*Stricter operating conditions are usually imposed through signed settlement agreements and often include installation of video cameras and secure fencing, hiring of security agencies, guest screening, improved lighting, electronic identification readers to prevent use of false I.D. cards, blight abatement and other measures.

Other Neighborhood Law Corps accomplishments for the year include:

- Prosecution of 32 drug abatement cases.
- Three lawsuits against negligent landlords
- Abatement of 21 blighted properties and seven general public nuisance cases. In one such case, the NLC worked with neighbors, the property owner and the state Community Care Licensing Division to end longstanding complaints of nuisances, drug use, vandalism and vehicle theft connected to a group home on Fairway Avenue.

## **6.2 Open Government Program**

The Open Government Program ensures that City government conducts the people's business on behalf of the people, accountable to the people and in full view of the people. This is reinforced through ongoing training and monitoring of boards and commissions to ensure that agendas are properly noticed.

On a daily basis, program staff assists citizens seeking public information through City departments. Furthermore, staff provides legal and technical assistance to City departments and monitors requests for public records received by departments for compliance. During the last fiscal year, the Open Government Program handled 169 public records requests.

## **6.3 State Law Changed for Timeline on Petitioning**

The State Legislature amended California State law, at the behest of the Oakland City Attorney's office, to clarify the timeline by which citizen's can petition existing laws. The Governor signed AB 1732, the Assembly Elections committee omnibus bill containing the change to local referenda circulation timeline, on Friday, July 20th, 2007.

The new amendment to the California Election Code ensures that referendum petitioners have a full 30 days to obtain their signatures. Under the new law, the 30-day clock for the signature gathering starts from the date a City Clerk attests to the final and full copy of the relevant ordinance, not the date a City Council adopts the ordinance.

## **6.4 Oakland Housing Authority lawsuit**

The lawsuit filed in February 2007 contends that the Oakland Housing Authority's failure to maintain and repair properties adversely affects the City of Oakland. In particular, of the apartment units under the control of OHA, 1,615 apartment units were at 254 "scattered sites" that did not have on-site managers. The continuous and unabated criminal activity (including but not limited to drug sales, drug possession and prostitution), housing code violations, unsafe living spaces, accumulation of garbage, dirt, debris, rodents and insects is a blight on the City of Oakland and the neighborhoods around OHA properties.

City Councilmembers exhausted all options to work with OHA to get properties fixed and found that litigation was the only means left to solve the chronic issues. The lawsuit has two causes of action: maintenance of a public nuisance and injunctive relief for the court to compel OHA to repair and maintain their properties in a safe and habitable condition.

## **6.5 East Bay Municipal Utility District Lawsuit**

In May 2006 a landslide destroyed a home on McKillop Avenue in Oakland's Dimond District. Adjacent buildings were red and yellow-tagged to prevent occupants from physical harm. The nearly 100 year old Central Reservoir, owned by the East Bay Municipal Utility District, is two blocks north of the slide area. The Reservoir is thirteen acres across and over 20 feet deep, containing 164-million gallons of water.

Through a public records request, city attorneys reviewed recordings of underwater dives inspecting the integrity of the walls on the southeast corner of the reservoir. Evidence of leaks and patchwork repairs were clearly displayed in the video.



In 1909, Oakland's Central Reservoir was built and run by what is the precursor to EBMUD. The first landslide in the McKillop Avenue area occurred in 1935, less than ten years after the neighborhood was built. After at least 22 homes were destroyed by a series of landslides between 1935 and 1956, residents brought a case against EBMUD and the Central Reservoir, resulting in numerous geological and soil tests by Oakland's Civil Engineering Department. In an attempt to seal the numerous cracks in the concrete block floors and walls of the reservoir, EBMUD drained the reservoir in 1960 and inserted an asphalt lining. Since that time, the lining has peeled away, and has not been replaced. Leakage from the reservoir has been documented, with known leaks temporarily patched.

The City is asking the court to compel EBMUD to repair the Central Reservoir, pay for the cost of repair for the road and repair the area of the slide to ensure the safety of the residences in the area.

## **6.6 Victory on Zip Code Profiling**

In the 1988, Californians were paying the second highest insurance premiums in the nation. Consumer advocates, fighting for fairness and equity in automobile liability insurance, successfully placed Proposition 103 on the state ballot. Proposition 103 demanded insurance companies base a person's automobile liability insurance premium primarily on three common sense factors: the driver's safety record, annual miles driven and the number of years of driving experience – not on a policyholder's ZIP code. Despite the insurance industry's effort to defeat Proposition 103 by spending record amounts, voters approved it.

Then the litigation began. After many years of arcane legal maneuvers by the insurance companies, Prop 103 was finally upheld in court. But the battle continued in the 1990s under disgraced former California Insurance Commissioner Chuck Quackenbush. Before Quackenbush's resignation, he set into place regulations allowing insurers to continue to base their auto insurance premiums mostly on a policyholder's ZIP code. As a result, millions of Californians, in mostly low-income or minority neighborhoods, have paid higher auto insurance premiums because of the where they live even though they have good driving safety records.

Three years ago, the Oakland City Attorney's Office joined the cities of San Francisco and Los Angeles, as well as Consumers Union, AARP and other advocacy groups in filing a petition to overturn the regulations allowing insurers to use ZIP codes to "profile" drivers. The first public hearing on the issue took place in Oakland, where drivers with similar driving records, living on the opposite sides of the street, had demonstrably different insurance rates.

After carefully taking testimony throughout the state, and after more than two years of staff research, Insurance Commissioner John Garamendi issued a ruling to finally enact Proposition 103 – a decision that resulted in another round of lawsuits by the insurance industry. However, in February 2007 a ruling by Sacramento Superior Court upheld the auto-insurance regulations. It took nearly two decades, but the simple fairness that voters demanded in 1988 has become a reality.

## **6.7 Defending Oakland's Anti-Discrimination Policy**

In March 2007, the Ninth Circuit Court of Appeals upheld a Federal District Court decision backing Oakland's anti-discrimination policy.

The conflict that led to the lawsuit against the City began on National Coming Out day in 2002, when an openly gay City Councilmember sent out a celebratory message to City staff. The two plaintiffs, employees in the City's Community and Economic Development Agency, responded by posting a flier just outside the cubicle of a lesbian colleague. The flier, titled "Preserve Our Workplace Integrity," advertised a group called the Good News Employee Association, which was described as "a forum for people of faith to express their views ... with respect for the Natural Family, Marriage and Family Values."

Ninth Circuit Court Judge Richard Clifton correctly pointed out that the flier clearly viewed homosexuality as something that hurt the "integrity" of the workplace.

After reviewing the flier, office supervisors explained to the plaintiffs why it had to be removed. Plaintiffs were invited to submit a new flier without discriminatory language, but they declined and instead filed a lawsuit. In a deposition, plaintiffs admitted that they intended the flier to convey their belief that homosexuality is "wrong." One plaintiff testified that she believed gay and lesbian employees were like "weeds" in the workplace.

The U.S. Supreme Court recently declined to review the case, meaning the lower court's decision in favor of the City stands.

## **7.0 PROJECT HIGHLIGHTS**

---

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. Highlights from our work in FY06-07 are summarized in **Attachments A – E**.

## **8.0 CONCLUSION**

---

We are proud to represent a progressive and innovative City where the law can be utilized as a 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.

Respectfully submitted,



John A. Russo  
City Attorney

## ATTACHMENT A

### 7.1 Redevelopment & Real Estate

- Settled litigation against Zhone Technologies by acquiring a vacant site for redevelopment in the Coliseum Redevelopment Project Area.
- Finalized the merger of the Oak Knoll and Central City East redevelopment areas, allowing for more flexibility in the use of redevelopment funds.
- Closed the sale of 3860 Martin Luther King Jr. Way in North Oakland to Cotter & Coyle for the development of 40 units of housing.
- Drafted an inclusionary housing ordinance, now being considered by the Blue Ribbon Housing Commission.
- Finalized leases with the future tenants of the renovated Fox Theater, the Oakland School for the Arts and Another Planet Entertainment.
- Closed affordable housing development loans on several projects.
- Helped manage the transfer of the assets and liabilities of the Oakland Base Reuse Authority (OBRA) to the Oakland Redevelopment Agency, including Council legislation, complicated real estate transfers, completing a tidelands trust exchange at the Army Base, the amendment of several major agreements with the Port of Oakland and other agencies, action by the Bay Conservation and Development Commission regarding the transfer, the transfer of federal and state environmental reporting responsibilities, transfers of certain property rights with Caltrans.
- Advised staff regarding the dissolution of OBRA, which was completed on June 30, 2007.
- Advised staff and City Council regarding the establishment of the West Oakland Community Fund, to be funded by future developers of the Army Base.
- Oversaw the transfer of responsibility for utilities serving the Army Base, from OBRA to the Port of Oakland, including the Western Area Power Authority Asset transfer from OBRA to the Port.
- Oversaw and advised staff regarding the closing of the OBRA leasing program at the Army Base, including the eviction of several tenants, and one bankruptcy matter.
- Advised staff and City Council regarding the commencement of a new short term leasing program operated by the Redevelopment Agency.
- Negotiated and advised staff regarding several letters of intent and Disposition and Development Agreements with several auto dealerships to be developed in the North Gateway portion of the Army Base into the Bay Bridge Auto Mall.
- Advised staff regarding the development and Request for Proposals (RFP) process for a freeway sign to advertise the Bay Bridge Auto Mall.

- Advised staff and Council, and negotiated with EBMUD regarding EBMUD's complaint about Redevelopment Agency's plans for Bay Bridge Auto Mall, the development of infrastructure and utilities in the North Gateway portion of the Army Base, and negotiations with third parties (BNSF Railroad, Port of Oakland) regarding property rights to be negotiated.
- Advised staff and Council regarding the legal issues and terms of an Exclusive Negotiating Agreement (ENA) with Fulton Project Development Group.
- Negotiated with Wayans-Pacifica for a new ENA, advised staff and the City Council regarding same.
- Advised staff and Council CED Committee regarding economic analysis of overall Army Base development, and Warehouse Reuse Study, and the Mitigation Monitoring and Reporting Program at the Army Base.
- Advised staff and City Council regarding the RFP and future development of 15 acres of the Army Base for ancillary maritime services, as required by the Bay Conservation and Development Commission.
- Staffed the City-Port Liaison Committee on behalf of the City Attorney's Office. Reviewed staff reports generated for the Committee.
- Advised Agency staff and reviewed contracts for services at the Army Base, including environmental mitigation, real estate matters, and property management.
- Drafted and executed predevelopment grant agreement with MacArthur Transit Community Partners.
- Negotiated, drafted and executed agreements associated with the sale of the Marriott and Courtyard Marriott hotels, resulting in a \$7.3 million payoff of loan to the City by Oakland Renaissance Associates.
- Negotiated with State and developed boilerplate loan agreements for Brownfields Cleanup Revolving Loan Program (BCRLF).
- Negotiated, drafted and executed loan documents for two (2) BCRLF loans.
- Negotiated, drafted and executed documents for property exchange and disposition agreement for the Civiq mixed-use project at 51st St. and Telegraph Ave.
- Drafted and executed amendment to ENA with Oakland Economic Development Corp. for the Coliseum BART Transit Village project.
- Negotiated, drafted and executed documents and closed acquisition of Butters Canyon property.
- Negotiated, drafted and executed license and lease agreements for Head Start centers.
- Negotiated, drafted and executed agreements with the Oakland Unified School District for use of fields and facilities.

- Negotiated, drafted and executed numerous licenses and leases (e.g. Lake Park Avenue office, Frank H. Ogawa Plaza commercial spaces, Benevides Park).
- Negotiations with the County regarding its lease for 600 Washington St.
- Negotiated, drafted/ revised and executed documents for construction of interim playground at Coliseum Gardens.
- Closed housing development loan for Mandela Townhomes.
- Provided staff support to Central City East Project Area Committee.
- Closed on Fox Theater Disposition and Development Agreement and tax credit financing so renovation of the Fox Theater could begin.
- Executed amendment to the Disposition and Development Agreement with the Shorenstein Company to develop parcels in the City Center project.
- Handled nine (9) litigation matters relating to the Rent Program.
- Staffed the Blue Ribbon Commission on Housing.
- Advised on proposal to amend condominium conversion ordinance.
- Closed on Phase 2 of Uptown Project, creating more housing and neighborhood-serving retail in downtown Oakland.
- Overall numerous post-closing issues arising from development of Uptown Project Phase 1 affordable and market rate housing project in downtown Oakland.
- Completed negotiations over billboard sign agreements, reducing the amount of unsightly billboards in Oakland.
- Successfully negotiated and oversaw closing of Sears Tire Center to facilitate downtown retail and housing development.
- Advised staff on environmental issues arising from City or Agency owned land.
- Briefed incoming new mayoral administration on City and Agency real estate and redevelopment matters.
- Facilitated development of temporary improvements to Madison Park in Chinatown.
- Advised staff on requirements for retaining consultant to advise City on establishing a World Trade Center in Oakland.
- Consummated a lease with East Bay Community Foundation to stay in downtown Oakland.
- Finalized several property acquisitions to facilitate the Uptown Project in downtown Oakland.

## ATTACHMENT B

### 7.2 General Government & Finance

- Together with CEDA staff, created the Wood Street Community Facilities District to fund the creation and maintenance of new City parks.
- Updated City employees' Deferred Compensation Plan.
- Assisted CEDA staff to create the new Fruitvale Business Improvement District and the Koreatown Community Benefits District.
- Issued legal opinions clarifying separation of powers questions under the Charter between the City Auditor and the City Administrator.
- With the Parking Division, wrote an ordinance to allow the City to use the new pay station parking meters.
- Issued legal opinion clarifying the permitted use of Wildfire Prevention Assessment District funds.
- Presented argument before State Public Utilities Commission in favor of local control of cable franchises.
- Assisted the Oakland Museum of California and the Oakland Museum of California Foundation obtain a grant to reconstruct the California History Gallery.
- Prepared an amendment to the City's View Ordinance for Councilperson Jean Quan.
- Drafted 25-year license agreement with the East Bay Bonsai Society to keep the society's bonsai trees at Lake Merritt.
- Prepared the agreement for the City to receive the accepted the Chiodo monument "Remember Them."
- Wrote the first ever agreement between the City and the Oakland Museum of California Foundation clarifying roles and responsibilities.
- With Councilmember Quan, drafted legislation regulating dog and pigeon defecation in public areas.
- Drafted legislation and assisted in creation of Human Relations Commission.
- With the Treasury Division, assisted in the issuance of bonds to raise \$13,780,000 for the Oakland Central City East Redevelopment Project.
- With the Treasury Division, assisted in the issuance of bonds to raise \$62,520,000 for the Central City East Redevelopment Project.
- With the Treasury Division, assisted in the issuance of bonds to raise \$28,770,000 for the Coliseum Area Redevelopment Project.

- With the Treasury Division, assisted in the issuance of bonds to raise \$73,820,000 for the Oakland Coliseum Area Redevelopment Project Tax.
- With the Treasury Division, assisted in the issuance of bonds to raise \$4,945,000 for the Broadway/MacArthur/San Pablo Redevelopment Project.
- With the Treasury Division, assisted in the issuance of bonds to raise \$12,325,000 for the Broadway/ MacArthur/San Pablo Redevelopment Project.
- With the Treasury Division, obtained Lease Tax-Exempt Financing to obtain new pay station parking meters.
- With the Treasury Division, obtained Tax-Exempt Lease Financing for the Oakland Museum Building at 400 Lancaster.
- Brought an action to enforce the City's cable franchise agreement against Comcast.
- Conducted open government training for:
  - Children's Fairyland Board
  - Wildfire Assessment District Board
  - City Council Legislative Analysts
  - City Auditor's Staff
  - Management at OPD
  - CEDA Agency Staff
  - Youth Ventures JPA
- Co-Sponsored Cal-Aware Public Records Procedures Workshop for area police departments.
- Filled or assisted staff in responding to 152 public records requests.
- Updated the City of Oakland's Conflict of Interest Code.
- Serve as liaison from the City Attorney's Office to the County Registrar to help oversee the implementation of Instant Runoff Voting in Oakland for the November 2008 election.

2 &

## ATTACHMENT C

### 7.3 Public Safety, Risk Management, Contracts & Purchasing

- Negotiated preliminary agreement with District Attorney and Alameda County Superior Court to authorize City Attorney's Office to institute a Quality of Life/Misdemeanor Prosecution practice to augment OPD's crime-reduction efforts. The project is currently on hold pending a funding allocation from the Council.
- Participated in over fifty Use of Force Board hearings conducted by OPD.
- Conducted training for OPD commanders on (1) development of contemporary practices in the field of law enforcement; (2) handling of Public Records' Requests; (3) City contracting requirements; and (4) Litigation statistics and trends.
- Assisted in drafting, reviewing and/or revising numerous OPD policies to update them to current legal standards, including: Public Records' Requests policy, disclosure of police personnel and IAD records in court proceedings, Vehicle Pursuit Policy, Use of Force Policy, UOF Investigations, Use of the Electronic Control Device (Taser) and Excited Delirium.
- Obtained more reasonable standards and specific methodology by which to measure OPD's compliance with the Negotiated Settlement Agreement in the matter of *Delphine Allen v. City of Oakland*; U.S.D.C. Case No. C-00-4599-TEH.
- Assisted in organizing a public forum in City Hall on immigration issues and prepared related policy legislation.
- Assisted OPD to negotiate and draft and/or revise several major agreements involving police services: OPD/PORT Airport contract, in-car videos contract, automated red-light camera contract, Shotspotter contract (detection of gun discharges).
- Obtained court order requiring Waste Management to resume collection of garbage recycling in accord with their franchise agreement in connection with Waste Management's July lockout of workers.
- Prepared and filed a complaint against Waste Management for compensatory, liquidated and other damages resulting from breach of contract and other causes of action in connection with Waste Management's July lockout of workers.
- Provided ongoing advice to Mayor, City Administrator and PWA staff regarding city's rights and remedies under the Waste Management franchise agreement, collection of documentation and analysis of damages.
- Assisted City Administrator and staff to review and develop next steps for Contracting Disparity Study and Employment Study.
- Prepared amendment to the Purchasing Ordinance authorizing City Auditor to directly execute professional services contracts.
- Prepared legislation for the Council to establish budget transfer, pay-go and event table and travel expenditure monitoring policies.



- Conducted staff training on new purchasing and pay-go policies.
- Prepared priority project and pay-go form agreements for Mayor and City Council to expedite priority project and pay-go transactions.
- Advised Public Works on bidding and construction issues and prepared non-standard construction contracts for major and community projects: Lake Merritt Sailboat House, Raimondi Park Improvements, Coliseum Gardens Replacement Park and Peralta Hacienda Park.
- Negotiated and prepared several major purchasing agreements with city-wide impact: Multi-space Pay and Display Parking Stations agreement, International contract for City translation services, term contracts involving accounting and collection of City business tax revenue (Progressive Solutions and Active Network Ltd. (on-line and electronic payments)), Mass Change Oracle Upgrade agreement and multiple agreement for Nextel public safety communications frequency band transfer.
- Provided staff training and construction seminars for project and construction managers: Mandatory City-wide Contract Compliance training, Construction Project Management training, Construction Project Scheduling seminar.
- With Risk Management, organized bond training for City Attorney, PWA and CEDA staff that handles projects involving performance and other bond requirements.
- Advised PWA on multiple claims and ongoing legal issues relative to the MacArthur Undergrounding Project, a multi-utility project involving the City, Comcast, PG&E and AT&T as project partners in the 8 million dollar undergrounding of utilities.
- Assisted in preparing legislation declaring local emergencies due to hill slides on McKillop Street and other locations in Oakland and assisted PWA to obtain FEMA funding for repairs to damaged roadways and other facilities and advised on multiple related claims.
- Filed public records requests for and obtained access to EBMUD documents pertinent to the investigation of condition of EBMUD facilities near the McKillop Street slide.
- Assisted staff in preparing legislation to declare a local emergency resulting from the collapse of a span of the I-580 freeway and provided ongoing advice regarding City's and State's obligations for the provision of emergency services, alternative street routes and safety features, and participated in periodic staff meetings through re-construction of the freeway.

25

## ATTACHMENT D

### 7.4 Land Use & Development

- Assisted in the approval of the Tassafioranga residential project sponsored by the Oakland Housing Authority.
- Assisted in implementation of Oak to Ninth development project consisting of up to 3,100 residential units, approximately 200,000 square feet of commercial space, parks and open space, marinas, roads and infrastructure and shoreline improvements. Negotiated and provided legal advice in development of toxic remediation plan for Oak to Ninth area.
- Provided legal advice to ensure sufficient financial assurances for public infrastructure to support the Wood Street residential development project.
- Assisted in drafting Oakland's first Traffic Impact Fee Ordinance, designed to ensure a funding mechanism for traffic improvements related to new development in the Southeast portion of the City.
- Provided legal advice to Blue Ribbon Commission appointed to address affordable housing and condominium conversion issues on Citywide basis.
- Assisted in implementing the conditions of approval for the Wood Street residential development and provided legal advice regarding financing mechanisms to ensure ongoing park maintenance for the project.
- Assisted in preparation of environmental impact report for Mandela Grand project, consisting of a proposal to redevelop approximately 13 acres in West Oakland with custom and light industrial, commercial and residential uses.
- Assisted in preparation of various City protocols implementing the California Environmental Quality Act.
- Assisted in approval of the Crestmont residential project, which created a conservation easement area to preserve rare, threatened and endangered plant species.
- Assisted in drafting comments on other agencies' environmental impact reports on projects with potential affects on Oakland. These included comments on the CalTrans' Caldecott Tunnel Fourth Bore EIR and AC Transit's Bus Rapid Transit EIR.
- Assisted in environmental review and approval of a new Auto Mall at the former Oakland Army Base.
- Assisted in developing procedures and guidelines regulating utility boxes in the public right of way to address City Council and community concerns.

26

## ATTACHMENT E

### 7.5 Labor & Employment

- Advised City administration, agencies, departments and supervisors concerning obligations and employee rights pursuant to statutes, ordinances and the federal and state constitutions.
- Ensured that the City fully complied with its obligations in the area of disability access.
- Resolved individual disciplinary matters and contractual disputes, including several class-action grievances.
- Provided anti-sexual harassment training to the Police Department and Fire Department.
- Provided assistance to the Police Department in complying with its obligations under the Negotiated Settlement Agreement.
- Provided advice concerning the enforcement of Oakland's Equal Benefits Ordinance and Equal Access Ordinances.
- Provided advice concerning contract negotiations with the Oakland Police Officers Association
- Successfully defended a challenge by the Oakland Police Officers Association to the Oakland Police Department's use of retirees, enabling the City to put more officers on the street.

*SR*