CITY OF OAKLAND
COUNCIL AGENDA REPORT

TO: Finance and Administrative Services Committee
ATTN: Chairperson, Councilmember Jean Quan
FROM: John Russo, City Attorney
DATE: January 13, 2008
RE: Office of the City Attorney Annual Report, Fiscal Year 2007-2008

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, summarizes financial results and highlights ongoing community-impact initiatives for the fiscal year from July 1, 2007 to June 30, 2008.

1.1 The Year in Review – Claims and Litigation

The City of Oakland received **668** claims in the last fiscal year, up significantly from 560 in the previous year. At the same time, the number of lawsuits increased marginally to **170**, compared to 165 the previous year.

The number of claims and lawsuits filed against the city is significantly lower than it was 10 years ago. In the late 1990s, the city received an average of 232 lawsuits and 980 claims a year.

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

The City Attorney's Office uses strategic litigation techniques in and out of court to protect taxpayer dollars. Of all claims and lawsuits resolved in FY07/08, almost **3 out of 4** (72%) were resolved with no payment of money.

As in past years, the City Attorney's Office dedicated the largest percentage of its time to police matters, including police conduct and vehicle accidents, and issues involving jail, towing and property damage. The number of police-related claims and lawsuits increased in FY07/08. ***However, over the last five years, the number of lawsuits filed against the Police Department has declined by 20 percent. Police-related lawsuits have declined by 44 percent since fiscal year 2001-02.***

The City Attorney also initiated legal action in FY07-08 as part of our mission to represent the municipal interest.

Notable cases included the July 12 complaint against Waste Management of Alameda County, which helped end a garbage worker lockout that seriously endangered public health.

The City Attorney also filed two lawsuits against some of the nation's most powerful financial companies in FY07/08, alleging fraud, bid rigging and other illegal practices in the municipal bond market.

1.2 The Year in Review – Financial Results

The overall cost to provide legal services to the City of Oakland was **$24.36 million** in FY07/08. This represents an increase from the previous fiscal year ($21.10 million in FY06/07). The overall cost of legal services this year was closer to what it was two years ago ($24.07 million in FY05/06).

The principal reason for this year's higher cost is the citywide increase in salaries and the dramatic increase in the cost of benefits, which includes health care premiums and pension contributions.

1.3 The Year in Review – Community Initiatives

The City Attorney's Office looks for ways to use the law as a powerful problem-solving tool to serve the community's best interests.

In response to the ongoing foreclosure crisis in Oakland, the City Attorney's Office partnered with organizations in the community to form the Oakland Fair Lending Coalition. The City Attorney's Office set up a foreclosure assistance hotline, and Neighborhood Law Corps attorneys intervened in a number of cases to protect renters from unlawful eviction in bank-owned properties.

Also in FY07/08, the City Attorney's Office organized a coalition of Bay Area cities and other agencies to oppose the state's plan to eradicate the Light Brown Apple Moth. The City Attorney's Office prepared a lawsuit to challenge the state's plan to spray chemicals over Oakland and other cities without an environmental review. However, after favorable court rulings in Santa Cruz and Monterey counties, the state Department of Food & Agriculture announced a halt to the aerial spraying program.

For more information, see Section 6.0 – Community Impact Initiatives.

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.

In FY07/08 our 78-member team included:

***41 attorneys** – City Attorney, 2 Assistant City Attorneys, 35 Deputy City Attorneys and 3 Neighborhood Law Corps attorneys.*

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

***7 operations staff** – budget, accounting, information technology and support, personnel administration, an Open Government Coordinator and a Communications Director.*

By the Numbers

Appearances by Attorneys FY07/08

Court appearances – 475

Motion hearings – 135

Arbitration & mediation – 52

Depositions – 129

Total – 791

More Information

www.oaklandcityattorney.org

2.0 FINANCIAL ANALYSIS

The total cost to provide legal services to the City of Oakland in FY07/08 was **$24.36 million**, including staff and operating costs, outside counsel costs and payouts for claims, lawsuit settlements and judgments (**Figure 1**). This represents a $3.26 million increase from the prior fiscal year (**Figure 2**).

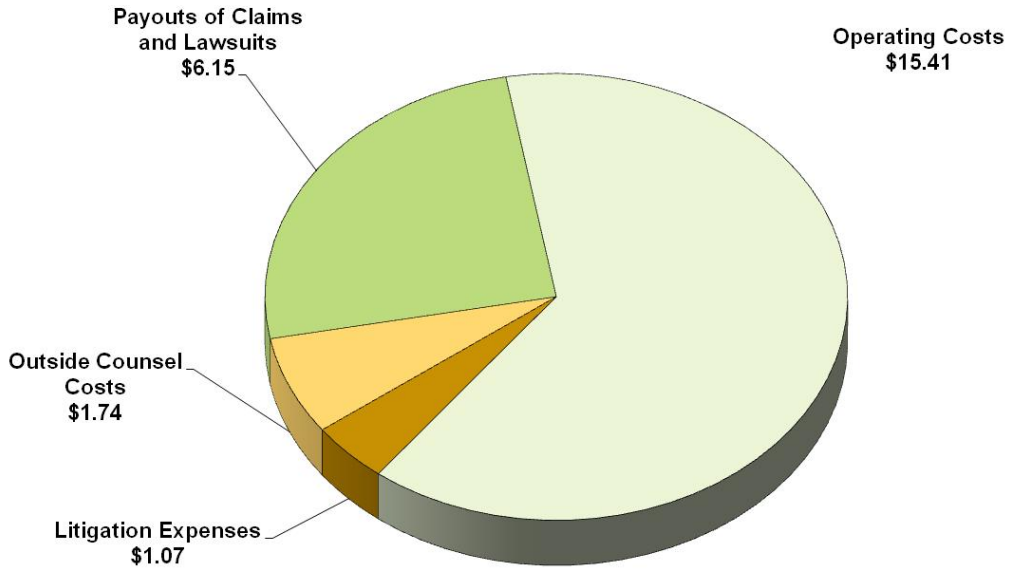

Figure 1: Cost to Provide Legal Services for FY 2007-08

Figure 2: Cost of Legal Services

2.1 Cost of Outside Counsel

The City Attorney's Office makes every effort to keep down the cost of outside counsel. The City of Oakland spent **$1.74 million** on outside counsel in FY07/08. This is below the 5-year average of $2.39 million and the 10-year average of $2.1 million (**Figure 3**).

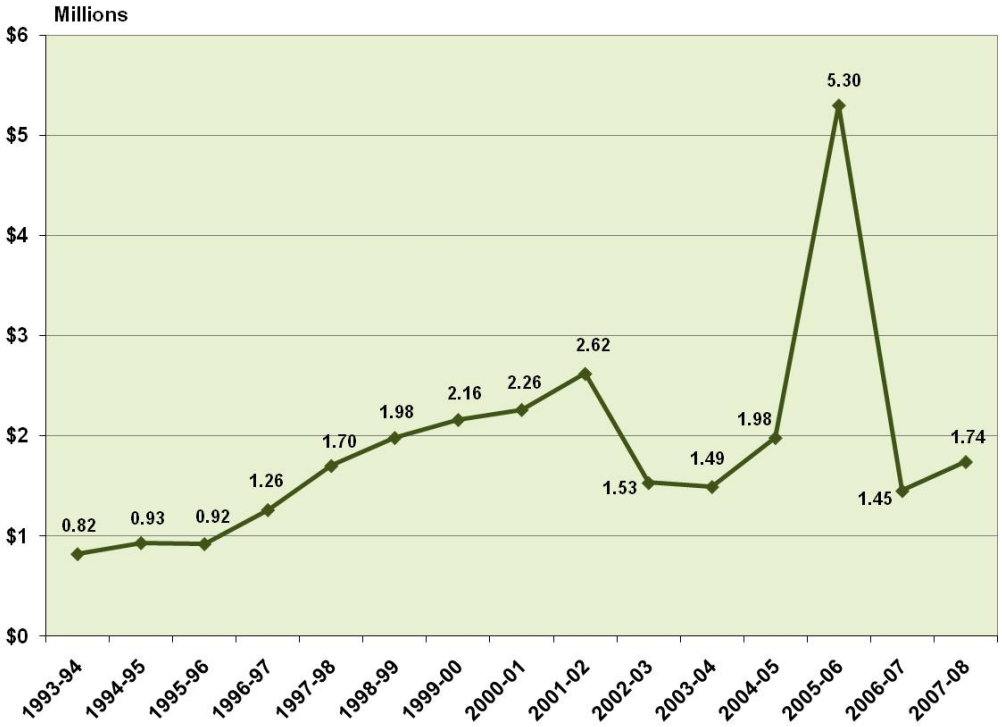

Figure 3: Outside Counsel Cost

3.0 ALLOCATION OF LEGAL RESOURCES

The Office of the City Attorney is organized into practice areas to better serve our clients (**Figure 4**).

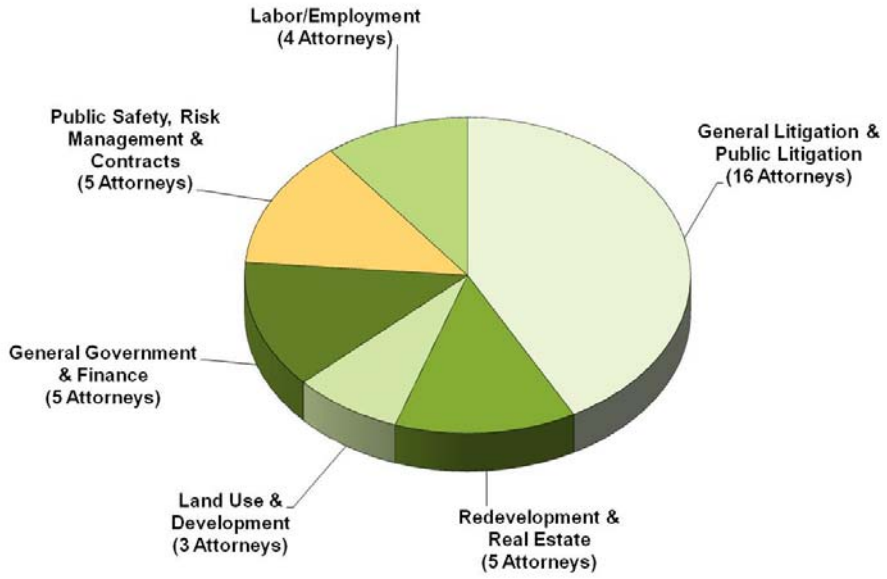

Figure 4: Allocation of Attorneys

In-house attorneys, paralegals and investigators spent 76,991 staff hours delivering legal services to City departments (**Figure 5**). Although the City Attorney's Office does not directly bill time to these departments, we closely track billable hours internally to manage our resources effectively and contain legal costs. The designation of our Departmental Counsels for Police and Public Works has contributed to better risk management in two departments in which the City has typically had greater exposure.

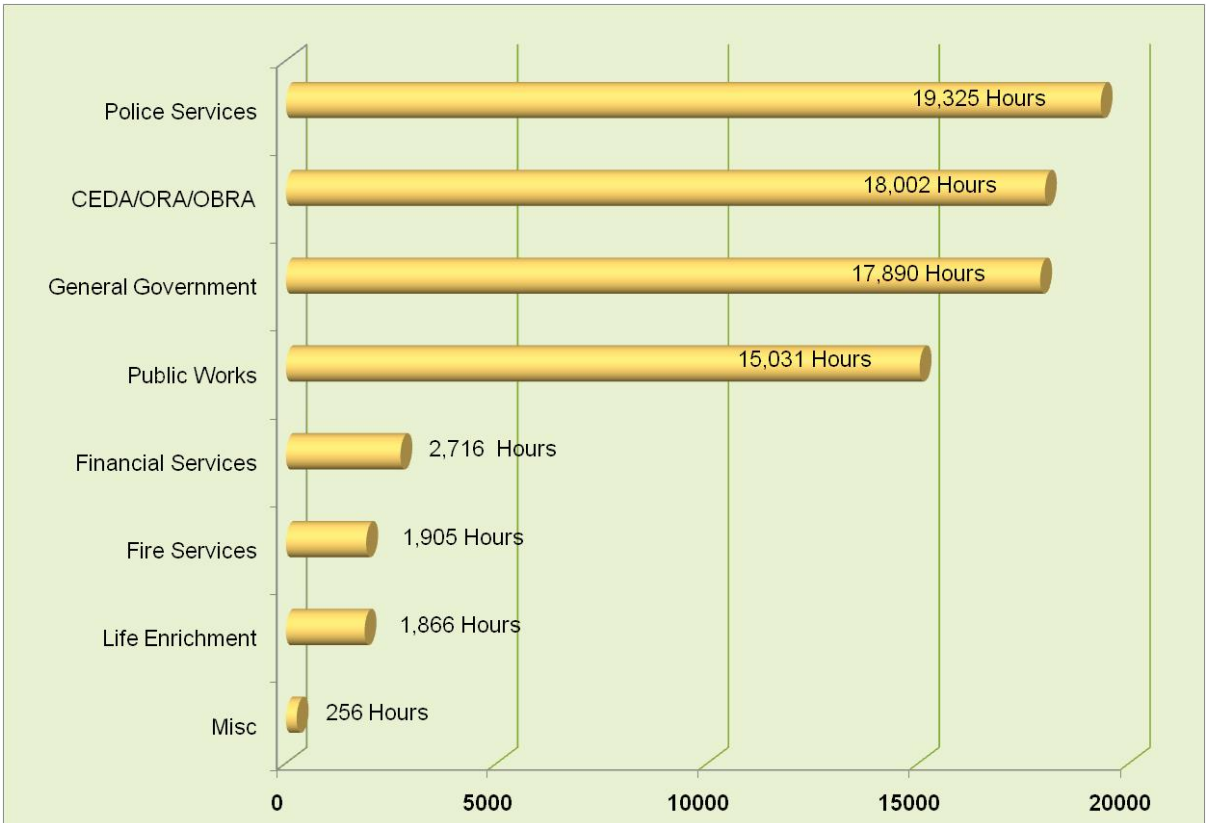

Figure 5: Billable Hours By Department

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 FY07/08, 668 claims were filed against the city, up from 560 the previous fiscal year (**Table 1**).

Table 1: Types of Claims Received

Category	2003-04	2004-05	2005-06	2006-07	2007-08	5-year average
Municipal Infrastructure	304	316	295	284	329	306
Police Matters	183	177	127	125	164	155
City Vehicle Accidents	115	77	69	83	91	87
Other	74	54	61	68	84	68
Total Claims/Year	**676**	**624**	**552**	**560**	**668**	**616**

4.2 Claims Resolved

Of the 585 claims resolved in FY07/08, **72 percent** (almost 3 out of 4) resulted in no payment of money. Only 16 claims resulted in payouts of more than $5,000 (**Figure 6**).

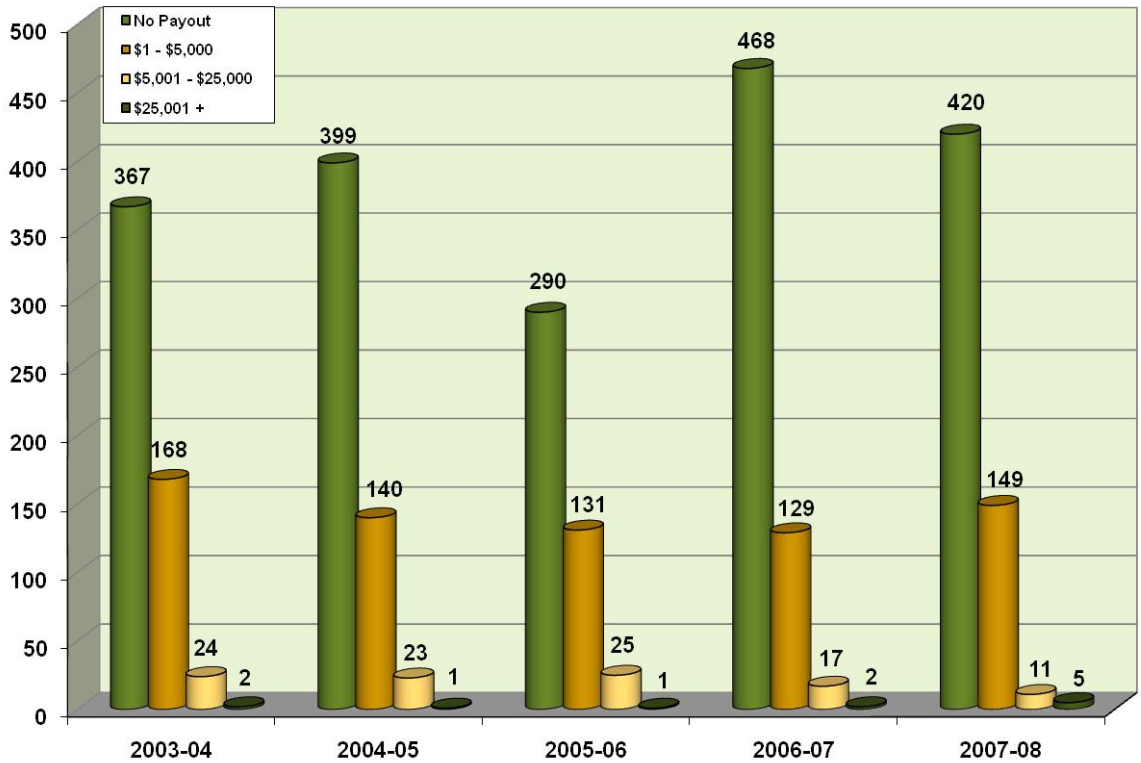

Figure 6: Claims Resolved Over 5 Years

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 – about **90 percent** – never become lawsuits, underscoring the effectiveness of this strategy (**Figure 8**).

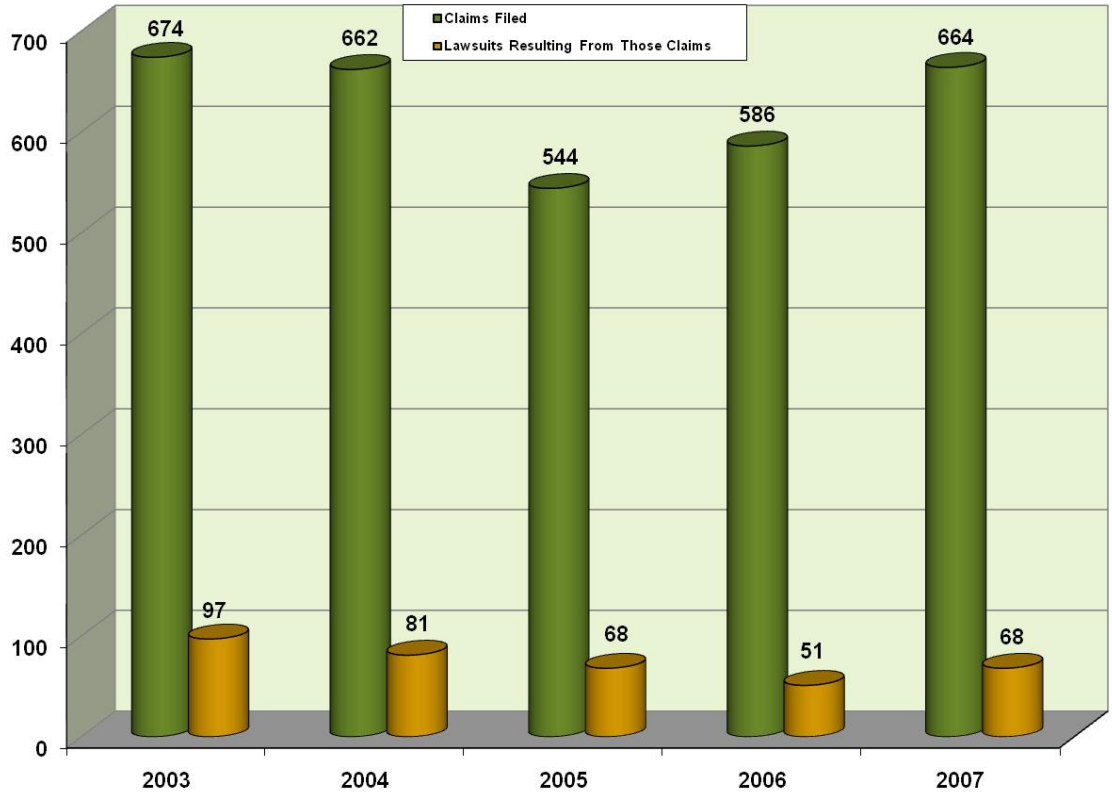

Figure 7: Claims That Evolved Into Lawsuits by Year of Incident

NOTE: Figure 7 is organized by calendar year.

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 of Oakland fleet vehicles.

The number of lawsuits against the City of Oakland increased slightly this year. Of note is an increase in the number of lawsuits regarding police matters (**Table 2**).

Table 2: Types of Lawsuits Received

Category	2003-04	2004-05	2005-06	2006-07	2007-08	5-year average
Municipal Infrastructure	54	33	46	48	44	45
Police Matters	58	45	35	30	40	42
Personnel/Labor (non-lawsuits and lawsuits)	20	16	22	39	35	26
City Vehicle Accidents	10	11	11	8	11	10
Other	36	42	48	40	40	41
Total Lawsuits/Year	**178**	**147**	**162**	**165**	**170**	**164**

4.5 Lawsuits Resolved

The City Attorney's Office resolved 180 lawsuits in FY07/08. Of those, **71 percent** were resolved with no payment of money. That represents a significant improvement from the previous fiscal year, when 58 percent of lawsuits were resolved with no monetary payment (**Figure 8**).

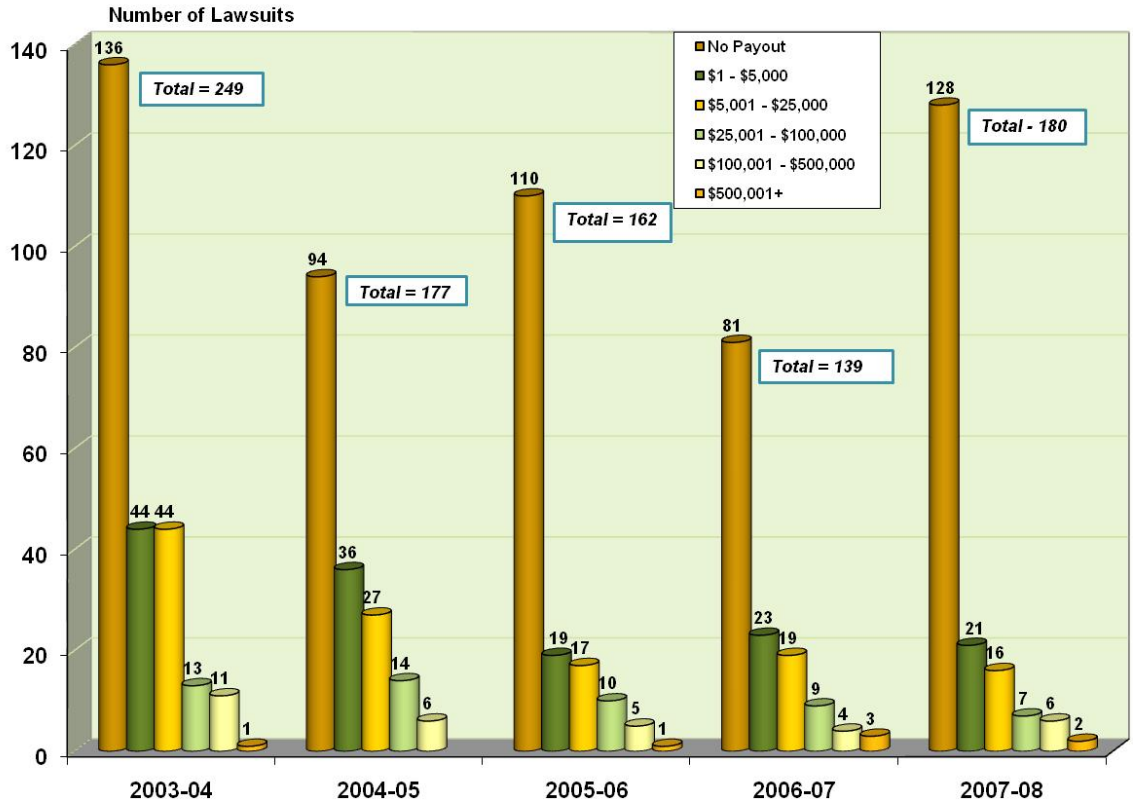

Figure 8: Lawsuits Resolved Over 5 Years

4.6 Payouts to Settle Claims and Lawsuits

Figures 9 & 10 provide a breakdown of the payouts to settle claims and lawsuits during the past five years. **Figure 9** shows payouts by cause category.

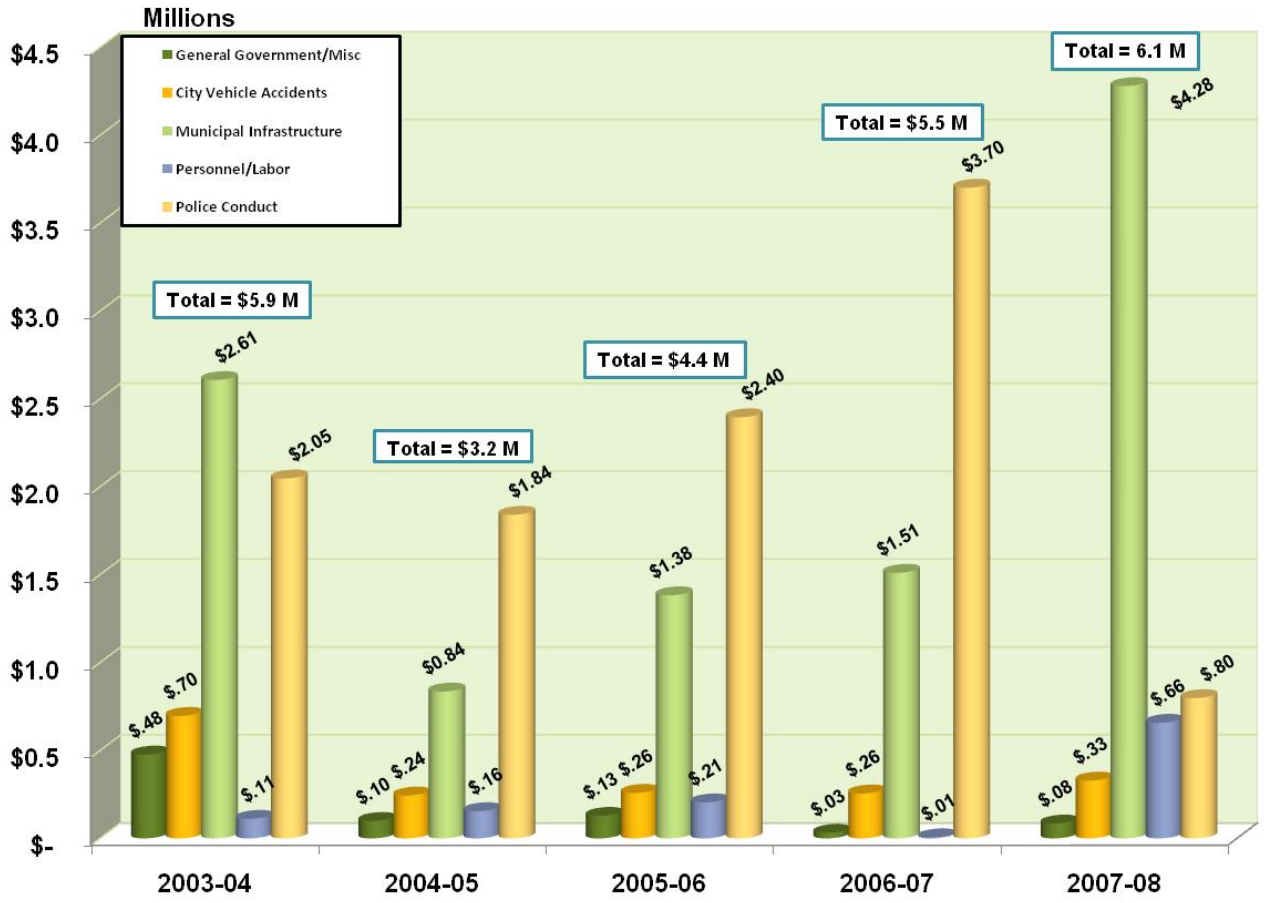

Figure 9: Total Payouts of Claims and Lawsuits by Category

Of note is a dramatic drop in payouts in police conduct cases in FY07/08. Payouts for police conduct cases fell to **$0.8 million** – a drop of $2.9 million from the previous fiscal year.

The total for all payouts of claims and lawsuits increased this year in part due to three cases (see **Table 3** below):

- A $1.79 million payout in a lawsuit over dangerous roadway conditions.
- A $1.2 million final payment in an inverse condemnation case resulting from a landslide.
- A $643,500 payout in a property damage claim resulting from a malfunctioning city sewer.

Table 3: Payouts of Claims and Lawsuits More Than $100,000 in 2007-08

Case	Type	Payout
Brown (Claim)	Sewer	$643,500
Cousey v. City of Oakland	Police Conduct - Force	$104,800
Navarra v. City of Oakland	Dangerous Condition/Roadway Accident	$1,789,097
Nesby v. City of Oakland	Police Conduct - Force	$175,000
Price v. City of Oakland	Wrongful Termination	$232,875
Rosenbaum v. City of Oakland	Discrimination/Wrongful Termination	$250,000
Silveira v. City of Oakland	Inverse Condemnation	$1,222,552 (final payment)
Vaughn v. City of Oakland	Discrimination/Wrongful Termination	$175,000
Zolowicz v. City of Oakland	Police Conduct - Force	$350,000

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

Figure 10 provides a breakdown of payouts by city department. **Figure 11** shows total payouts for claims and lawsuits over the last 10 years.

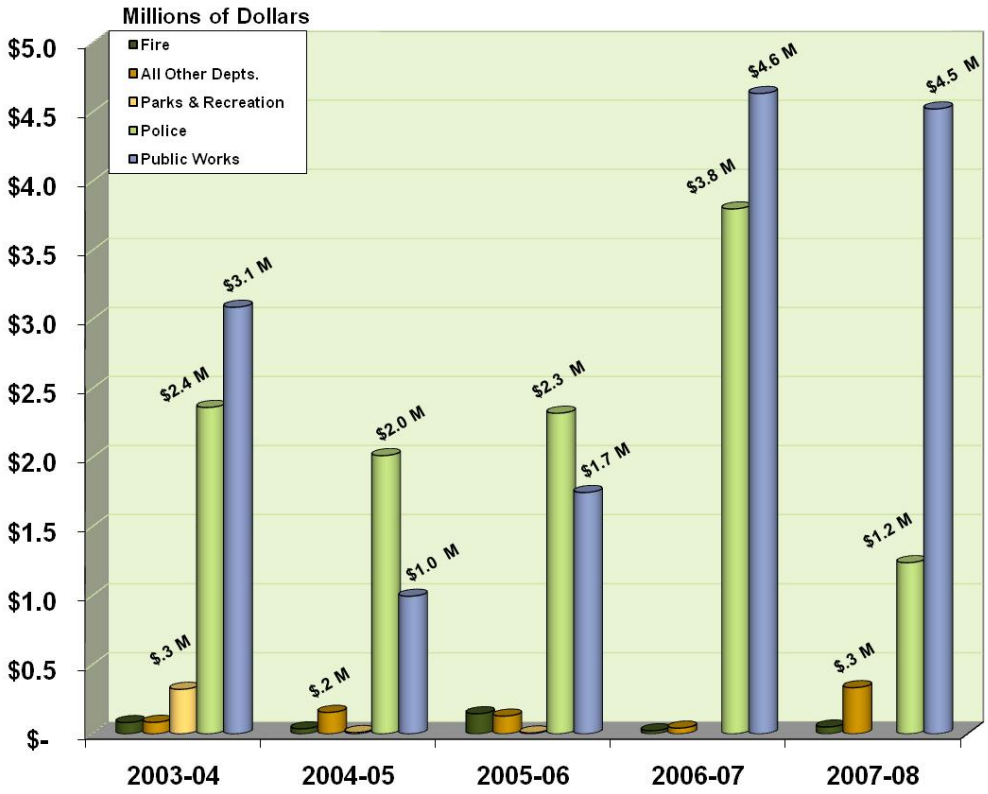

Figure 10: Payouts of Claims and Lawsuits by Department

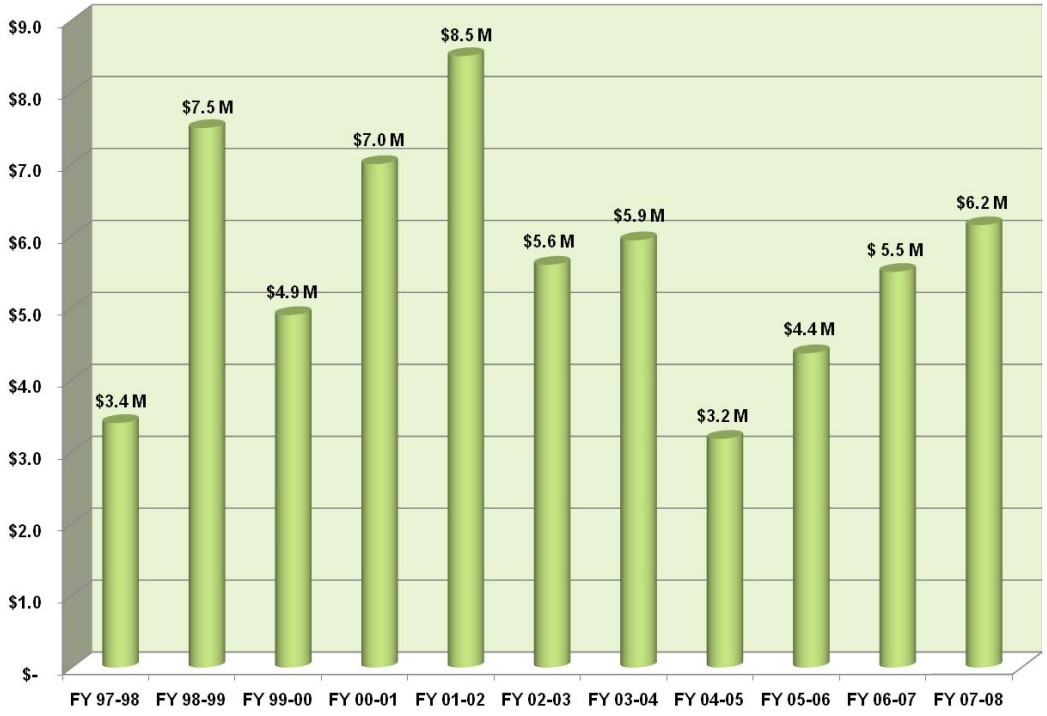

Figure 11: Total Payouts Over the Last Ten Years

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

Table 4: Payouts of Claims & Lawsuits

Police Matters	2003-04	2004-05	2005-06	2006-07	2007-08	5-year average
Alleged Use of Force	$1,380,775	$992,040	$1,853,000	$2,673,962	$364,800	$1,452,915
Conduct - Non-force	$649,618	$735,900	$502,832	$694,766	$350,000	$586,623
Alleged Wrongful Death	$4,000	$50,000	$0	$306,850	$0	$72,170
Vehicle Accidents	$315,574	$111,434	$117,074	$99,670	$208,600	$170,470
Property Loss/Miscellaneous	$7,316	$63,120	$39,820	$22,942	$10,027	$28,645
Towing	$6,838	$0	$378	$3,213	$73,960	$16,878
Personnel/Labor	$0	$63,000	$85,000	$0	$232,875	$76,175
Total Paid/Year	**$2,364,121**	**$2,015,494**	**$2,598,104**	**$3,801,403**	**$1,240,262**	**$2,403,877**

Table 5: Payouts of Claims & Lawsuits

Infrastructure	2003-04	2004-05	2005-06	2006-07	2007-08	5-year average
Building & Park Maintenance	$18,611	$17,343	$19,766	$19,332	$25,058	$20,022
Sewers/Storm Drains	$833,220	$216,866	$357,197	$248,497	$922,593	$515,675
Sidewalks	$568,970	$287,222	$145,303	$300,492	$167,646	$293,927
Streets	$245,966	$206,164	$761,039	$123,063	$1,858,295	$638,905
Landslides	$864,706	$23,957	$25,975	$800,000	$1,224,402	$587,808
Trees	$76,255	$83,967	$73,822	$19,666	$81,822	$67,106
Total Paid/Year	**$2,607,728**	**$835,519**	**$1,383,102**	**$1,511,050**	**$4,279,816**	**$2,123,443**

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

Table 6: Payouts of Claims & Lawsuits

City Vehicle Accidents	2003-04	2004-05	2005-06	2006-07	2007-08	5-year average
Police	$315,574	$111,434	$117,074	$103,465	$208,600	$171,229
Public Works	$73,351	$92,617	$91,572	$124,038	$70,216	$90,359
Parks & Recreation	$220,750	$3,833	$6,864	$0	$0	$46,289
Fire	$76,211	$34,817	$25,439	$22,654	$48,261	$41,476
Other Departments	$11,142	$1,502	$18,243	$5,600	$2,018	$7,701
Total Paid/Year	**$697,028**	**$244,203**	**$259,192**	**$255,757**	**$329,095**	**$357,055**

Table 7: Payouts of Claims & Lawsuits

Personnel/Labor	2003-04	2004-05	2005-06	2006-07	2007-08	5-year average
Police	$0	$63,000	$85,000	$0	$232,875	$76,175
Parks & Recreation	$9,000	$0	$0	$0	$0	$1,800
General Government/Other	$15,000	$92,000	$0	$5,000	$250,000	$72,400
Public Works	$87,500	$0	$0	$1,750	$175,000	$52,850
Fire Services	$0	$0	$120,000	$0	$0	$24,000
Total Paid/Year	**$111,500**	**$155,000**	**$205,000**	**$6,750**	**$657,875**	**$227,225**

4.7 Lawsuits filed on behalf of the City of Oakland

The City Attorney's Office takes legal action to defend the interests of the municipal corporation and the quality of life of the community. **Table 8** contains summaries of cases filed in FY07/08.

Table 8: Lawsuits Initiated by the City of Oakland FY07/08

Case	Filed	Description	Status
Waste Management of Alameda County RG07335086	July 11, 2007	Breach of contract	Complaint withdrawn on 11/14/08 following agreement with Waste Management
Henson, Pauline (Oakland Care Center) RG07354392	November 1, 2007	Delinquent business taxes	Paid & dismissed
Session, Kenneth D. (Session Real Estate) RG07354391	November 11, 2007	Delinquent business taxes	Dismissed
Aguilar, Casildo (La Oficina) RG07357091	November 14, 2007	Problem liquor outlet	Pending
Johnson Theodore (Summit Law Office) RG07358833	November 30, 2007	Delinquent business taxes	Paid
City of Oakland Public Ethics Commission RG07363359	December 27, 2007	Alleged PEC acted without jurisdiction and abused discretion in a 10/1/07 decision	Dismissed 1/22/08
DC v Heller Amicus Brief 07-290	February 1, 2008	Amicus brief in gun control case	U.S. Supreme Court held that 2nd Amendment protects individual's right to own a firearm
Smith, Denise RG08369077	February 1, 2008	Returned check	Dismissed by the City on 10/3/08
Capital Recycling RG08376689	March 14, 2008	Fire and Health & Safety regulatory fines	Dismissed by the City on 9/2/08
Jarvis, Craig (Tri-County Properties) RG08380738	April 8, 2008	Unlawful business practices, violations of Just Cause ordinance	Obtained positive settlement agreement
AIG Financial Products Corp., et al C08-02116 MEJ	April 23, 2008	Antitrust lawsuit against firms for bid rigging in municipal bond market	Pending. Case transferred to Southern District of New York District Court.
Cosco Busan oil spill lawsuit C08-02268 EMC	May 1, 2008	Joined San Francisco lawsuit against owners of Cosco Busan	Removed to U.S. District Court 9/22/08. Pending.

Singh, Baljit (Friendly Cab) RG03085331	May 30, 2008	Violations of hazardous waste and environmental codes	Administrative hearing in city's favor – Defendant to pay $100,000
Gazzali's Supermarket RG08393168	June 17, 2008	Failure to repay city loan	Pending
Williams, Leo (Leo Williams Tax Service) RG08394046	June 20, 2008	Delinquent business taxes	Pending
BGB Inc. (Trussworks) RG08394603	June 24, 2008	Delinquent business taxes	Pending
Chen, Timothy RG08394605	June 24, 2008	Delinquent business taxes – rental property	Pending
Jetstream Mortgage RG08394602	June 24, 2008	Delinquent business taxes	Default entered and Abstract of Judgment issued on 11/24/08.

4.8 Notable Cases FY07/08

- **Oakland Housing Authority Lawsuit**

  The City of Oakland filed a lawsuit against the Oakland Housing Authority (OHA), the city's largest landlord, in February 2007. The suit had 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.

  In FY07/08, the two agencies made significant progress on a settlement. In December 2008, the City Attorney's Office and OHA signed a final settlement that includes new systems for reporting, tracking and fixing maintenance problems for the thousands of tenants living in Oakland's federally funded public housing units.

- **Waste Management of Alameda County Lawsuit**

  On July 11, 2007, the City Attorney filed an injunction in Alameda County Superior Court to compel Waste Management of Alameda County to perform its contractual duty to pick up garbage, yard waste and recycling bins in the City of Oakland. The complaint was filed after Waste Management locked out its truck drivers in the middle of a contract dispute. During the lock-out, garbage, food scraps and recycling began to pile up throughout the city, creating serious public health concerns.

  After Waste Management resumed picking up garbage and recycling, the city reached a settlement that included increased services for city customers and compensatory damages to the city for costs incurred during the lock-out.

  The settlement included:

  - $337,221 to reimburse the City of Oakland for inspections, garbage pick-ups and other staff work during the lock-out.

- Increased services for the remaining five years of the Franchise Agreement, including augmented illegal dumping collection, amnesty collection days for tires, appliances and mattresses, and new residential recycling programs such as curbside household battery collection.

- More than $3 million in rebates to residential customers for services missed during the lock-out.

- **Anti-trust & Fraud Lawsuits**

  In 2008, Oakland filed antitrust and fraud lawsuits against some of the nation's most powerful financial institutions.

  In April, the city filed a federal anti-trust lawsuit against firms including AIG Financial Products, Bank of America, Bear Stearns, JPMorgan Chase, Wachovia Bank and others. The lawsuit charges the companies with conspiring to gouge taxpayers in Oakland and other American cities through illegal price fixing and bid rigging in the municipal bond market.

  According to the complaint, financial companies and brokers agreed among themselves to give cities artificially low bids for Guaranteed Investment Contracts, which cities use to earn interest on municipal bond funds. By conspiring to avoid competitive bidding, the financial companies were able to give cities abnormally low interest rates, thereby cheating taxpayers out of a legitimate rate of return on their money.

  Another lawsuit filed in August charges major bond insurance companies of defrauding taxpayers. The complaint accuses the firms of charging California cities and public agencies millions of dollars to guarantee their debts, while at the same time covering up financial shenanigans that made it impossible for the firms to provide the services they were paid for.

- **CEMEX Pollution Case**

  In FY07/08, the City Attorney's Office successfully enforced a major effort by the Oakland Fire Department and the Public Works Agency to clean up the CEMEX cement factory on 23rd Avenue.

  CEMEX had been illegally discharging cement sludge into the City's sewer system. That run-off settled and hardened, resulting in major blockages in the sewer system.

  Following a demand letter from the City Attorney's Office, CEMEX agreed to completely clear the City's sewer lines in a several-block radius of the facility. The company also complied with the order to upgrade its storm drainage system controlling water run-off from its facility, and to install a testing and monitoring facility in order to protect creeks and the Estuary. Finally, CEMEX reimbursed the City of Oakland $15,000 for staff time spent on the enforcement effort. The matter was resolved without litigation.

5.0 THE YEAR IN REVIEW – POLICE MATTERS

5.1 Claims and Litigation

Examining more than 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 12**).

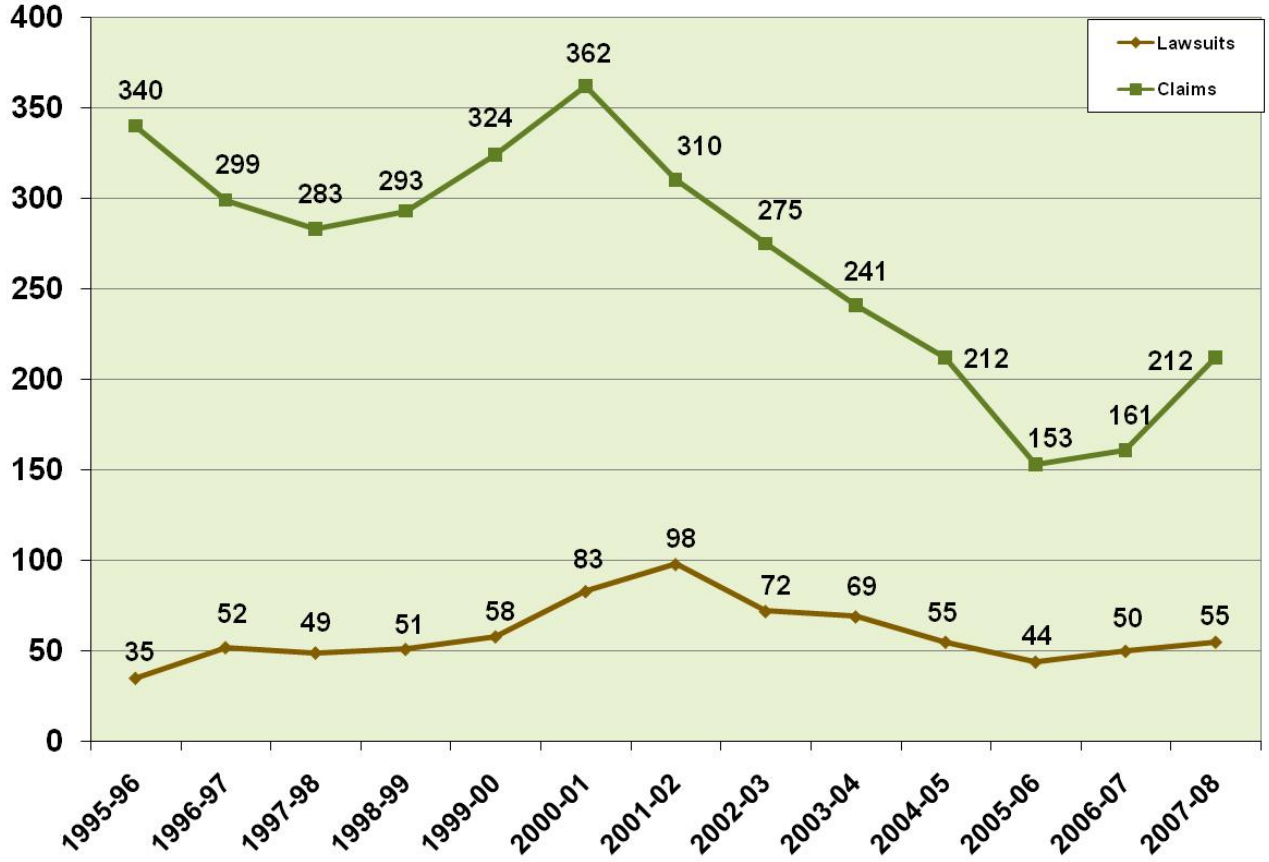

Figure 12: Trend of Police Claims and Lawsuits Filed

NOTE: Figure 12 includes police-related vehicle accidents and personnel/labor matters.

5.2 Law Enforcement Partnerships – Problem Liquor Outlets

The City Attorney's Office continued to work aggressively in conjunction with the Oakland Police Department's Alcoholic Beverage Action Team in FY07/08 to improve or shut down problem liquor stores and other liquor-selling businesses that contribute to public nuisances, blight and violent crime in Oakland neighborhoods. Significant work was done on a number of sites including the following (**Table 9**):

Table 9: Abatement of Problem Liquor Outlets FY07/08

Business	Address	Ended Liquor Sales at Site	Result
A&M Liquor Store	303 Oakland Avenue	Yes	Now a convenience store
Arrwa Liquor Store	8607 Bancroft	Yes	Surrendered liquor license & closed
Bonfare Liquor Store	10319 International Boulevard	Yes	Indefinite suspension of liquor sales at this location (Land use lapsed 1/24/08)
Bookers Liquor Store	1944 90th Avenue	No	Negotiations underway
La Oficina Bar	4768 International Boulevard	Yes	In litigation – bar closed since February 2008
One Stop Liquor Store	6001 MacArthur Boulevard	Yes	Indefinite suspension of liquor sales at this location (Land use lapsed 5/15/08)
Seven Seas Bar	4001 MacArthur Boulevard	No	In litigation – filed May 19, 2008

5.3 Law Enforcement Partnerships – Special Prosecution Team

For years the Oakland community and the Oakland Police Department have wanted more aggressive prosecution of chronic low-level crimes that impact the quality of life in Oakland neighborhoods and ultimately lead to more serious or violent crimes.

In the previous fiscal year (FY06/07) the City Attorney, the Mayor and the Police Chief proposed a new unit in the City Attorney's Office to prosecute misdemeanors and infractions such as illegal dumping, prostitution-related crimes, cruelty to animals, disorderly conduct and other public nuisances, while at the same time providing an appropriate measure of restorative justice to deserving individuals. District Attorney Tom Orloff agreed to deputize city attorneys to work as criminal prosecutors.

In June 2008, the City Council approved funding to hire three experienced criminal attorneys to staff the Special Prosecution Team. At the date of this report, the team has handled hundreds of cases. The program also strengthens the City Attorney's already aggressive alcohol enforcement efforts by giving the office the ability to prosecute problem liquor outlets both civilly and criminally.

6.0 COMMUNITY IMPACT INITIATIVES

The City Attorney's Office 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

Oakland's Neighborhood Law Corps (NLC) puts attorneys in the streets to tackle drug houses, prostitution, slumlords, blight and other problems impacting the quality of life in our community.

Working with residents, police, business and civic groups, the NLC has improved or shut down dozens of drug properties and other public nuisances, and NLC attorneys have sued slumlords to clean up substandard housing across Oakland. The program inspired by the Peace Corps was recognized with the Gold Award for Municipal Excellence from the National League of Cities.

The NLC spearheaded the City Attorney's effort to fight predatory lending, assist homeowners facing foreclosure and protect the rights of tenants in foreclosed buildings.

In FY07/08, the NLC's work with tenants included the following:

- Intervened to stop unlawful evictions of at least 17 families in foreclosed housing.
- Worked to restore utilities (water and/or power) for six families in foreclosed housing.
- Advised four brokers to cease violations of tenants' rights – obtained agreements from the brokers stating that they would comply with the law.
- Sued one broker for repeated violations of the Just Cause for Eviction ordinance and obtained positive settlement.
- Contacted five law firms handling evictions for lenders – obtained agreements that the firms would change policies and practices where necessary to comply with the Just Cause for Eviction ordinance.

6.2 Oakland Fair Lending Coalition

Many Oakland families lost their homes in the national foreclosure crisis in FY07/08. A large number of those families were victims of unethical predatory lenders who targeted Oakland with subprime loans, questionable deals and outright fraud.

In FY07/08, the City Attorney's Office organized the Oakland Fair Lending Coalition to lobby for new laws in Sacramento, to help homeowners facing foreclosure and to protect the rights of tenants in foreclosed buildings. The City Attorney's Office also created and staffed a hotline – 510 BE ALERT – to refer homeowners, borrowers and renters to organizations providing appropriate counseling or legal services.

On October 20, 2008, the coalition held a foreclosure prevention workshop attended by hundreds of Oakland residents.

6.3 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 **266** public records requests – a significant increase from 169 in the previous fiscal year.

6.4 Coalition Opposed to Aerial Moth Spraying Without CEQA Review

In FY07/08 the City Attorney's Office organized a coalition of Bay Area cities and other agencies to oppose the state's moth spraying plan. The state's plan involved sending fleets of airplanes to douse Oakland and other cities with an untested chemical called "Checkmate" to eradicate the Light Brown Apple Moth, a species that farmers consider a threat to crops.

Claiming an emergency, the state planned to conduct the aerial spraying campaign before completing an environmental review. The City Attorney's coalition prepared a lawsuit to stop the state from spraying without conducting a proper environmental review. The City Attorney also lobbied state officials and put public pressure on the Department of Food & Agriculture to postpone the plan until a review of health and environmental impacts was done. After favorable court rulings in Santa Cruz and Monterey counties, the state abandoned its moth spraying plan.

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 FY07/08 are summarized in **Attachments A – E**.

8.0 CONCLUSION

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

For more information about the work of the Oakland City Attorney's Office, please visit http://www.oaklandcityattorney.org/.

Respectfully submitted,

John A. Russo, Oakland City Attorney

ATTACHMENT A

7.1 Redevelopment & Real Estate

- Advised staff and negotiated with owner, tenant and lender attorneys on legal issues raised by insolvency of Oakland Community Housing, Inc.; negotiated, drafted and executed documents providing operating loans and grants, tenant assistance, predevelopment loans and other assistance to 13 OCHI affordable housing properties.

- Negotiated, drafted and executed documents for settlement of Pacific Renaissance lawsuit, reimbursement of City legal costs and conversion of 50 Pacific Renaissance units to affordable housing.

- Closed Agency purchase of 3.12 acres of land at Wood Street in West Oakland for affordable housing.

- Closed Agency repurchase of 3.6 acres of land in Coliseum area as part of the settlement of the Zhone Technologies lawsuit.

- Closed Agency sale of site for Fox Courts affordable housing project.

- Negotiated and drafted agreement for sale of Agency parking at UCOP building to 1100 Broadway developer.

- Negotiated terms for sale of Agency land at Oak Knoll to SunCal.

- Drafted default letters, negotiated and drafted amendments, and advised staff on default issues re CityWalk (Olson) Disposition and Development Agreement.

- Advised staff, drafted opinions and drafted legislation creating an Oakland resident and worker preference policy for affordable housing.

- Closed affordable housing development loans on several projects.

- Advised staff on adopting Central City East redevelopment implementation plan.

- Negotiated and executed an Exclusive Negotiating Agreement for Hill-Elmhurst project in East Oakland.

- Advised staff and Council on adoption of programs for redevelopment funding of police and public safety.

- Provided staff support to Project Area Committees for Central City East, West Oakland and Broadway/MacArthur/San Pablo redevelopment project areas.

- Staffed the Blue Ribbon Commission on Housing.

- 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.

- Negotiated with Wayans-Pacifica regarding their potential development of the West and Central Gateway Areas of the Oakland Army Base; advised staff and the City Council regarding same.

- Staffed the City-Port Liaison Committee on behalf of the City Attorney's Office. Reviewed staff reports generated for the Committee.

- 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.

- Negotiated and advised staff and the City Council regarding a Disposition and Development Agreement with Bay Area Kenworth regarding a truck dealership and service center to be developed in the East Gateway portion of the Army Base.

- Worked with staff and outside counsel to negotiate a second phase of the tidelands trust exchange at the Oakland Army Base, to free certain portions of the base from the trust.

- Negotiated with the Port of Oakland regarding several real estate matters, including a potential land swap to accommodate the Port's Outer Harbor Intermodal Terminal, the deconstruction of historic warehouses straddling the Port-ORA property line, and easements and other real property rights at the Oakland Army Base.

- Completed negotiations with the Port of Oakland regarding the ongoing management of the utility systems at the Oakland Army Base.

- Completed negotiations with the Port of Oakland regarding the Amended & Restated Memorandum of Agreement governing the relationship of the Port, the City and the Redevelopment Agency at the Oakland Army Base related to environmental remediation, the Port's Berth 21 project, and the Army's reinvestment obligations, among other matters.

- Worked with staff and outside counsel regarding the creation of a special tax district to help fund the infrastructure at the former Amy Base.

- Negotiated with the California Department of Transportation regarding the future development of the former Oakland Army Base and the Bay Bridge Project, including several easements, deed transfers and a potential land swap to accommodate Caltrans' ongoing maintenance needs and the redevelopment of the West and North Gateway Areas of the Army Base.

- Managed a dispute with the Port of Oakland regarding misuse by the Port of Army ESCA environmental remediation funds.

- Advised staff and City Council regarding the short term leasing program at the former Oakland Army Base operated by the Redevelopment Agency.

- Advised staff regarding the Request for Qualifications (RFQ) process, followed by a limited Request for Proposals (RFP) process, for the selection of a master developer for the Oakland Army Base.

- Advised staff and City Council regarding the RFP and future development of 30 acres of the Army Base for ancillary maritime services, as required by the Bay Conservation and Development Commission, including the selection of and negotiations with Oakland Maritime Support Services (OMSS) regarding their proposed development.

- Managed a dispute with the Army regarding its failure to reimburse the California Department of Toxic Substances Control regarding its review of Army Base environmental documentation.

- Advised staff and City Council regarding the establishment of the West Oakland Community Fund, to be funded by future developers of the Army Base.

- 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 Agency staff and reviewed contracts for services at the Army Base, including environmental remediation, security, real estate matters, and property management.

- Helped implement the MacArthur BART Transit Village by drafted the executed Amendment to an Exclusive Negotiating Agreement with MacArthur Community Transit Partners; drafting legislation for application for Proposition 1C funding and preparing the Ownership Participation Agreement.

- Drafted Maintenance Declaration for the Civiq Mixed-Use Project at 51st & Telegraph.

- Negotiated, drafted and executed Purchase & Sale Agreement and Declaration of Restrictions for 2 parcels at Butters Canyon.

- Negotiated, drafted and executed Release and Satisfaction Agreement regarding 600 Washington Street.

- Completed negotiations and revisions and executed Lease with restaurant operator at Lake Merritt Boathouse.

- Negotiated, reviewed, amended and executed leases with Oakland Unified School District.

- Negotiated, drafted and executed Lease with Children's Hospital for the African American Cultural Center.

- Revised and executed a number of leases for City properties (e.g. 150 Frank Ogawa Plaza) and for private properties (e.g. 530 Lake Park).

- Negotiated, reviewed, amended and executed a number of Licenses for Head Start Centers (e.g. Coliseum Gardens, St. Joseph's Center, etc.).

- Drafted and executed a number of licenses for City properties (e.g. Lake Park Ave. Tree Lot).
- Drafted and executed a number of Rights of Entry (e.g. Uptown Housing Partners).
- Negotiated, drafted and executed the Construction Easement for the Coliseum Gardens project.
- Drafted and executed First Amendment to Loan Agreement and Subordination Agreement for Percy Abrams Housing Development.
- Reviewed, amended and executed Pre-Development Loan Agreement for Habitat for Humanity, Byron Ave. Housing Development.
- Drafted and executed Amendment to Agreements with McCoy and Wrigh regarding the Cal ReUSE Program.
- Reviewed, amended and executed loan documents for Brush Street and Habitat for Humanity's Edes Ave. projects.
- Reviewed, amended and executed a number of professional services contracts (e.g. OBDC, Oakland Merchants Leadership Forum, real estate title companies, etc.).
- Handled nine (9) litigation matters relating to the Rent Program.
- Handled several 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.
- Advised staff on environmental issues arising from City or Agency owned land.
- Successfully negotiated partial settlement of lawsuit against Just Cause Ordinance and briefed appeal in case.
- Closed on Fox Theater and provided on-going litigation support to Fox Theater restoration.
- Closed on City Center T-12 site for new Shorenstein development.
- Advised on foreclosure related evictions.
- Advised on Nuisance Eviction Ordinance matters.
- Defended Measure Y in lawsuit.

ATTACHMENT B

7.2 General Government & Finance

- New three year contract with San Jose Arena Management (SJAM0, the Sharks) to operate and manage the OIC (for the first time in 12 years of its operation, the OIC, in 8 months, showed a $300,000 profit, of which the City received its contractual share).
- Assisted Oakland Museum to receive grants from CalTrans and other funding sources.
- Successfully mediated a dispute regarding the Port and the Museum's storage.
- Successfully negotiated a Joint Use Agreement between OPR and OUSD regarding the use by both entities of facilities owned and operated by the other.
- Assisted OPR in negotiating O&M Agreement for Chabot golf course, which now, is showing a profit and in beautiful condition.
- Assisted CEDA staff to create the new Lake Merritt/Uptown Community Benefit District.
- Assisted CEDA staff to create the new Downtown Community Benefit District.
- Drafted the Proposed Ordinance Creating a Special Parcel Tax entitled "The 2008 Oakland Police Services Expansion Measure."
- Assisted Public Works Agency to create the new Oakland Utility Underground Assessment District, Map 2007-233, Piedmont Pines Phase 1.
- Assisted Fire Department in making purchases of three engines in compliance with the Emergency Services Retention Act of 1997 (Measure M).
- Issued legal opinions clarifying Measure Y.

ATTACHMENT C

7.3 Public Safety, Risk Management, Contracts & Purchasing

- Developed implementation plan and completed contract negotiations with the County and District Attorney to commence the City Attorney's Special Prosecution Team – a unit of criminal attorneys deputized by the District Attorney to prosecute misdemeanor/quality-of-life crimes.
- Attended over 50 Executive and Regular Use of Force board hearings.
- Conducted several trainings for the Oakland Police Department regarding: 1. Police litigation and trends; 2. Liability of supervisors for misconduct of subordinates, and; 3. Contemporary police practices.
- Researched and updated numerous Oakland Police Department policies regarding public records requests, vehicle pursuit, use of force, force investigations, use of the Electronic Control Device (Taser), excited delirium, searches and confidential informants.
- Continued representation of the City and the Oakland Police Department in litigation proceedings in *Delphine Allen v. City of Oakland, USDC. Case No*. *C-00-4599-TEH.*
- Continued to assist the City and the Oakland Police Department to implement changes and adopt contemporary police practices and methodologies to comply with the City's Negotiated Settlement Agreement.
- Negotiated and drafted an extension of the contract with the Independent Monitoring Team for the Oakland Police Department.
- Reviewed, drafted and researched contracts, agreements and MOUs for the Oakland Police Department including but not limited to: 1. An agreement with county probation for tracking by GPS technology of probationers released in Oakland; 2. The City's Vehicle Towing and Storage contract, and; 3. An Automated Red Light Camera Enforcement contract.
- Assisted the City and the Oakland Police Department to research and develop several programs, including a community radar gun program to identify and warn speeding motorists and an Inter-Agency Working Group to address crime trends and hot spots.
- Provided ongoing advice to the Mayor, City Administrator, Chief of Police, City Council and staff regarding law enforcement programs, policies and legal issues.
- Prepared legislation for the Council and worked with the Police Department on various policy initiatives related to law enforcement.
- Advised the Oakland Police Department in handling numerous public records requests, subpoenas and Pitchess motions.
- Attended over 30 vehicle accident and pursuit review board hearings.

- Worked on resolution supporting U-Visa Applicants – allowing immigrant crime victims to legally stay in the US when they assist law enforcement.

- Prepared Prompt Payment Ordinance and assisted with preparation of extensive prompt payment regulations, solicitation and contact provisions and forms.

- Prepared extensive 2008 Fire Code Ordinance Amendments.

- Prepared draft contractor debarment ordinance (not yet presented), draft amendments to the purchasing ordinance (not yet presented), draft railroad franchise agreement ordinance (not yet presented) and boilerplate railroad franchise agreement, and draft oversize vehicle parking ordinance (not adopted).

- Advised staff and prepared legislation to implement residential parking programs: Jack London Square & Panoramic Way.

- Conducted or participated in training with city departments, agencies and Mayor and City Council staff on prompt payment policy, pay-go policy, stop notice and general contracting process training, city-wide Contract Compliance training.

- Prepared priority project and pay-go resolutions and form agreements for the Mayor and City Council.

- Prepared specialized purchase orders, design and construction contracts and funding/donation agreements for major projects: Museum Renovation project, Fox Theater Renovation, Municipal Boathouse project, Shepherd Canyon Parking Lot project and other Parks and Recreation projects.

- Assisted City Administrator and staff to review and develop next steps for Contracting Disparity Study.

- Assisted staff to obtain settlement and living wage payments for multiple employee claimants in connection with the Prudential Overall Supply contract.

- Assisted the Port of Oakland to defend a contractor challenge in the Court of Appeals involving Port of Oakland and City of Oakland construction contracting practices.

- Coordinated Real Estate Department, CEDA, Public Works, Treasury and Revenue Department to determine City's rights of way and right to franchise fees under franchise agreements with Union Pacific, Burlington Northern-Santa Fe and Oakland Terminal Railway railroads.

- Assisted staff to prepare legislation declaring local emergencies due to the Bay Oil Spill and provided representation in lawsuit filed by City and County of San Francisco in *City and County of San Francisco, et al. v. Regal Stone, et al.* against parties liable for damages resulting from the Bay spill and responsible for environmental clean up.

- Assisted Public Works Agency to undertake major repair of a failing roadway on McKillop Street resulting from a slide, to gain access to adjacent private properties and to recover cost of repair funding from FEMA - $3,198,967.00 (Fed $2,344,967.00 and State $854,387.00) as of June 30, 2008.

- Assisted Public Works Agency to negotiate and settle claims arising from the Waste Management worker lockout and subsequent service failures, resulting in an additional $4.8 million in services to the City and residents in the form of enhanced collection services and prevention of illegal dumping, and over $3 million in service credits to City customers.

- Assisted staff to contest the re-opening of the Glascock railroad track that runs amid residences in the Fruitvale District.

- Coordinated city, county and state agencies to force repair and clean up of Cemex industrial facility to abate illegal dumping of cement into City sewer mains threatening catastrophic sewage overflow for hundreds of residents and businesses.

- Assisted the Fire Department to abate illegal storage/handling of hazardous materials at Capitol Recycling facility.

- Assisted Public Works Agency to declare emergency and undertake emergency actions necessary to mitigate roadway damage in connection the January 2008 slide on Oakwood and Skyline Drives.

- Assisted in the transfer of the City's radio frequency bands to Nextel and obtained reimbursement for legal fees from Nextel.

- Completed extensive negotiations and contracts for red light cameras and city-wide towing.

- Assisted Mayor's Office, City Council, City Auditor's Office and Information Technology Department with technology contracts including multiple contracts for refresh of Oracle System, Oracle/AST Public Budgeting software contract, Lagan Citizen Relationship Management Services contract, Teammate Auditing software contract and a City-wide copier contract.

ATTACHMENT D

7.4 Land Use & Development

- Successfully defended CEQA challenge to actions implementing Measure DD. Our success in the litigation removed a major impediment to fulfilling the voter-approved measure, which funds a host of water quality, recreational and creek improvements around Lake Merritt and the Oakland Estuary.

- Assisted in the environmental review and approval of numerous development projects, including St. Joseph's, Waitling Street and Courthouse Condominiums (residential projects of 164, 79 and 142 housing units, respectively), City Center T-12 (commercial development of 600,00 square feet), Oak Knoll Naval Hospital Redevelopment Project (proposed mixed use development, involving 960 residential units, 82,000 square feet of commercial uses and restoration of the degraded Rife Range Creek) and the Elmhurst Creek restoration project.

- Assisted in the continuing processing of numerous development project applications, including the Gateway Community, Pali Court and Creekside residential projects (residential projects of 800, 7 and 120 housing units, respectively), Bentley School (360 student enrollment), Kaiser Hospital Phase II (1.06 million square feet of hospital and related facilities), and Aaron Metals (100,000 square foot recycling facility).

- Drafted moratorium and then permanent regulations of tobacco retailers.

- Assisted in preparation of various City protocols implementing the California Environmental Quality Act.

- Developed and implemented legal strategies for opposing aerial spraying for the Light Brown Apple Moth without appropriate CEQA review, including organizing a coalition of public agencies and non-profit organizations.

- Assisted in negotiating and drafting of settlement agreement with Caltrans for Caldecott Tunnel Fourth Bore Project.

- Assisted in environmental review and approval of the City's Bicycle Master Plan.

- Assisted in environmental review and approval of the MacArthur BART Transit Village Project (675 residential units, 45,000 square feet of commercial space and a 400 space parking garage).

- Assisted in various activities at the former Oakland Army Base, including defending the Automall Project against EBMUD CEQA challenge.

- Assisted in environmental review and approval of 4801 Shattuck Avenue (44 residential units) and in the successful defense of a CEQA challenge to the project.

- Assisted in updating and streamlining provisions of the Oakland Planning Code.

ATTACHMENT E

7.5 Labor & Employment

- Advised City administration, agencies, departments and supervisors concerning City 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 class-action grievances.
- Provided sexual harassment and discrimination training to the Police Department.
- Provided training on the Firefighters' Bill of Rights to the 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 contact negotiations for Local 55, SEIU and Local 21.
- Conducted negotiations directed at resolving lawsuits alleging failure to fully implement the Equal Access Ordinance and provided direction to City to ensure full implementation.
- Defended the City in labor and employment lawsuits and in opposition to writs.
- Represented the City in arbitrations conducted pursuant to contracts with City employees.
- Defended the City's ordinance protecting patient access to reproductive health service clinics.
- Assisted Council in drafting legislation directed at eliminating nepotism and favoritism and protecting whistleblowers.