1.0 Introduction

City Attorney's Statement

We consider Oakland residents and business owners to be the shareholders of this municipal corporation, to whom we are ultimately accountable. Like any shareholder, you are entitled to know how your taxpayer dollars are spent for legal services.

This annual shareholder's report provides a detailed review and analysis of litigation trends, financial results and community initiatives for the fiscal year from July 1, 2008 to June 30, 2009.

This year was a challenging one for our city government, as it was for many of the Oaklanders who depend on the services we provide.

During this difficult year, our philosophy – ***law in service of the public*** – continued to guide 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 initiating legal action when the community's quality of life or economic interests are jeopardized.

In FY08/09, our litigators aggressively defended the city in and out of court – more than two-thirds of all suits resolved this year were ended with no payment of money. Attorneys also continued to provide top notch legal advice to employees and officials in the other departments and branches of Oakland's government.

Mission Statement

The mission of the Oakland City Attorney's Office is:

To provide the highest quality legal services to the City of Oakland,

To promote open government, transparency and accountability to the residents of Oakland in accordance with the letter and spirit of the law, and

To apply the law in an innovative and community oriented manner to improve the quality of life in Oakland neighborhoods.

This year a new partnership with the Oakland Police Department and the District Attorney's Office created a criminal law unit within the City Attorney's Office to focus on misdemeanors and quality-of-life crimes. The Special Prosecution Team handled hundreds of cases in its first year. And the Neighborhood Law Corps – the city's community lawyering unit – continued its work on behalf of families living in substandard or foreclosed housing.

This report and the initiatives it details are driven by our commitment to transparency and accountability at all levels of government. Please don't hesitate to contact me with questions or feedback about any aspect of the work of the Oakland City Attorney's Office.

Sincerely,

John A. Russo
Oakland City Attorney

2.0 Financial Analysis

The Oakland City Attorney's Office aggressively manages claims, lawsuits, operating expenses and outside counsel costs to save taxpayers money.

In FY08/09, the total cost to provide legal services to the City of Oakland was $23.73 million, including staff, litigation and operating expenses, outside counsel costs and payouts for claims, lawsuits and judgments (**Figure 1**). This represents a savings of $700,000 from the prior fiscal year, due in part to budget cuts mandated by the City Council and to our effort to limit payouts for claims and lawsuits (**Figure 2**).

Although overall costs decreased in FY08/09, the amount spent on outside counsel increased by 34 percent. The City Attorney's Office handles a heavy case load, and cutting staff attorneys invariably increases the need for outside counsel to litigate cases.

With budget cuts mandated by the City Council, staffing in the City Attorney's Office has reached a critical level at which further reductions in attorneys will be counter-productive – Oakland will spend more on outside counsel than it saves by cutting in-house attorneys. The cost of outside counsel this year – $2.33 million – is the highest since 2001/02 (excluding the Pacific Renaissance case, which spiked outside counsel costs in 2005/06 – **Figure 3**).

Year in Review: Financial Results

- *Overall cost of legal services: **$23.73 million** (down from $24.43 million from last year)*
- *Total payouts for claims & lawsuits: **$5.4 million** (down from $6.1 million last year)*
- *Operating costs: **$14.72 million** (down from $15.41 million last year – due to reduction in staff)*
- *Outside counsel costs: **$2.33 million** (up from $1.74 million last year – mainly due to reduction in in-house attorneys)*
- *Outside counsel costs were highest since 2001/02 (excluding Pacific Renaissance case)*
- *Total billable hours: **69,637***

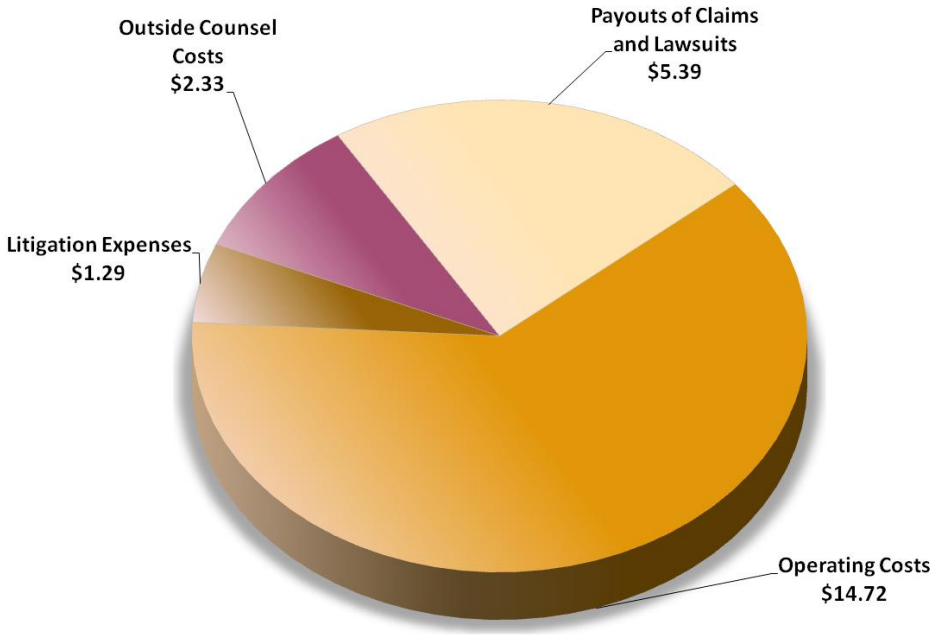

Figure 1: Cost to Provide Legal Services for FY 2008-09

Figure 2: Cost of Legal Services

2.1 Cost of Legal Services

The City Attorney's Office works diligently to contain costs and save taxpayer dollars. In FY08/09, the total cost to provide legal services to the City of Oakland dropped to $23.7 million. Budget cuts mandated by the City Council contributed to a drop in operating expenses of about $700,000. We also aggressively managed claims and lawsuits to reduce payouts – total payouts for claims and lawsuits dropped by $760,000 in this fiscal year.

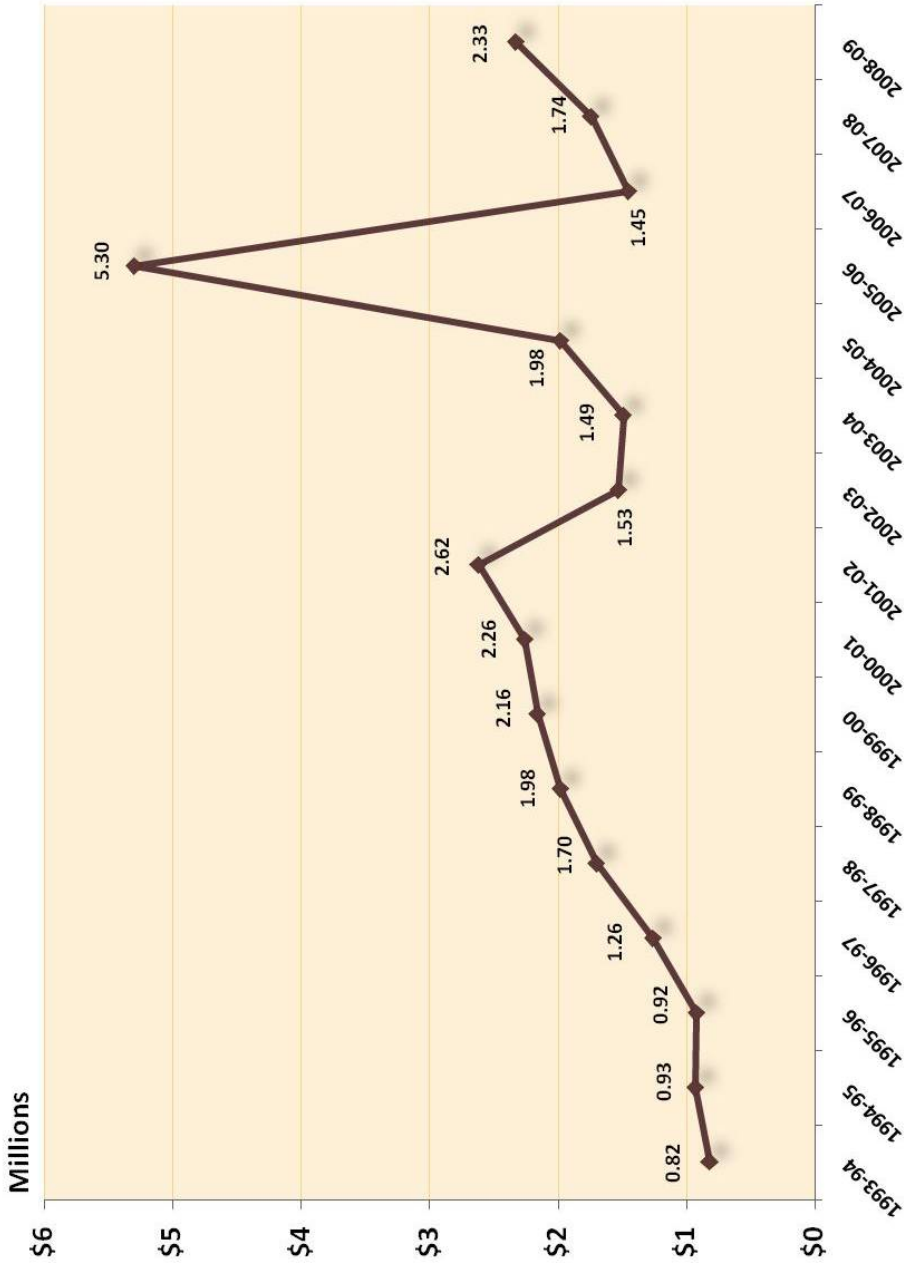

Figure 3: Outside Counsel Cost

2.2 Outside Counsel

The cost of outside counsel this year – $2.33 million – is the highest since 2001/02 (excluding the Pacific Renaissance case, which spiked outside counsel costs in 2005/06).

Costs increased significantly this year after budget cuts mandated by the City Council resulted in a loss of two staff attorneys in FY08/09. Cutting in-house attorneys may reduce operating costs, but it will invariably increase the need for outside counsel to handle cases and meet our legal obligations. On average, outside counsel costs $319 per hour, more than twice the average hourly cost of a staff Deputy City Attorney ($122 per hour).

With additional budget cuts resulting in the loss of three in-house attorneys in 2009/10, staffing in the City Attorney's Office has reached a critical level at which further reductions will be counter-productive – Oakland will spend more on outside counsel than it saves by cutting in-house attorneys.

2.3 Allocation of Legal Resources

Figure 4 shows how the City Attorney's Office is organized into practice areas to better serve our clients. This chart does not include the City Attorney and the two Assistant City Attorneys. Despite cuts in staff, the total number of attorneys increased by one this year due to the creation of a new criminal prosecution unit, approved by the City Council last year.

Figure 5 is a breakdown of billable hours by department. Although the City Attorney's Office does not bill time directly to departments, we closely track billable hours internally to manage resources and contain legal costs.

The designation of department counsels for the Oakland Police Department and the Department of Public Works has contributed to better risk management in two areas where the City has typically had greater exposure.

Office Profile FY08/09

The Oakland City Attorney's Office continued to be one of the most diverse legal teams in the country, with 68% women and 66% people of color on staff.

This year our office included:

***42 attorneys** – City Attorney, 2 Assistant City Attorneys, 11 litigation, 22 advice, 3 Neighborhood Law Corps and 3 criminal attorneys.*

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

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

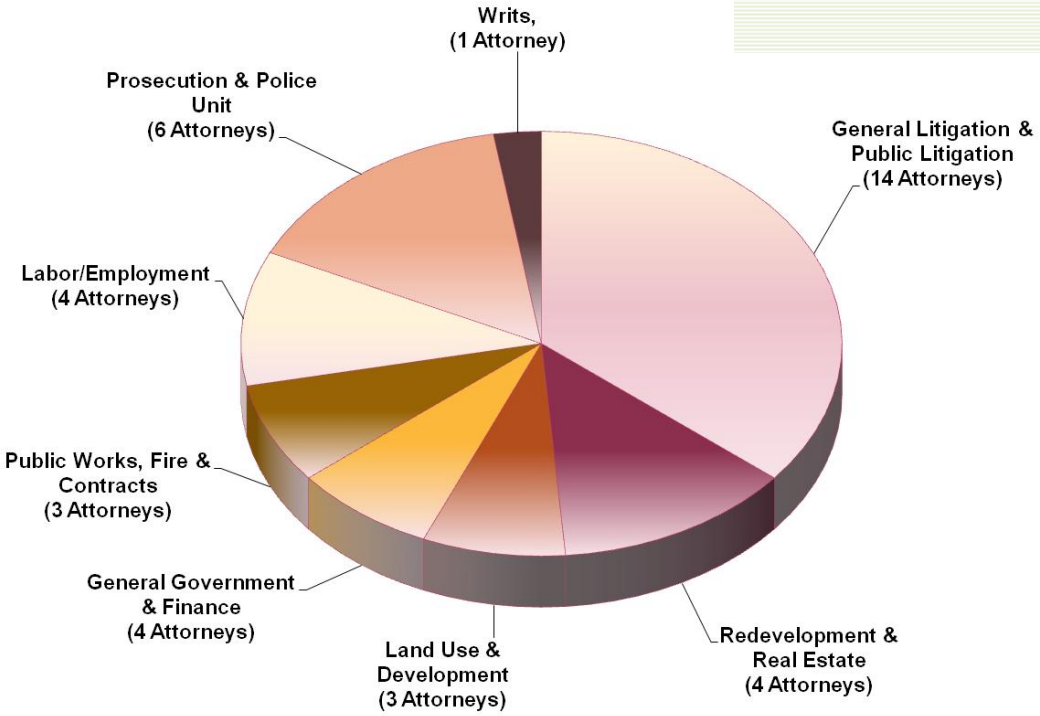

Figure 4: Allocation of Attorneys

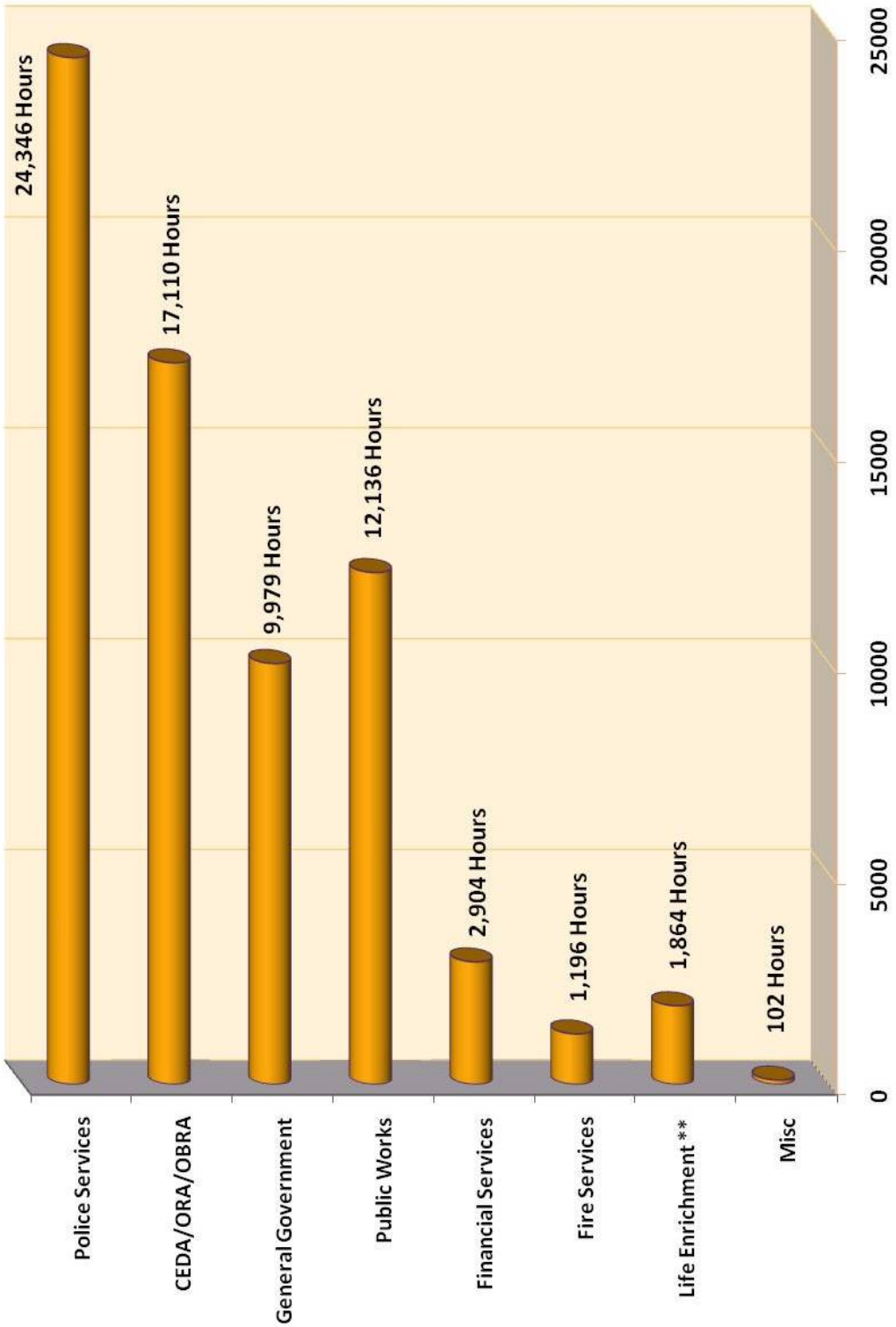

Figure 5: Billable Hours By Department

** Life Enrichment includes Parks & Recreation, Library, Museum and Health & Human Services

3.0 Management of Claims & Litigation

The Oakland City Attorney's Office uses strategic litigation techniques to protect taxpayer dollars.

Claims fall into three categories: municipal infrastructure (streets, sewers and sidewalks), police matters (conduct, towing, jail and property damage) and city vehicle accidents. Lawsuits primarily arise in the same three categories, with the addition of personnel/labor.

The number of claims and lawsuits received dropped slightly this year (**Tables 1 & 2** on the next page). Of note are decreases in the number of claims and lawsuits involving police matters (**Figure 6**).

We aggressively manage liability at the claims stage to reduce the number of claims that evolve into lawsuits. When there is clear liability, we seek to settle claims early to avoid the higher costs of defense and to discourage plaintiffs' attorneys from increasing fees through needless litigation.

This year, 71 percent of claims – almost three out of every four – were resolved with no payment of money (**Figure 7**). The large majority of denied claims – more than 90 percent – never become lawsuits, underscoring the effectiveness of our strategy (**Figure 9**).

When lawsuits are filed, we seek to reduce litigation costs and limit potential exposure by filing motions to dismiss defendants and causes of action, thereby narrowing the scope of defense.

Year in Review: Claims & Litigation

- *Number of claims paid:* ***162*** *(last year: 165)*
- *Total payouts for claims:* ***$679,744*** *(down from $1,201,779 last year)*
- *Percent claims resolved with no payment of money:* ***71%***
- *Percent claims that never evolve into lawsuits:* ***90%***
- *Number of payouts for lawsuits:* ***44*** *(last year: 52)*
- *Total payouts for lawsuits:* ***$4,713,479*** *(down from $4,963,086 last year)*
- *Percent lawsuits resolved with no payment of money:* ***68%***
- *Total payouts for claims & lawsuits:* ***$5.4 million*** *(down from $6.1 million last year)*
- *Claims received:* ***660*** *(last year: 668)*
- *Lawsuits received:* ***153*** *(last year: 170)*

More than two-thirds of lawsuits resolved in FY08/09 resulted in no payment of money (**Figure 8**). Only seven cases resulted in payouts of more than $100,000 (**Table 7**). The largest amount of payouts this year resulted from claims and lawsuits involving police matters (**Figures 10 & 11**). The total amount of payouts for claims and lawsuits this year – $5.4 million – is a significant drop from the previous fiscal year, and is lower than the 10-year average of $5.7 million (**Figure 12**).

The City Attorney's Office also initiates legal action on behalf of the municipal corporation when the community's quality of life or economic interests are jeopardized. Plaintiff actions initiated in FY08/09 included five lawsuits against major banks and local agents responsible for illegal evictions of tenants living in foreclosed buildings (**Attachment F**).

3.1 Claims and Lawsuits Received

Table 1: Types of Claims Received

Category	2004-05	2005-06	2006-07	2007-08	2008-09	5-year average
Municipal Infrastructure	316	295	284	329	325	310
Police Matters	177	127	125	164	150	149
City Vehicle Accidents	77	69	83	91	109	86
Other	54	61	68	84	76	69
Total Claims/Year	**624**	**552**	**560**	**668**	**660**	**613**

Table 2: Types of Lawsuits Received

Category	2004-05	2005-06	2006-07	2007-08	2008-09	5-year average
Municipal Infrastructure	33	46	48	44	33	41
Police Matters	45	35	30	40	34	37
Personnel/Labor (non-lawsuits and lawsuits)	16	22	39	35	32	29
City Vehicle Accidents	11	11	8	11	8	10
Other	42	48	40	40	46	43
Total Lawsuits/Year	**147**	**162**	**165**	**170**	**153**	**159**

3.2 Police Claims & Lawsuits

The number of claims and lawsuits brought against the Oakland Police Department decreased in FY08/09. **Note:** this chart includes claims and lawsuits for police-related vehicle accidents and personnel/labor matters.

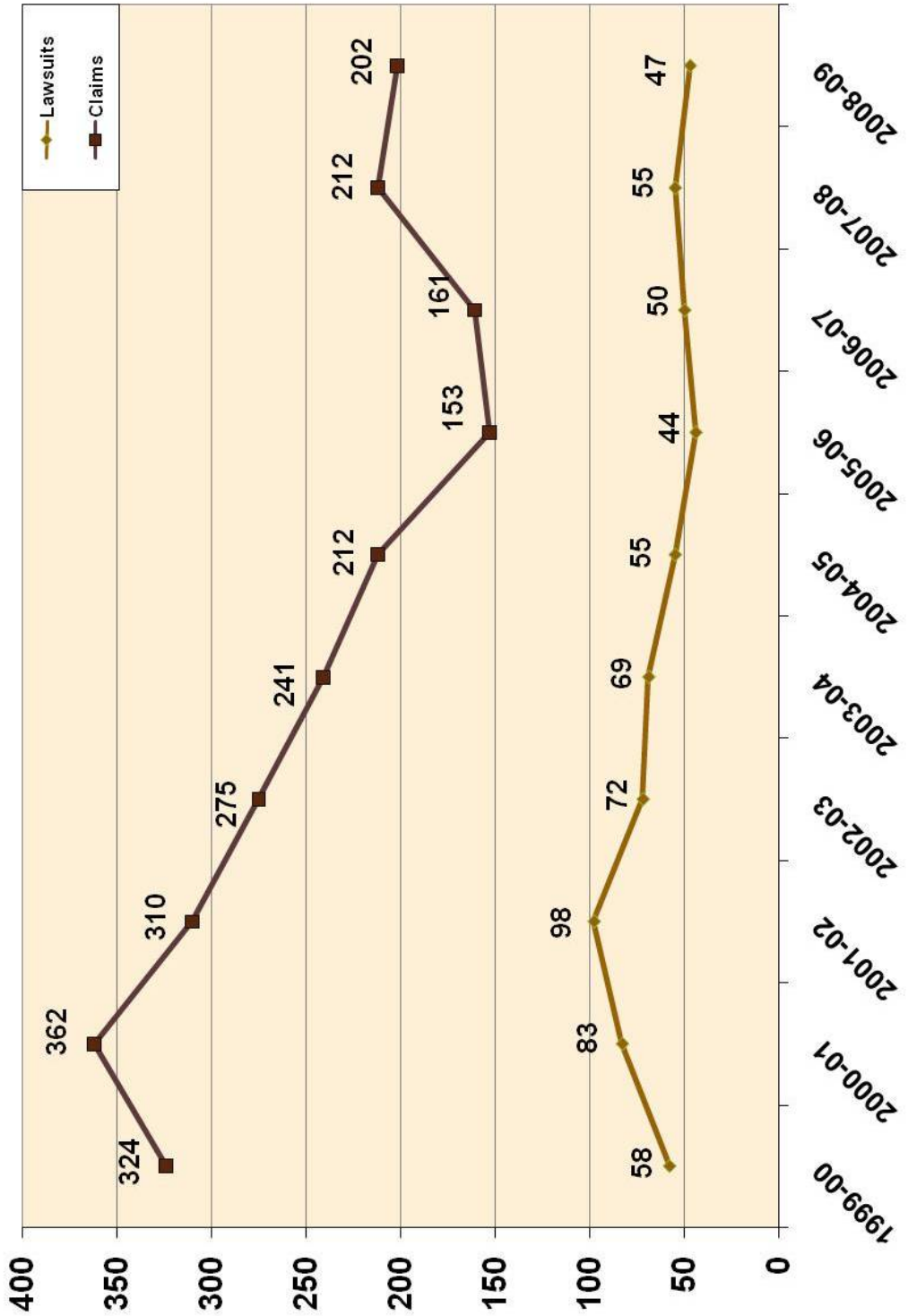

Figure 6: Trend of Police Claims and Lawsuits Filed

3.3 Claims and Lawsuits Results

Of the 556 claims resolved this year, 71 percent resulted in no payment of money. Of 137 lawsuits resolved in FY08/09, 68 percent ended with no payment of money.

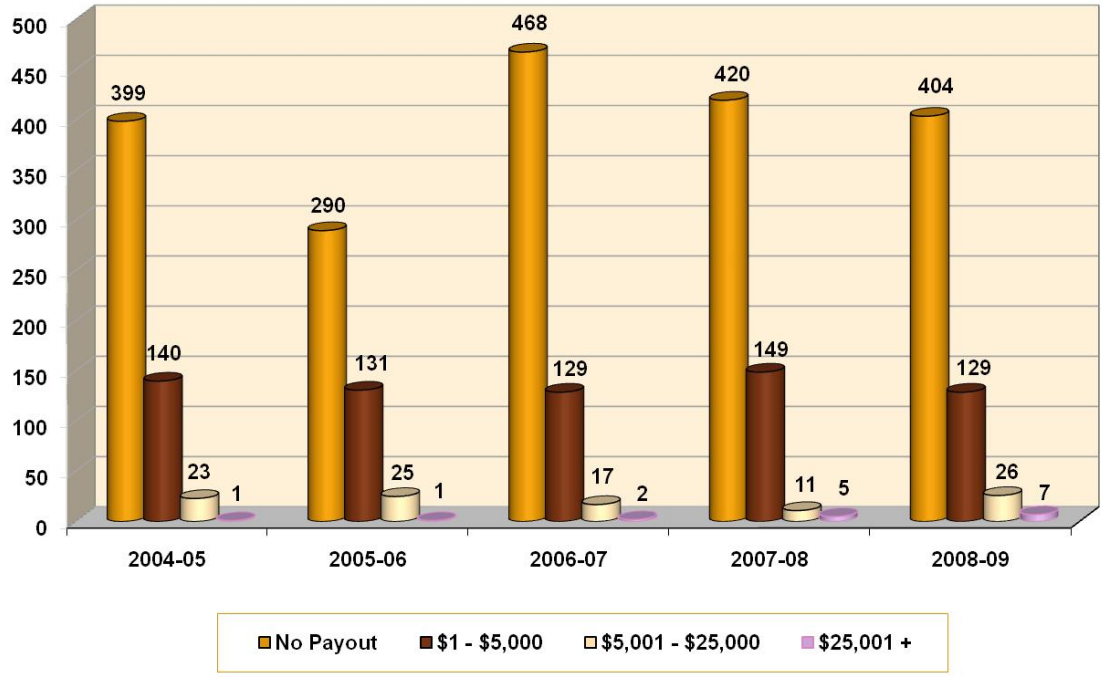

Figure 7: Claims Resolved Over 5 Years

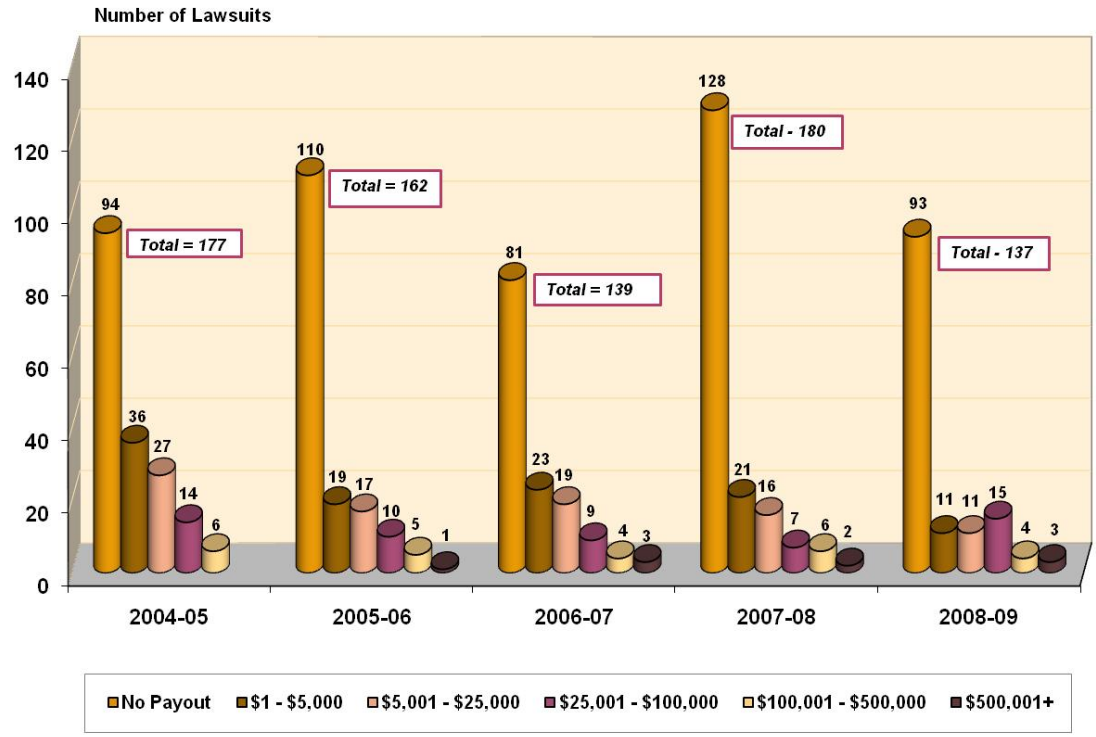

Figure 8: Lawsuits Resolved Over 5 Years

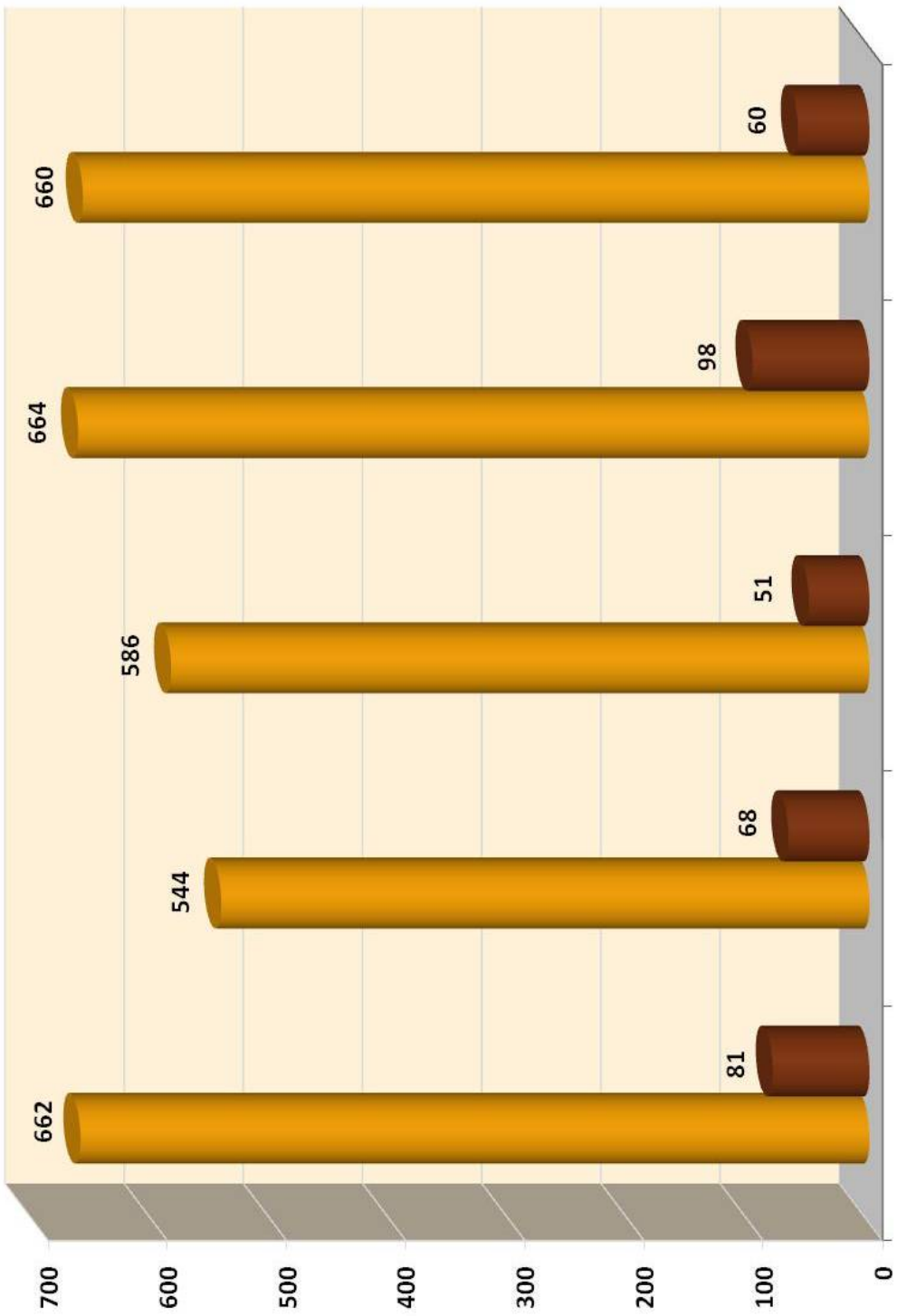

Figure 9: Claims That Evolved Into Lawsuits by Year of Incident

We aggressively manage liability at the claims stage to reduce the number of claims that evolve into lawsuits. When there is clear liability, we seek to settle claims early to avoid the higher costs of defense and to discourage plaintiffs' attorneys from increasing fees through needless litigation. The large majority of denied claims – more than 90 percent – never become lawsuits, underscoring the effectiveness of this strategy.

3.4 Payouts of Claims and Lawsuits by Category and City Department

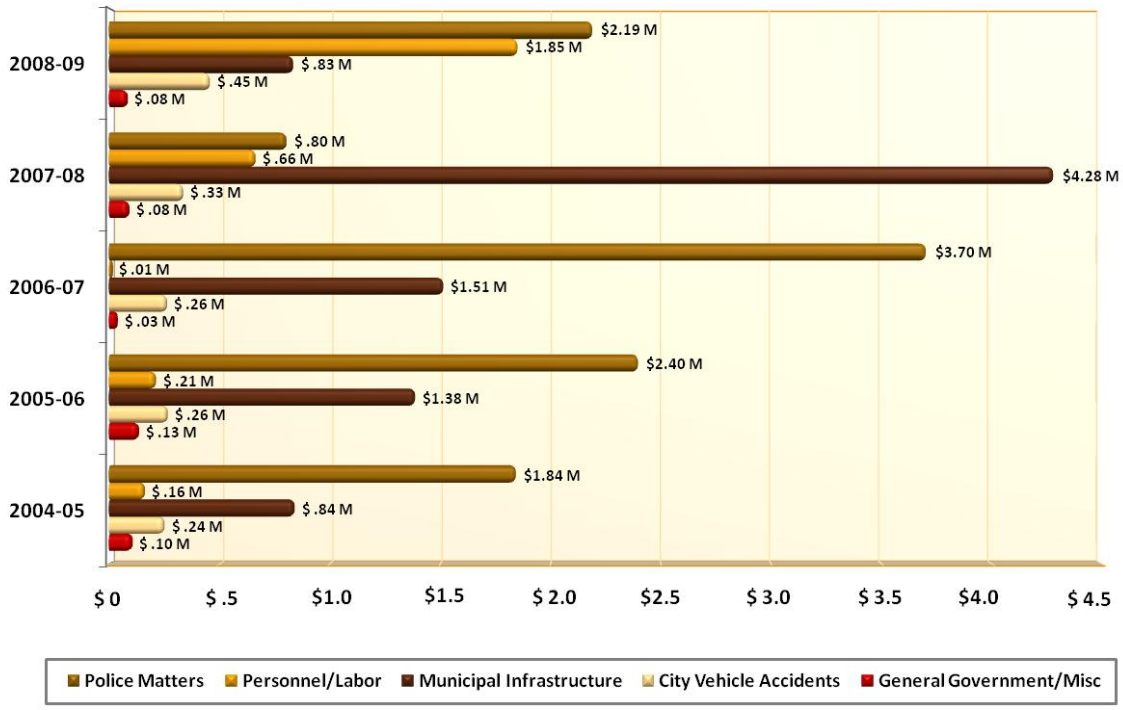

Figure 10: Total Payouts of Claims and Lawsuits by Category

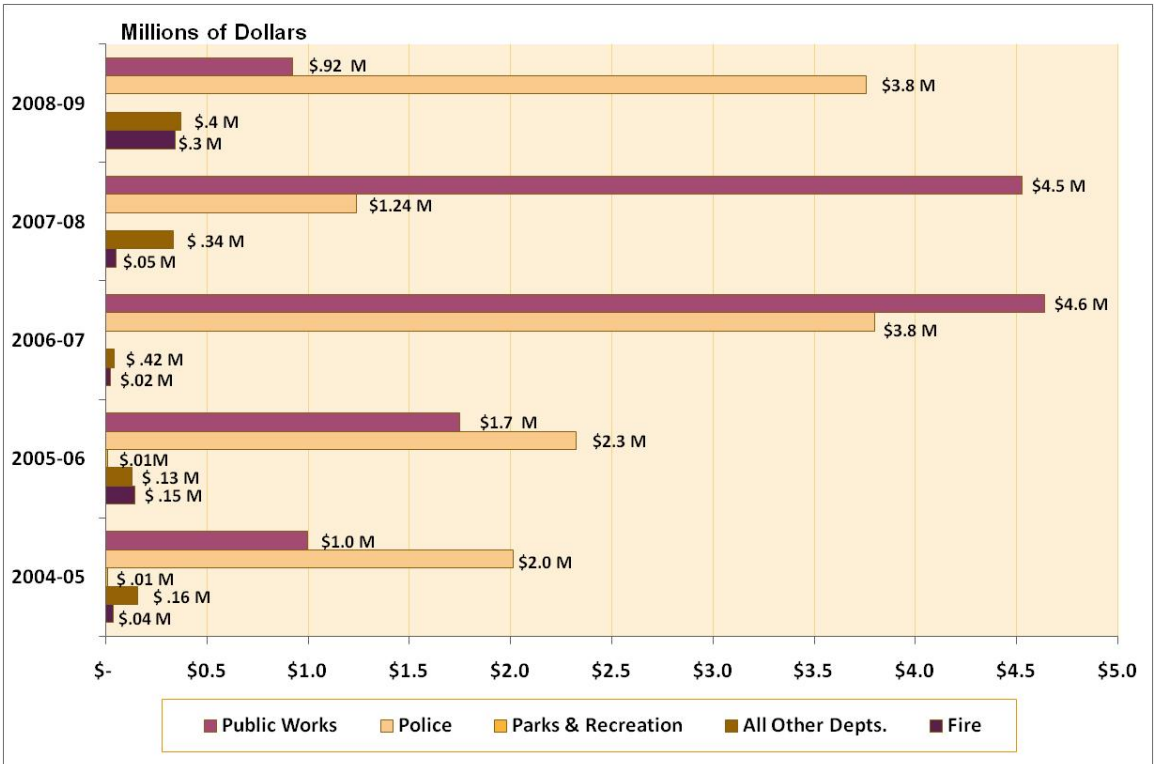

Figure 11: Payouts of Claims and Lawsuits by Department

Table 3: Payouts of Claims & Lawsuits – Police Matters

Category	2004-05	2005-06	2006-07	2007-08	2008-09	5-year average
Conduct: Shooting Non-Fatal	$0	$0	$0	$0	$975,926	$975,926
Alleged Use of Force	$992,040	$1,853,000	$2,673,962	$364,800	$1,211,000	$1,418,960
Conduct - Non-force	$735,900	$502,832	$694,766	$350,000	$0	$456,700
Alleged Wrongful Death	$50,000	$0	$306,850	$0	$0	$71,370
Vehicle Accidents	$111,434	$117,074	$99,670	$208,600	$276,432	$162,642
Property Loss/Miscellaneous	$63,120	$39,820	$22,942	$10,027	$250	$27,232
Towing	$0	$378	$3,213	$73,960	$1,262	$15,763
Personnel/Labor	$63,000	$85,000	$0	$232,875	$1,290,828	$334,341
Total Paid/Year	**$2,015,494**	**$2,598,104**	**$3,801,403**	**$1,240,262**	**$3,755,698**	**$2,682,192**

Table 4: Payouts of Claims & Lawsuits - Infrastructure

Category	2004-05	2005-06	2006-07	2007-08	2008-09	5-year average
Building/Park Maintenance	$17,343	$19,766	$19,332	$25,058	$16,087	$19,517
Sewers/Storm Drains	$216,866	$357,197	$248,497	$922,593	$383,994	$425,829
Sidewalks	$287,222	$145,303	$300,492	$167,646	$209,522	$222,037
Streets	$206,164	$761,039	$123,063	$1,858,295	$188,433	$627,399
Landslides	$23,957	$25,975	$800,000	$1,224,402	$0	$414,867
Trees	$83,967	$73,822	$19,666	$81,822	$31,081	$58,072
Total Paid/Year	**$835,519**	**$1,383,102**	**$1,511,050**	**$4,279,816**	**$829,117**	**$1,767,721**

Table 5: Payouts of Claims & Lawsuits – City Vehicle Accidents

Category	2004-05	2005-06	2006-07	2007-08	2008-09	5-year average
Police	$111,434	$117,074	$103,465	$208,600	$276,432	$163,401
Public Works	$92,617	$91,572	$124,038	$70,216	$87,197	$93,128
Parks & Recreation	$3,833	$6,864	$0	$0	$0	$2,139
Fire	$34,817	$25,439	$22,654	$48,261	$17,312	$29,697
Other Departments	$1,502	$18,243	$5,600	$2,018	$69,091	$19,291
Total Paid/Year	**$244,203**	**$259,192**	**$255,757**	**$329,095**	**$450,032**	**$307,656**

Table 6: Payouts of Claims & Lawsuits – Personnel/Labor

Category	2004-05	2005-06	2006-07	2007-08	2008-09	5-year average
Police	$63,000	$85,000	$0	$232,875	$1,290,828	$334,341
Parks & Recreation	$0	$0	$0	$0	$0	$0
General Government/Other	$92,000	$0	$5,000	$250,000	$228,000	$115,000
Public Works	$0	$0	$1,750	$175,000	$4,500	$36,250
Fire Services	$0	$120,000	$0	$0	$325,000	$89,000
Total Paid/Year	**$155,000**	**$205,000**	**$6,750**	**$657,875**	**$1,848,328**	**$574,591**

3.5 Total Payouts for Claims and Lawsuits

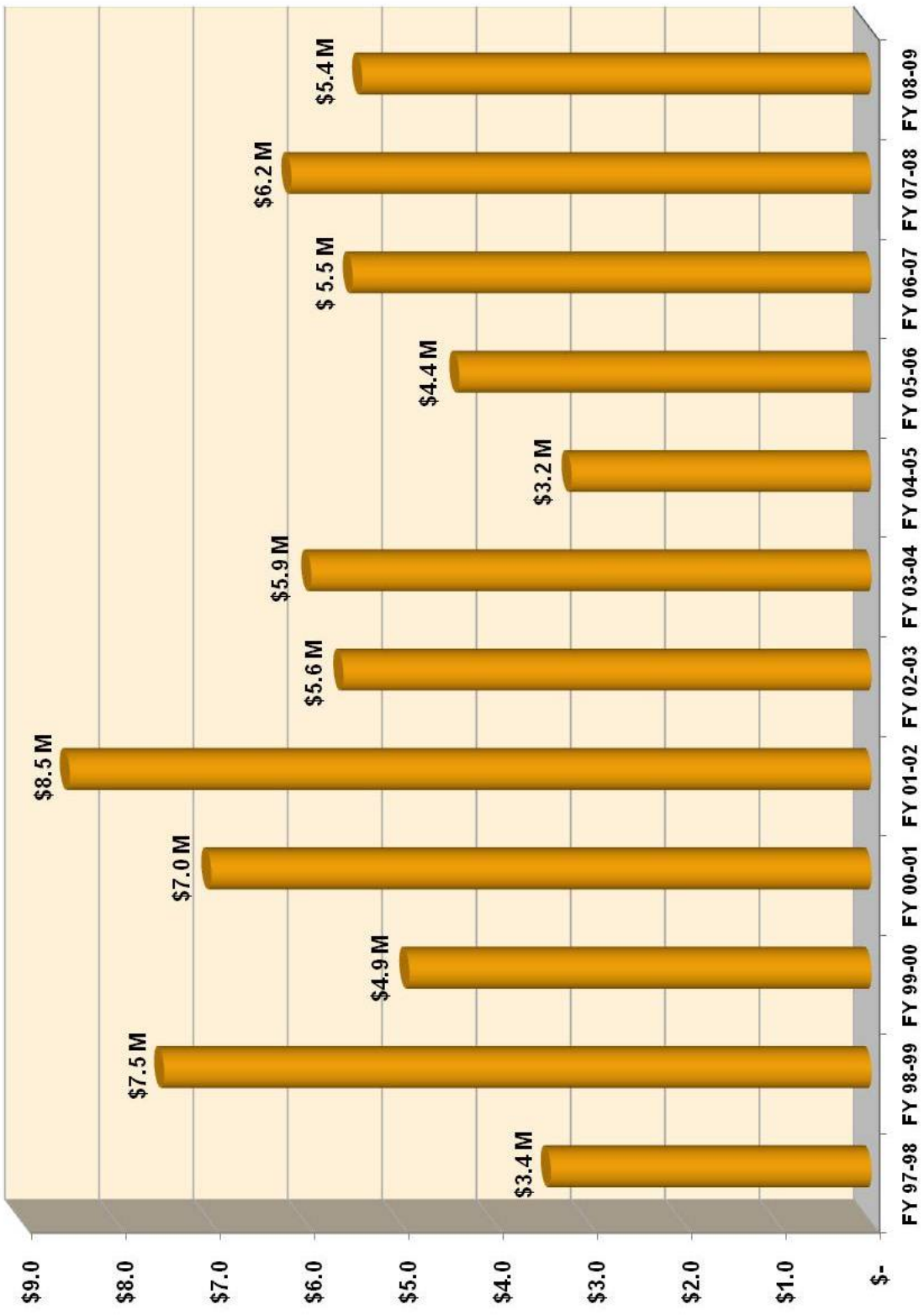

Figure 12: Total Payouts Over the Last 12 Years

3.6 Major Payouts FY08/09

Table 7: Payouts of Claims, Lawsuits & Arbitrations of more than $100,000

Case	Type	Payout
Glenn-Davis, Janeith	Employment Discrimination	$1,281,594
Smith, Jane	Police Conduct – Force	$1,000,000 *
Caldwell, Willaim & Savon, Leona	Police Conduct – Shooting Non-Fatal	$975,000
Banks, Sherri Anne	Employment / Sexual Harassment	$325,000
Hunter, Wallace	Wrongful Termination	$154,000
DeWitt, Sylvia	Employment / Sexual Harassment	$125,000
Roe, Jane	Police Conduct – Force	$110,000

Does not include payments by insurance and department funds.

** - $1,000,000 paid on July 2008 and $1,000,000 paid July 2009 for a total of $2,000,000.*

4.0 Special Programs

4.1 Special Prosecution Team

In Oakland, felonies and major crimes are prosecuted by the Alameda County District Attorney.

This year, in partnership with the Alameda County District Attorney's Office and the Oakland Police Department, the City Attorney's Office created a new unit to step up criminal prosecution of misdemeanors, infractions and "quality-of-life" crimes.

With approval from the City Council, we created the Special Prosecution Team to target the kind of pervasive misdemeanor crimes that, left unchecked, degrade the social and economic life of our neighborhoods and invariably contribute to more serious crime, fear and disorder in Oakland. Working closely with the community, the unit focuses on prosecuting crimes such as prostitution, disturbing the peace, vandalism, cruelty to animals, illegal dumping, disorderly conduct and drug-related offenses. Most of the cases handled by the Special Prosecution Team are violations of the state Penal Code (**see sidebar below**).

In addition to reviewing, overseeing and prosecuting appropriate cases, the Special Prosecution Team responds to community inquiries, attends Neighborhood Crime Prevention Council and other community meetings, studies and analyzes hot spots and crime trends in Oakland and trains police officers on methodologies to improve investigations and documentation of evidence.

The unit works closely with the District Attorney's Office to charge and prosecute cases. City prosecutors presented several hundred criminal cases for charging in FY08/09 (**Figure 13**).

Types of violations received by the Special Prosecution Team FY08/09

Penal Code: ***672*** *(84%)*

Health & Safety Code: ***62*** *(7%)*

Oakland Municipal Code: ***36*** *(5%)*

Business & Professions Code: ***16*** *(2%)*

Vehicle Code: ***15*** *(2%)*

Total: ***801***

Many of the defendants in those cases agreed to settlements or other resolutions, thereby avoiding a trial. The unit's first trial win was a guilty verdict in a vandalism case in April of this year. In that case, a resident in the Maxwell Park area was charged with vandalism after decapitating a number of her neighbor's trees. The defendant was considered by neighbors to be a source of considerable nuisances. Over a period of several years, she had allegedly vandalized a number of trees on her block, and in one instance, painted a neighbor's garage door red for no apparent reason. The defendant's sentence included 30 days in jail and an order to pay restitution for the decapitated trees. This prosecution hopefully will remedy a long-running problem and improve the quality of life for neighbors on the block. At the trial, neighbors expressed appreciation for the City's help in resolving this matter.

In addition to charging cases, the Special Prosecutors employ intervention services and restorative justice programs in appropriate circumstances.

One prosecutor is assigned to each of the Oakland Police Department's three command areas. In addition to three criminal prosecutors, the team includes one civil attorney assigned to clean up or shut down nuisance liquor outlets.

Case highlights and other accomplishments for the team are included in **Attachment G**.

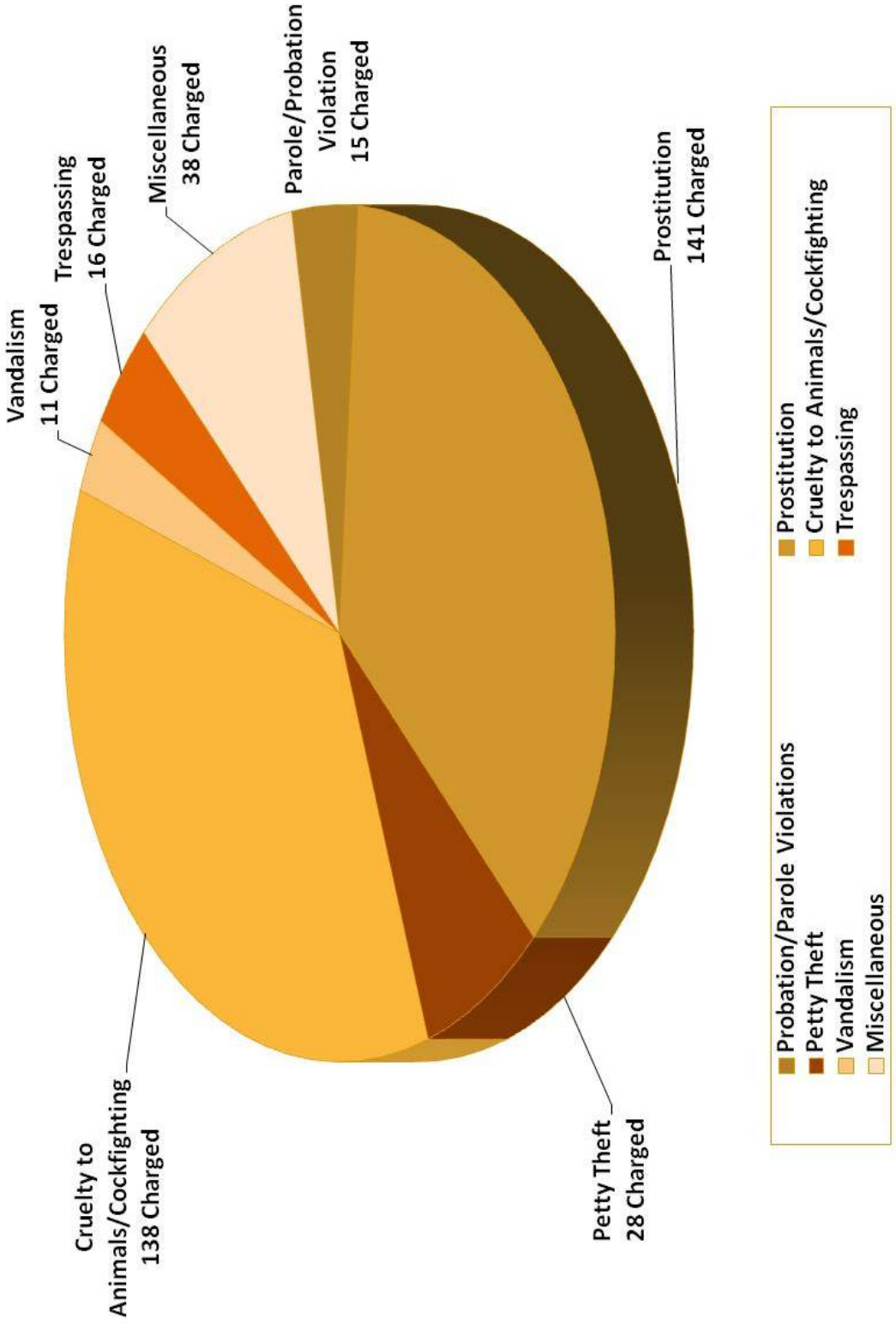

Figure 13: Special Prosecution Team Penal Code Cases Charged FY 08/09

4.2 Problem Liquor Outlet Enforcement

The City Attorney's Office continued to work aggressively with the Oakland Police Department's Alcoholic Beverage Action Team (ABAT), the state Department of Alcoholic Beverage Control (ABC) and residents to improve or shut down liquor outlets that contribute to blight, crime and other serious problems in Oakland neighborhoods.

The City Attorney's Office first works with property and business owners to clean up problem outlets. When businesses prove unable or unwilling to make necessary improvements, we use legal means – including lawsuits and removal of land use status allowing liquor sales – to shut them down (**Table 8**).

Table 8: Abatement of Problem Liquor Outlets FY08/09

Name	Address	Ended Liquor Sales	Result
Arrwa One Stop	8607 Bancroft Ave.	Yes	Store closed last year – city won appeal in FY08/09
La Raza Market	5001 Bancroft Ave.	Yes	Appeal pending
High Street Billiards	1452 High Street	No	Eviction proceedings underway
La Oficina Bar	4768 International Blvd.	Yes	Closed/suspension of liquor sales (land use lapsed*)
Seagull Market	4005 MacArthur Blvd.	Yes	Closed
Seven Seas Bar	4001 MacArthur Blvd.	Yes	Closed/suspension of liquor sales (land use lapsed*)
Los Dos Hermanos	2331 International Blvd.	Yes	Closed/suspension of liquor sales (land use lapsed*)
The Serenader	504 Lakepark Ave.	No	Cabaret permit revoked

**Land Use Lapsed means the City has changed the status of the property, making it impossible for anyone to sell alcohol at that address in the future without a Conditional Use Permit from the City.*

Liquor Enforcement Highlights for FY08/09:

1. City litigation resulted in the closure of La Oficina bar, a nuisance liquor outlet at 4768 International Boulevard.

   According to Oakland Police, La Oficina functioned as the hub of a drug network – between summer 2005 and summer 2007, at least 10 people were arrested for sales or possession of narcotics, with 44 bags of meth and 58 bags of cocaine recovered from inside the bar. At the time of the City Attorney's Annual Report last year, the litigation against the bar was pending and the bar was closed. After numerous litigation delays by defendants, the City successfully lapsed La Oficina's deemed approved land use status on May 20, 2009, effectively ending the City's

ongoing litigation against the owners and indefinitely suspending liquor sales at this address. An appeal by the bar is pending.

2. The Seven Seas Bar at 4001 MacArthur Boulevard closed its doors this year after simultaneous enforcement actions by the Oakland Police Department, the state Department of Alcoholic Beverage Control (ABC) and the Oakland City Attorney's Office.

   In 2008, the City Attorney's Office filed a public nuisance lawsuit against the Seven Seas and the Hoang brothers, the owners of the property who rented space to the Seven Seas bar and the adjacent Seagull Market. The lawsuit, based on evidence gathered by Oakland police investigators, was filed in response to repeated incidents of violence at the bar, including three shootings in the space of one year that began as disputes inside the bar and spilled out into the neighborhood.

   The bar officially lost its license to sell alcohol in April of this year after an undercover operation by ABC resulted in multiple arrests and charges against the bar's owners for receiving stolen property. The same investigation also resulted in the closure of the adjacent liquor store, the Seagull Market, which shut its doors on January 22, 2009. Facing criminal, civil and administrative legal actions, the Seven Seas followed suit, closing its doors on April 1, 2009.

3. The La Raza liquor store at 5001 Bancroft Avenue brought years of grief to neighbors in the Melrose neighborhood in the form of drug dealing, loitering and problems associated with public drunkenness.

   On February 5, 2009, the property owners and store operators agreed to operating conditions designed to reduce nuisances at the property. Oakland police and community members documented voluminous violations of the stipulated operating conditions and the City called a revocation hearing on July 2, 2009. The resulting order of the hearing officer demanded the operators cease the sale of alcohol, a victory for the neighbors. At the time of this report, the order was pending appeal.

4. In 2008, the Oakland Police Department and Alameda County Drug Task Force conducted multiple arrests and served numerous search warrants for narcotics sales at Los Dos Hermanos bar at 2331 International Boulevard.

   In concurrent separate actions by the City Attorney's Office, the Alameda County District Attorney's Office and the state Department of Alcoholic Beverage Control, the operator's license was suspended indefinitely and is pending transfer out of Oakland. The operator pleaded no contest to felony possession of cocaine for sale, and the City lapsed the land use status of the property, meaning that no business can sell alcohol there in the future without a Conditional Use Permit. The bar closed its doors in April 2009.

4.3 Neighborhood Law Corps

Oakland's Neighborhood Law Corps, started in 2002, is a unit of newly licensed lawyers in the City Attorney's Office focused on using the law to improve the quality of life in Oakland neighborhoods. The program, often described as "Legal Aid meets the Peace Corps," has been recognized with the Gold Medal for Municipal Excellence from the National League of Cities.

The Neighborhood Law Corps continues to work with the Oakland Police Department to close drug houses and prosecute hotels and motels that act as havens for prostitution, including child prostitution. The unit has prosecuted owners of drug houses throughout the city, and has sued property owners to stop prostitution at various hotels and other sites in Oakland.

In recent years, the Neighborhood Law Corps has played a major role in the city's effort to protect tenants in foreclosed buildings. Attorneys have intervened in numerous cases to stop illegal evictions and have helped facilitate the restoration of utility services in foreclosed homes.

In FY08/09, Law Corps attorneys filed five lawsuits accusing major banks, their subsidiary companies and several local real estate agents of violating an Oakland law that protects tenants from unjust evictions. The unit filed lawsuits in February and March of 2009 against JPMorgan Chase and Fidelity National Financial, along with local agents who were paid to remove tenants from properties the banks had acquired through foreclosure. Tenants in foreclosed homes provided many examples of improper eviction notices served by those agents. Some of the defendants, including JPMorgan Chase, were forced to cease illegal evictions and pay fines to the City.

4.4 Open Government Program

The City Attorney's Office created the Open Government Program to ensure transparency and accountability in city government. The program conducts ongoing training and monitoring of city boards and commissions to ensure that meeting agendas are properly noticed. The program also provides technical and legal assistance to city departments. In FY08/09, the City Attorney's Open Government Coordinator handled 250 public records requests.

5.0 Community Initiatives & Partnerships

5.1 Real Oakland Administrative Reform (ROAR)

In July 2008, City Attorney John Russo, City Auditor Courtney Ruby and City Councilmembers Ignacio De La Fuente and Patricia Kernighan presented a package of reforms to make city government more transparent, accountable and effective for the taxpayers of Oakland.

The package, called Real Oakland Administrative Reform, or ROAR, included five good government proposals: a whistleblower protection ordinance, an anti-nepotism ordinance, an employee ethics training program, reform of personnel department procedures and reform of Oakland's records management practices.

The City Council adopted the whistleblower ordinance, which has resulted in a program – administered by the City Auditor's Office – that protects City employees who report waste, fraud, abuse or misuse of funds. The nepotism ordinance was adopted by the City Council, but was challenged in court by the Oakland Police Officers Association. The ordinance was stayed by a judge, and the City Attorney's Office is now in negotiations with the plaintiffs.

The City Attorney's Office, the City Auditor's Office and the Public Ethics Commission submitted a proposal in August of this year to provide ethics training to City employees, including all City managers. With approval from the City Administrator, the City Attorney's Office and the Public Ethics Commission have begun to schedule trainings.

Reforms recommended for the City's Personnel Department have been formally adopted by the City Administrator or implemented through new customs and practices by staff.

Reform of records management, however, has stalled since the City Attorney's Office, the City Clerk's Office and the Public Ethics Commission brought a legislative proposal to the City Council on November 3 of last year. Since that time, there has been sporadic attendance by departmental staff at meetings of the Records Management Committee, and the City's records manager has resigned. The City Clerk is expected to bring a records reform proposal to the City Council in coming months.

6.0 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.

A detailed summary of the work of the individual units of the City Attorney's Office during the 2008/09 fiscal year can be found in the attachments to this report. For more information, please visit http://www.oaklandcityattorney.org/.

Respectfully submitted,

John A. Russo
Oakland City Attorney

7.0 Attachments to City Attorney's Annual Report FY08/09

ATTACHMENT A

7.1 Redevelopment & Real Estate Group

- Advised staff and negotiated with owner, tenant and lender attorneys on legal issues raised by the insolvency of Oakland Community Housing, Inc. (OCHI); negotiated, drafted and executed documents providing operating loans and grants, tenant assistance, predevelopment loans and other assistance to OCHI affordable housing properties.
- Negotiated transfer of the stalled CityWalk residential project in Downtown Oakland to new ownership.
- Closed on leases of the Fox Theater to Another Planet Entertainment and Oakland School for the Arts.
- Closed on an agreement for the sale of Agency parking at the University of California building to the developer of 1100 Broadway.
- Negotiated and executed an Exclusive Negotiating Agreement for the Telegraph Plaza project in Downtown Oakland.
- Closed a predevelopment loan for the restoration of the historic train station in West Oakland.
- Closed affordable housing development loans on several projects, including St. Joseph's Senior Homes, Jack London Senior Housing and Altenheim Apartments.
- Provided staff support to Project Area Committees for Central City East, West Oakland and Broadway/MacArthur/San Pablo redevelopment project areas.
- Completed the RFP Process for the selection of a Master Developer on the Redevelopment Agency's portion of the former Oakland Army Base.
- Advised Agency staff and reviewed contracts for services at the Army Base.
- Advised Redevelopment Agency staff on the management of the Army Base Leasing Program.
- Provided legal counsel to the Oakland Rent Board.
- Negotiated a compromise with the Port of Oakland over several million dollars in disputed environmental remediation costs.
- Negotiated and executed extension to an Exclusive Negotiating Agreement with Oakland Maritime Support Services for a development site at the former Oakland Army Base.
- Continued complex negotiations with the Army, Department of Toxic Substances Control and the Regional Water Quality Control Board over funding of environmental remediation oversight costs at the former Oakland Army Base.
- Continuing Negotiations with Caltrans for a multi-acre land swap for a CalTrans maintenance yard at the former Oakland Army Base.
- Pursuing second phase of the tidelands trust exchange at the former Oakland Army Base, which will allow certain portions of the base to be developed free of trust restrictions.

- Completed negotiation and execution of documents for property exchange and maintenance agreement for residential development at 51st Street and Telegraph Avenue.
- Completed amendments to agreements for the Coliseum Gardens project infrastructure improvements.
- Negotiated and executed documents for sale of a strip of Diamond Park to adjacent property owner for parking – settling an ongoing dispute between City and property owners.
- Negotiated, finalized and executed lease for restaurant at Lake Merritt Boathouse.
- Negotiated Owner Participation Agreement for MacArthur BART Transit Village.
- Negotiated termination of lease for 600 Washington Street with Alameda County, facilitating use of the building by the Oakland Police Department.
- Developed legislation creating new City Business Assistance Center.
- Drafted legislation and real estate documents for acquisition of a number of properties for future development in the Seminary-Foothill area.
- Negotiated leases for Head Start centers.
- Negotiated leases with Oakland Unified School District.
- Developed model agreement for security camera program in commercial areas.
- Drafted legislation and real estate documents for disposition of a number of City-owned parcels, primarily to adjacent property owners.
- Advised CEDA staff and negotiated with State staff regarding development of new loan documents for the CalReUSE environmental assessment loan program.
- Advised CEDA staff and drafted necessary documents for both delinquent and new commercial loans.
- Advised CEDA staff, negotiated and executed necessary loan and other documents for a number of affordable housing projects (e.g. Toler Heights, Tassafaronga).
- Negotiated with AC Transit regarding acquisition of more than six acres at 66th Avenue and San Leandro Street for future redevelopment.
- Negotiated with East Bay Regional Park District and private property owner for acquisition of approximately 64 acres near Dunsmuir Ridge.
- Staffed the City-Port Liaison Committee on behalf of the City Attorney's Office. Reviewed staff reports generated for the Committee.
- Staffed regular and special meetings of the Community and Economic Development Committee, attended City Council meetings on numerous real estate and redevelopment matters.

ATTACHMENT B

7.2 General Government & Finance Group

- Reviewed hundreds of contracts, grant agreements, staff reports, ordinances and resolutions.
- Advocated for the speedy implementation of Ranked Choice Voting by the Alameda County Registrar and attended meetings with advocates and the County regarding same.
- Drafted new regulations and ordinance amendments to apply to the use of debt service as a rent increase justification.
- Drafted new regulations applying to evictions for units cited with code violations.
- Provide regular verbal and written advice to over 30 departments, commissions, divisions and agencies.
- Drafted Measure C, passed by 76% of the voters, to provide millions of dollars to support the Oakland Convention and Visitors' Bureau and 12.5% each to the Oakland Zoo, the Oakland Museum, the Chabot Space and Science Center and cultural arts programs and festivals.
- Drafted Measure D, passed by 72% of the voters, to make sure all services affecting children, including public safety, libraries and recreation, get their fair share of funding.
- Drafted Measure F, passed by 80% of the voters, to create the first-in-the-county business tax classification and rate for cannabis dispensaries.
- Drafted Measure H, passed by 75% of the voters, to correct a loophole to ensure that corporations are treated the same as residential homeowners.
- Successfully negotiated with general contractor to pay contribution for restoration of ice center. Note: the Ice Center this year is finally turning a profit under the contract negotiated and drafted by this office.
- Drafted joint use agreement with Oakland Unified School District for shared use of City and OUSD facilities.
- Drafted dog "pooper scooper" legislation.
- Drafted legislation allowing dogs in several parks.
- Negotiated and drafted contracts for corporate donations to Art & Soul festival.
- Represented City in the issuance of the City's 2008-2009 $105,705,000 Tax and Revenue Anticipation Notes.
- Represented the Redevelopment Agency in the issuance of the Agency's 2009 $38,755,000 Central District Tax Allocation Bonds.
- Successfully shepherded the City through the process of complying with new FPPC Regulation 18944.1, which requires city officials to report all tickets and passes they receive to events, and creates new rules for the receipt of those passes and tickets. At our initiative, the City created a new web-based reporting system for the distribution of tickets and passes, which posts this information to the City's website. The new system has been lauded by other cities for its innovation and ease of use. We regularly provide advice to City officials about the new law.

ATTACHMENT C

7.3 Public Safety, Risk Management, Contracts & Purchasing Group

- Researched and prepared contractor debarment ordinance adopted by City Council in May of this year.
- Advised on legality of the potential State of California gas tax revenue reduction and courses of action.
- Researched and prepared ordinance for property owner responsibility and liability for sidewalk maintenance and safety – not adopted by Council.
- Advised and prepared legislation for various new parking restrictions and residential permit parking areas.
- Prepared pay-go legislation and agreements for and training and advised on pay-go rules to the Budget, Mayor's and Council offices.
- Conducted City-wide purchasing process training in conjunction with the Department of Contracting and Purchasing.
- Reviewed construction, professional services, and other purchase contracts for the Department of Contracting and Purchasing, Mayor, City Administrator, Oakland Redevelopment Agency and City departments and agencies, advising on bidding, payment and performance bonds, prevailing wages, stop notice, living wage, equal benefits, prompt payment and other compliance matters.
- Provided advice on implementation of City purchasing programs and policies on federal, stimulus-funded projects.
- Prepared amendments to contracts with the Oakland Museum Foundation and construction contractors in connection with the Oakland Museum Renovation.
- Provided training, advice and specialized contracts to the Oakland Redevelopment Agency on various construction and purchase issues related to use and development of the Oakland Army Base and other ORA properties, including the lease and crush/fill project on the Oakland Army Base and the Oak Knoll building demolition project.
- Provided advice to and Community Economic Development Agency on construction claims and other issues to facilitate completion of the Oakland Municipal Boathouse restaurant.
- Provided advice to the Fox Theater Board regarding construction, tenant improvement and tenant use issues and developed specialized contracts in connection with the multi-million dollar renovation and occupancy of the Fox Theater.
- Prepared specialized contract for and provided advice on East Oakland Sports Complex.
- Continued ongoing coordination of 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.
- Initiated negotiations with Union Pacific Railroad for new franchise agreement ordinance and to resolve street/track crossing issues, maintenance and clean-up issues, re-utilization of formerly non-used spur tracks in residential areas and homeless encampment issues.
- Provided advice to and developed specialized contract documents for Department of Information Technology and the Department of Contracting and Purchasing to automate via Oracle all of City's contracting processes, for a City-wide Wireless Study professional services contract involving free internet access to underserved citizens and public schools, for the Sun Technology Refresh Contract

project, for a City-wide Alarm monitoring project and for the Network Car (GPS tracking of Public Works cars) project.

- Commenced review of a City-wide Wireless proposal from Clear Channel.
- Provided legal advice in connection with completion of the MacArthur Undergrounding Project involving joint installation of City, PG&E, Comcast and SBC facilities.
- Assisted Oakland Police Department and Information Technology Department with (1) technology contracts including multiple contracts for in-car video, (2) RFP and Memorandum of Understanding for surveillance cameras in the Oakland Public Schools, and (3) pilot surveillance cameras in Oakland Neighborhoods.
- Assisted in preparation of a request to the federal Communications Commission (FCC) to waive FCC rules to allow the Bay Area Cities to use the public safety broadband spectrum in the 700 MHz band to deploy a regional, mobile, interoperable public safety broadband network, which will create better communications between Bay Area public entities particularly during area-wide disasters.
- Revised legislation and reviewed grant documents for multiple Homeland Security and Federal Emergency Management Agency grants for funding to increase and maintain emergency response personnel, training and resources.
- Participated in Office of Emergency Response coordinated emergency response planning, including development of ABAG area plan for major disasters, City's H1N1 flu response planning and review of seismic screening ordinance.
- Continued to coordinate with the San Francisco City Attorney on the 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.
- Prepared numerous license and right of entry agreements allowing Fire Department training activities on privately-owned properties.
- Continued to advise staff in connection with the re-opening of the Glascock railroad track that runs amid residences in the Fruitvale District to obtain Caltrans-funded street repairs and other improvements.
- Provided advice to staff on new regulations for water discharges into the Bay conducted in connection with an administrative action by the Environmental Protection Agency against the East Bay Municipal Utility District, and advising staff concerning appeal of new water discharge permit conditions proposed by the Regional Water Quality Control Board.

ATTACHMENT D

7.4 Land Use & Development Group

- Assisted in revising EIR and successfully defending ongoing litigation for Oak to Ninth 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.
- Assisted in preparation and provided ongoing legal advice regarding master land use plans for three major planning areas: Central Estuary, Broadway-Valdez and Lake Merritt BART Station.
- Assisted in the environmental review and approval of Kaiser Hospital Phase II seismic retrofit project (1.06 million square feet of hospital and related facilities).
- Assisted in the environmental review and approval of Creekside residential project (120 units).
- Provided legal assistance in the environmental review and approval of federally-funded 70 unit affordable senior housing project located at 6th and Oak.
- Assisted in numerous ongoing development project applications, including Gateway Community (800 unit housing project), Skyline Ridge and 325-7th Street (382 housing units), Bentley School (increase student enrollment to 360); Summit Hospital (seismic retrofit and campus expansion); Kaiser Center (construction of 1.3 million square feet of new office space); 1938 Broadway (mixed use consisting project of 829,00 square feet of office space, 220 residential units and 85,00 square feet of retail); Oakland Zoo expansion; redevelopment of two Safeway locations in North Oakland.
- Assisted in development and preparation of draft Green Building Ordinance for Oakland.
- Assisted City with preparation of draft climate action plan and compliance with state climate change legislation, including SB 375.
- Assisted in preparing traffic and other impact fees to ensure a funding mechanism for improvements related to new development.
- Assisted in preparation of various City protocols implementing the California Environmental Quality Act.
- Assisted in negotiating and drafting a Development Agreement for 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 and in ongoing negotiations/mediation with EBMUD, selection of Master Developer and environmental review for the proposed Crush and Fill Operation and Ancillary Maritime Support Services.
- Assisted in environmental review and approval of Aaron Metals (100,000 square foot recycling facility) and in the successful defense of a CEQA challenge to the Project.
- Assisted in updating and streamlining provisions of the Oakland Planning Code, including the adoption of new zoning regulations for the Central Business District, Industrial areas and Recycling Facilities.
- Assisted in updating the City's Housing Element, including reviewing documents and advising on related environmental review.
- Successfully negotiated settlement with Caltrans that secured funding for safety improvements along the Glascock railroad spur.

- Assisted in drafting policies and procedures for implementing tobacco retailer's licensing ordinance, including a standard settlement agreement.
- Assisted in preparing draft seismic soft story screening ordinance to help protect Oakland residents living in multi-family soft-story housing.

ATTACHMENT E

7.5 Labor & Employment Group

- Advised City administration, agencies, departments and managers concerning City legal obligations and employee rights.
- Ensured that the City fully complied with its obligations in the area of disability access.
- Supervised the defense of all employment litigation.
- Advised City administration, agencies, departments and managers concerning compliance with the Equal Access Ordinance requiring that the City provide limited English speakers with equal access to City services.
- Supervised the implementation and defense of the City's "bubble ordinance," protecting patient access to reproductive health clinics.
- Provided legal advice in connection with negotiation of successor Memoranda of Understanding with City unions.
- Resolved individual disciplinary matters and contractual disputes.
- Provided sexual harassment and discrimination training.
- Provided assistance to the Police Department in complying with its obligations under the Negotiated Settlement Agreement.
- Assisted Council in drafting legislation directed at eliminating nepotism and favoritism and protecting whistleblowers.
- Provided legal advice in connection with responding to Public Records Act requests.

ATTACHMENT F

Lawsuits Initiated by the City of Oakland FY08/09

Defendant	Case #	Date Filed	Description	Disposition
Ambac Financial Group et al.	CGC08479241 / C08-04425	8/28/08	Failure to provide promised insurance on City bonds	Open
Gardner Hong/Avalon Properties	RG09455940	6/4/09	Substandard nuisance property	Open
Jacque Barnes	RG08405509	7/15/08	Eviction/unlawful detainer	Tenant vacated property
Rodney Bell Michele Lachaux	RG08405504	7/10/08	Eviction/unlawful detainer – rent	Judgment for City
Cal-Fentons Ice Cream Corp.	RG08401236	7/30/08	Delinquent business taxes	Payment in full to City
CA Attorney General et al.	S1608078	12/2/08	Joined City of San Francisco lawsuit against Prop. 8	Supreme Court ruled Prop. 8 constitutional
Chris Campbell Seal Beach, CA	RG09436033	1/12/09	Delinquent business taxes	Open – mediation pending
Cherokee Simeon Venture II LLC	RG08401238	7/30/08	Collection of real estate transfer tax	Open – mediation pending
Percy Cheung Smart Choice Realty	RG09436902	2/26/09	Illegal eviction	Settlement included $2,500 payment to City
County of Alameda et al.	Claim	6/22/09	County charged excess property tax administration fees	County has not acted on City's claim
Andre Dyas	RG09442189	4/15/09	Eviction/unlawful detainer – rent	Settled – payment in full to City
Edith Ferrari VIP Parking	RG08401235 RG08401600	7/31/08	Delinquent business taxes – $840,955.83	Judgment for City
Fidelity National Financial, Marco Rodriguez et al.	RG09436907	2/26/09	Illegal eviction	Open
Sukaro Follings	RG09436015	10/17/08	Collections – $11,420.75 real estate transfer tax	Settled – monthly payments
David Glover	RG09442193	4/15/09	Unlawful detainer – rent	Settled – monthly payments

Chong Han	RG08401231	7/30/08	Collections	Paid in full to City
JPMorgan Chase Bank, Joseph McNulty et al.	RG09440648	2/26/09	Illegal eviction	Settled – Chase paid $35,000, McNulty $3,000
Shar-lo Kelly	RG09437319	2/10/09	Collections – prorated uniform allowance & training costs	Judgment
Troy Lampkins	RG08405507	7/15/08	Unlawful detainer – rent	City prevailed at trial
Mark Lyons	RG09450217	3/30/09	Collections – prorated uniform allowance & training costs	Paid in full to City
Josephine McFarlane	RG08422446	10/17/08	Collections – bad check	Judgment
Howard Mortimer	RG09437139	2/20/09	Evictions without cause & illegal rent increases	Open
Michael Murphy Keller Williams Realty	RG09436901	2/26/09	Illegal eviction	Open
Rudi Mwongozi et al.	RG08412915	9/4/08	Unlawful detainer – rent	Judgment – evicted
Dinh Pham San Rafael, CA	RG09436019	12/15/08	Delinquent business taxes	Judgment
Lissette Ramirez	RG09437324	12/10/09	Collections – prorated uniform allowance & training costs	Settled – monthly payments
Kenneth Session Session Real Estate	RG09436897	2/26/09	Illegal eviction	Open
Marc Taylor	RG09442188	4/15/09	Unlawful detainer – rent	Evicted
John Wilcoxson	RG09436024	12/15/08	Delinquent business taxes	Judgment
Joseph Williams	RG08401225	7/30/08	Collection of real estate transfer tax	Judgment
Theodore Williams	RG08415568	9/4/08	Unlawful detainer – rent	Paid in full to City

Robert Yeung	RG09442182	3/3/09	Collections – prorated uniform allowance & training costs	Open

ATTACHMENT G

7.6 Special Prosecution Team

- **Case:** People v. Cynthia McCurty
  Charge: Vandalism
  Facts: Neighbors say McCurty had been a problem in the Maxwell Park area for approximately eight years. During this time, McCurty allegedly had vandalized several of her neighbors' properties by destroying their trees, plants and other vegetation. In one instance she painted a neighbor's garage door red for no apparent reason.

  In September 2009, McCurty decided to decapitate seven of a neighbor's back yard trees. Another neighbor noticed the trees moving suspiciously, and after closer inspection, observed the defendant cutting them by leaning over the fence.

  With cooperation from the Oakland police and the Alameda County District Attorney's Office, the Special Prosecutor from Area 3 charged the defendant with vandalism. The jury came back with a guilty verdict on April 16, 2009. McCurty was sentenced to three years of court probation, 30 days in county jail or the Alameda County Sherriff's Work Alternative Program and 26 anger management classes. She was ordered to stay away from the victim's property, pay $8,238 in restitution to the victim and pay a $120 fine. The criminal charge and guilty verdict hopefully will remove a source of problems and improve the quality of life for residents on this block.

  NOTE: This case marked the first win at trial for the Special Prosecution Team.

- **Case:** People v. Ivan Tames
  Charge: Petty Theft
  Facts: The defendant, a laid off construction worker, stole 10 books from Barnes & Noble bookstore in Jack London Square. The City's prosecutor determined – given the defendant's skills in the construction trade and his lack of a criminal record – that justice would be better served by giving the defendant community service instead of a 30-day jail sentence.

  The Special Prosecutor for Area 1 contacted the Beebe Memorial Cathedral at 3900 Telegraph Avenue. The church needed repair work and agreed to monitor the defendant's community service. The defendant was required to complete 50 hours of community service and pay restitution to the bookstore in addition to serving five days in Alameda County jail. The defendant completed work at the cathedral including: repairing and painting the baptismal pool, repairing walls that showed signs of water damage, cleaning and repairing bathrooms in the sanctuary building, replacing worn tiles and reinforcing wood panels in the church's education building.

- **Case:** People v. Ronnie Mack
  Charge: Trespassing
  Facts: The defendant, who is homeless, was charged with trespassing after refusing to vacate a burned-out church where he was living. The pastor of the church had given the defendant permission to use the burned building as a shelter. However, when the church decided to sell the property and raze the building, the defendant refused to leave. The pastor finally called police to arrest the defendant for trespassing.

  The Special Prosecutor for Area 1 contacted Alameda County mental health services to assign a case manager for the defendant. The defendant is a veteran, so the case manager was able to bring in help from the U.S. Department of Veterans Affairs. The City intends to dismiss the case, with the pastor's consent, pending confirmation that the defendant is receiving services from the Department of Veterans Affairs.

- **Case:** People v. multiple defendants
  Charges: Being a spectator at a cockfight
  Facts: On February 28, 2009, 69 men were citied and two arrested after an Oakland police raid on a cockfighting event at Sanchez Ironworks – 725 Clara Street.

  Police found dead fighting birds, a large amount of blood on the property and on some spectators, animal steroids, veterinary equipment and gaffs – the razors attached to the feet of the birds – in decorative boxes.

  The Special Prosecutor for Area 3 was given a courtroom to handle only cockfighting cases on May 11. The majority of the defendants have settled. To date, defendants have paid about $12,000 in fines and served 111 hours of community service for organizations such as Habitat for Humanity, Project 22 and the City of Oakland Department of Public Works. Two defendants were placed on delayed entry of judgment for the being a spectator to cockfighting. If these two defendants are caught at another cockfight within two years, they will have the initial misdemeanor charge on their record and the next spectator charge will be a felony.

- In addition to charging cases, Special Prosecutors worked with the District Attorney's Office to address the proliferation of prostitution in Oakland by asking Judge Carol Brosnahan to update and extend stay-away orders for convicted prostitutes. Stay Away from Areas of Prostitution (SOAP) orders are often used to keep recidivist prostitutes from operating in known areas of prostitution. Judge Brosnahan agreed to extend the boundaries for SOAP orders to incorporate the growth of prostitution areas in Oakland.

- Prosecutors also worked to educate Oakland police officers on search warrants and reviewed warrants prior to service. One such warrant prepared for the Lemon Drop Coffee Shop (a rogue cannabis club) and the shop owner's home in San Ramon yielded weapons as well as narcotics.