# 1.0 City Attorney's Annual Report FY2010-11 Introduction

I am delighted to present the City Attorney's Annual Report for fiscal year 2010-2011. The City Attorney's Office has published an Annual Report every year since fiscal year 2000-2001 to show residents and taxpayers exactly how their money is spent on legal services.

In this report, you will find detailed review and analysis of litigation trends, financial results and special initiatives undertaken by the City Attorney's Office during the fiscal year from July 1, 2010 to June 30, 2011.

By providing top level legal advice to City leaders and departments, hammering out agreements, drafting legislation and laws, and helping to shape Oakland's policies, the City Attorney's Office plays an integral and often behind-the-scenes role in the municipal corporation. The Office also aggressively defends Oakland's interests and resources in court, and initiates legal action to protect the rights and enhance the quality of life of the community.

This was an especially challenging year for Oakland City government, as it was for many of the residents and businesses that use and rely on City services. Our philosophy – ***Jus Pro Populo, or law in service of the public*** – continues to guide how we provide legal services to the City of Oakland.

This report and the work it details are driven by our commitments to serve all Oaklanders and to transparency and accountability at all levels of government. Please contact me to provide input or ask questions about any aspect of our mission. Your contributions are vital to our success.

***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.*

Very truly yours,

Barbara J. Parker
Oakland City Attorney

# ABOUT BARBARA PARKER

**Barbara J. Parker** is the City Attorney for Oakland, California. She is a longtime Oakland resident and a lifelong advocate for civil rights, women's empowerment and children's issues.

In July 2011, the City Council appointed Parker to the elected City Attorney's seat for the balance of the current term, which ends in January 2013. This report covers the fiscal year just prior to Parker's appointment.

Parker is a native of Seattle, Washington, where her parents migrated to escape the brutalities of legalized oppression and sharecropping in the rural, segregated South. Family experiences during segregation, her parents' fierce commitment to education and their struggles as union workers ignited Parker's determination to strive for equal opportunity and equal rights for everyone regardless of race, gender, sexual orientation, religion or economic status. Parker earned an undergraduate degree in Economics from the University of Washington, and she was of the very few African American women accepted at Harvard Law School in the early 1970s. She graduated from Harvard in 1975 determined to use the law as a tool to help underrepresented communities.

In an award-winning legal career spanning almost four decades, Parker has developed extensive expertise as an attorney at all levels of government – federal, state and local – including more than five years as an Assistant United States Attorney for the Northern District of California. As an Assistant US Attorney, she represented the United States in federal court litigation involving complex policy matters. Parker also has worked in the private sector for private law firms and Kaiser Hospitals.

Prior to becoming City Attorney, Parker served for 20 years in the Oakland City Attorney's Office, including 11 years as Chief Assistant City Attorney. As Chief Assistant, she provided legal advice to the City Council at virtually every Council meeting and directed all legal advice to the Mayor's Office, the City Council, the City Administrator and all other City departments and commissions.

Parker has worked to keep Oakland in the strongest possible legal standing, helping to save millions of dollars for essential services like public safety, senior programs and libraries. She has been a strong advocate for transparency and good government at City Hall and has led or supported efforts on important social justice issues including: creation of Oakland's "Bubble Ordinance" ensuring patient access to reproductive health clinics; decriminalization of medical marijuana; enforcement of the Americans with Disabilities Act; passage of the City's groundbreaking anti-predatory lending ordinance; prosecution of nuisance liquor stores and hotels that traffic in prostitution, and; fighting to overturn the US Supreme Court's *Citizens United* decision, which allows unlimited corporate spending to influence elections.

In 2005, the State Bar Board of Governors selected Parker for an appointment to the prestigious State Judicial Council. The constitutional agency chaired by the Chief Justice of the California Supreme Court is responsible for ensuring the consistent, independent, impartial and accessible administration of justice. Parker is a member of the Charles Houston and Alameda County Bar Associations, the Berkeley-Bay Area Alumnae Chapter of Delta Sigma Theta Sorority, Inc., the League of Women Voters, the National Women's Political Caucus, Black Women Organized for Political Action, and the Black Women Lawyers Association. She serves as President of the Black Adoption Placement and Research Center, an organization that finds permanent, loving and supportive homes for waiting children, many of whom are in the foster care system. She is co-President of Sankofa Holistic Healing Institute (supporting holistic health and healing for cancer and depression) and volunteers as a mentor for the East Bay College Fund. She is the proud parent of daughter Savannah Parker, a senior at Spelman College in Atlanta, Georgia, studying Political Science and Spanish, and the proud grandparent of Samuel Koda Clement, born in 2011. Parker resides in Oakland's Haddon Hill neighborhood near Lake Merritt.

## 2.0 Financial Summary & Analysis

***The Oakland City Attorney's Office aggressively manages claims, lawsuits, operating expenses and outside counsel costs to save taxpayer dollars. In FY 2010-11, the cost to provide legal services to the City of Oakland breaks down as follows:***

This year, the total cost to provide legal services to the City of Oakland was **$32.81 million**, including staff, litigation and operating expenses, outside counsel costs and payouts for claims, lawsuits and judgments (**Figure 1**). This represents an increase of about $5 million from the previous fiscal year (**Figure 2**).

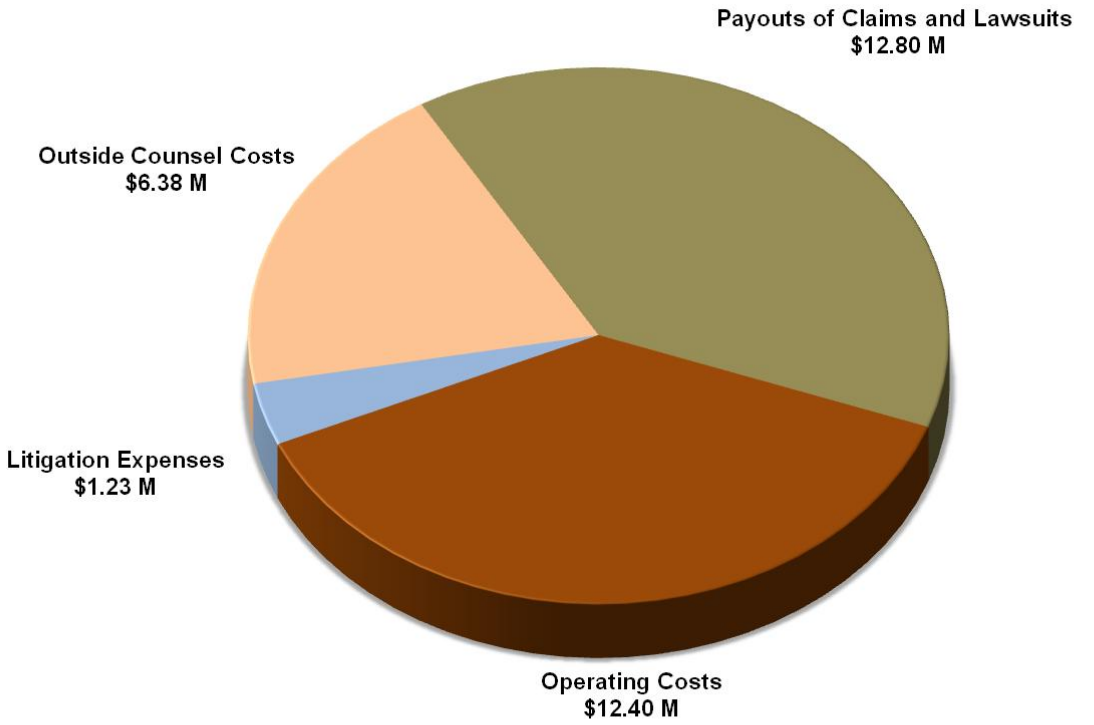


**Figure 1: Cost to Provide Legal Services for FY 2010-11**

This year, operating costs – mainly the cost of staff in the City Attorney's Office – fell by more than $1 million. The drop is due primarily to staff layoffs resulting from the City Council's budget cuts.

However, during the same timeframe, the cost of outside counsel increased by more than $2 million. This increase is also due to the City Council's decision to lay off in-house attorneys. As we have advised in previous Annual Reports and in numerous communications to the City Council, reducing staff attorneys leaves the City no choice but to hire outside counsel at a much higher hourly cost to meet mandatory legal requirements, defend the City in lawsuits and advise the City Council, Mayor, City Administrator and City departments, agencies, boards and commissions on contracts, legislation, laws, new and ongoing policies and projects.

Costs also increased this year in the category of Payouts of Claims and Lawsuits. The City Attorney's Office uses strategic litigation techniques to limit payouts and protect taxpayer dollars. Although the majority of cases were resolved this year with no payment whatsoever, the total amount of payouts approved by the City Council spiked for the second year in a row due to several high-liability infrastructure and police cases (see **Table 7**).

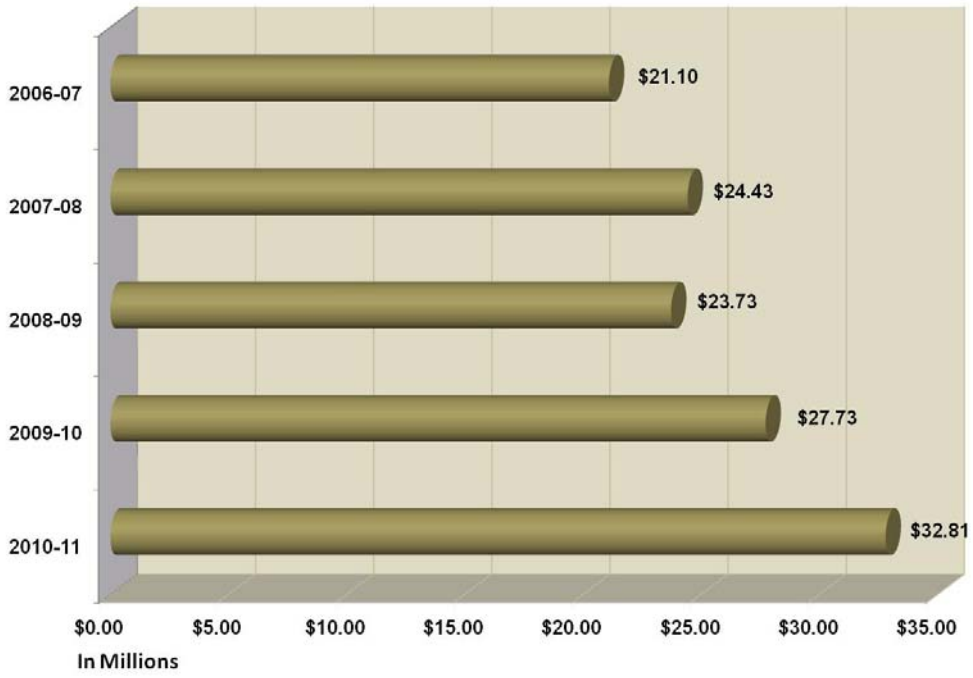


**Figure 2: Cost of Legal Services**

***The City Attorney's Office works diligently to contain costs, protect taxpayer resources and maintain services and programs. The cost of legal services rose this year in part due to several complex civil rights and high-liability police cases.***

## 2.1 Outside Counsel

City Council mandated budget cuts to the City Attorney's Office have resulted in a loss of 19 attorneys (more than 1/3 of the attorney staff) and 14 non-attorney staff between July 2003 and the date of this report. While the number of attorneys in the City Attorney's Office has plummeted, the demand for legal services has remained constant or increased. Not surprisingly, the cost of outside counsel for FY 2010-11 – **$6.38 million** – is at its highest point in the history of the City Attorney's Office. Much of this work could have been handled by the staff attorneys who were laid off. This year's outside counsel bill would be at least **$4 million** lower if those attorneys were not cut.

Not only is this trend costly to Oakland residents and businesses (by reducing the revenue that otherwise would be available to maintain vital City services and programs), it damages the City's ability to provide efficient, effective legal guidance. Like all law offices, we strive to build and maintain expertise and institutional knowledge to better represent our clients. Too much expertise is being lost necessitating reliance on more expensive outside attorneys who do not have knowledge of City systems, procedures, regulations, laws, policies and other requirements, and

therefore are less efficient. Our skeletal in-house staff must divert significant in–house resources and time to providing this oversight, guidance and review to outside counsel, exacerbating costs to Oakland residents, businesses and taxpayers.

***Reducing in-house attorneys does not save dollars; it increases the budget deficit, thereby requiring additional cuts to programs and services and employees who provide those services. Oakland spends more on outside counsel than it has saved by cutting in-house attorneys. Retaining and increasing the number of in-house attorneys will save City dollars that can be used to preserve programs and services and employees who provide those services.***

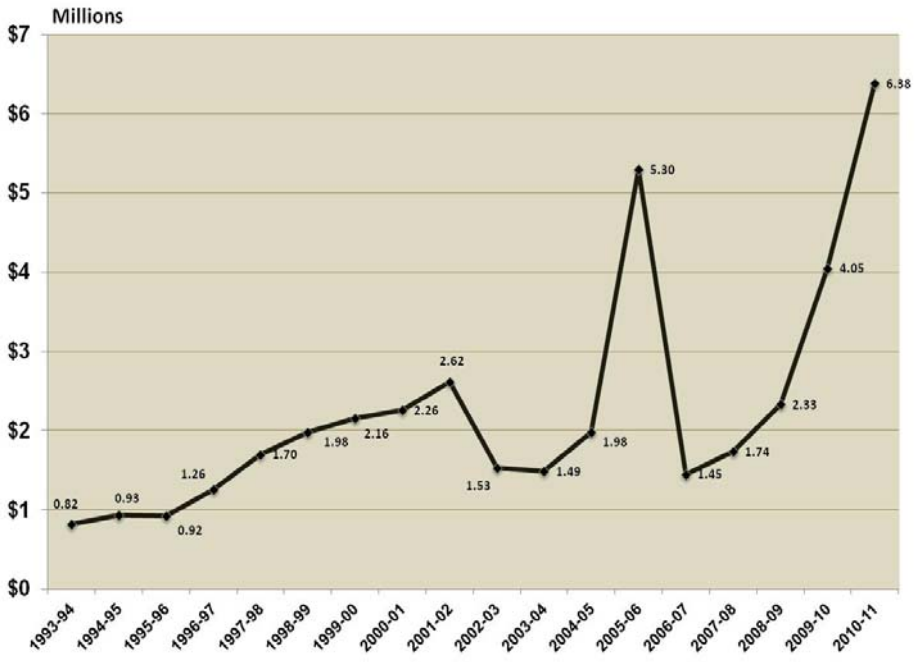


**Figure 3: Outside Counsel Cost**

Despite the City Council's policy decision to rely more heavily outside counsel, the City Attorney's Office has limited those costs whenever and however possible – First, by closely managing outside counsel hours; Second, by choosing to initially focus the budget cuts on practice areas, such as general litigation (e.g. trip and fall cases) that command lower outside counsel rates than more specialized practice areas (e.g., employment advice and litigation, real property, tax) and; Third, by increasing and redistributing caseloads as much as possible for in-house attorneys. Cuts initially focused primarily on the general litigation cases, such as trip-and-fall cases, because the hourly cost of hiring outside litigators to perform this work- due to the economic downturn -has been less than the cost of hiring outside attorneys to provide specialized legal advice and litigation services (see **Cost Comparison** below).

| **Cost Comparison: In-House Attorneys and Outside Counsel** | |
|---|---|
| **Litigation – general litigation cases such as trip and fall cases** | **Amount** |
| Deputy City Attorney IV (Salary & Benefits) – top of the range<br>(1500 billable hours – typical annual minimum billable hours) | $234,290 |
| Cost for Outside Counsel to handle the same work ($250x1500 hours) | $375,000 |
| **Potential Additional Cost to the City of Oakland** | **$140,710** |
| **Transactional/Advisory/Specialized Litigation Services (e.g. Employment litigation)** | **Amount** |
| Deputy City Attorney IV (Salary & Benefits) – top of range<br>(1500 billable hours) | $234,290 |
| Cost for specialized outside counsel to handle the same work ($420*x1500 hours)<br>*This is an average hourly, government discounted rate for outside counsel. | $630,000 |
| **Potential Additional Cost to the City of Oakland** | **$395,710** |

***Note:*** *For a more detailed cost/benefit analysis, please see* ***Attachment G*** *of this report.*

## 2.2 Allocation of Legal Resources

**Figure 4** shows how the City Attorney's Office is organized into practice areas to better serve our clients.

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

***Office Profile FY10/11***

*The Oakland City Attorney's Office continued to be one of the most diverse legal teams in the country.*

*Although these numbers have subsequently changed, In FY10/11, our office included:*

***35 attorneys** – City Attorney, 2 Assistant City Attorneys, 7 litigation, 19 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, administration, and an Open Government Coordinator.*

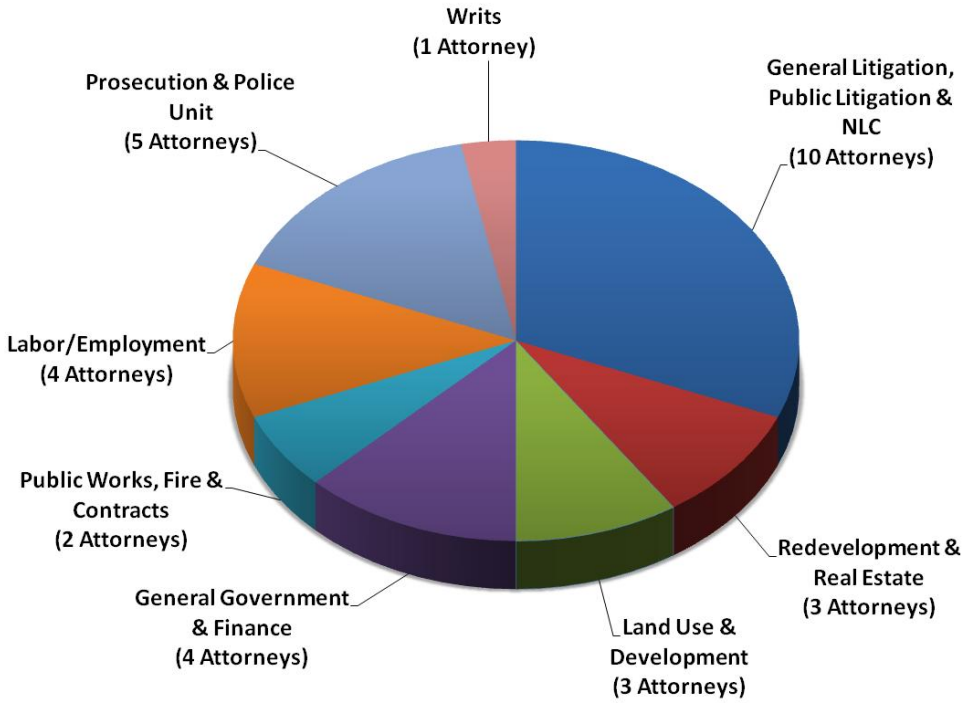


**Figure 4: Allocation of Attorneys**

## 2.3 Billable Hours

**Figure 5** is a breakdown of billable hours by department. This does not include the City Attorney and the two Chief Assistant City Attorneys. Although the City Attorney's Office does not bill time directly to departments, we closely track billable hours internally to manage resources, contain legal costs, and document the cost of legal services in cases where the City may be entitled to recover its attorney's fees.

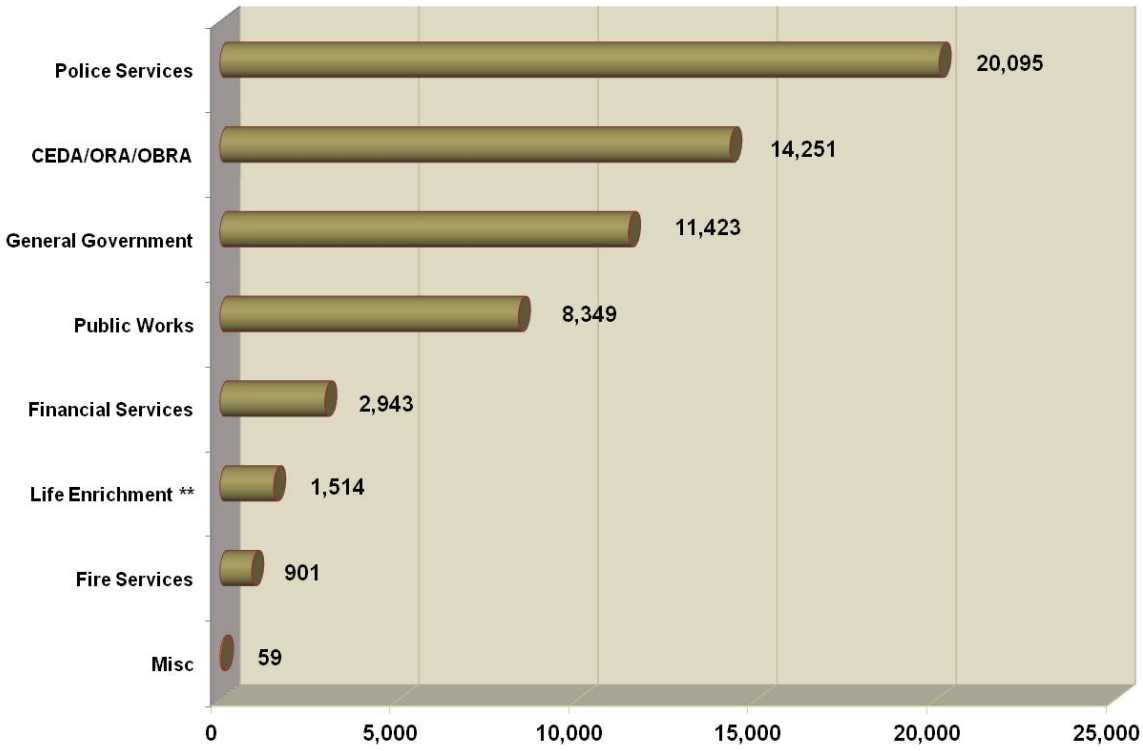


**Figure 5: Billable Hours By Department**

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

## 3.0 Litigation Division

***The Oakland City Attorney's Office uses strategic litigation techniques to protect taxpayer dollars, and initiates legal action on behalf of the municipal corporation when the community's quality of life or economic interests are jeopardized.***

Claims primarily 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, employment and complex contracts.

This year, the total number of claims and the total number of lawsuits filed against the City dropped. Twelve percent (**12 percent)** fewer lawsuits were filed against the City this fiscal year compared to the last fiscal year. Claims involving police matters dropped noticeably for the fourth year in a row, while the number of claims involving police matters that ripened into lawsuits increased slightly.

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 overwhelming majority of claims – **92 percent** – never become lawsuits, underscoring the effectiveness of this strategy. In addition, **79** percent of the claims resolved this year resulted in no payment of money.

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. In FY2010-11, **61 percent** of lawsuits were resolved with no payment of money.

While the majority of claims and lawsuits are successfully resolved with no payment of money, payouts for lawsuits have gone up because of a number of high-liability cases involving police matters (**Table 7**).

***Year in Review: Claims & Litigation***

- *Number of claims paid:* ***166***
- *Percent claims resolved with no payment of money:* ***79%***
- *Percent claims that never evolve into lawsuits:* ***92%***
- *Number of payouts for lawsuits:* ***79***
- *Percent lawsuits resolved with no payment of money:* ***61%***
- *Total payouts for claims & lawsuits:* ***$12.8 million*** *(up from $8.3 million last year)*
- *Claims received:* ***619*** *(last year: 623)*
- *Lawsuits received:* ***168*** *(last year: 191)*

### 3.1 Claims and Lawsuits Received

**Table 1: Types of Claims Received**

| Category | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5-year average |
|---|---|---|---|---|---|---|
| Municipal Infrastructure | 284 | 329 | 325 | 367 | 358 | 333 |
| Police Matters | 125 | 164 | 150 | 110 | 93 | 128 |
| City Vehicle Accidents | 83 | 91 | 109 | 79 | 64 | 85 |
| Other | 68 | 84 | 76 | 67 | 67 | 72 |
| **Total Claims/Year** | **560** | **668** | **660** | **623** | **582** | **619** |

**Table 2: Types of Lawsuits Served on the City**

| Category | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5-year average |
|---|---|---|---|---|---|---|
| Municipal Infrastructure | 48 | 44 | 33 | 34 | 53 | 42 |
| Police Matters | 30 | 40 | 34 | 31 | 14 | 30 |
| Personnel/Labor (non-lawsuits and lawsuits) | 39 | 35 | 32 | 43 | 63 | 42 |
| City Vehicle Accidents | 8 | 11 | 8 | 9 | 6 | 8 |
| **Other | 40 | 40 | 46 | 55 | 43 | 45 |
| **Total Lawsuits/Year** | **165** | **170** | **153** | **172** | **179** | **168** |

***While the number of infrastructure and personnel/labor lawsuits increased significantly this year, police-related lawsuits fell by more than half.***

### 3.2 Police Claims & Lawsuits

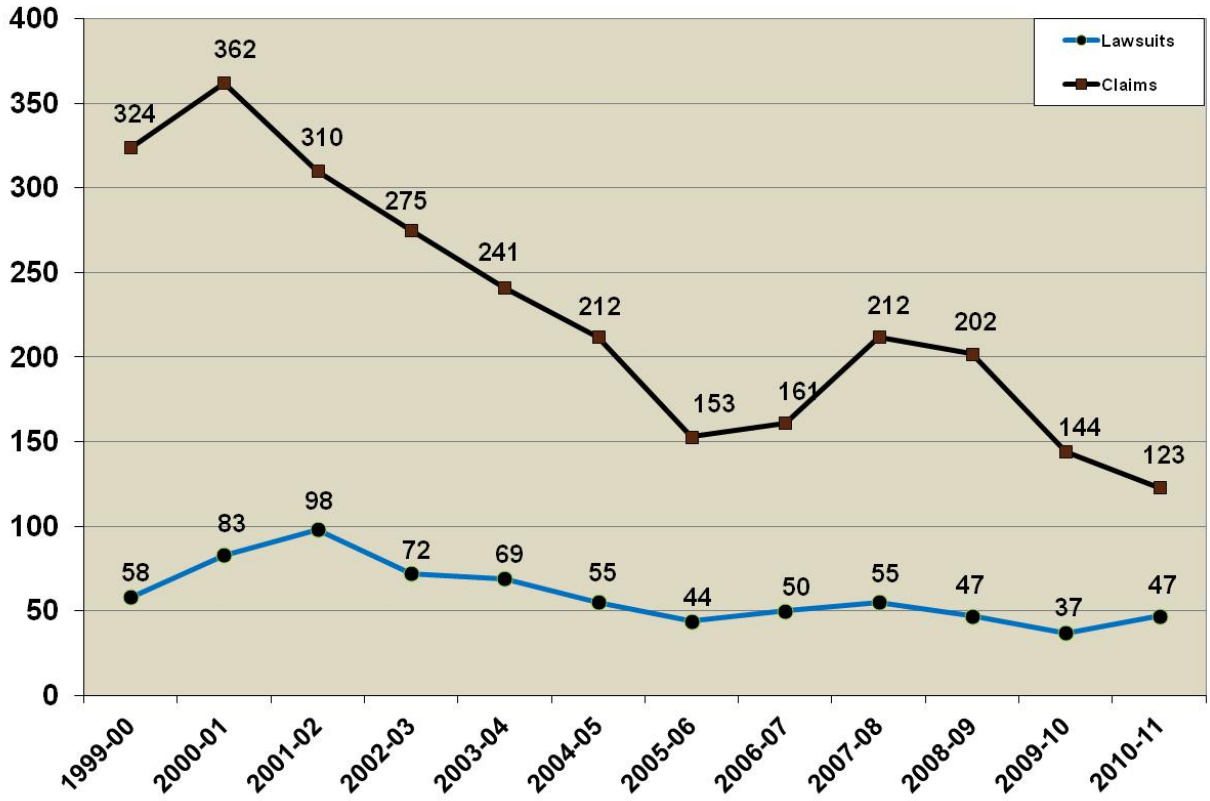


**Figure 6: Trend of Police Claims and Lawsuits Filed**

***Note:*** *This chart includes claims and lawsuits for polie - related vehicle accidents and personnel/labor matters.*

Although the number of lawsuits against the Oakland Police Department increased by 27 percent this year, the number of both claims and lawsuits against the Department generally has been on a downward trend in recent years. That number has declined significantly since FY2002/03, when the Department began to implement new oversight protocols and accountability reforms as a result of the *Delphine Allen v. City of Oakland* federal litigation, otherwise known as the "Riders" case.

The City entered into a Negotiated Settlement Agreement (NSA) on January 22, 2003 in response to allegations of police misconduct plaintiffs raised in that lawsuit. The settlement was designed to bring a higher level of accountability and oversight to the police department. It included the appointment of a court-appointed, Independent Monitoring Team, which reviews police department operations and reports on the status of the department's compliance with the NSA.

Reports of the Independent Monitoring Team can be found on the Oakland Police Department's Web site.

***Note:*** *this chart includes claims and lawsuits for police-related vehicle accidents and personnel/labor matters.*

### 3.3 Claims and Lawsuits Results

This year, **79 percent** of claims and **61 percent** of lawsuits were resolved with no payment of money (Figures 7 & 8).

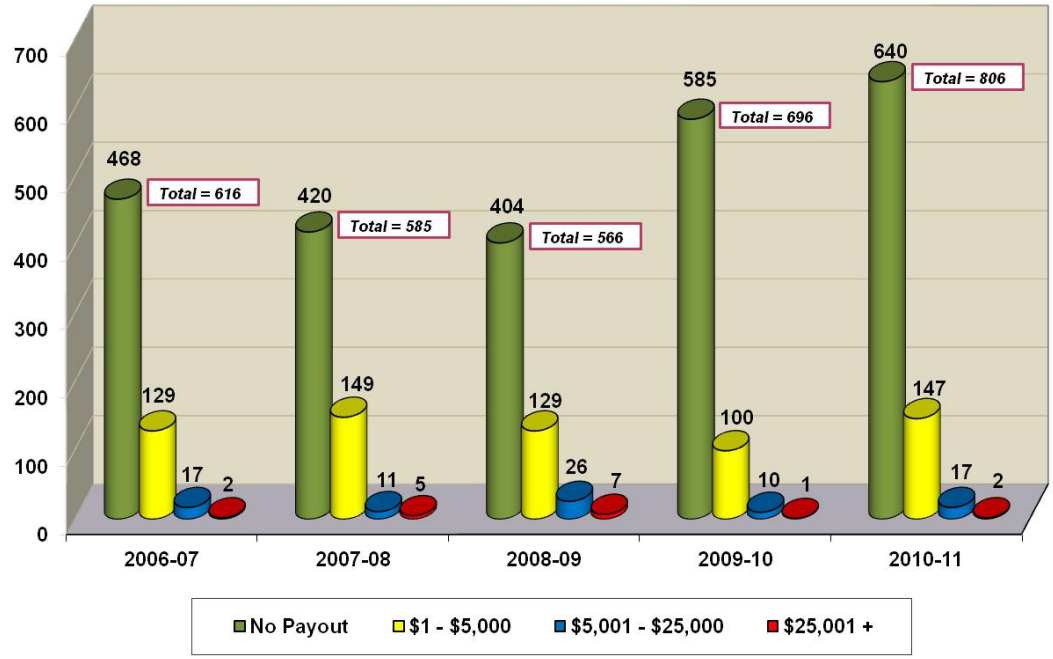


**Figure 7: Claims Resolved Over 5 Years**

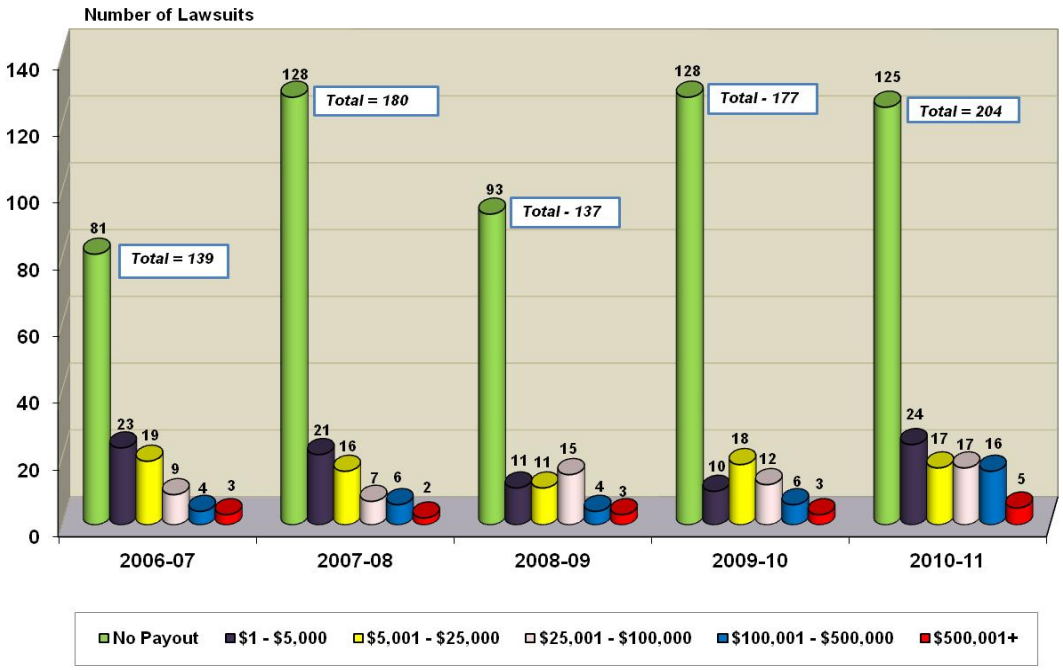


**Figure 8: Lawsuits Resolved Over 5 Years**

### 3.4 Claims that Evolve into Lawsuits

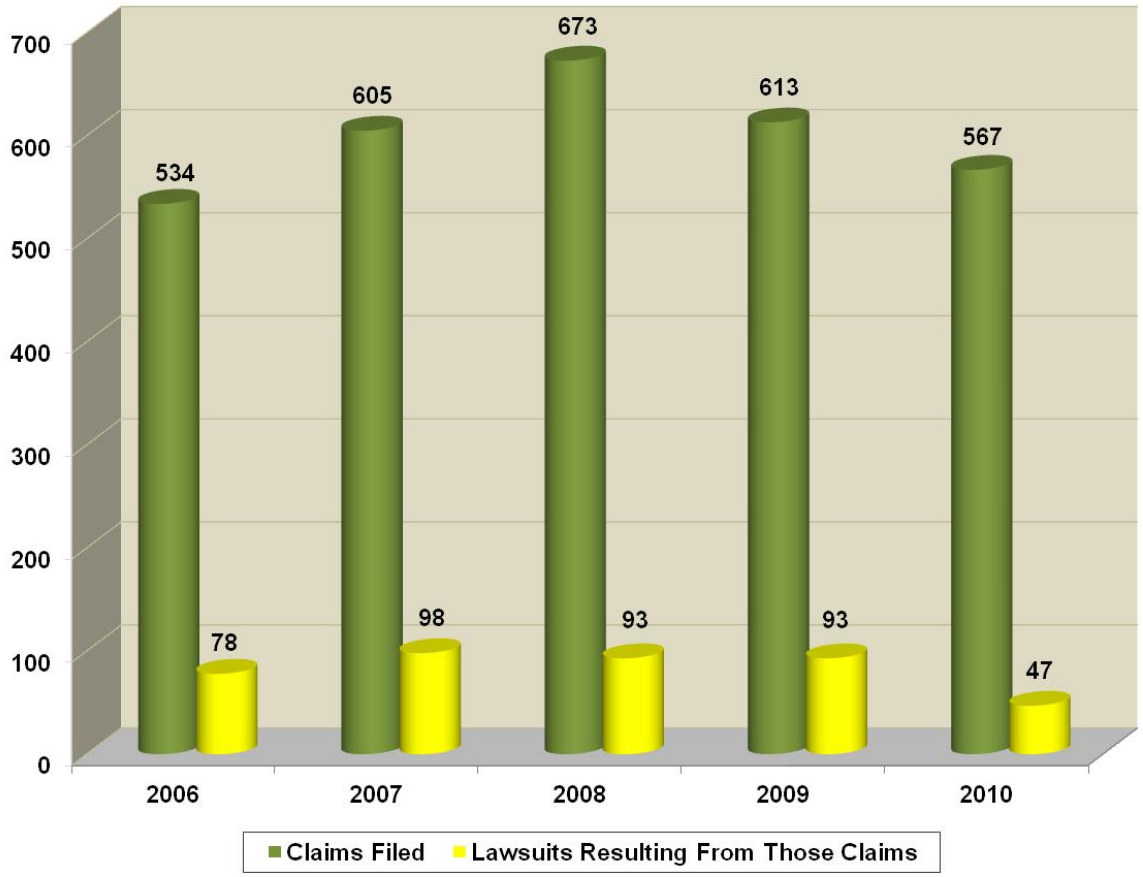


Figure 9: Claims That Evolved Into Lawsuits by Year of Incident

***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 reduce plaintiffs' attorneys' fees that the City could be required to pay if plaintiffs' prevail.***

The large majority of claims that the City denies – 92 percent – never become lawsuits, underscoring the effectiveness of this strategy.

## 3.5 Payouts of Claims and Lawsuits

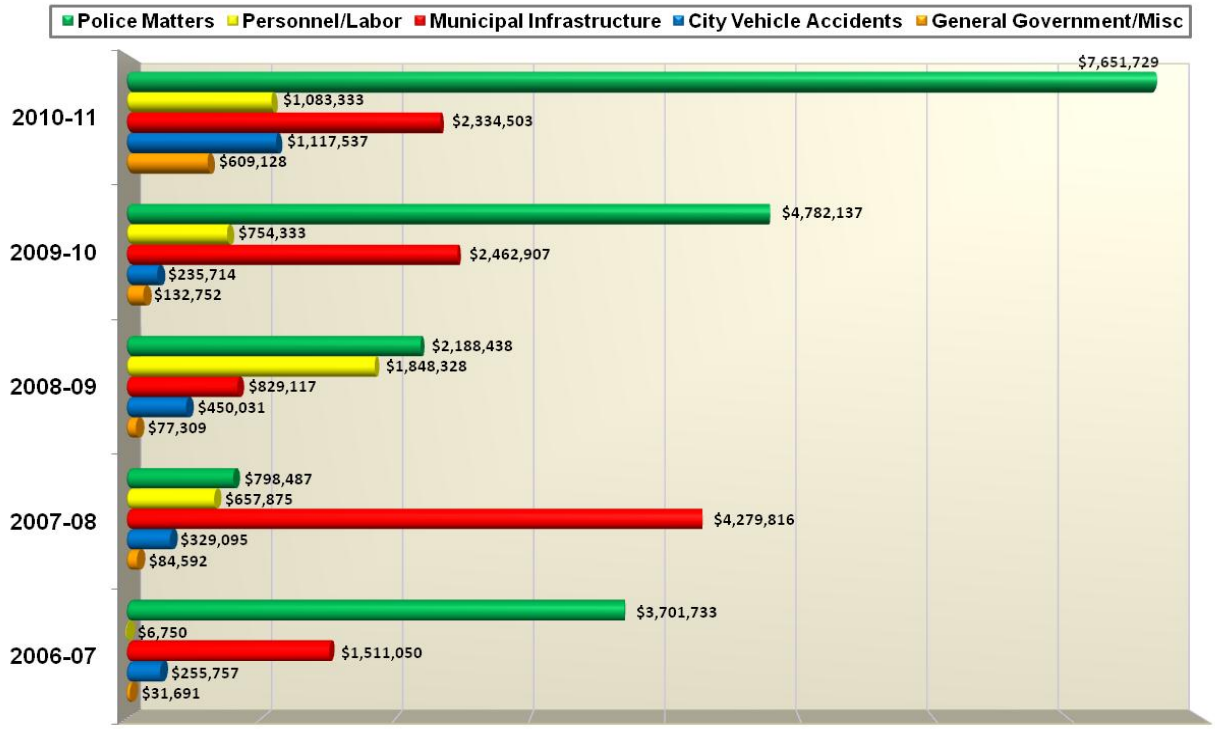


**Figure 10: Total Payouts of Claims and Lawsuits by Category**

**Figure 10** and **Figure 11** show payouts by City department and category. This year payouts were highest in the Police Matters category.

While the City has received fewer claims and lawsuits against the police department in recent years, payouts for lawsuits involving police matters almost doubled in FY2010-11 due to 10 high liability cases involving police Use of Force, Wrongful Death, Vehicle Accident and Labor complaints (**Table 7**).

***The City Council approves all settlements exceeding $5,000; the City Attorney's Office provides legal advice and analysis of the cases.***

Payouts fell dramatically in the categories of City Vehicle Accidents and General Government/Miscellaneous (**Tables 5 & 6**).

Payouts for claims and lawsuits vary from year to year (**Figure 12**) depending on many factors, including the types of complaints that are filed against the City. The City Attorney's Office closely monitors payouts to determine whether increases represent a statistical trend or a one-year spike. A continuing increase in high-liability cases involving police complaints warrants serious review by the City Administrator's Office.

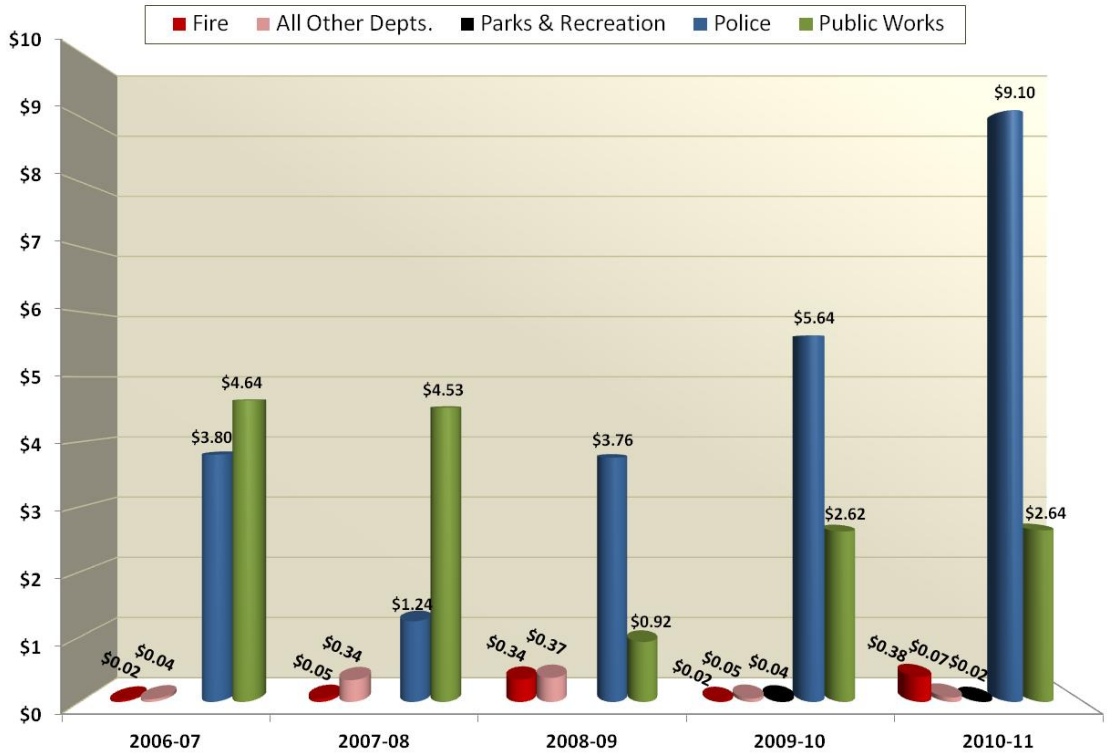


**Figure 11: Payouts of Claims and Lawsuits by Departments**

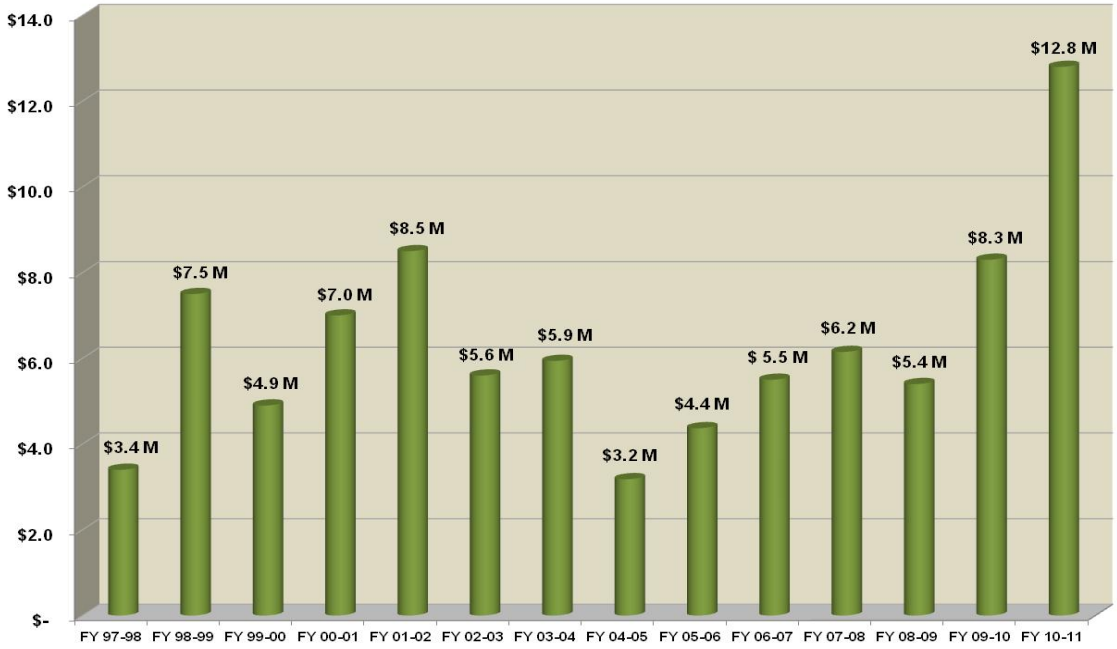


**Figure 12: Total Payouts Over the Last 14 Years**

**Table 3: Payouts of Claims & Lawsuits - Police Matters**

| Category | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5-year average |
|---|---|---|---|---|---|---|
| Conduct: Suspect Chase | $0 | $0 | $975,926 | $1,200,000 | $3,582 | $435,902 |
| Alleged Use of Force | $2,673,962 | $364,800 | $1,211,000 | $1,354,035 | $2,963,472 | $1,713,454 |
| Conduct - Non-force | $694,766 | $350,000 | $0 | $35,850 | $4,149,266 | $1,045,976 |
| Alleged Wrongful Death | $306,850 | $0 | $0 | $2,150,000 | $500,000 | $591,370 |
| Vehicle Accidents | $99,670 | $208,600 | $276,432 | $181,422 | $857,692 | $324,763 |
| Property Loss/Miscellaneous | $22,942 | $10,027 | $250 | $5,173 | $30,580 | $13,794 |
| Towing | $3,213 | $73,960 | $1,262 | $37,080 | $4,830 | $24,069 |
| Personnel/Labor | $0 | $232,875 | $1,290,828 | $673,333 | $583,333 | $556,074 |
| **Total Paid/Year** | **$3,801,403** | **$1,240,262** | **$3,755,698** | **$5,636,893** | **$9,092,755** | **$4,705,402** |

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

| Category | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5-year average |
|---|---|---|---|---|---|---|
| Building & Park Maintenance | $19,332 | $25,058 | $16,087 | $8,886 | $14,040 | $16,681 |
| Sewers/Storm Drains | $248,497 | $922,593 | $383,994 | $250,504 | $1,078,558 | $576,829 |
| Sidewalks | $300,492 | $167,646 | $209,522 | $432,005 | $1,011,615 | $424,256 |
| Streets | $123,063 | $1,858,295 | $188,433 | $1,745,614 | $171,659 | $817,413 |
| Landslides | $800,000 | $1,224,402 | $0 | $0 | $0 | $404,880 |
| Trees | $19,666 | $81,822 | $31,081 | $25,897 | $58,632 | $43,420 |
| **Total Paid/Year** | **$1,511,050** | **$4,279,816** | **$829,117** | **$2,462,906** | **$2,334,504** | **$2,283,479** |

**Table 5: Payouts of Claims & Lawsuits - City Vehicle Accidents**

| Category | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5-year average |
|---|---|---|---|---|---|---|
| Police | $103,465 | $208,600 | $276,432 | $181,422 | $857,692 | $325,522 |
| Public Works | $124,038 | $70,216 | $87,197 | $21,232 | $48,059 | $70,148 |
| Parks & Recreation | $0 | $0 | $0 | $0 | $16,173 | $3,235 |
| Fire | $22,654 | $48,261 | $17,312 | $15,486 | $181,115 | $56,966 |
| Other Departments | $5,600 | $2,018 | $69,091 | $17,574 | $14,497 | $21,756 |
| **Total Paid/Year** | **$255,757** | **$329,095** | **$450,032** | **$235,714** | **$1,117,536** | **$477,627** |

**Table 6: Payouts of Claims & Lawsuits - Personnel/Labor**

| Category | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5-year average |
|---|---|---|---|---|---|---|
| Police | $0 | $232,875 | $1,290,828 | $673,333 | $583,333 | $556,074 |
| Parks & Recreation | $0 | $0 | $0 | $40,000 | $0 | $8,000 |
| General Government/Other | $5,000 | $250,000 | $228,000 | $0 | $55,000 | $107,600 |
| Public Works | $1,750 | $175,000 | $4,500 | $41,000 | $250,000 | $94,450 |
| Fire Services | $0 | $0 | $325,000 | $0 | $195,000 | $104,000 |
| **Total Paid/Year** | **$6,750** | **$657,875** | **$1,848,328** | **$754,333** | **$1,083,333** | **$870,124** |

**Table 7: Payouts of Claims, Lawsuits & Arbitrations of More Than $100,000**

| Case | Type – Allegations | Payout |
|---|---|---|
| *Oliver, Reginald* | Police Conduct - Bad Warrants | $6.5 million ($1.77 million paid by City. $4.73 million paid by excess insurance carrier) |
| *Smith, Torry* | Police Conduct - False Arrest | $4.45 million ($2 million paid by the City. $2.45 million paid by excess insurance carrier) |
| *White, Nicole* | Police Conduct – Force | $1,245,000 |
| *Pena-Marquez, Daniel* | Police - Vehicle Accident | $630,000 |
| *Valladon (Class Action)* | Fair Standards Labor Act - Donning & Doffing Uniforms Case | $583,333 |
| *Studesvill, L.* | Police Conduct - Shooting Non-Fatality | $550,000 |
| *Buenostros, Jose* | Police Conduct - Wrongful Death | $500,000 |
| *Castillo, Raymond* | Police Conduct – Force | $412,500 |
| *Family Bridges, Inc.* | Failure to Meet City's Non-English Language Requirements | $400,000 |
| *Fleming, Novender* | Police Conduct – Force | $378,748 |
| *Hall, Lorenzo* | Police Conduct – Force | $300,000 |
| *English, Dexter* | PWA - Labor/Employment | $250,000 |
| *Evans-Robinson, Vicky* | Fire Dept. - Labor/Employment | $245,000 |
| *California Foundation for Independent Living Centers* | ADA Violations | $180,000 |
| *Laughlin, Douglas* | OPD Conduct – Force | $175,000 |
| *EPA Lawsuit* | Relief Under Clean Water Act | $165,714 |
| *Peskin, Stephen* | Fire Dept. - Vehicle Accident | $165,000 |
| *Muldrow, Norma* | Dangerous Condition - Sidewalk Trip & Fall | $155,000 |
| *Horowitz, Jill* | Dangerous Condition - Sidewalk Trip & Fall | $150,000 |
| *Lay, Marla* | Dangerous Condition - Sidewalk Trip & Fall | $150,000 |
| *Burkes, William* | Police Conduct - Bad Warrants | $138,645 |
| *Lobrovich, Kathleen* | Police Conduct - Injury by K-9 | $125,000 |

### 3.6 Major Cases

The Litigation and Advisory Divisions worked on dozens of cases during this fiscal year. A more detailed list can be found in **Attachment F** of this report.

**Table 8: Litigation Highlights**

| Case | Summary |
|---|---|
| ***Singh v. City of Oakland*** | Eight-year battle in state and federal courts over a challenge to Oakland code enforcement practices finally resolved in City's favor at both the state and federal courts of appeal. |
| ***Sacks v. City of Oakland I & II*** | Voters approved the Measure Y Violence Prevention and Public Safety Act in 2004. It provides about $20 million annually for police, violence prevention/social service programs and the Fire Department. The measure authorized the City to "hire and maintain" 63 community policing officers, with most assigned to neighborhood beats across Oakland.<br><br>The long-running legal battle over the tax started in 2008, when a local attorney sued the City, arguing that money raised by the tax could be used to hire new officers, but only if those officers were immediately assigned to community policing positions. However, Oakland Police Department policy requires new officers to be assigned to the patrol division for three years.<br><br>The trial court issued a split decision in that case, but the appeal ultimately validated the City's use of Measure Y funds to "backfill" the patrol division, thereby freeing up more experienced officers to take on community policing assignments. On March 18, 2010, during the appeal, the plaintiff filed a second lawsuit with seven causes of action, all of which were denied. |
| ***Burgess v. City of Oakland*** | This tragic case arose on August 26, 2009 when co-defendant Steve Reed ran a stop sign in West Oakland and struck a car driven by Marquita Bosley. Ms. Bosley died at the scene. Her 19-month-old son Naiere Burgess, who was riding in a car seat in the back, was critically injured.<br><br>The plaintiff, Naiere Burgess' guardian, filed a lawsuit alleging a high speed chase by Oakland police officers caused the collision. The participating officers and eyewitnesses uniformly agreed that Reed was driving erratically and at excessive speeds before the officers activated their lights and siren and began their pursuit. In fact, it was the reckless manner in which Reed was driving that caught the officers' attention. Reed was criminally prosecuted and is serving 21 years following a plea bargain for gross vehicular manslaughter while intoxicated, infliction of great bodily injury, fleeing from pursuing police officers and other charges.<br><br>The plaintiff ultimately agreed to dismiss the action after the City filed a motion for summary judgment asserting immunity from liability under Vehicle Code Section 17004.7. Section 17004.7 provides immunity for public agencies that have adopted a written policy on vehicular pursuits in conformance with 17004.7(c). OPD's General Order J-4 governs vehicle pursuits and complies with or exceeds the standards set forth in Section 17004.7. |

| | |
|---|---|
| ***People v. Norteños*** | The City ultimately prevailed in a trial that began in October 2010 when the City Attorney's Office filed a civil lawsuit against the Norteños – one of the most violent and notorious gangs in the city. The City asked the court to grant an injunction against 40 members of the Norteños based on their proven ties to the gang and crimes they have committed in the zone covered by the injunction.<br><br>In September 2011, Judge Robert Freedman issued a preliminary injunction in "Phase I" of the case covering five defendants. In February 2012, Freedman issued a preliminary injunction including all remaining defendants.<br><br>Within the injunction zone covering most of the Fruitvale District, the court's order restricts the defendants from carrying guns, threatening witnesses, selling drugs, wearing gang colors, associating with each other in public or being on the streets during late night hours (10 p.m. to 5 a.m.). There are clear exceptions to the last two restrictions for lawful activities such as work, school and medical emergencies. Violation of the order is a misdemeanor punishable by up to six months in jail and/or a $1,000 fine.<br><br>In May 2011, the City Council directed the City Attorney's Office to complete prosecution of the Norteños case and prohibited the City Attorney from pursuing any additional gang injunctions without Council approval.<br><br>The two injunctions in effect in Oakland (Norteños and North Side Oakland) are different from most of the other gang injunctions in California. Oakland's injunctions are similar to restraining orders against individuals. Each defendant had the right to contest the lawsuit's claims before the court, and the City had the burden of proving to the court, by clear and convincing evidence, that the gang is a criminal enterprise and that each defendant is a member of the gang. Importantly, anyone who leaves the gang can go through an "opt-out" process and seek to be removed from the order.<br><br>The 40 individuals named as defendants in the City's lawsuit have close to 200 adult arrests and at least 106 adult convictions among them. Their adult criminal convictions include: multiple cases of assault with a deadly weapon, multiple robberies, robbery resulting in great bodily injury, carjacking, shooting at an occupied home, dog fighting, fighting in public, numerous incidents of domestic violence including one resulting in traumatic injury, felony drunk driving, obstructing a peace officer by use of force, battery, carrying a concealed weapon, carrying a loaded firearm, felony possession of an assault weapon, possession of body armor, felony possession of a controlled substance while armed with a gun, felony manufacturing a weapon while in prison, discharging a firearm in a grossly negligent manner and many other gun crimes; also numerous vehicle thefts, drug sales, vandalism, residential and non-residential burglaries, grand theft, receiving stolen property and forgery. Most of these crimes occurred in or were committed against people who live or work in the Fruitvale neighborhood. In most cases, evidence submitted to the court included the individuals' own claims of gang membership.<br><br>"Their behavior constitutes a nuisance in that (it) is indecent and offensive to the senses, interferes with the comfortable enjoyment of life and property, and is injurious to the health of the people in the Safety Zone," Judge Freedman's order states. |

## 4.0 Advisory Division

***The City Attorney's Office provides ongoing, daily advice and counsel to the Mayor, City Council, City Administrator and all City departments, agencies and commissions. These matters include but are not limited to: quick advice, routine review of laws, creation of agenda reports and resolutions, in-depth research and legal analysis, participation as project team members on major City litigation, redevelopment projects, real property transactions, public works projects, review of disciplinary actions, training City employees on ethics, transparency and other issues, drafting and negotiating contracts and creation of new City policies.***

The demand for advisory work has remained constant – and in many cases has increased – due to the City's progressive and innovative and cutting edge policies, initiatives and programs, while at the same time in-house attorneys have been laid off due to budget cuts.

In this fiscal year, the Advisory Division worked on hundreds of major matters. A highlighting = key matters by unit can be found in **Attachments A – E** of this report.

**Table 9: Advisory Highlights**

| Matter | Summary |
|---|---|
| ***A's Baseball Stadium*** | Advised on legal issues regarding potential new baseball stadium for Oakland A's. |
| ***Ballot Measures*** | Drafted the text of three ballot measures for the November 15, 2011 election including tax measures and measure amending amortization period for funding of Police and Fire Retirement System. |
| ***Billboards*** | Advised City staff regarding existing and prospective agreements with outdoor advertising companies to construct new signs in return for demolition of numerous billboards throughout the City and for substantial monetary contributions to the City's General Fund. |
| ***City Planning*** | Advised on the preparation of master land use plans for four major planning areas of the City: Central Estuary, Broadway-Valdez, Lake Merritt BART Station and West Oakland. |
| ***Negotiated Settlement Agreement (NSA)*** | Advised the Mayor, City Administrator, Chief, Office of Inspector General /OPD on legal matters and reform implementation issues. Attended meetings with the federal monitors, plaintiffs' attorneys and police union attorneys and helped City develop action plans to further reform implementation. |
| ***Oakland Army Base*** | Advised staff, Planning Commission and City Council legal assistance for various activities at the former Oakland Army Base, including environmental review related to the Master Developer. 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 Base. |
| ***Oakland Zoo*** | Advised on the environmental review and approval of Oakland Zoo expansion and assisted in defending legal challenges to the approvals. |

| | |
|---|---|
| ***Problem Liquor Stores*** | Advised staff and Planning Commission in letter preventing resumption of alcohol sales in locations that had discontinued operations. |
| ***Public Records*** | Coordinated and facilitated response to dozens of Public Records Requests. Resolved a dispute between the Mayor's Office and the *Oakland Tribune* over a public records request for polling dated cited by the Mayor. |
| ***Special Prosecution Team (Eliminated by City Council in budget process)*** | Prosecuted hundreds of quality-of-life misdemeanors in criminal court for chronic offenses involving vandalism, petty theft, prostitution, animal cruelty, property damage and graffiti. Negotiated plea bargains and other settlements and focused on other intervention services and restorative justice programs in appropriate cases. |
| ***Zoning*** | Advised on the successful completion of the City's comprehensive zoning update to bring the Oakland Planning Code into conformance with the Oakland General Plan's Land Use and Transportation Element. |

### 4.1 Neighborhood Law Corps

Oakland's Neighborhood Law Corps is a unit of newly licensed lawyers in the City Attorney's Office working to improve the quality of life in Oakland neighborhoods. The program, often described as "Legal Aid meets the Peace Corps," has been recognized with awards including the Gold Medal for Municipal Excellence from the National League of Cities and the Making Democracy Work award from the League of Women Voters Oakland.

The Neighborhood Law Corps hires highly qualified attorneys who could be making significantly more money in the private sector, but choose to dedicate two years to public service in Oakland at a salary commensurate to that of a first year teacher.

One Neighborhood Law Corps attorney is assigned to each of the three police Area Commands (North/West Oakland, Central Oakland and East Oakland). Working closely with the community, police and other agencies, the unit focuses on protecting Oakland consumers, abating public nuisances and removing sources of crime in Oakland neighborhoods.

Since its inception in 2002, the Neighborhood Law Corps has worked to improve or shut down dozens of nuisance liquor outlets contributing to blight, crime and other serious problems. Neighborhood Law Corps attorneys also work with police and neighbors to close drug houses, force slumlords to clean up substandard properties and prosecute businesses that act as havens for prostitution, including child prostitution.

Neighborhood Law Corps attorneys also focus on protecting the rights of Oakland renters. In numerous cases, the unit has forced landlords to clean up slum properties, stop unlawful eviction of vulnerable tenants, deal with crime and nuisance problems and comply with local and state laws.

**Table 10: Neighborhood Law Corps Case Highlights**

| Case | Date | Summary |
|---|---|---|
| ***Oakland v. Dugas, Sharp, Williams & Rousseau*** | March 3, 2011 | NLC wins judgment against two men who used a large protest in downtown Oakland as cover to loot a jewelry store. Two other defendants caught vandalizing City property agreed to a settlement that included a payment to the City. |
| ***Oakland v. Economy Inn, National Lodge & Sage Motel*** | December 22, 2010 | City Attorney announces NLC lawsuit against three hotels catering to prostitution. One hotel agreed to stricter operating conditions in a settlement. Trial has begun against the other two hotels, located in an area notorious for prostitution, including child prostitution. |
| ***Oakland v. Gardner*** | June 2011 | NLC goes to court and ultimately wins a lawsuit against infamous slumlords responsible for years of inhumane living conditions at four Oakland apartment buildings. The court ordered landlords Hong Gardner and John Gardner to sell the buildings, stay away from the properties and refrain from ever owning or operating multi-unit rental properties in the City of Oakland. |

## 5.0 Conclusion

We are proud to represent a progressive and innovative city where the law often is 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 and to serving all Oaklanders continues to be the cornerstone of our work.

For more information, please visit http://www.oaklandcityattorney.org/.

Respectfully submitted,

Barbara J. Parker
City Attorney

# 6.0 Attachments: Major Projects, Accomplishments & Work Matters by Practice Units

**ATTACHMENT A**

## 6.1 Land Use & Development

- Advised on the preparation of master land use plans for four major planning areas of the City: Central Estuary, Broadway-Valdez, Lake Merritt BART Station and West Oakland.
- Advised on the successful completion of the City's comprehensive zoning update to bring the Oakland Planning Code into conformance with the Oakland General Plan's Land Use and Transportation Element.
- Advised on the environmental review for redevelopment plan amendments to the Central District Urban Renewal Plan and the Broadway/MacArthur San Pablo Redevelopment Plan.
- Advised staff in the City's implementation of the Measure DD-funded public open space improvements, including updated design for Snow Park.
- Advised on legal issues regarding potential new baseball stadium for Oakland A's.
- Advised on legal issues regarding City's proposal to locate Lawrence Berkeley Laboratory facility in Oakland.
- Advised staff, Planning Commission and City Council on legal requirements for various activities at the former Oakland Army Base, including on California Environmental Quality Act ("CEQA") environmental review related to the Master Developer.
- Advised staff, Planning Commission and City Council in numerous ongoing development project applications, including St. Johns Sanctuary (construction of new church); 222 19th Street development (42 story residential tower); two new Foods Co. grocery store locations; two Safeway locations in North Oakland; redevelopment of 1800 San Pablo Avenue; the AMG Senior Housing project (115 units); various hillside residential subdivision projects (including Pali Court, Felton Acres, Skyway Lane and Skyline Ridge).
- Advised on the environmental review and approval of 325 7th Street (382 housing units).
- Advised on the environmental review and approval for the redevelopment of the Foothill Square Shopping Center, including a new Foods Co supermarket.
- Advised on the environmental review and approval of Kaiser Center Office (construction of 1.3 million square feet of new office space).
- Advised on the environmental review and approval of Oakland Zoo expansion and assisted in defending legal challenges to the approvals.
- Advised staff and City Council on developer transfers under the Jack London Square development agreement to facilitate refinancing of the project.
- Advised on CEQA and environmental issues related to clean up of a former General Electric factory at 5441 International Boulevard.
- Advised on the environmental review and approval of federally-funded 100 unit affordable housing project located at 2100 Martin Luther King Jr. Way (Cathedral Gardens), 16th and Jefferson affordable housing project,

Erna P. Harris affordable housing project and numerous other federally-funded projects requiring review under the National Environmental Policy Act (NEPA) and National Historic Preservation Act Section 106 review.

- Obtained published opinion in Court of Appeal rejecting challenge to City's Environmental Impact Report for the Oak to Ninth Project (Oakland Heritage Alliance v. City of Oakland (2011) 195 Cal.App.4th 884).

- Successfully defended lawsuit by Wells Fargo Bank, as foreclosing owner of real property located at 2156 Harrington Ave.), in Alameda Superior Court (Case no. RG10536087), seeking to invalidate administrative penalty imposed for code violations.

- Advised staff, Planning Commission and Mayor on appeal and successful settlement of dispute regarding application for a parolee day reporting facility located at 3333 Telegraph Avenue.

- Advised on the appeal and approval of the McDonald's on Telegraph Avenue.

- Assisted in obtaining dismissal of the lawsuit filed by the owners NicNac/Jo Jos Liquors to invalidate the City Council's June 2010 denial of an application to resume selling liquor.

- Advised staff and Planning Commission in letter preventing resumption of alcohol sales in locations that had discontinued operations ("Loss of Deemed Approved Status" letters).

- Advised staff in the preparation of the City's Draft Energy Climate Action Plan, compliance with state climate change legislation (including SB 375) and the Air District's new Air Quality regulations, including Greenhouse Gases.

- Assisted staff in preparing comments on Bay Conservation and Development District proposed regulations relating to climate change.

- Assisted staff in efforts to retain an Oakland-based Metropolitan Transportation Commission headquarters rather than a proposed relocation to San Francisco.

- Advised on the environmental review and approval of Bentley School (increase student enrollment to 360) and ongoing monitoring/enforcement.

- Assisted staff in preparation of various City protocols implementing the California Environmental Quality Act, including revised Thresholds of Significance and Standard Conditions of Approval.

- Advised staff, Planning Commission and City Council legal assistance for various activities at the former Oakland Army Base, including environmental review related to the Master Developer.

- Advised staff in updating and streamlining provisions of the Oakland Planning Code, including the adoption of new zoning regulations for Demolition Findings, and general plan mapping corrections.

- Advised staff in updating the City's Housing Element, including reviewing documents and related environmental review.

- Advised staff on land use and environmental issues relating to the International Boulevard Transit Oriented Development plan.

- Advised staff, Planning Commission and City Council on federal, state and local telecommunications law, including establishment of design standards for projects located within the public right of way – particularly with respect to distributed antenna system providers, such as NextG.

- Advised on draft regulations regarding laundromats.

- Advised on draft temporary conditional use permit regulations.

- Advised on draft regulations regarding mobile food vending.
- Staffed all City Planning Commission meetings and provide ongoing legal advice to Commissioners, and planning staff.
- Advised on preparation of the extension and expansion of the Mills Act Program, which provides historic preservation tax incentives.
- Advised on various activities related to the MacArthur BART Transit Village, including the Phase 1 Final Development Plan and Final Subdivision Map.
- Assisted in implementation of vacant properties registration ordinance to monitor vacant foreclosed properties.
- Assisted in reviewing large-scale medical cannabis cultivation ordinance.
- Commented on City of Piedmont's Moraga Canyon Sports EIR and environmental impacts on City of Oakland.
- Advised on condominium conversion issues.
- Assisted in drafting amendments to Oakland's condominium conversion ordinance.
- Advised the Landmarks Preservation Advisory Board and attended Board meetings.
- Advised on proposed municipal ID program.
- Advised on a variety of Subdivision Map Act issues relating to stalled developments.
- Advised on a variety of Building Services matters, including fee refunds and liens on foreclosed properties.
- Advised on CEQA and NEPA compliance for FEMA and State pre-disaster mitigation funding relating to the Wildfire Assessment District area located in the Oakland hills.

**ATTACHMENT B**

**6.2 General Government & Finance Group**

- Advocated to keep Metropolitan Transportation Commission offices in Oakland.
- Brought litigation against online retailers of hotel rooms based on their underpayment of the City's Transient Occupancy Tax.
- Under a mutual assistance arrangement with the San Francisco City Attorney's Office, advised the San Francisco Board of Supervisors and Ethics Commission on conforming a San Francisco campaign ordinance to constitutional requirements.
- Guided the City Council to avoiding conflicts of interest in the decision making in the historic amendments to the City's zoning ordinance.
- Advised the City Council on the effects of newly passed constitutional amendment Proposition 26: "Requires That Certain State and Local Fees Be Approved by Two–Thirds Vote. Fees Include Those That Address Adverse Impacts on Society or The Environment Caused by The Fee–Payer's Business."
- Supervised City's litigation against municipal bond guaranteed investment contract brokers and issuers for bid-rigging.

- Supervised City's litigation against municipal bond insurers.
- Advised the City Administrator on legal issues relating to the City's obligations to the Police and Fire Retirement System.
- Represented the City's interests in administrative proceedings before the Police and Fire Retirement Board regarding cessation and recovery of overpayments to retirees.
- Advised various City departments on tax exempt bond issues relating to the Kaiser Convention Center.
- Supervised litigation against online retailers of hotel rooms based on their underpayment of the City's Transient Occupancy Tax.
- Represented City in the issuance of the City's 2011-2012 $81,200,000 Tax and Revenue Anticipation Notes.
- Advised the City's Tax Administrator regarding Oakland's taxes ordinances, including the business tax, parking tax, transient occupancy tax, real property transfer tax and utility users tax.
- Represented the Redevelopment Agency in the issuance of the Agency's 2011 $46,980,000 Subordinated Housing Set Aside Bonds.
- Represented the City in the issuance the City's $83,775,000 General Obligation Refunding Bonds, Series 2012 Bonds.
- Advised the Redevelopment Agency regarding financing issues relating to the garage at 1800 San Pablo as part of the proposed mixed-use project.
- Advised the City Administrator and various City departments regarding the uses of monies including grants proceeds, tax-exempt bond proceeds, special tax revenues, and other restricted funds.
- Advised the Office of City Auditor regarding the interpretation and application of City Charter provisions and ordinances.
- Issued Public Legal Opinions on: Legal Implications Of Two Recall Petitions, Disclosure Of Text And Email Messages Under California Public Records Act.
- Drafted the text of three ballot measures for the November 15, 2011 election including tax measures and measure amending amortization period for funding of Police and Fire Retirement System.
- Provided advice to Public Ethics Commission on a number of complaints and served as legal advisor at Commission meetings
- Assisted the public in resolving contested parking citations and guided citizens in the appeals process.
- Answered public records questions from the public and City staff.
- Created and conducted ethics training for City supervisors.
- Clarified the City Charter's mandate for the City Auditor's budget and independence.

- Confirmed the role of the City Attorney's Office as the sole attorneys for the City and its officials, including the Mayor.

- Resolved a dispute between the Mayor's Office and the Oakland Tribune over a public records request for polling data cited by the Mayor.

- Advised the Wildfire Prevention Assessment District Advisory Committee on the proper use of district funds.

- Provided impartial analysis of ballot measures to educate the voting public at the November 15, 2011 election.

- Reviewed hundreds of contracts, grant agreements, staff reports, ordinances and resolutions. This includes more than 100 Kids First grant agreements and numerous services contracts and grant agreements for programs for children & families, Head Start, youth and adults & seniors.

- Provided regular verbal and written advice to over 30 departments, commissions, divisions and agencies.

**ATTACHMENT C**

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

- Litigated gang injunction cases in court against the North Side Oakland and the Norteños street gangs.

- Obtained gang injunction against the Norteños gang and active gang members following highly contested court hearings involving Phase 1 of the litigation involving five of the forty defendants.

- Successfully defended gang injunction in an appeal brought by a North Side Oakland gang member.

- Worked with affected communities, City Neighborhood Services Coordinators and the Oakland Police Department on safety initiatives related to street gangs.

- Advised City Council, OPD and other City Departments on legal and implementation matters.

- Prosecuted hundreds of quality-of-life misdemeanors in criminal court for chronic offenses involving vandalism, petty theft, prostitution, animal cruelty, property damage and graffiti. Negotiated plea bargains and other settlements and focused on other intervention services and restorative justice programs in appropriate cases.

- Drafted city ordinance making it a local crime to engage in pimping, soliciting and committing prostitution offenses and authorizing City to prosecute violations.

- Drafted ordinance making it a local crime to use vehicles for the purpose of furthering prostitution crimes.

- Studied and analyzed hot spots and crime trends in Oakland and trains police officers on methodologies to improve investigations and documentation of evidence.

- Represented City in court and filed pleadings showing City's work and progress with police reforms; supervised outside counsel.

- Advised the Mayor, City Administrator, Chief, Office of Inspector General /OPD on legal matters and reform implementation issues.

- Prepared Council reports and advised the Council on case status.
- Prepared City employees for court testimony and appearances.
- Attended meetings with the federal monitors, plaintiffs' attorneys and police union attorneys and helped City develop action plans to further reform implementation.
- Consulted with federal monitors, reviewed monitors' quarterly reports and attended monitors' meetings.
- Reviewed OPD Executive Memos to the monitor.
- Advised Animal Shelter Director and hearing officers on due process requirements, animal control regulations, search and seizure, developing evidentiary records and proper handling of administrative hearings and issued several legal advisories.
- Reviewed several decisions of administrative hearing officers and provided advice.
- Responded to inquiries from constituents, city departments and the Council on dangerous and abused animals.
- Represented City and defended decision of administrative hearing officers in court.
- Issued legal memos and policy advisories on OPD vehicle tow policies and protocols.
- Advised OPD on due process, noticing requirements, administrative hearings and record keeping requirements.
- Reviewed OPD notices and vehicle forfeiture forms and provided advice.
- Met with OPD employees on vehicle traffic and nuisance issues.
- Responded to Council and constituent inquiries.
- Provided advice to City and OPD on special events permits, marches and demonstrations. Provided advice to OPD on crowd control related to date, time and place restrictions, sidewalk encroachments, facilitation of marches.
- Provided advice to OPD on the legal and policy requirements of OPD's crowd control policy.
- Issued legal memo on officers pointing of firearms.
- Advised Chief, Internal Affairs and Force Board members regarding appropriate administrative investigations, credibility assessments, preponderance of evidence and witness interviews.
- Attended numerous OPD Force Board hearings on Levels 1 and 2 incidents and provided advice on the use and application of the baton, Taser, pepper spray and deadly force.
- Responded to the scene of various officer-involved shootings and met with OPD employees and investigators.
- Advised the City Council on state gun laws, drafted local legislation, prepared council reports and attended council meetings.
- Advised OPD on gun permit applications.

- Worked with City and the parties requesting records to ensure that City complies with Sunshine and Public Records Act requirements.

- Researched public records laws and issued legal advisories to OPD on several cases.

- Coordinated with City departments the review and appropriate response to subpoenas for records, deposition subpoenas and Pitchess motions for peace officers' personnel files.

- Advised the Office of the Chief, Internal Affairs, CID and the Court Liaison on legal matters.

- Appeared in Court to defend City's position, filed motions and negotiated resolutions with the moving parties.

- Researched policies and best police practices in the areas of police use of force, foot pursuits, vehicle pursuits, vehicle abatements, force and other misconduct investigations, high-risk vehicle stops, pointing of a firearm, stop data analysis.

- Provided advice to OPD and helped amend OPD policies.

- Staffed the Council's Public Safety Committee meetings.

- Approved the Committee's reports, resolutions and ordinances and advised City and OPD on the legal issues.

- Drafted several resolutions on prostitution, vehicle abatement and other issues.

- Drafted ordinances requested by the Council on Juvenile Curfew and Gun Offender Registry, both of which were continued by Council.

- Confirmed compliance with legal mandates and city's purchasing ordinance and signed several City and OPD professional services agreements, memorandums of understanding and other contracts.

- Prosecuted hundreds of cases based on OMC 9.08.260, the City's new loitering for prostitution, solicitation for prostitution, and recruiting a prostitute ordinance – Spring-Fall 2011.

- Trained OPD officers on how to apply a variety of OMC ordinances that address quality of life issues such as vandalism, open alcohol containers, etc. (Winter 2011).

- Negotiated the voluntary shut down of an illegal bingo hall operating in foothill square (East Oakland) in winter 2011.

**ATTACHMENT D**

**6.4 Redevelopment & Real Estate Unit**

- Advised City staff regarding existing and prospective agreements with outdoor advertising companies to construct new signs in return for demolition of numerous billboards throughout the City and for substantial monetary contributions to the City's General Fund.

- Advised staff and City Council on numerous issues arising from state legislation eliminating redevelopment agencies and resulting legal challenges. Participated in proposing and drafting alternative legislative proposals.

Drafted Funding Agreement and other agreements between the City and Redevelopment Agency in anticipation of legislation.

- Drafted continuation ordinance adopted by City Council to continue Redevelopment Agency activities.

- Advised staff and negotiated with developer and lender attorneys on transfer of several affordable housing projects owned by defunct Oakland Community Housing, Inc. (OCHI) to new ownership. Completed foreclosure sales on several former-OCHI properties.

- Closed affordable housing development loans on several projects, including rehabilitation of the Jefferson Oaks project in downtown Oakland, rehabilitation of Slim Jenkins Court in West Oakland, new construction of affordable housing at 720 East 11th Street, rehabilitation of Effie's Housing, and rehabilitation of the Posada de Colores project in Fruitvale.

- Drafted and negotiated lease documents for Fox Theater spaces.

- Drafted documents for transfer of Henry J. Kaiser Convention Center to Redevelopment Agency ownership.

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

- Provided ongoing legal services to Oakland Workforce Investment Board (WIB), and advised WIB and staff on transition of workforce investment system to City.

- Drafted and negotiated funding contracts with providers of workforce development services to adults and youth.

- Provided legal advice and services on pending major redevelopment plan amendment extending time limits and fiscal limits for Central District Redevelopment Project Area.

- Provided legal advice and services on pending major redevelopment plan amendment expanding Broadway/MacArthur/San Pablo Redevelopment Project Area.

- Continued negotiation on affordable housing agreements and other implementation of the Owner Participation Agreement for MacArthur BART Transit Village.

- Drafted and negotiated agreements with AC transit and funding agencies for the Broadway Shuttle service.

- Drafted funding agreements for the Broadway Basement Backfill program to assist downtown business owners/tenants.

- Drafted and negotiated grant agreements for dozens of community projects under Neighborhood Projects Initiative programs in Coliseum, West Oakland, Broadway/MacArthur/San Pablo, and Central City East redevelopment areas.

- Negotiated and finalized three substantive amendments to an Exclusive Negotiating Agreement with the proposed Master Developer on the Redevelopment Agency's portion of the former Oakland Army Base.

- Negotiated a comprehensive Cost Sharing Agreement with the Port of Oakland for coordinated development of the former Oakland Army Base.

- Advised Redevelopment Agency staff and reviewed contracts for services at the Army Base.

- Advised Redevelopment Agency staff on the continued management of the Army Base Leasing Program.
- Represented the City and Agency in litigation over environmental matters concerning a tenant 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.
- Continued to pursue additional 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.
- Staffed the City-Port Liaison Committee on behalf of the City Attorney's Office. Reviewed staff reports generated for the Committee.
- Advised staff when persons who owe money to the City or Agency file bankruptcy.
- Provided legal counsel to the Oakland Rent Board.
- Continued research and advice to staff regarding condominium conversion ordinance (not adopted by Council).
- Successfully defended Rent Board regulation on illegal unit evictions (appeal pending).
- Advised and negotiated contracts and loans for the Fox Theater.
- Negotiated lease for "Rudy's Can't Fail Cafe" at Fox Theatre site.
- Addressed Fox Theatre development audit issues.
- Handled administrative writs contesting Rent Board decisions.
- Negotiated lease with Awaken Cafe.
- Negotiated, revised and executed a number of leases/licenses and amendments (e.g. Western Federal Credit Union, etc.).
- Negotiated, drafted/revised, and executed leases for a number of Head Start programs.
- Negotiated, drafted, and executed many rights of entry to facilitate beneficial use of City/Agency properties.
- Negotiated several leases with the Port of Oakland.
- Provided advice on real property acquisitions for 42$^{nd}$ and High Street project.
- Assisted with revisions to downtown (Parcel T-12) development project.
- Advised on issues regarding amounts due to City/Agency from the Port for provided services.
- Advised on issues pertaining to the Warriors practice facility and office on Scotlan Convention Center.
- Advised on title and subdivision issues pertaining to the Kaiser Convention Center and Oakland Museum.

- Closed parking agreement with developer of Domain residential project in Downtown Oakland.

- Staffed regular and special meetings of the Community and Economic Development Committee, and attended City Council meetings on numerous real estate and redevelopment matters.

**ATTACHMENT E**

**6.5 Public Works/Contracting**

- Negotiated a preliminary settlement to litigation by the U.S. Environmental Protection Agency ("EPA")/ California State/Regional Water Board ("Water Board") and Environmental Groups (Our Children's Earth, San Francisco Bay Keeper) involving Oakland's aging sewer collection system.

- Negotiated settlement of Water Board Civil Administrative Liability action for sewer collection system spills and City alleged deficient reporting to the State of these spills.

- Advised the City Council on the adoption of sewer lateral ordinance, which will help resolve infiltration and flow problems related to residential, commercial and industrial sewer pipes.

- Advised Oakland Fire Department and Office of Information Technology with respect to the implementation by Oakland, San Francisco, San Jose and all the surrounding Bay Area counties of a 700MHz Broadband network for public safety communications, which will greatly expand wireless broadband service to emergency responders and other public safety agencies during emergencies.

- Advised OFD with respect to City site access agreements with Motorola for survey of proposed City communication sites.

- Advised OFD and IT about scope and limits of participation in new Joint Powers Authority ("JPA") that will manage and govern the new public safety broadband communications system and assignment of Federal Communications Commission 700 MzHzwaiver/broadband lease to JPA.

- Advised the City Council and the City Administrator on contract issues with respect to the implementation of a new Municipal Identification system.

- Advised staff on a negotiated take-over by project contractor's surety, and project completion and close-out of the 81st Street Library, due to contractor bankruptcy and default.

- Counseled City staff with respect to the settlement of Ice Center Solar Panel service issues involving the installation contractor and defective solar panels.

- Negotiated and prepared agreement transferring the operation of the Oakland Museum to the Museum Foundation.

- Negotiated and prepared amendment to Oakland Zoo Operation Agreement.

- Prepared Restatement of Chabot Golf Course Agreement.

- Advised the City Administrator, Department of Information Technology and the Oakland Police Department with respect to police radio communications problems and contract issues resulting from the P25 Radio Upgrade Project.

- Advised Public Works Department with respect to the extension of the existing solid waste and recycling agreement with Waste Management.

- Advised Public Works and negotiated new SeeClickFix smart phone application for reporting by the public of street potholes, fallen trees and other City infrastructure related issues to the City.

- Advised Public Works Department on procurement process involving a Request for Proposals and the negotiation of three new Franchise Agreements for solid waste/organics collection, recycling and landfill disposal.

- Advised and trained new Public Works Contracting Division with respect to processing professional services contracts and construction contracts and related bonds, insurance, and City contracting requirements. Reviewed multiple contracts for new Division.

- Advised Department of Contracting and Compliance with respect to professional services contracts and construction contracts.

- Advised Oakland Fire Department and reviewed professional services contracts.

- Advised Department of Information Technology with respect to City broadband fiber optic communications system cable hook-ups to Bay Area Rapid Transit broadband fiber optic system.

- Reviewed and advised on numerous Public Records requests.

- Negotiated new Franchise Agreement with Union Pacific Railroad for old Western Pacific track line.

- Advised OPD on police monitors professional services contracts with respect to Riders settlement and the Occupy Oakland events.

- Advised the Department of Information Technology and CEDA and negotiated an agreement with Accela for a new Permit Tracking software system for the City.

**ATTACHMENT F**

**6.6 Litigation**

- *The People v. North Side Oakland* – trial court ruling on gang injunction upheld in the state Court of Appeal.

- *Singh v. City of Oakland* – Eight-year battle in state and federal courts over a challenge to Oakland code enforcement practices finally resolved in City's favor at both the state and federal courts of appeal.

- *Uaisele v. City of Oakland* – Summary judgment in wrongful death case based on a design immunity theory.

- *Pete v. City of Oakland* – Successful defense of constitutional challenge by owner of nightclub Geoffrey's Inner Circle who claimed police investigation of problems associated with his club forced him to close club and suffer damages. Claims were based on due process and racial bias as well as state law claims. Case dismissed by Court following successful Motion for Summary Judgment.

- *Ward, et al. v. City of Oakland, et al. (Michael Holmes, Richard Rix & Mark Engram v. City and Richard Vass*) – The plaintiffs alleged illegal search and civil rights violations. Following bench trial, judge ruled in favor of the City.

- *Michael Turner v. City, et al.* – Prevailed on 12(b)(6) motion that eliminated all but one claim (whether custodial detention was unconstitutionally long); prevailed on summary judgment as to that remaining claim (now on appeal before 9th Cir., but unlikely to be overturned).

- *Escamilla, et al. v. City, et al.* – $5,000 settlement – Plaintiffs claimed OPD wrongfully kicked in door serving warrant and used excessive force against Plaintiff Josefina Escamilla.

- *Gomez v. City* – $1,000 settlement – Plaintiff slipped on a wet City sidewalk fronting Fremont H.S.; slippery condition was caused by leaky sprinkler on OUSD property.

- *Thaxton v. City* – $5,000 settlement – trip and fall on uneven City sidewalk.

- *Cobb v. City, et al.* – Excessive force – Obtained dismissal following plaintiff's failure to appear for deposition and settlement conference.

- *Okoro v. City & Ausmus* – Plaintiff alleged that his civil rights were violated and that he was wrongfully arrested and imprisoned. CA Court of Appeal affirmed jury verdict for defense.

- *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070 – First District Court of Appeal ruled in December 2010 that City had properly expended special tax funds (Measure Y) for restricted purposes of measure, including by spending the taxes to recruit and train new officers who filled patrol positions so that veteran officers could be deployed to community policing positions authorized by Measure Y. Court also ruled that the City had complied with Measure Y by appropriating funds for at least 739 non-Measure Y officers and that the measure did not actually require continued employment of 739 officers.

- *Sacks v. City of Oakland*, Alameda Superior Court Case No. RG10504741 – The Alameda Superior Court ruled in this second lawsuit by Sacks that the City had properly deployed Measure Y officers, did not have an obligation to spend funds to recruit and train at least 739 officers, did not violate the Public Records Act, and did not illegally award grants of Measure Y funds to third party service providers.

- *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 – First District Court of Appeal upheld in May 2011 City Council's approval of Environmental Impact Report for Oak to Ninth Project. Court of held that the EIR sufficiently studied and provided mitigation measures for seismic impacts.

- *County of Alameda v. City of Oakland*, Alameda Superior Court Case No. RG09460907 – The Alameda Superior court ruled in September that the County may not prohibit the City from enforcing the City's Parking Tax Ordinance at the jointly owned and operated Oakland Alameda County Coliseum Complex. Judgment has not been entered as other causes of action remain alive. Action is now pending in San Francisco Superior Court.

- *Pannell v. City of Oakland*, Alameda Superior Court Case No. RG10534273 – In January 2011, the Alameda Superior Court granted Petitioner's request for dismissal after we convinced Petitioner that it had not timely sued the City regarding its application for a permit to sell liquor.

- *Orozco v. City of Oakland* – In trip and fall personal injury matter, plaintiff voluntary dismissed (with prejudice) his case on the eve of a ruling on third discovery motion, which sought terminating sanctions.

- *Leon v. City of Oakland* – Plaintiff sought damages for interference with contract after City closed their bar (High Street Billiards). Plaintiffs simultaneously filed a discovery motion and a SLAPP suit, plaintiffs then voluntarily dismissed with prejudice.

- *Dunbar v. City of Oakland* – Pro Per prisoner filed civil rights case against OPD – Plaintiff suffered injuries during a gun fight that followed a high speed chase. The federal court case was dismissed on Summary Judgment.

- *Landry v. City of Oakland* – County employee claimed Fire Department captain intentionally hit her with his car while she was issuing him a ticket. Case dismissed without leave to amend on successful demurrer on grounds the event happened while he was off duty, not in uniform and not in a City vehicle, and thus, outside the course and scope of his employment.

- *Wan v. City of Oakland & Martin v. City of Oakland* – Successfully argued that non-City contractors installed defective sidewalk. City ended up paying a nuisance fee of $2,500 in each of the two cases. Plaintiff was unable to identify the contractors.

- *O'Guinn v. City of Oakland* – In trip and fall involving sidewalk defect in Jack London Square, negotiated settlement with significant share of liability falling on adjacent property owner after finding experts to testify sidewalk defect caused by improperly installed pipe underlying sidewalk. City paid only $12,500 of $35,000 total settlement.

- *Wadley v. City of Oakland* – In trip and fall involving sidewalk defect in East Oakland, negotiated settlement with significant share of liability falling on adjacent property owner after prevailing in our opposition to property owner's motion to dismiss. City paid only $30,000 of $85,000 settlement.

- *Garth v. John Tennant Memorial-Episcopal Senior Communities, et al.* – Pro Per plaintiff filed civil rights case against OPD (among many other defendants) alleging civil rights violations and trespass. Case dismissed without leave to amend on successful demurrer on grounds too numerous to list briefly.

- *Burgess v. City of Oakland* – This tragic case arose on August 26, 2009 when co-defendant Steve Reed ran a stop sign in West Oakland and struck a car driven by Marquita Bosley. Ms. Bosley died at the scene. Her 19-month-old son Naiere Burgess, who was riding in a car seat in the back, was critically injured. The plaintiff, Naiere Burgess' guardian, filed a lawsuit alleging a high speed chase by Oakland police officers caused the collision. The participating officers and eyewitnesses uniformly agreed that Reed was driving erratically and at excessive speeds before the officers activated their lights and siren and began their pursuit. In fact, it was the reckless manner in which Reed was driving that caught the officers' attention. Reed was criminally prosecuted and is serving 21 years following a plea bargain for gross vehicular manslaughter while intoxicated, infliction of great bodily injury, fleeing from pursuing police officers and other charges. The plaintiff ultimately agreed to dismiss the action after the City filed a motion for summary judgment asserting immunity from liability under Vehicle Code Section 17004.7. Section 17004.7 provides immunity for public agencies that have adopted a written policy on vehicular pursuits in conformance with 17004.7(c). OPD's General Order J-4 governs vehicle pursuits and complies with or exceeds the standards set forth in Section 17004.7.

**ATTACHMENT G**

**6.7 Outside Counsel Cost/Benefit Analysis**

The outside counsel budget is not part of the City Attorney's Office Budget. Outside Counsel is paid from the City's Public Liability fund, which also includes payouts of claims and lawsuits settlements and judgments. The expenses paid with the Public Liability Fund also include the cost to prosecute or defend litigation to which the City is a party. These costs include outside counsel costs, expert witnesses, depositions and court exhibits.

Due to lack of in-house capacity, the city has paid private attorneys significantly more money to litigate cases than it would have paid staff attorneys to litigate the same cases. Examples can be found in recent construction defect matters and employment discrimination matters.

Construction Defect Matters:

In July 2009, the City Attorney was forced to lay-off a staff attorney with about 20 years of experience. This attorney was an expert in public entity construction defect litigation and was handling an average of 30 cases at any given time, including the McKillop Road and Underground Construction cases. Her annual salary, including benefits was $246,251.

As of the date of this report, outside counsel costs for these two cases are:

- McKillop Road: $844,810
- Underground Construction: $915,856
- Total: **$1,760,666**

If the expert staff attorney was not laid off, she could have performed at least 50 percent of the work done by outside counsel on these cases, meaning the City would have saved at least **$880,333** on these two cases alone. The staff attorney also would have been able to continue to handling her existing caseload. If the City Attorney's Office had the capacity to assign a second attorney to these matters, outside counsel costs could have been reduced by as much as 75 percent.

Employment Discrimination Matters:

Employment cases are a major source of outside counsel costs. One way to compare the cost of outside counsel to the cost of using in-house attorneys is to look at the total cost of motions for summary judgment in the following cases (**Table 11**).

**Table 11: In-House v. Outside Counsel – Cost of a Motion for Summary Judgment**

| Case Name & File Number | Cost |
|---|---|
| **Motions for Summary Judgment (In-House)** | |
| Mary Uaisele (27186) | $34,613.25 |
| Sonia Cerna (22199) | $68,683.15 |
| Yong Shi Sun (24706) | $36,261.75 |
| **Total:** | **$139,558.15** |
| **Motions for Summary Judgment (Outside Counsel)** | |
| Deborah Edgerly (26971) | $92,378 |
| Cheryl Thompson (26975) | $145,840 |
| Derwin Longmire (x03508, x03508-b) | $54,650 |
| **Total:** | **$292,868.00** |

In the first row, motions for summary judgment in three employment discrimination cases were handled by in-house attorneys. The "costs" of the motions by in-house attorneys represent the amount of time billed on these matters, not out-of-pocket expenses.

In the second row, motions for summary judgment in three employment discrimination cases were handled by outside counsel. In this example, the cost of routine legal work (motions for summary judgment) is **more than double** when performed by outside counsel. The cost of just three motions handled by outside counsel also far exceeds the annual salary of an in-house law & motion attorney at the top of the DCAIV range ($150,352.92). An in-house law & motion attorney handles many such motions every year.