

CITY OF OAKLAND COUNCIL AGENDA REPORT

TO: Finance and Administrative Services Committee
ATTN: Chairperson: Danny Wan
FROM: John Russo, City Attorney
DATE: January 29, 2002
RE: Office of the City Attorney's Annual Report, Fiscal Year 2000-2001

INTRODUCTION

Fiscal year 2000-2001 marked a major change in the administration of the Office of the City Attorney due to the election of Oakland's first elected City Attorney, who took office in September 2000. This first year was characterized by the tasks inherent in transition: evaluating existing resources and procedures, organizational restructuring, and streamlining operations to enhance delivery of legal services to our clients.

The purpose of this annual report is to summarize the major accomplishments the Office of the City Attorney (OCA) achieved during the last fiscal year and to highlight our ongoing community initiatives.

Mission and Guiding Philosophy

Our mission is to:

- Provide the highest quality legal services to the City of Oakland, its employees, officers, agencies, boards and commissions; and
- Promote open government and accountability to the residents of Oakland in accordance with the letter and spirit of the law.

Our guiding philosophy—***law in service of the public***—shapes our approach to providing legal services to the City of Oakland. Our staff believes that the law should be applied in an innovative and community-oriented manner. As a team, we are committed to providing top-notch legal services that are cost-effective, streamlined, efficient, and accessible.

OFFICE PROFILE

At the close of fiscal year 2000-2001 (FY 2000-01), the Office of the City Attorney was staffed by 79 dedicated professionals: 41 attorneys and 38 support staff, including paralegals, legal secretaries, claims investigators, clerks and operations staff (budget, accounting, informational technology, communications and personnel administration). The Office of the City Attorney is proud to employ one of the most diverse legal teams in the Bay Area, mirroring the diversity of the community we serve.

COST OF LEGAL SERVICES

In FY 2000-2001, the OCA had operating costs of \$8.7 million, representing 1.1% of the City budget. In addition, the cost of outside counsel was \$2.3 million, and other legal fees pertaining to litigation (i.e., expert witnesses, depositions, and exhibits) cost \$1.2 million. The total cost of providing legal services to the City of Oakland in 2000-2001 was \$12.2 million, or 1.6% of total City expenditures. This percentage is consistent with the expenditure for legal services in cities of similar size facing similarly complex legal issues.

According to the U.S. Department of Labor, Bureau of Labor Statistics, the Consumer Price Index (CPI) for legal services nationwide has increased 20% over the past five years. The cost of legal services purchased by the City of Oakland in the form of hiring outside counsel shows an even sharper upward trend. Since 1996, Oakland's outside legal counsel costs have nearly doubled, rising an average of 20% per year, as shown in **Figure 1**.

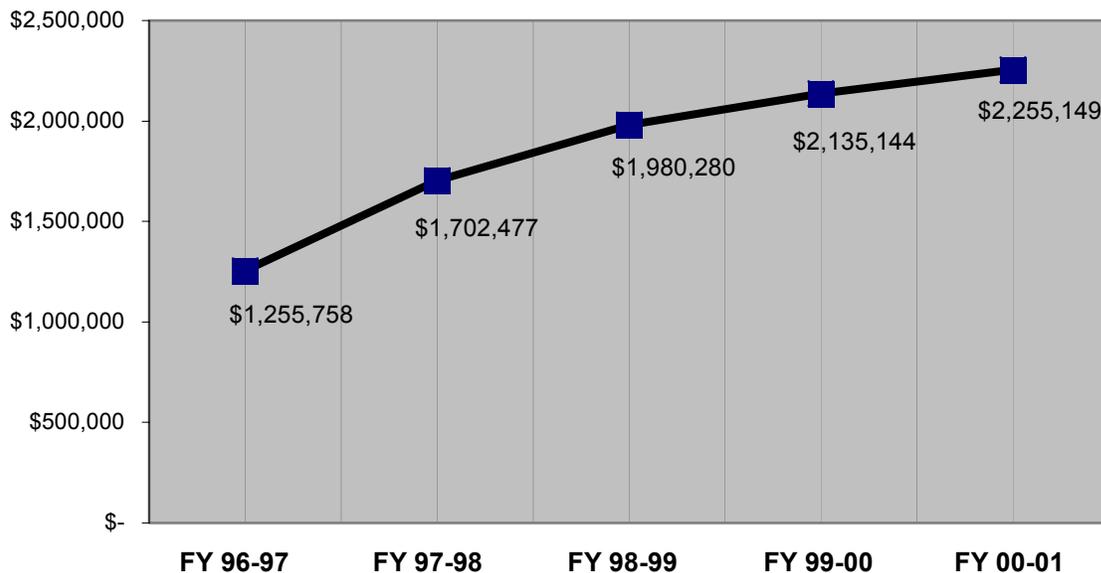


Figure 1: Outside Counsel Costs By Fiscal Year

To meet the significant and growing demand for legal services, it was imperative during FY 2000-2001 to control the per-unit cost of service delivery. This was achieved by hiring more in-house attorneys, thus building long-term institutional capacity and reducing reliance on expensive outside counsel.

A comparison of average hourly rates presented in **Figure 2** shows that hiring outside legal counsel costs the City nearly double what an in-house attorney costs, including support and administrative overhead.

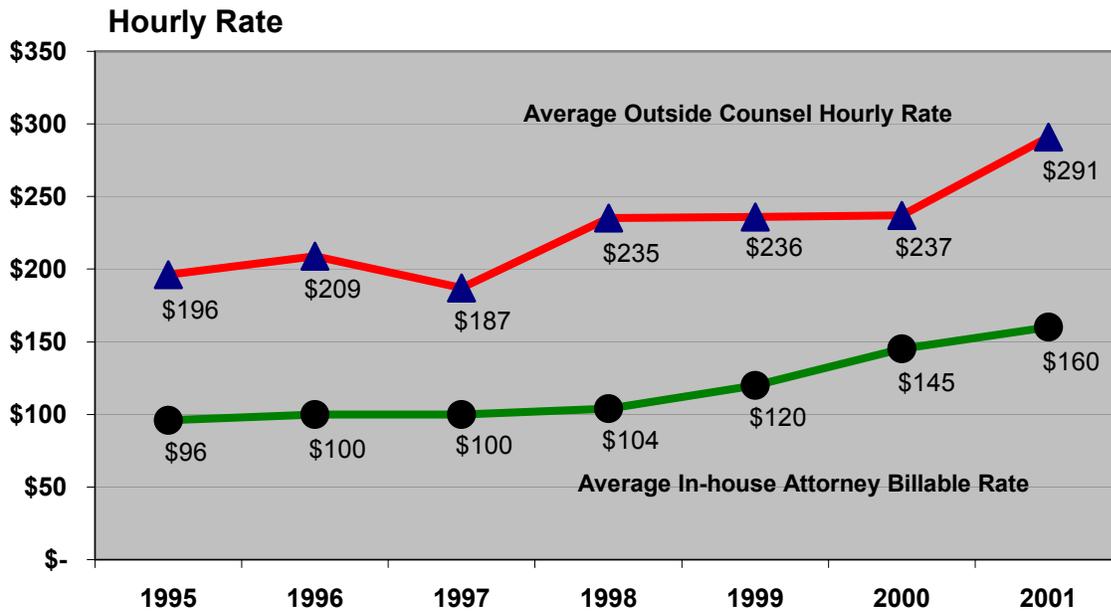


Figure 2: Comparative Cost: In-house Services vs. Outside Counsel

A comparison of figures 1 and 2 shows that between 2000 and 2001, the hourly rate to hire outside counsel spiked 23%, yet the total cost of outside counsel services in FY 2000-2001 increased only 6%, reflecting the success of OCA in containing these costs by improving management of outside counsel.

This long-term cost containment strategy was also achieved by hiring 11 new attorneys possessing a broad range of specialized skills to enhance the expertise of the existing legal team. The OCA retained outside counsel on projects requiring niche-area specialists to address highly complex legal issues, on conflict of interest matters, or where the day-to-day demand for focused expertise did not warrant hiring an in-house attorney over the long run.

MANAGEMENT AUDIT

In September 2000, the City Attorney commissioned a management audit to evaluate the existing operational practices, organizational structure, staffing levels and physical plant to identify opportunities for change that would improve organizational efficiency and enhance service delivery, thereby improving the Office's overall cost-effectiveness.

As a result of the audit, the OCA took the following steps to be more responsive to our clients' needs and enhance the delivery of legal services:

- Created new Departmental Counsel positions to serve two of our largest clients—the Police Department and the Public Works Agency—with a focus on managing potential risks and being proactive to avoid lawsuits.
- Reorganized staff into five functional practice areas (see below) to maximize coordination, teamwork and cross training, and to streamline service delivery.
- Hired a managing attorney, consistent with the private sector model, who is responsible for integrating all office functions, achieving operational efficiencies, allocating legal

resources to meet our client’s service needs, and managing the overall cost of providing legal services.

ALLOCATION OF LEGAL RESOURCES

In fiscal year 2000-2001, in keeping with City Council priorities and to meet the demand for legal services, in-house attorneys, paralegals and investigators spent approximately 70,000 staff hours delivering legal services in seven categories, as shown in **Figure 3**.

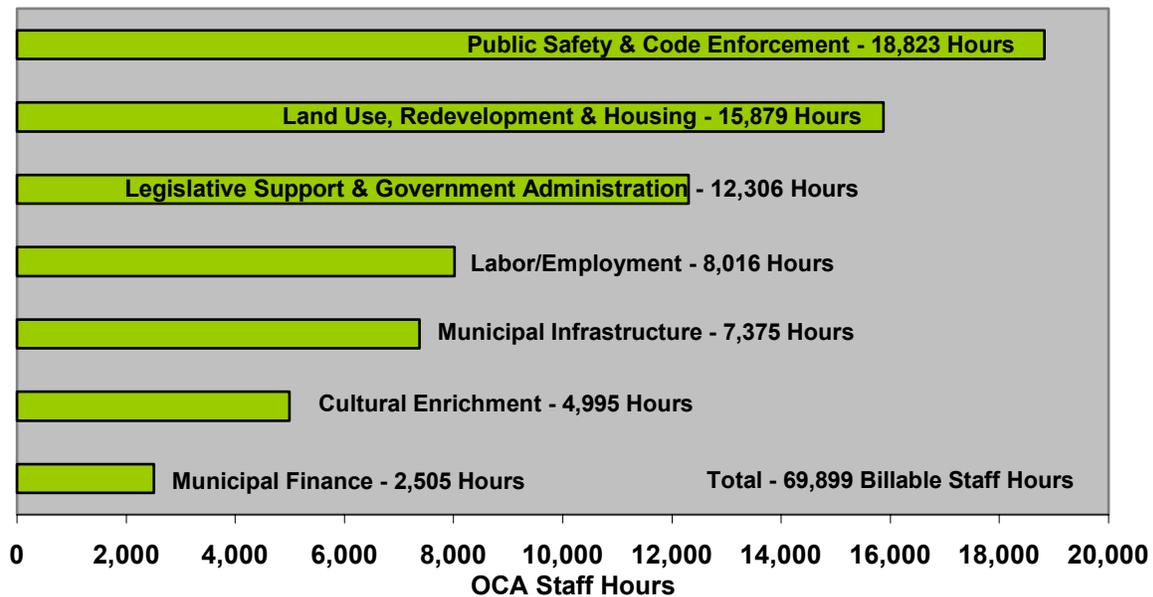


Figure 3: Delivery of Legal Services

The greatest demand for services arose out of the *Public Safety & Code Enforcement* category, which includes legal support to the Police Department, Fire Department, “Operation Beat Feet” vehicle seizure program, enforcing the City’s building and zoning codes, liens, and drug nuisance abatement matters.

Land Use, Redevelopment & Housing includes the 62 economic development and redevelopment projects currently in the City’s pipeline, real estate negotiations, General Plan and zoning support, and the Oakland Housing Authority.

Legislative Support & Government Administration includes legal services for the City Council, the Mayor, boards and commissions, contract compliance and Americans with Disabilities Act (ADA) compliance.

Municipal Infrastructure includes legal support in the areas of public works (streets, sewers, drainage, traffic engineering, vehicle accidents) and information technology.

Cultural Enrichment includes the Oakland Museum, libraries, parks and recreation, public art, Chabot Space and Science Center, and health and human services.

Municipal Finance includes budget, taxation and special assessments, revenue collections, and citations.

Labor & Employment includes legal support on labor issues, employee relations, training on City employment policies, and representing the City's interests in labor arbitration, employment hearings, and employment litigation.

The OCA endeavors to provide legal services using in-house attorneys whenever possible. Nevertheless, outside counsel must be retained in the event of a conflict of interest (i.e., for personnel issues pursuant to union agreements or for complaints regarding the Public Ethics Commission) and in complex matters involving highly specialized expertise. **Figure 4** depicts the categories requiring outside counsel in FY 2000-2001.

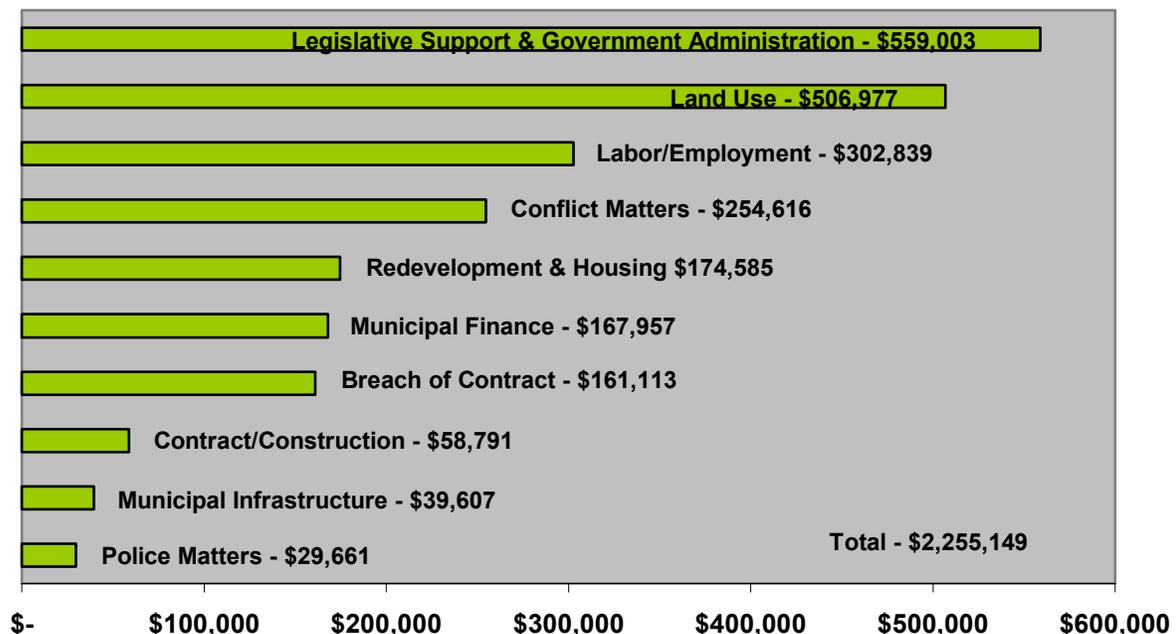


Figure 4: Outside Counsel Costs By Category

LEGAL SERVICES BY PRACTICE AREA

To better serve our clients' needs and based on recommendations by an outside management auditor, OCA re-organized into five practice areas during fiscal year 2000-2001. These include:

1. Land Use, Redevelopment and Housing
2. General Government and Finance
3. Public Safety and Code Enforcement
4. Labor/Employment
5. Claims and Litigation

Figure 5 shows the number of attorneys assigned to each practice area.

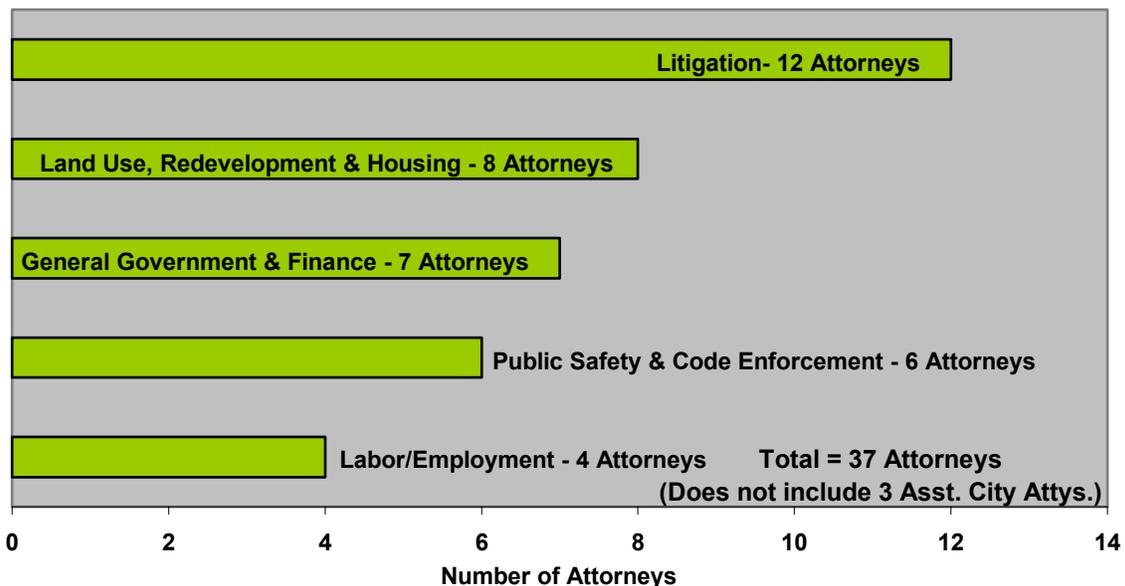


Figure 5: Attorneys Assigned to Practice

This section describes the role of each of these practice areas and presents highlights of their major accomplishments during FY 2000-2001.

Land Use, Redevelopment and Housing

Attorneys in this practice area contribute to Oakland’s economic revitalization by providing legal advice to the City regarding land use, real estate, housing, and economic development projects; and providing counsel to City Council committees, the Planning Commission, and the Oakland Housing Authority (under contract).

Highlights of Major Projects and Accomplishments

- “10K Downtown” strategy
- Uptown Redevelopment Area
- 80 economic development contracts
- Montgomery Ward demolition litigation
- Oakland Army Base and Broadway/MacArthur/San Pablo redevelopment plans
- Rent Arbitration Ordinance
- All major housing and commercial projects, such as Amtrak Maintenance Facility, Durant Square, Habitat for Humanity’s 82nd Avenue residential project, Just Desserts manufacturing facility, Housewives Market Residential Project, Bridge Housing Projects, Green City loft project, and Kaiser Center office tower.

General Government and Finance

Attorneys in this practice area provide training on conflict of interest rules, campaign laws, ethics, and complying with Open Government legislation such as Oakland’s Sunshine

Ordinance, the Brown Act (open meetings law), and the California Public Records Act. They also provide tax, bond, and finance-related advice; provide advice on public contracting and purchasing; draft and review construction, software, purchasing, professional services, and other agreements; and provide counsel regarding telecommunications, utility-related matters, film and education issues, and bankruptcy matters.

Highlights of Major Projects and Accomplishments

- Initiated City's first Open Government Program to monitor public records requests served on the City and facilitate access to timely and accurate information for Oakland citizens.
- Conducted numerous trainings for City staff and members of various boards and commissions on Open Government laws, ethics and campaign laws.
- Defended Oakland's interests during PG&E power crisis by filing legal documents with the California Public Utilities Commission.
- Represented Oakland in Public Utilities Commission proceedings pertaining to the undergrounding of electrical utilities.
- Developed lease agreement for non-profit organizations at Alice Arts Center.

Public Safety and Code Enforcement

Attorneys in this practice area use code enforcement and other actions to obliterate blight and improve the quality of life in Oakland's neighborhoods. Cases involve drug nuisance abatement, enforcement of the City's building and housing codes, the "Operation Beat Feet" vehicle seizure program, ensuring compliance with alcohol and hotel/motel permit requirements, and working with the courts to rehabilitate substandard and/or vacant properties using third-party receivers.

Highlights of Major Projects and Accomplishments

- Successfully defended the City's aggressive blight ordinance against a constitutional attack.
- Shuttered a long-standing drug house and worked with the U.S. Attorney's Office to force the property owners to forfeit the property as a permanent solution.
- Obtained an injunction against the owner of substandard apartment to provide relocation benefits to displaced tenants in an effort to uphold standards of decent and fair housing.
- Initiated legal proceedings against a liquor store and a nightclub, mitigating nuisance activities at the properties.
- Won a court order to close the severely substandard Star Hotel.
- Obtained cooperation from Motel 6 to eliminate drug, prostitution and other illegal activities at its East Oakland property.
- Withstood a challenge in California Court of Appeals to the legality of the "Beat Feet" ordinance.
- Under "Beat Feet" program, seized 65 vehicles used in buying drugs or soliciting prostitution and collected \$70,256 in settlements and proceeds from vehicles sold.
- Completely rehabilitated three blighted, substandard properties; rehabilitation of three additional long-standing public nuisance properties is underway.
- Continued advocating the City's medical cannabis distribution policy by filing amicus briefs in Federal courts of appeal.

Labor/Employment

Attorneys in this practice area provide legal counsel and staff training to City departments concerning personnel issues, disciplinary matters, medical leave, disability laws, harassment, and fitness-for-duty. They also provide legal services to the Citizens' Police Review Board,

Civil Service Board, and retirement boards. This practice area is responsible for providing legal advice in labor negotiations and representing the City in disciplinary and contract interpretation grievances.

Highlights of Major Projects and Accomplishments

- Developed and delivered sexual harassment training to more than 400 City employees, including executives, supervisors and non-managerial employees.
- Provided training on the Americans with Disabilities Act, Fair Employment and Housing Act, the California Family Rights Act, and employee discipline.
- Worked on procedures and information packets related to requests for disability-based and religious accommodations.
- Participated in police and fire labor negotiations.
- Represented the City in numerous arbitration hearings.

Claims and Litigation

Claims investigators and attorneys in this practice area aggressively defend the City's interest to minimize the amount of money the City pays to resolve claims and lawsuits. The City of Oakland is self-insured up to \$2 million per case on all but a very few of the claims filed against it. This means that every dollar spent on claims and lawsuits is a dollar that is not available for other community services.

As shown in **Figure 6**, in fiscal year 2000-2001, staff spent about 32,000 staff hours handling claims and lawsuits. Over half of these staff hours were dedicated to handling matters related to police and municipal infrastructure (sewers, drainage, streets). This underscores the importance of assigning Departmental Counsel to the Police Department and Public Works Agency to assist these agencies in identifying, managing, and to the extent possible, eliminating risks before they result in claims or lawsuits.

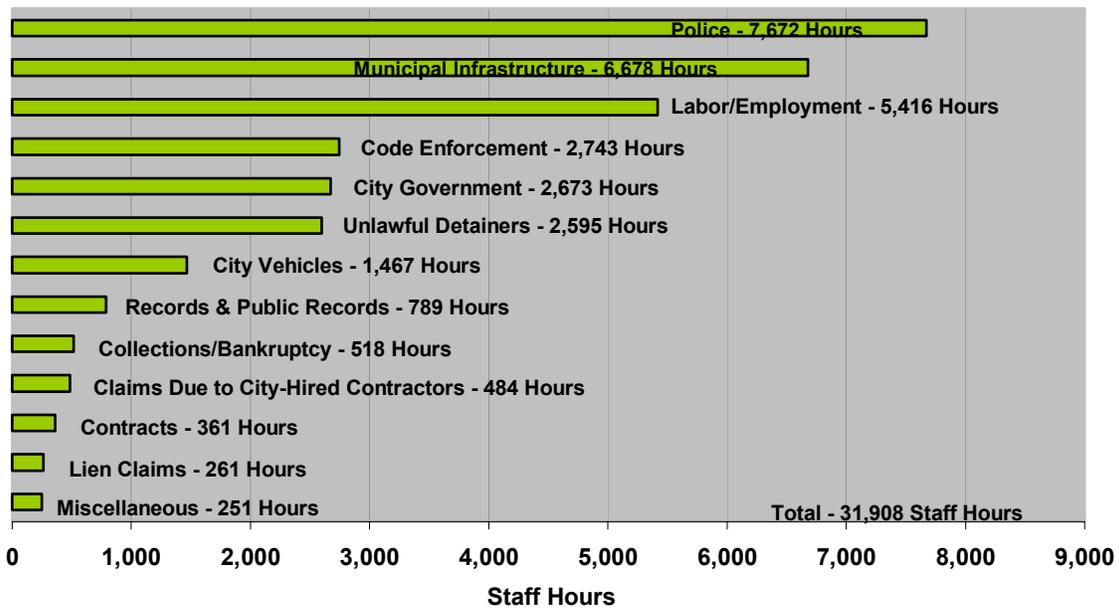


Figure 6: Staff Hours to Handle Claims and Lawsuits

Claims

In fiscal year 2000-2001, about 1,000 claims were filed against the City of Oakland—that’s one claim every two business hours. As shown in **Figure 7**, almost half of these claims involved municipal infrastructure issues (i.e., streets, sewers, sidewalks), and about a quarter arose from police matters (primarily conduct cases).

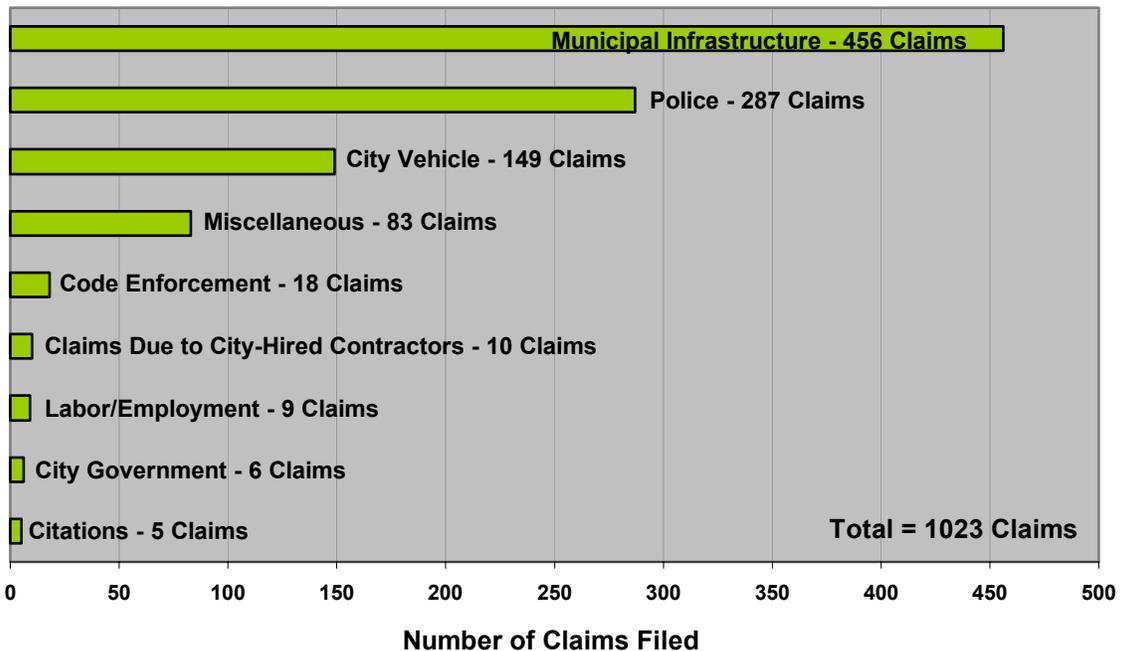


Figure 7: Claims Received By Category

Figure 8 shows that 78% of the claims resolved in fiscal year 2000-2001 were resolved with zero payout, and 20% were settled for under \$5,000. About 1% was resolved between \$5,001 and \$25,000, and less than ½% of the claims resulted in a payout over \$25,000. A total of \$641,677 in claims was paid without pending litigation.

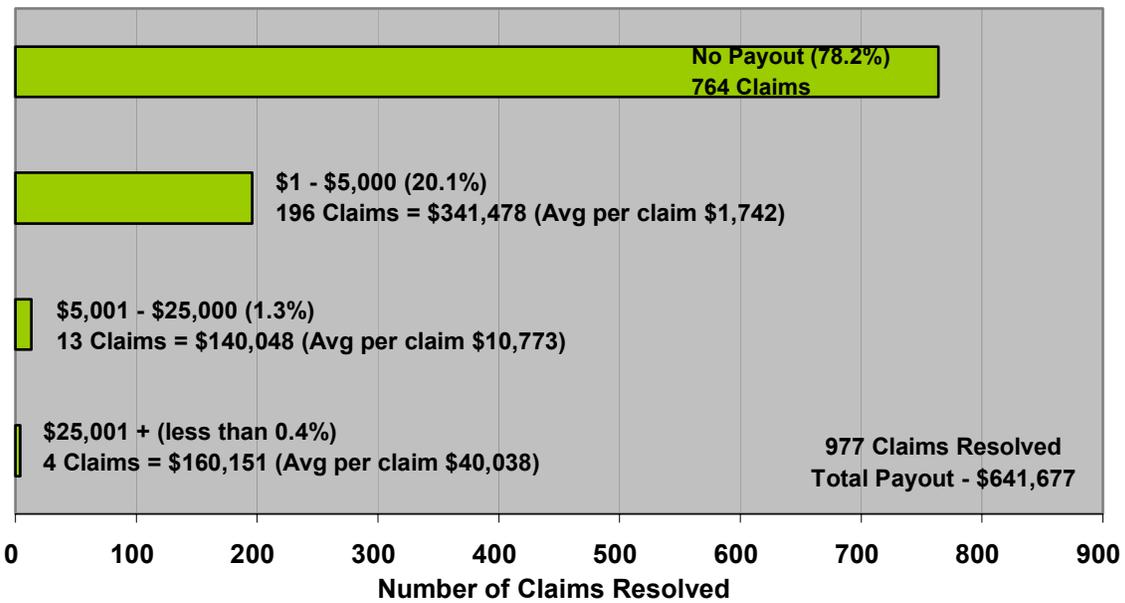


Figure 8: Summary of Claims Results

Figure 9 depicts the importance of aggressively managing potential liability at the claims stage. Of the claims arising from incidents occurring in 2000, less than 10% evolved into lawsuits. Although the number of claims received has remained fairly constant over the past five years, there is a downward trend in the number of claims which evolve into lawsuits, reflecting the success of our strategy to thoroughly investigate and adjust claims in a timely and aggressive manner.

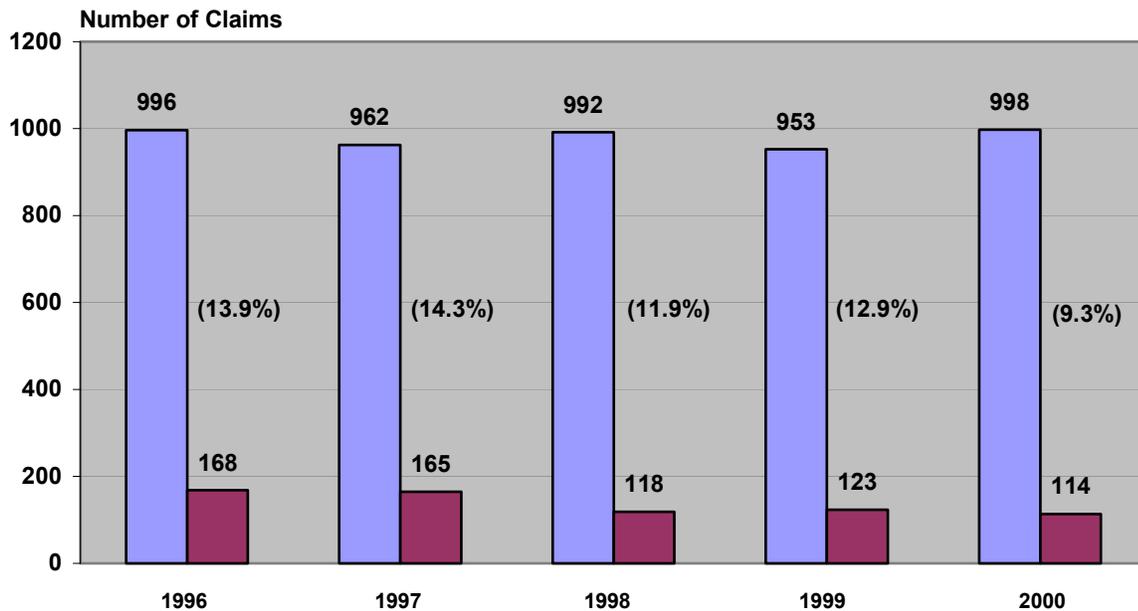


Figure 9: Claims Which Evolved Into Lawsuits By Year of Incident

Lawsuits

In litigation, winning cases is only one measure of success. Our legal team takes an aggressive and strategic approach to limit the City's exposure on lawsuits. Tactics include settling meritorious claims where there is clear liability early to avoid higher costs of defense and discourage plaintiffs' attorneys from needlessly litigating to increase their fees, and filing motions to dismiss defendant employees and causes of action, thereby narrowing the scope of the defense and reducing litigation costs.

Employing these aggressive strategies has paid significant dividends. The estimated exposure of the cases resolved in FY 2000-2001 was \$8.8 million, yet OCA resolved these cases for \$6.4 million, thereby saving the City **\$2.4 million** which could be used for other City services.

In fiscal year 2000-2001, 201 lawsuits or administrative matters were filed against the City of Oakland, as shown in **Figure 10**. About a third of these cases involved police matters, and about a quarter involved municipal infrastructure/dangerous conditions.

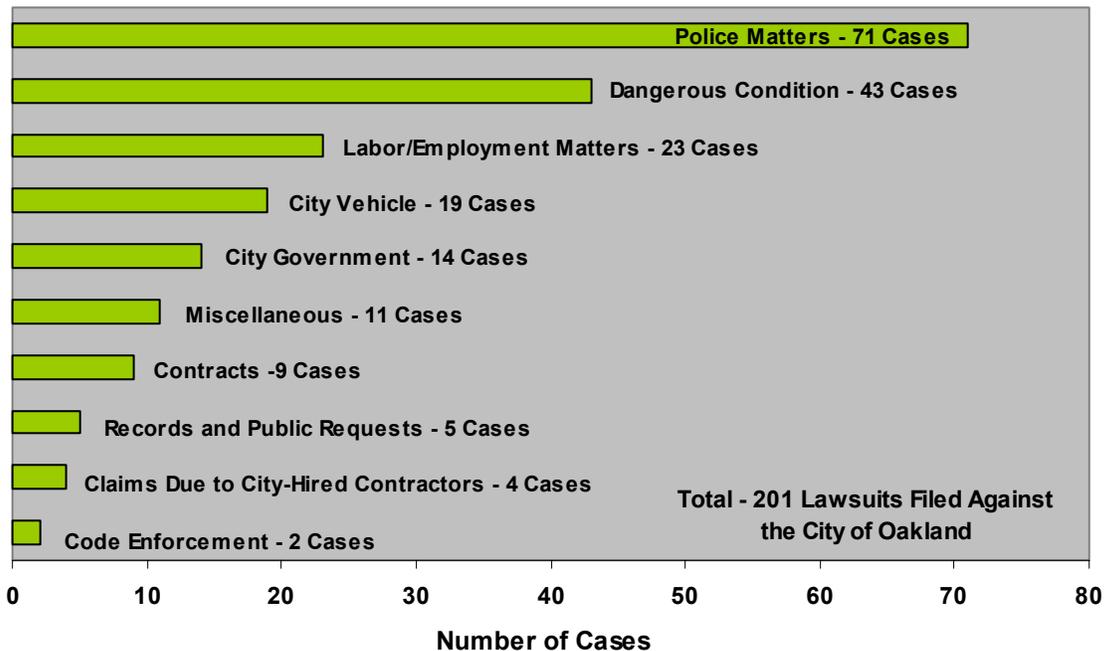


Figure 10: Lawsuits Received

Looking at a historical perspective, the 201 lawsuits against the City in FY 2000-2001 represent a 20% decrease over the previous year. Nevertheless, the number of lawsuits filed against the City remains fairly consistent over time, as shown in **Figure 11**.

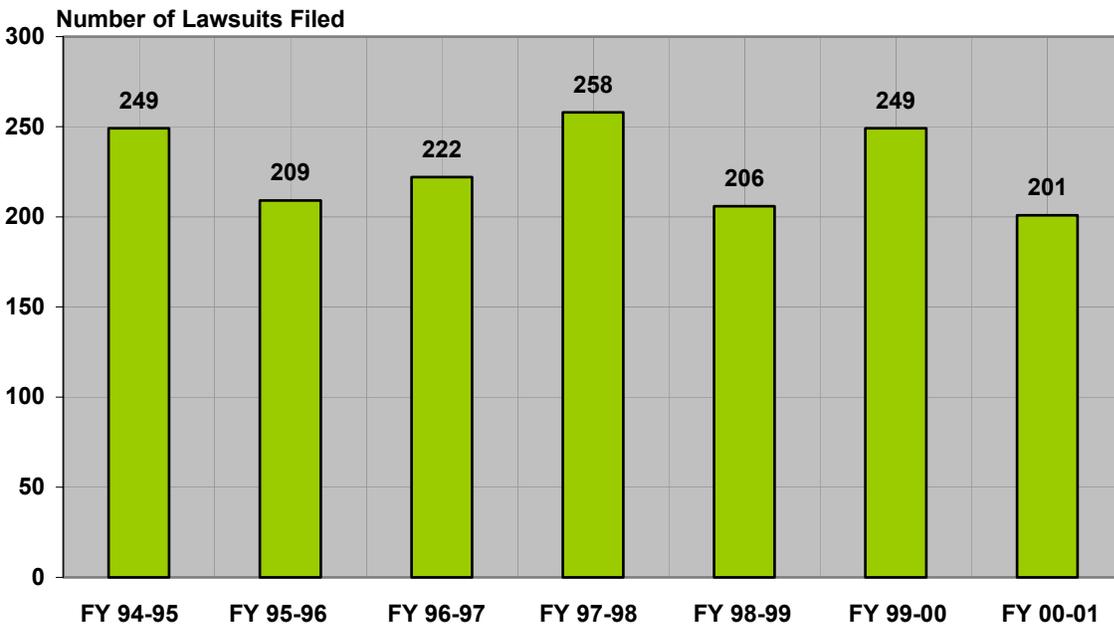


Figure 11: Lawsuits Filed Against City Since FY 1994-1995

In FY 2000-2001, 71 of the 201 lawsuits filed against the City involved police matters. Eight of these cases involving 73 plaintiffs stem from the Riders matter. **Figure 12** gives a historical comparison of the number of lawsuits involving police matters since FY 1994-95.

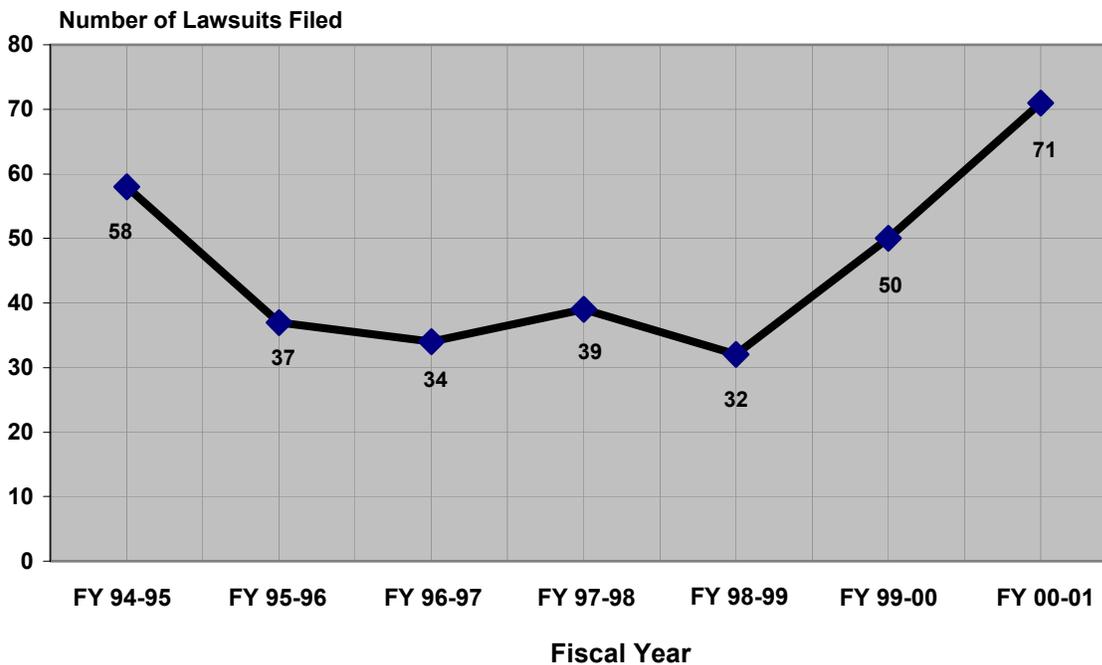


Figure 12: Lawsuits Filed Involving Police Matters Since FY 1994-1995

Nearly 50% of the 174 lawsuits OCA defended and resolved in fiscal year 2000-2001 resulted in zero payout. As shown in **Figure 13**, 81% of the cases were resolved for under \$25,000. Total lawsuit payout was \$6.4 million.

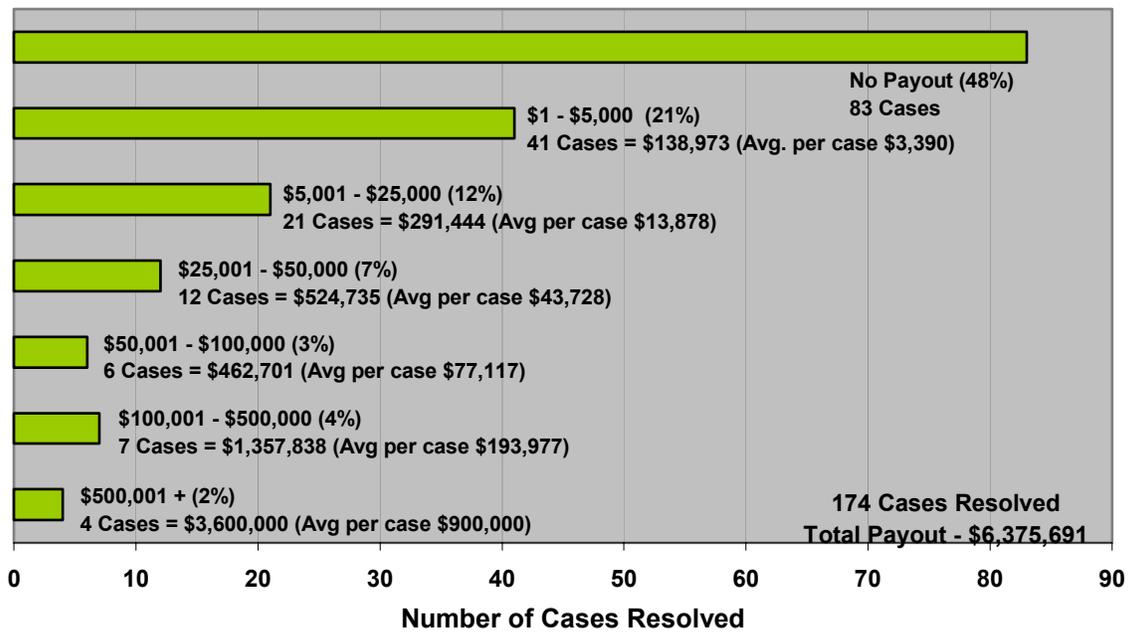


Figure 13: Results of Lawsuits Received

OCA also initiates lawsuits or other legal actions in order to protect the City’s financial interests, prosecute violations of our civil laws, or prevent infringement on or damage to the City’s rights or quality of life.

In fiscal year 2000-2001, the City filed 179 actions, as shown in **Figure 14**. Many of these matters involved conducting evictions for the Oakland Housing Authority. Over a third of the cases involved seizing vehicles used in the solicitation of drugs or prostitutes under the City’s “Operation Beat Feet” program.

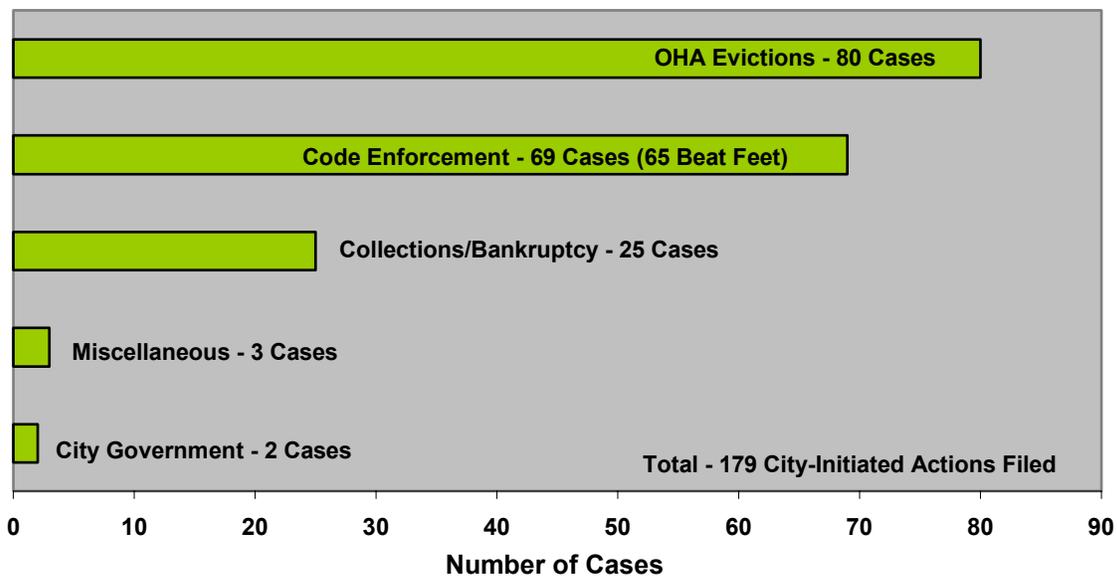


Figure 14: City-initiated Matters

During fiscal year 2000-2001, the Office of the City Attorney resolved 160 City-initiated matters (lawsuits and administrative actions), resulting in the collection of \$433,526, as shown in **Figure 15**. The largest collection came from the settlement of a breach of contract matter for \$325,000. The “Operation Beat Feet” program yielded \$70,256, and aggressive code enforcement actions netted the City \$25,000.

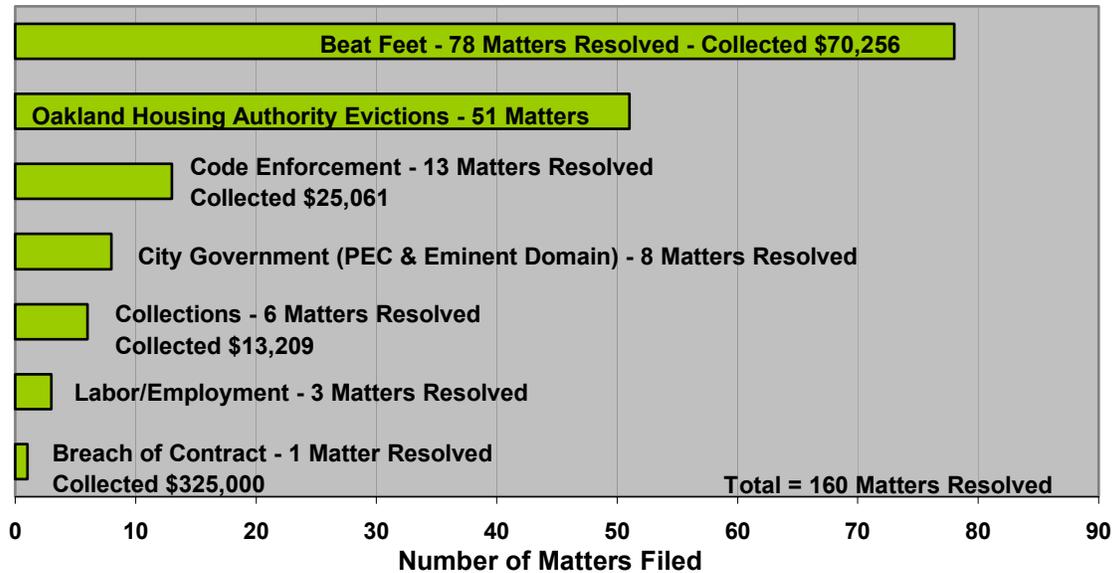


Figure 15: Results of City-initiated Matters

Highlights of Major Projects and Accomplishments

- Saved the City \$5.5 to \$27 million by successfully defending the City’s interests in a case involving payment of retirement benefits for police officers and firefighters.
- Won a jury verdict vindicating two police officers in an excessive force case.
- Won a unanimous federal jury verdict upholding the objectivity and fairness of the City’s hiring practices in a reverse discrimination lawsuit.
- Won an appeal allowing the City and the Oakland Unified School District to proceed with plans to build a new elementary school at the former Montgomery Ward site.
- Joined San Francisco and Santa Clara County in a lawsuit against lead paint manufacturers charging them with fraud and negligence. The suit contends that the lead paint industry callously and knowingly deceived consumers about the deadly effects of lead, particularly on children, for nearly a century, and that local governments are now stuck with a multi-million dollar bill to clean up public property and schools.
- Defended the City’s landmark anti-predatory lending ordinance against a challenge by the subprime lending industry.
- Settled a lawsuit restricting billboards advertising tobacco and alcohol in order to protect the health and safety of children and to discourage underage drinking and smoking.
- During the peak of the energy crisis, joined the State of California in a lawsuit against the Federal Energy Regulatory Commission demanding that they fulfill their statutory obligation to ensure “just and reasonable” energy rates.
- Won an appeal overturning a ruling by the Fair Political Practices Commission that would have disqualified Mayor Jerry Brown from participating in redevelopment decisions downtown due to his ownership of property in the downtown area.

ONGOING COMMUNITY INITIATIVES

In addition to enhancing the delivery of legal services to our clients and managing the rising cost of delivering these services, OCA has launched several important community initiatives. These initiatives serve as the cornerstone of our public commitment to accountability, provide Oakland citizens with greater access to city government, and enhance legal services at the neighborhood level.

Open Government Program and Guide

The Open Government program is designed to preserve the public's right to information about city government and enhance the opportunity for community participation in local decision making. In the fall of 2001, OCA developed a user-friendly guide to local and state laws governing open meetings and public records.

Enhanced Communication

One of our highest priorities is to enhance two-way dialogue with the community. In the fall of 2001, OCA launched a new Web site to increase the public's accessibility to information about our office. OCA also plans to turn this annual report into a Community Report Card to expand the reporting of our accomplishments and objectives each fiscal year.

Neighborhood Law Corps

The Neighborhood Law Corps is a unique, innovative community lawyering program that will launch in early 2002. These attorneys will focus on three community issues: blight and housing code violations, toxic pollution, and consumer education. Designed to be proactive, neighborhood based, and community directed, the Neighborhood Law Corps will bring resources and remedies into the community to address and solve problems early on before they become embedded, long-term issues. While the Neighborhood Law Corps represents the City of Oakland, it will work in collaboration with residents, neighborhood and merchant groups, and other public agencies to improve the quality of life in our community.

Megan's Law

The Office of the City Attorney, in partnership with the Oakland Police Department and the Oakland Unified School District, joined in a community outreach campaign to use Megan's Law as a tool to protect our children from molesters and abductors. Information packets about how to use Megan's Law were distributed in four languages to parents of over 50,000 school children in March 2001.

Hate Crimes Program

Following devastating terrorist attacks in September 2001, OCA created an innovative program to punish hate crimes using California civil codes. One of our attorneys, who managed the Hate Crimes Unit in the San Francisco District Attorney's Office before coming to Oakland, set up panels of outside attorneys to respond to complaints pro bono. We distributed over 2,000 posters to shops and small businesses proclaiming Oakland as a hate-free zone and monitor a toll-free, confidential hotline for people to report incidents.

Respectfully submitted,

John A. Russo
City Attorney

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