

**CITY OF OAKLAND**  
*COUNCIL AGENDA REPORT*

**TO:** Finance and Administrative Services Committee  
**ATTN:** Chairperson, Danny Wan  
**FROM:** John Russo, City Attorney  
**DATE:** September 17, 2002  
**RE:** Office of the City Attorney's Annual Report, Fiscal Year 2001-2002

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## **1.0 INTRODUCTION**

In the Office of the City Attorney, our guiding philosophy—**law in service of the public**—shapes our approach to providing legal services to the City of Oakland. We believe 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.

The purpose of this Annual Report is to summarize the major achievements of the Office of the City Attorney (OCA) during the last fiscal year (FY 2001-2002) and to highlight our ongoing community-impact initiatives. This report presents the following:

- **Section 1.0**—Background and Office Profile
- **Section 2.0**—Financial Analysis
- **Section 3.0**—Allocation of Legal Resources
- **Section 4.0**—Management of Claims and Litigation
- **Section 5.0**—Highlights of Major Projects by Practice Area
- **Section 6.0**—Community Initiatives
- **Section 7.0**—Community Impact Litigation
- **Section 8.0**—Conclusion

### **1.1 Background**

Fiscal year 2001-2002 marked the first full year OCA operated under an elected City Attorney. During the course of the year, many of the significant organizational and operational changes enacted the previous fiscal year (FY 2000-2001) began to germinate and yield predicted and positive results.

By way of background, the overriding objective during the previous fiscal year (FY 2000-01) was to initiate a long-term cost-containment strategy that would bear fruit over time. Emanating from the recommendations of a management audit conducted in September 2000, this strategy included the following key tactics:

- Hiring 11 new attorneys possessing a broad range of specialized skills to enhance the expertise of the existing legal team, thus building long-term institutional capacity and reducing reliance on costly outside counsel;

- Creating new Departmental Counsel positions to serve two of our largest clients—the Police Department and the Public Works Agency—with a focus on managing risk and liability;
- Reorganizing staff into five functional practice areas to maximize coordination, teamwork and cross training, and to streamline service delivery;
- Hiring a managing attorney, consistent with the private sector model, who is responsible for integrating office functions and achieving operational efficiencies.

These tactics implemented in the previous fiscal year (FY 2000-01) established a foundation of cost containment, enhanced efficiency and increased effectiveness. The goal for FY 2001-02 was to build upon these achievements and allow the significant changes put into place to take root. The full effect of this long-term strategy will not be apparent for another few years.

## 1.2 Office Profile

The Office of the City Attorney is proud to employ one of the most diverse legal teams in the country, mirroring the diversity of the community we serve. At the close of FY 2001-02, OCA was staffed by 83 dedicated professionals:

- 44 attorneys (including the City Attorney, 3 Assistant City Attorneys and 40 Deputy City Attorneys);
- 32 support staff (including legal secretaries, paralegals, clerks, claims investigators, and executive assistants);
- 7 operations staff (including budget, accounting, information technology, communications, personnel administration, and Open Government Program coordination).

## 2.0 FINANCIAL ANALYSIS

### 2.1 Cost of Legal Services

The total cost of providing legal services to the City of Oakland in FY 2001-02 was \$12.3 million, broken down as follows:

- |                                                                        |               |
|------------------------------------------------------------------------|---------------|
| • Operating costs (i.e., salaries, equipment, overhead):               | \$8.1 million |
| • Litigation expenses (i.e., expert witnesses, depositions, exhibits): | \$1.6 million |
| • Outside counsel costs:                                               | \$2.6 million |

Our actual expenditures of \$8.1 million, shown above as operating costs, came in \$700,000 under our appropriated budget for FY 2001-02 of \$8.8 million.

## 2.2 Management of Outside Counsel Costs

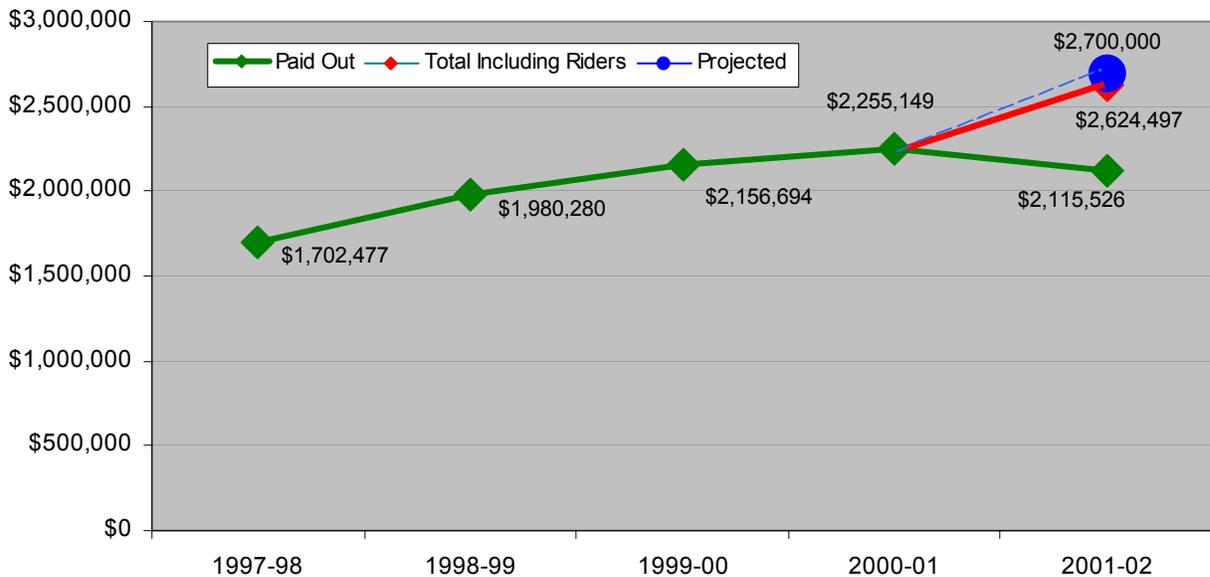
OCA endeavors to provide legal services using in-house attorneys whenever possible. Nevertheless, outside counsel must be retained in complex matters involving highly specialized expertise and in the event of a conflict of interest (i.e., for personnel issues pursuant to union agreements or for complaints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

In last year's Annual Report (FY 2000-01), OCA reported that since 1996, the cost to hire outside legal counsel had nearly doubled, rising an average of 20% per year. Without intervention, OCA projected that the cost of outside counsel for FY 2001-02 would have been \$2.7 million or more.

To curb this upward trend, OCA implemented the cost-containment tactics described in Section 1.1, specifically, hiring 11 new attorneys with specialized expertise in key practice areas, whose effective billable rates are almost 50% lower than outside counsel. In addition, augmenting in-house legal staff has built extensive institutional capacity to address complex and recurring legal issues.

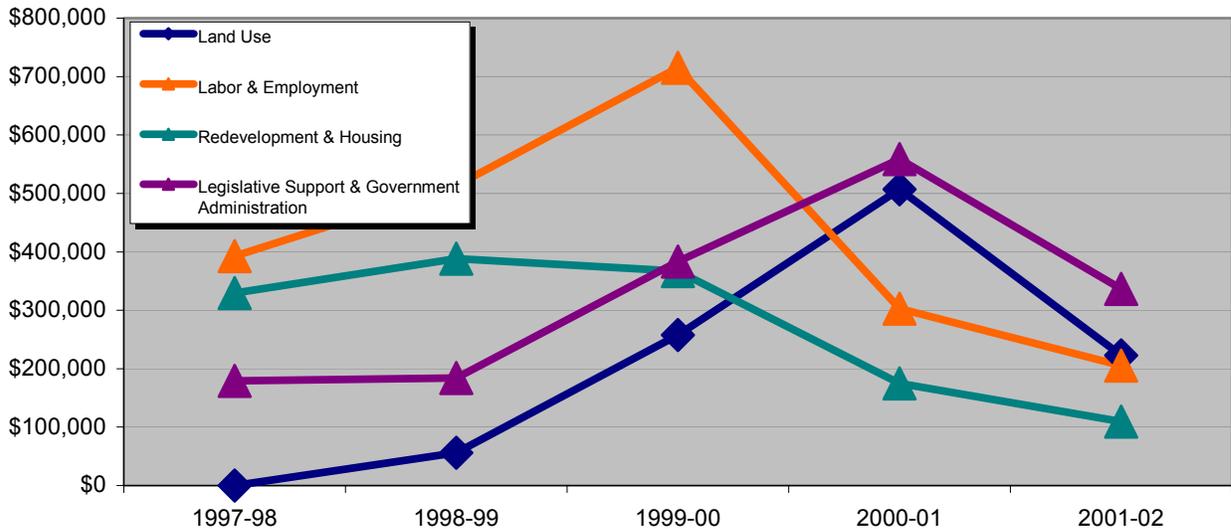
**Figure 1** shows that actual outside counsel costs for FY 2001-02 were \$2.6 million, just below the \$2.7 million projected. However, this \$2.6 million includes over a half-million (\$500,000) dollars in outside counsel costs related to the "Riders" police litigation, which is an anomalous, non-recurring case, the magnitude of which very few cities in the United States have ever experienced.

Discounting this outlying, one-time expenditure, outside counsel costs for FY 2001-02 would have been \$2.1 million, well below the projected \$2.7 million initially projected for this year. Containing outside counsel costs remains a top priority for OCA in the coming fiscal year.



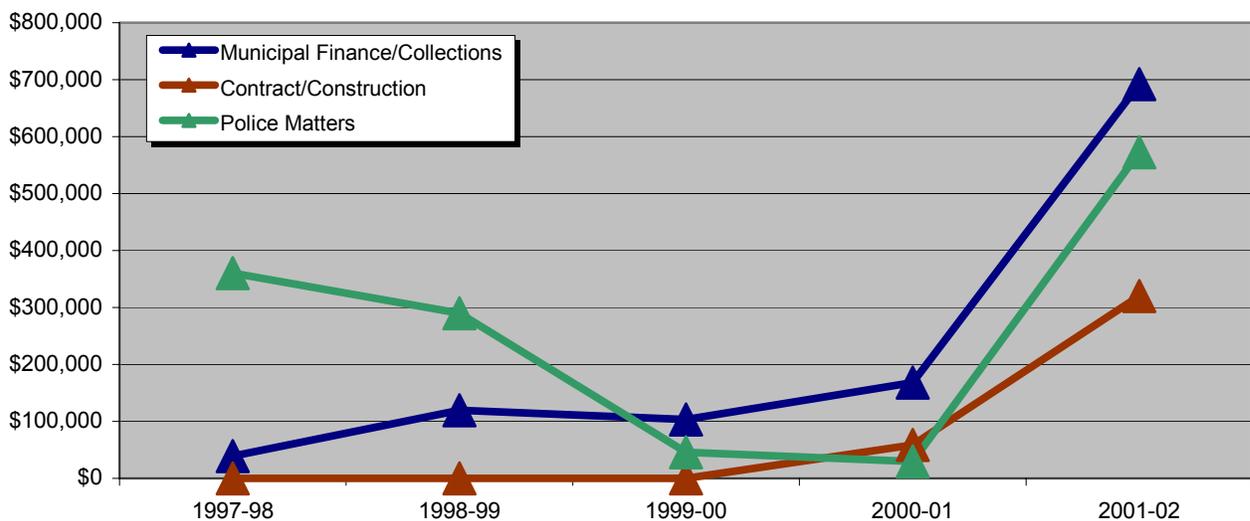
**Figure 1: Five-Year Trend in Outside Counsel Costs**

**Figure 2** demonstrates the effectiveness of hiring specialized attorneys in key practice areas to drive down the cost of outside counsel. After posting several years of sharp increases in the cost of outside counsel in the areas of labor/employment, land use, and legislative support and government administration, FY 2001-02 showed steep declines in outside counsel costs of approximately 78%, 55%, and 40% respectively.



**Figure 2: Downward Trend in Outside Counsel Costs**

**Figure 3** depicts sharp increases in the cost of outside counsel in three areas: municipal finance/collections, contract/construction, and police matters.

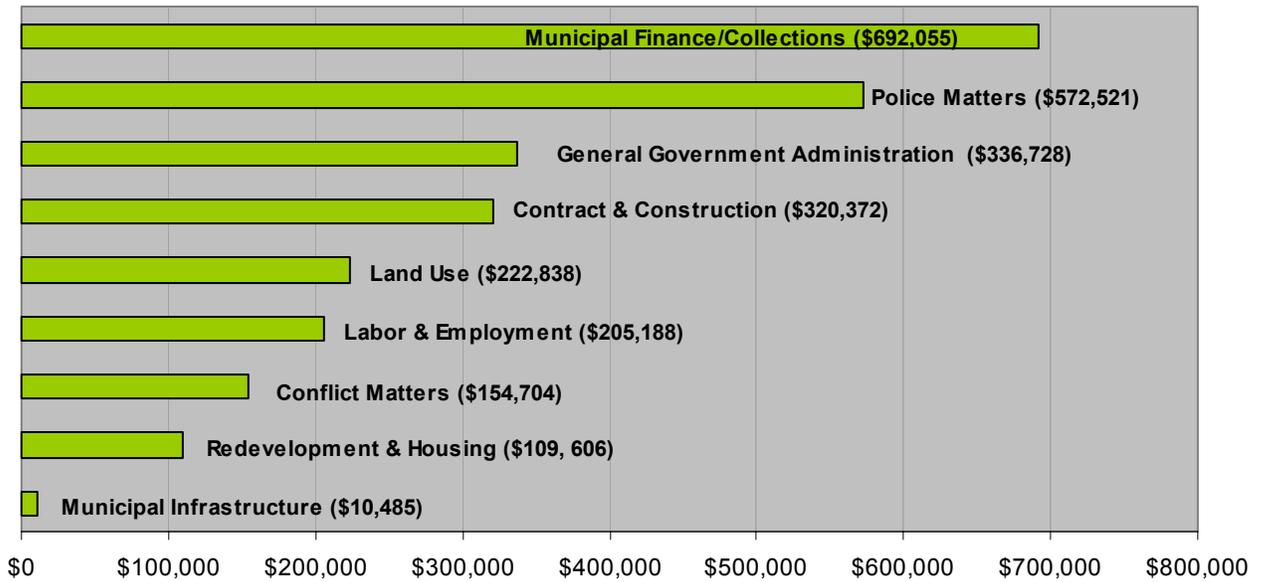


**Figure 3: Categories Requiring Increase in Outside Counsel**

In the area of municipal finance/collections, OCA hired outside counsel during FY 2001-02 to analyze and settle a complex business tax matter involving Federal constitutional questions and to aggressively pursue judgments for payment in defaulted loans made over the past 7 years by the City.

In the area of contract/construction, OCA hired outside counsel to provide specialized expertise to negotiate several, complex, multi-million dollar technology contracts in order to avoid contracting issues previously experienced by the City in this area. As a risk management strategy, over the last year OCA has enhanced its review of major contracts to reduce the City’s overall liability exposure.

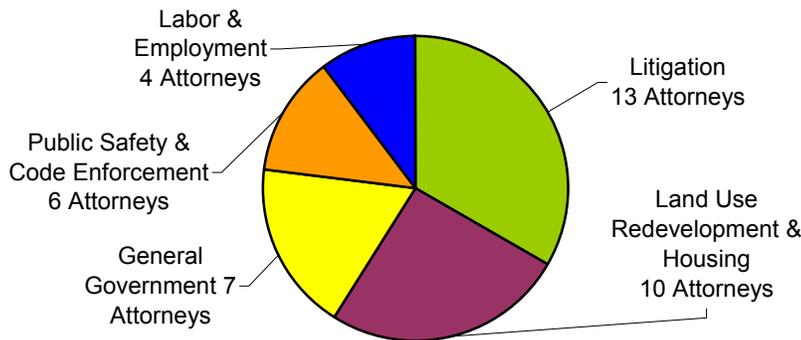
**Figure 4** depicts the types of matters requiring outside counsel in FY 2001-02.



**Figure 4: Outside Counsel Costs by Category 2001-02**

### 3.0 ALLOCATION OF LEGAL RESOURCES

As presented earlier, OCA is organized into practice areas to better serve our clients’ needs. **Figure 5** shows the number of attorneys assigned to each practice area.



**Figure 5: Allocation of Legal Resources**

The *Labor & Employment* unit provides 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, the 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.

The *Public Safety & Code Enforcement* unit attorneys 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.

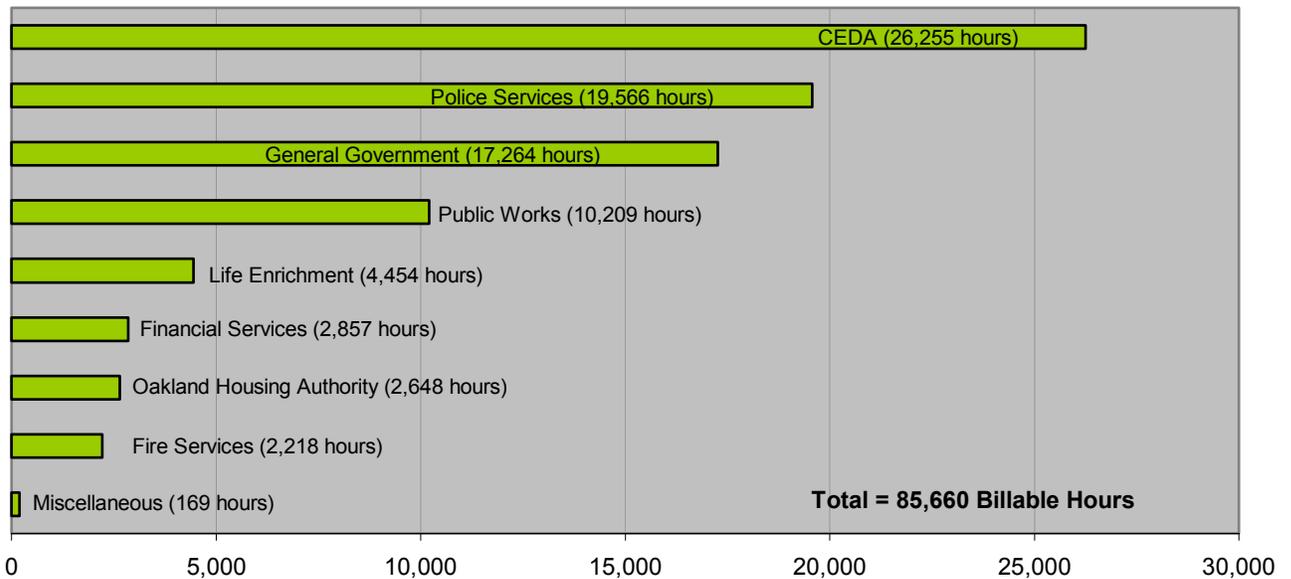
The *Land Use, Redevelopment & Housing* unit contributes to Oakland's economic revitalization by providing legal advice to the City regarding land use, real estate, housing, and economic development and redevelopment projects; providing General Plan and zoning support; and providing counsel to City Council committees, and the Planning Commission.

The *General Government* unit provides legislative and legal support to the City Council, the Mayor, and City boards and commissions. This unit provides tax, bond, and finance-related advice; drafts and reviews construction, software, purchasing, professional services, and other contractual agreements; and provides counsel regarding telecommunications and utility-related matters. The unit provides 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. General Government attorneys provide legal advice to numerous cultural enrichment facilities such as the Oakland Museum, libraries, parks and recreation, Chabot Space and Science Center, public art, and health and human services.

The *Litigation* unit defends the City in claims and lawsuits. More detail about this practice area is presented in Section 4.0.

### **3.1 Delivery of Legal Services**

In keeping with City Council priorities and to meet the demand for legal services, in-house attorneys, paralegals, and investigators spent approximately 85,660 staff hours delivering legal services to City departments, as shown in **Figure 6**. Although OCA does not directly bill time to these departments, internally we now closely track billable hours to manage our resources more effectively and contain legal costs.



**Figure 6: Billable Hours by Department**

### 3.2 Departmental Counsel

OCA has assigned Departmental Counsel to serve as a single point of contact for two of the City’s largest and highest liability-generating departments—the Police Department and the Public Works Agency—in order to streamline the delivery of legal services and provide better coordination between these departments and OCA. Highlights of their achievements this past fiscal year are described as follows.

#### ***Public Works***

In FY 2001-02, the primary focus of the Public Works Departmental Counsel was to conduct a thorough assessment of agency operations and identify ways to address the specific risk management factors involved in those operations.

To that end, Departmental Counsel established a new Streets & Sidewalks Risk Reduction Task Force to evaluate dangerous conditions risk factors and implement operational changes, including training and modification of procedures, to minimize the City’s liability associated with streets and sidewalks. The Task Force is currently investigating the Agency’s complaint-gathering and document-retention procedures and inspection and repair systems.

#### ***Police Department***

As the liaison between OCA and OPD, the Departmental Counsel for the Police Department has primarily focused during FY 2001-02 on the day-to-day defense of the Riders litigation. In this capacity, the Departmental Counsel has coordinated the defense and settlement strategy; worked with the consultants and the Office of Inspector General to draft and negotiate the departmental reform measures; and worked with the insurance defense counsel to secure funding for the settlement.

In addition to working on the Riders litigation, the Departmental Counsel:

- Provides training in the Police Academy and to supervisors and field-training officers.
- Advises on risk management policy issues, new general orders and procedures.
- Reviews officer-involved shootings for risk management purposes and tracks the daily incident log for potential lawsuits and risk management issues.
- Advises the departmental review boards on officer-involved shootings, vehicle pursuits, accidents, and use of force.

#### 4.0 MANAGEMENT OF CLAIMS AND LITIGATION

OCA’s claims investigators and attorneys aggressively defend the City and seek to minimize the City’s payouts for claims and lawsuits. Because the City of Oakland is self-insured, every dollar spent on claims and lawsuits is a dollar that is not available for other community services.

In FY 2001-02, OCA staff spent about 36,545 hours handling claims and lawsuits. About half these hours were dedicated to handling matters related to police conduct, municipal infrastructure (i.e., sewers, drainage, streets), and dangerous conditions (i.e., sidewalks). This underscores the importance of assigning Departmental Counsel to the Police Department and the Public Works Agency to assist these agencies in identifying, managing, and to the extent possible, eliminating risks before they result in claims and lawsuits.

#### 4.1 Claims

In FY 2001-02, 945 claims were filed against the City of Oakland—that’s about one claim every 2 business hours. Claims fell into three primary categories: municipal infrastructure (streets, sewers, sidewalks), police matters (primarily conduct cases) and accidents involving City vehicles. The percentage of claims received in each category during FY 2001-02 is consistent with claims trends over the past five years, as shown in the table below:

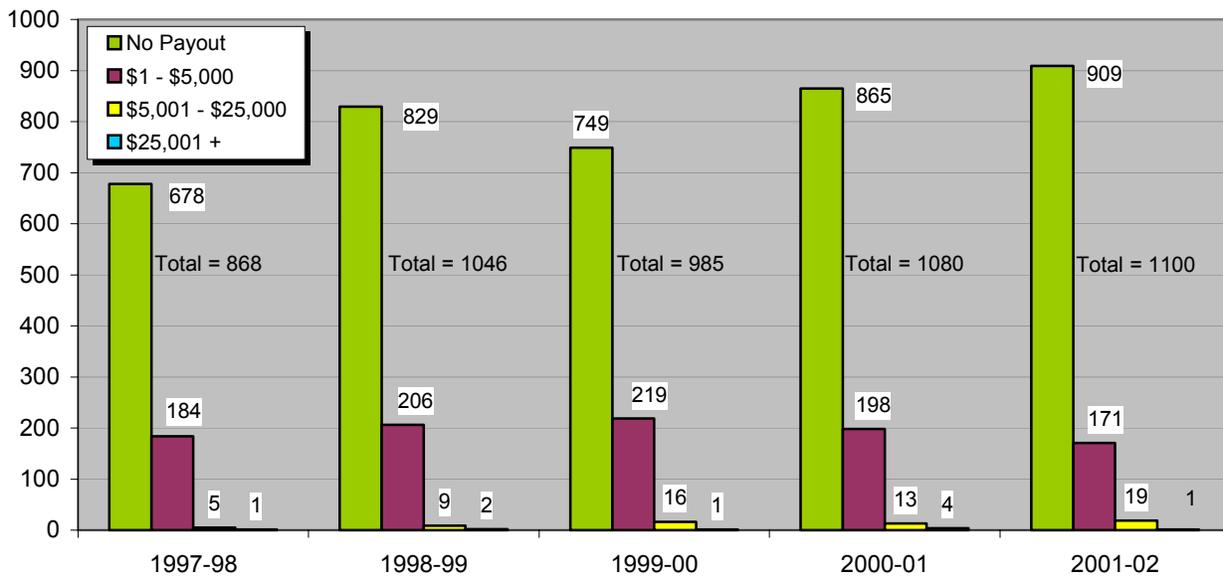
Type of Claims Received	1996-97	1997-98	1998-99	1999-00	2000-01	5-year average	2001-02
Municipal Infrastructure	453 45%	450 45%	446 48%	467 46%	458 44%	455 46%	415 44%
Police Matters	241 24%	200 20%	227 25%	233 23%	288 28%	238 24%	210 22%
City Vehicle Accidents	132 13%	142 14%	132 14%	164 16%	151 15%	144 14%	152 16%
<b>Total Claims/Year</b>	<b>1007</b>	<b>1005</b>	<b>926</b>	<b>1012</b>	<b>1034</b>	<b>997</b>	<b>945</b>

Looking at an historical perspective, the number of claims received by the City has remained relatively consistent over time. The 945 claims filed against the City in FY 2001-02 represent a slight decrease over the five-year average of 997 cases per year.

As shown in **Figure 7**, of the 1,100 claims resolved in FY 2001-02:

- 83% (or 909) were denied with zero payout,
- Nine out of 10 of the remaining claims were settled for under \$5,000,
- Fewer than 2% of the claims resulted in payouts between \$5,001 and \$25,000.
- Only 1 claim was resolved for over \$25,000 (a claim for damage resulting from a sewer back-up for \$182,950).
- A total of \$685,609 in claims was paid in FY 2001-02 without pending litigation.

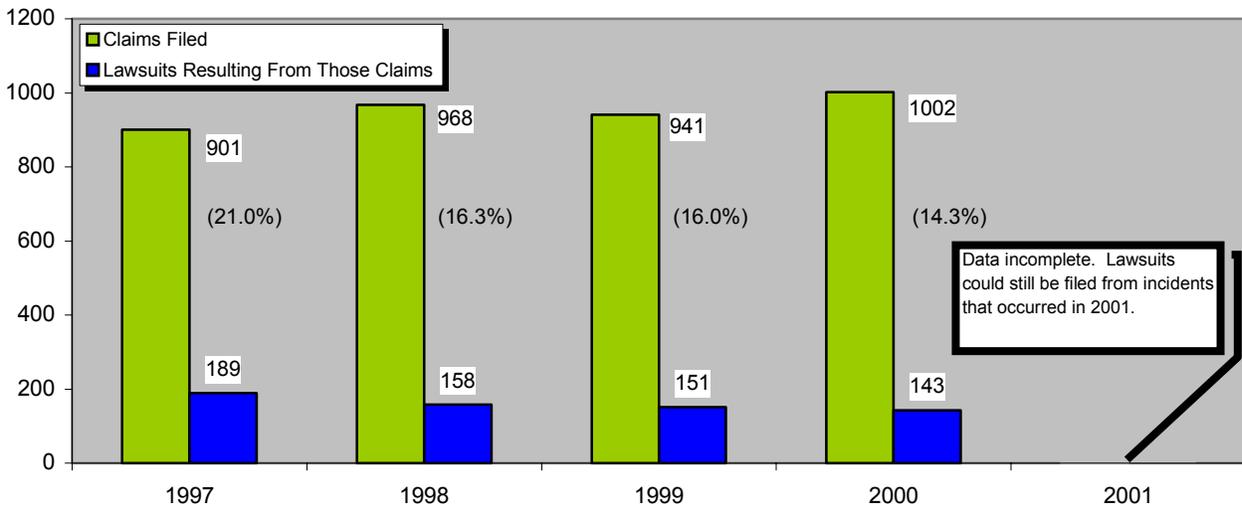
**Figure 7** also shows that the number of claims resolved with no payout has been consistent over the past two fiscal years (83%), despite a more than 10% increase in the total number of claims over the three previous years. This is especially significant in light of the fact that two years ago, the number of claims paid was 24% higher than it is today.



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

Another reason OCA aggressively manages potential liability at the claims stage is to reduce the number of claims that evolve into lawsuits, thereby avoiding the significant costs involved in litigating a case, such as expert witnesses, depositions, research, court costs, and attorney staff time.

As shown in **Figure 8**, of the 1,002 claims arising from incidents that occurred in 2000, only 143, about 14%, evolved into lawsuits. Compared to an average of almost 18% over the previous three years, this marks a steady downward trend in the number of claims that become lawsuits, reflecting the success of our strategy to thoroughly investigate and adjust claims in a fair, timely, and aggressive manner, driving down the overall cost of providing legal services.



**Figure 8: Claims Which Evolved Into Lawsuits By Year of Incident**

## 4.2 Lawsuits

Once a claim becomes a lawsuit, winning cases is only one measure of success. Our legal team takes a comprehensive, strategic approach to limit the City's financial exposure.

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 defendants and causes of action, thereby narrowing the scope of the defense and reducing litigation costs and potential exposure.

In FY 2001-02, 214 lawsuits or administrative matters were filed against the City of Oakland. Lawsuits primarily arise in four categories: municipal infrastructure/dangerous conditions (streets, sewers, storm drainage, sidewalks, trees), police conduct, personnel/labor, and accidents involving City vehicles.

In FY 2001-02, about a quarter of the lawsuits filed involved municipal infrastructure/dangerous conditions (up slightly from 22% in FY 2000-01) and another quarter involved police matters (down from 36% last fiscal year).

The table below compares the percentage of lawsuits received in each category during FY 2001-02 to the trend over the past five years: