

CITY OF OAKLAND

CITY ATTORNEY'S OFFICE

MID-YEAR ANNUAL REPORT

TO: Hon. City Council President Larry Reid
Members of the City Council

FROM: Barbara J. Parker
City Attorney

DATE: September 14, 2012

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.

We are now in the process of closing our books and compiling our Annual Report for FY 2011-12, and I would like to share some positive results in two areas: outside counsel costs and payouts for claims and lawsuits.

This brief Mid-Year Annual Report shows that the cost of payouts for claims and lawsuits, which include settlements and judgments against the City, fell by **more than 50%** in the fiscal year that ended on June 30, 2012. The decline of more than \$6.7 million – a 53% drop from the previous fiscal year – is unprecedented in modern City history.

The cost of outside counsel also fell sharply – by **40%** – in the most recent fiscal year (FY 2011-2012).

In the full Annual Report, which we will file later this year, you will find detailed review and analysis of litigation trends, financial results and special initiatives the City Attorney's Office undertook during the fiscal year from July 1, 2011 to June 30, 2012.

1.0 City Attorney's Budget

The City Attorney's Office is responsible for day-to-day legal advice to the City Council, Mayor, City Administrator and City Departments, Boards and Commissions. By providing top notch 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 and other initiatives to protect the rights and interests and enhance the quality of life of our community.

The actual budget of the City Attorney’s Office for the prior fiscal year (FY 2010-11) was \$12.4 million. The budget for the Office has steadily dropped from a high of \$15.41 million in FY 2007-08 due to budget reductions. In the last nine years, the City Attorney’s Office lost more than a third of its staff (19 attorneys and 14 support staff positions).

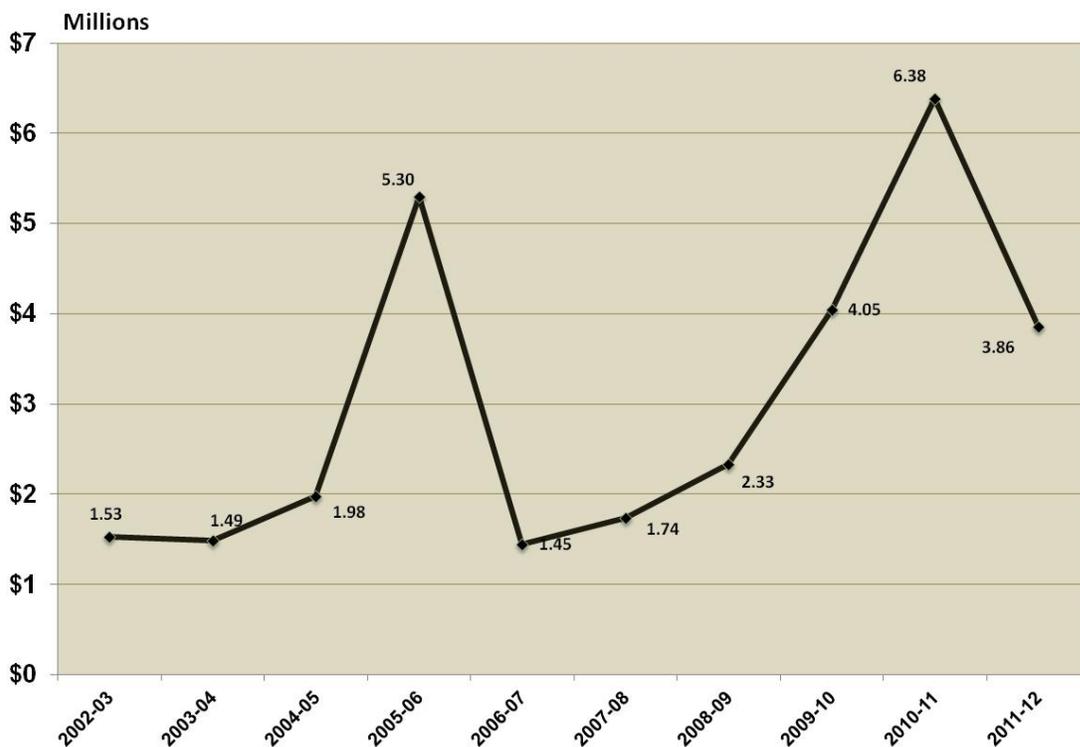
Costs for both payouts and outside counsel had been on a steep upward trend in recent years, and costs in both areas reached an all-time high in the prior fiscal year (FY 2010-11).

Outside counsel costs, payouts for claims and lawsuits and litigation expenses are part of the City’s Liability Fund, not part of the City Attorney’s budget.

2.0 Outside Counsel

Like other major cities, Oakland routinely hires outside attorneys every year to handle legal work. The amount of money Oakland spends on outside counsel has gone up in recent years in large part because of the significant cuts to the City Attorney’s in-house staff.

Despite the loss of in-house staff, the demand for legal services has only increased, meaning the City has been forced to contract out legal services and hire outside attorneys for work that would have been much cheaper to do in-house. **Example:** In a recent personnel case, the bill for outside attorneys to handle one summary judgment motion was close to \$250,000, more than the annual cost of a staff attorney (including salary and benefits) who could handle multiple summary judgment motions plus other work in the course of a year.



Outside Counsel - Timeline

The above chart shows the cost of outside counsel reached a high of \$6.38 million in the prior fiscal year (FY 2010-11) due to in-house staff cuts and a number of high liability cases.

In FY 2011-12, outside counsel costs fell to **\$3.86 million** – a drop of 40%.

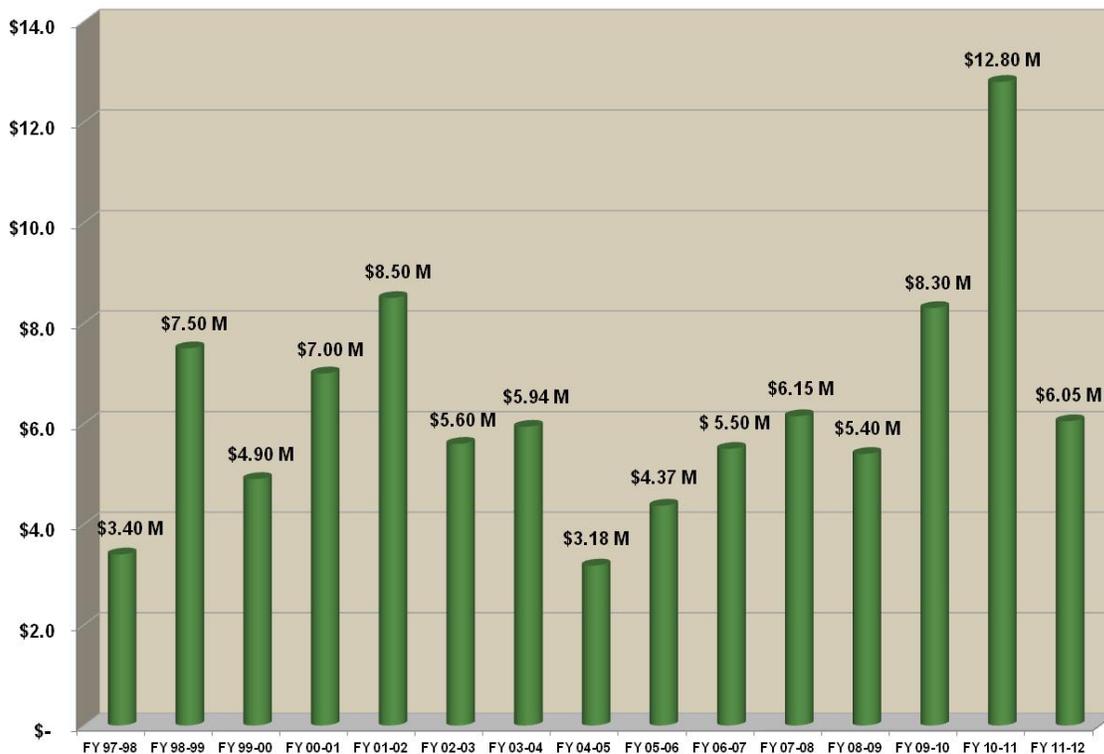
My office worked to limit outside counsel costs whenever and however possible in FY 2011-12. We did so by increasing caseloads, carefully managing every outside counsel contract, restructuring the Office to use our in-house resources more strategically and by creating a [Request for Qualifications](#) protocol for outside counsel to make the hiring process more competitive and more transparent.

The sharp reversal this year in the trend for outside counsel costs is a positive outcome. But given the minimal staff resources in the City Attorney’s Office, it may be difficult to sustain in the long run. Cutting the City Attorney’s staff reduced the Office’s budget by about \$3 million between FY 2007-08 and FY 2010-11. At the same time, the cost of outside counsel skyrocketed from \$1.74 million to \$6.38 million, an increase of \$4.64 million. In other words, Oakland has spent more on outside counsel than it has saved by cutting its in-house legal staff.

Contracting out legal services also makes it harder for the Office to build the in-house expertise and institutional knowledge that are essential for any efficient law practice. Retaining and increasing the number of staff attorneys will help the City maintain and build legal expertise and save dollars that can be used for other critical services and programs.

3.0 Payouts for Claims & Lawsuits

Payouts fell from \$12.8 million in FY 2010-11 to **\$6.05 million** in FY 2011-12:



FY11-12: Total Payouts Over the Last 15 Years

The 53% decline in payouts in FY 2011-12 is the largest one-year decline on record and puts the total payout amount for this fiscal year below the 10-year average of \$6.33 million.

We aggressively manage liability at the claims stage to limit expensive lawsuits. The vast majority of claims – more than 90% – never become lawsuits, underscoring the effectiveness of this strategy. When liability is clear, we seek to settle claims early to avoid the higher cost of litigation. When lawsuits are filed, our expert litigators work strategically and aggressively to protect taxpayer resources, reduce litigation costs and limit potential exposure. The majority of lawsuits are resolved with no payment of money.

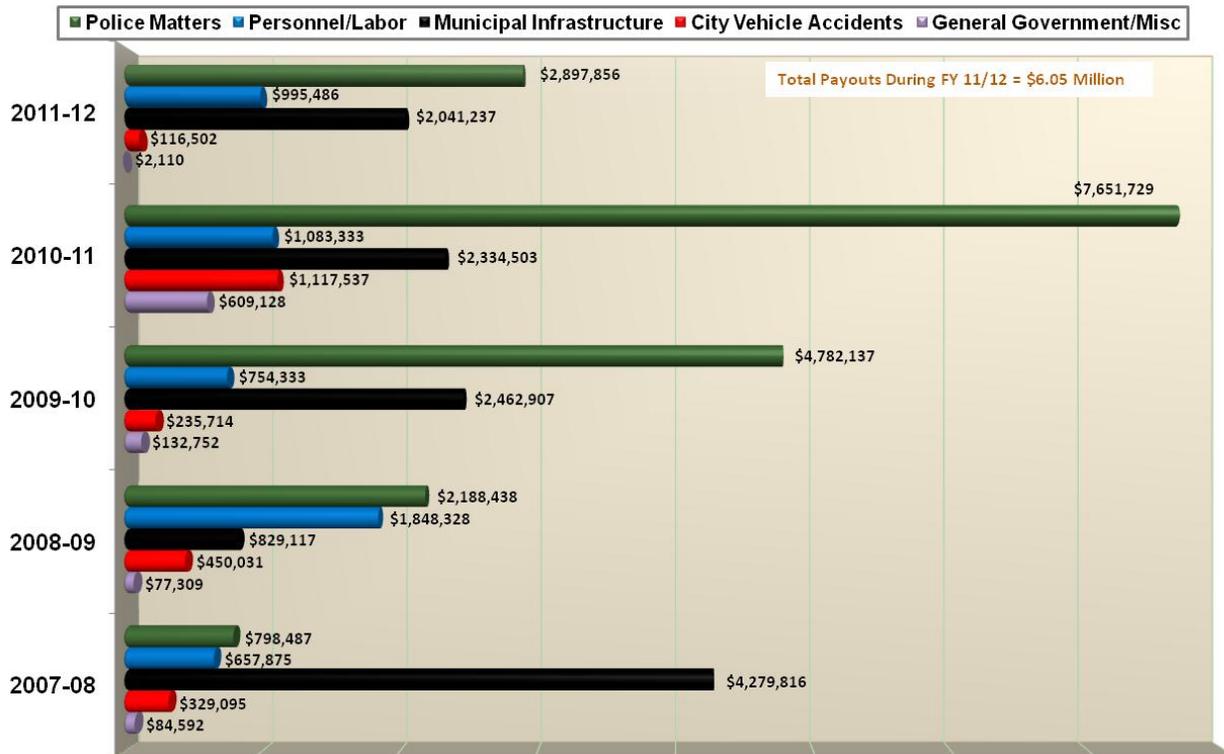
Payouts vary from year to year depending on many factors, including the types of claims and lawsuits that are filed against the City. The City Attorney’s Office provides legal advice and analysis of all cases to the City Council – the City Council approves all settlements exceeding \$5,000.

Payouts include settlements of claims, settlements of lawsuits and judgments against the City.

The breakdown of payouts in FY 2011-12 is as follows:

Claims settlements:	\$366,880
Litigation settlements:	\$5,461,248
Litigation judgments:	\$225,063
Total:	\$6,053,191

Payouts spiked in FY 2010-11 mainly due to settlements in about 10 high liability cases involving police matters – use of force, wrongful death, police vehicle accidents and police labor complaints. Payouts in police cases were dramatically lower this year – from \$7.65 million in FY 2010-11 to \$2.89 million in the most recent fiscal year. Notably, payouts also fell across the board in all other categories – personnel/labor, municipal infrastructure, city vehicle accidents and general government/miscellaneous.



Total Payouts of Claims and Lawsuits by Category

4.0 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, economic interests or other vital interests or rights are jeopardized. We also use impact litigation, legislation and other initiatives proactively to improve our community and help Oakland realize its great promise. Our commitment to accountability, fiscal responsibility and fair, honest and open City practices continues to be the cornerstone of our work.

The City Attorney's full Annual Report, which we will file later this year, will include a more detailed review and analysis of litigation trends, financial results and special initiatives undertaken by the City Attorney's Office in FY 2011-12. All previous Annual Reports can be found at:

<http://www.oaklandcityattorney.org/Ops-Reps/AnnualReport.html>