



RESOLUTION NO 2011-115

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, ESTABLISHING THE COUNCIL
MANAGEMENT AND TRANSPARENCY POLICY FOR THE
CITY ATTORNEY'S OFFICE.

WHEREAS, the Fresno City Attorney's Office is charged by Charter § § 800 and 803 to provide legal services to the City of Fresno; and

WHEREAS, it is incumbent upon the City Council to oversee the City Attorney, who is appointed by and serves at the pleasure of the Council, and his/her management of the City Attorney's Office affairs and duties; and

WHEREAS, inherent to Council's administrative authority is the responsibility to evaluate the quality of the services provided by the City Attorney's Office and the costs associated with such services; and,

WHEREAS, by Council adopting the Council Management and Transparency Policy for the City Attorney's Office, the Council of the City of Fresno shall receive from the City Attorney in April of each year a comprehensive Office Report that identifies with particularity the financial and administrative conditions of the City Attorney's Office and quarterly a Services and Litigation Log; and,

WHEREAS, by Council adopting the Council Management and Transparency Policy for the City Attorney's Office, the City Attorney's Office will implement a Work Management Policy that requires the City Attorney to report to the Council President projects that cumulatively exceed twenty-five (25) billable hours, and requires the City Attorney to seek Council authorization, by a simple majority vote, for projects that cumulatively exceed fifty (50) billable hours; and,

Adopted 6-9-11
Approved 6-16-11
Effective 6-16-11



WHEREAS, for purposes of respecting confidentiality, a general description of the work may suffice as determined by the City Attorney's Office; and,

WHEREAS, privileged and confidential information may be omitted as necessary from the public report as determined by the City Attorney's Office.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno that the City Attorney's Office will be required to produce the following:

1. An Annual City Attorney's Office Report.
2. A Quarterly Service and Litigation Log.
3. Adhere to the Work Management Policy.

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 9th day of June, 2011.

AYES : Baines, Borgeas, Olivier, Quintero, Brand
NOES : None
ABSENT : Westerlund
ABSTAIN : Xiong

Mayor Approval: June 16, 2011
Mayor Approval/No Return: N/A
Mayor Veto: N/A
Council Override Veto: N/A

REBECCA E. KLISCH
City Clerk

BY: Rebecca Klisch
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: [Signature]
JAMES C. SANCHEZ
City Attorney

10:00am 3
06/09/11



ANDREAS BERGEAS
COUNCILMEMBER

COUNCIL AGENDA ITEM

DATE: June 9, 2011
TO: Fresno City Council
FROM: Councilman Andreas Borgeas
AGENDA ITEM: Recommend Council adopt the:

***Council Management & Transparency Policy
for the City Attorney's Office***

Executive Summary:

The City Attorney's Office (CAO) is charged by Charter §§ 800 & 803 to provide legal services to the City of Fresno. While placed under the administrative jurisdiction of the City Council, the CAO is expected to provide apolitical legal services City-wide to the Mayor, Council and Staff.

In the spirit of providing effective and transparent government, it is incumbent upon the City Council to oversee the City Attorney, who is appointed by and serves at the pleasure of the Council, and his/her management of the CAO's affairs and duties. Inherent to Council's administrative authority is the responsibility to evaluate the quality of the services provided by the CAO and the costs associated with such services.

Therefore, it is recommended Council adopt the "*Council Management & Transparency Policy for the City Attorney's Office.*" This policy is intended to have the City Council hold the CAO to the same transparency and accountability standards of other City departments by requiring the CAO to do the following:

- 1) Produce an *Annual City Attorney's Office Report*;
- 2) Produce a *Quarterly Service and Litigation Log*; and
- 3) Implement the *Work Management Policy*.



The City Attorney's Office Annual Report

The City Attorney's Office shall provide to the City Council a comprehensive annual report in the month of April of each year that identifies with particularity the financial and administrative conditions of the CAO. The City Manager, Risk Manager, and relevant staff shall help provide the CAO information related to claims and insurance administration.

The annual report shall include the following:

A. Financial Analysis

- Total and categorical CAO operating costs (*See Appendix A*);
- Payout amounts for settlements and lawsuits (*See Appendix B*);
- Listing of all matters with payouts over 100k (*See Appendix C*);
- Costs of outside counsel and consultants (*See Appendix D*);
- Litigation costs;
- City Manager will provide an analysis of the fiscal condition of the City's self-insurance fund for incorporation into the annual report; and
- Total yearly costs compared to total costs from previous years (i.e. goal is to maintain a multi-year log with averaging) (*See Appendix F*).

B. Allocation of Legal Resources

- Categorize major practice areas (i.e. land use, litigation, labor etc.);
- Identify the number of attorneys/staff assigned to each practice area (*See Appendix G*);
- Number and percentage of billable hours used by each City department (*See Appendix H*); and
- Number and percentage of billable hours used by Mayor, City Manager, and Council.

C. City Attorney and City Manager Management of Claims and Litigation

- Categorize areas of claims and litigation (i.e. municipal infrastructure, police matters, City vehicle accidents, etc.);
- Number of claims and lawsuits per above areas (*See Appendix I*);
- Financial results of those settlements and lawsuits (*See Appendix J*);
- Number and percentage of claims that evolved into lawsuits;
- Criteria used in creating "percentile" system;
- Comparison of "percent chance of success" as provided in closed-session staff reports vs. actual outcome;
- Comparison of cases kept "in-house" vs. "outside counsel";
- Criteria used for selection of outside counsel (i.e. expertise, topic sophistication etc.); and
- A cost-benefit analysis of in-house vs. selected outside counsel.



D. Office Profile and Personnel

- Office hierarchy/chain of command;
- Profiles of Attorneys (i.e. salary, experience); and
- Changes in personnel (i.e. hired, left employment, transferred excluding any privileged personnel information).

E. Recommendations and Trends in Legal Services

- City Manager to identify trends in claims and City Attorney to identify trends in litigation (i.e. spike in claims against police, bus accidents, increased use of outside counsel etc.) (See Appendix K);
- Recommendations on allocations of resources (i.e. more transactional than litigation work, spikes in department specific work, etc.);
- Risk assessment; and
- Recommendations on preemptively reducing risks and liabilities.

It is important to note that in addition to the above referenced topics, the CAO will maintain the flexibility to report on other areas deemed relevant and important. The CAO Annual Report shall be posted and made available to the public on the City website. However, privileged and confidential information may be omitted as necessary from the public report as determined by the CAO.

CAO's Quarterly Service & Litigation Log

The City Attorney's Office shall supply to the Council and City Manager on a quarterly basis a *Service & Litigation Log*. This Log is designed to provide Council with a comprehensive status report on the following:

A. Services

- List of "high priority" projects posing unusual demands on CAO resources;
- Number and percentage of billable hours used by each City department; and
- Number and percentage of billable hours used by Mayor, City Manager, and Councilmembers.

B. Litigation

- City Attorney, in coordination with City Staff, to list status of claims against the City (i.e. in arbitration, mediation, settlement discussions) and amounts sought;
- City Attorney to list claims currently in litigation and amounts sought;
- List of recently closed/settled matters with relevant dollar amounts; and
- Projected payouts and liabilities in the context of a fiscal analysis of City's self-insurance fund (to be done in conjunction with City Manager and City Staff).



Work Management Policy

The City Attorney's Office shall implement a *Work Management Policy* as follows:

- Projects estimated by the CAO to take more than 25 billable hours, or projects that cumulatively surpass that hour amount, shall be reported to Council President;
- Projects estimated by the CAO to take more than 50 billable hours, or projects that cumulatively surpass that hour amount, shall be reported to the Council;
- Council President, or a simple majority of Council, may direct the City Attorney to report to the Council in an appropriate setting on the nature of such projects;
- Matters authorized by a majority vote of Council, such as litigation, research, or claim resolution, or those inherent to the administration of the City Attorney's Office, such as budget, hearings, and reporting requirements, are exempt from the Work Management Policy; and
- For purposes of respecting confidentiality, a general description of the work may suffice as determined by the CAO.

Action Requested:

Recommend Council adopt the: *Council Management & Transparency Policy for the City Attorney's Office*.

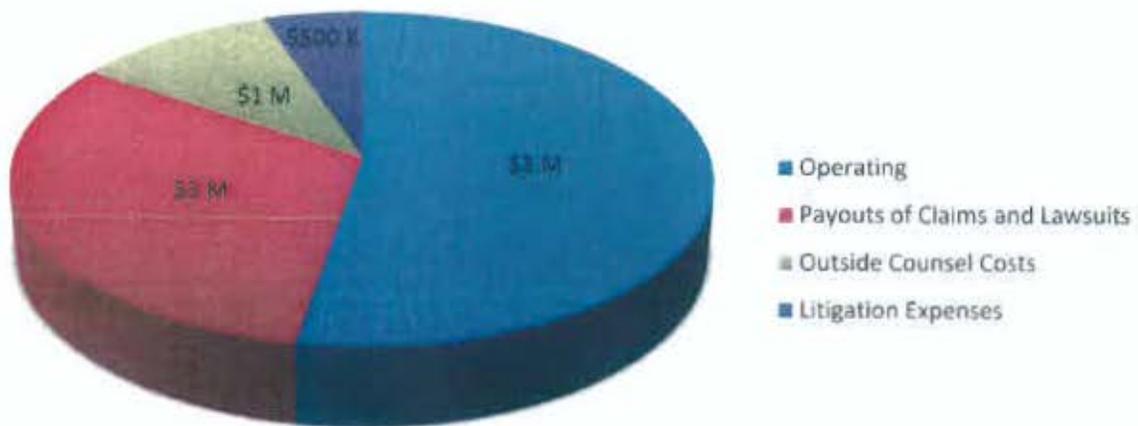
Appendices:

- A: Example chart of "Costs to Provide Legal Services"...page 05
- B: Example chart of "Claims and Lawsuits Results"...page 06
- C: Example table of "All matters with payouts of more than \$100,000"...page 07
- D: Example graph of "Outside Counsel Costs"...page 08
- E: Example of "Cost Benefit Analysis: In-House vs. Outside Counsel"...page 09
- F: Example graph of "Multi-Year Costs of Legal Services"...page 10
- G: Example chart of "Allocation of Attorneys"...page 11
- H: Example graph of "Billable Hours by Department"...page 12
- I: Example table of "Types of Claims & Lawsuits Received"...page 13
- J: Example graph of "Payouts of Claims and Lawsuits by Category"...page 14
- K: Example graph of "Trend of Lawsuits and Claims Filed"...page 15

APPENDIX A



Costs to Provide Legal Services for FY 2011-12



***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.

APPENDIX B



***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.

APPENDIX C



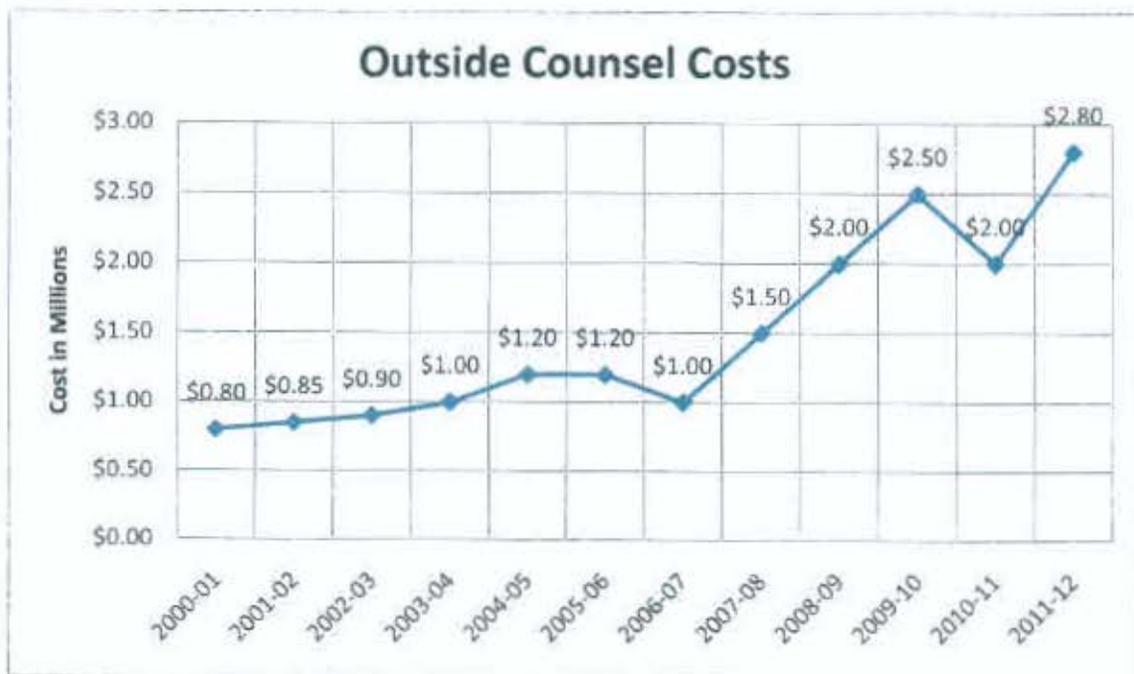
Payouts of Claims, Lawsuits & Arbitrations of more than \$100,000

| Case | Type | Attorney | In House / Outside | Amount Sought | Payout |
|-------------|------------------|--------------|--------------------|---------------|-----------|
| Joe Smith | Police | Carl King | In house | \$300,000 | \$300,000 |
| Adam Davis | Public Works | Jane Egan | Outside | \$2,000,000 | \$900,000 |
| David Jones | Vehicle Accident | Larry Guzman | In house | \$1,000,000 | \$200,000 |

***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.



APPENDIX D



***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.

APPENDIX E



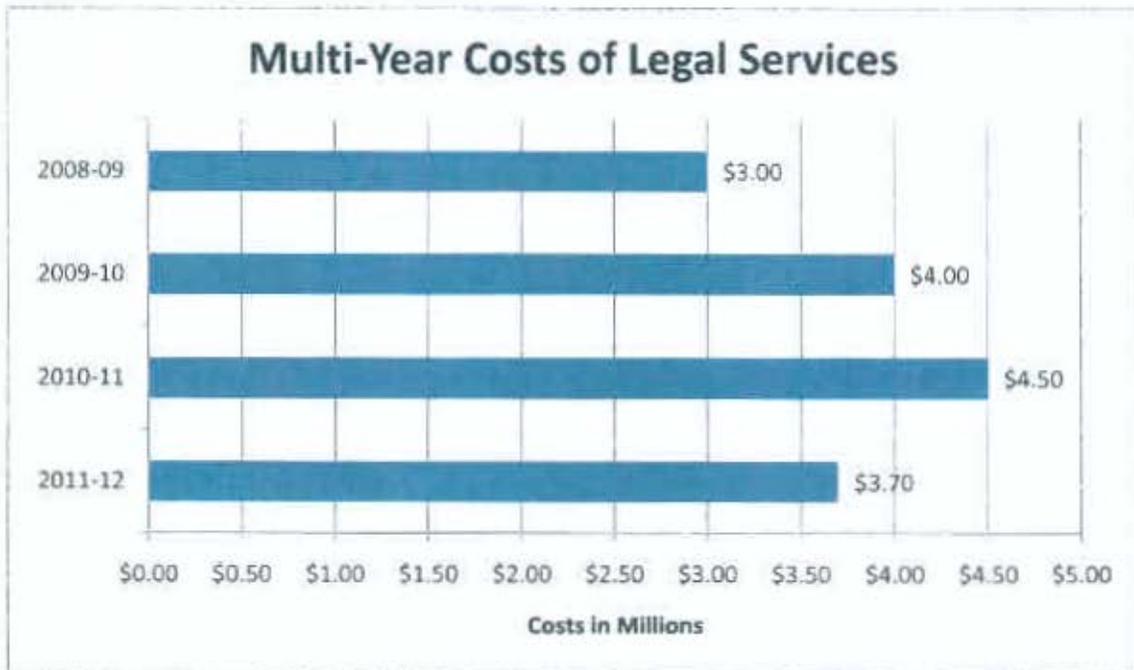
Cost Comparison: In-House v. Outside Counsel

| <i>Litigation</i> | Amount |
|--------------------------------------------------------------------|-----------------|
| Deputy City Attorney (Salary and Benefits) (1500 billable hours) | \$150,000 |
| Costs for Outside Counsel to handle same work (\$135 x 1500 hours) | \$202,500 |
| Potential Additional Cost to the City | \$52,500 |

| <i>Transactional/Advisory</i> | Amount |
|--------------------------------------------------------------------|------------------|
| Deputy City Attorney (Salary and Benefits) (1500 billable hours) | \$150,000 |
| Costs for Outside Counsel to handle same work (\$200 x 1500 hours) | \$300,000 |
| Potential Additional Cost to the City | \$150,000 |

***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.

APPENDIX F

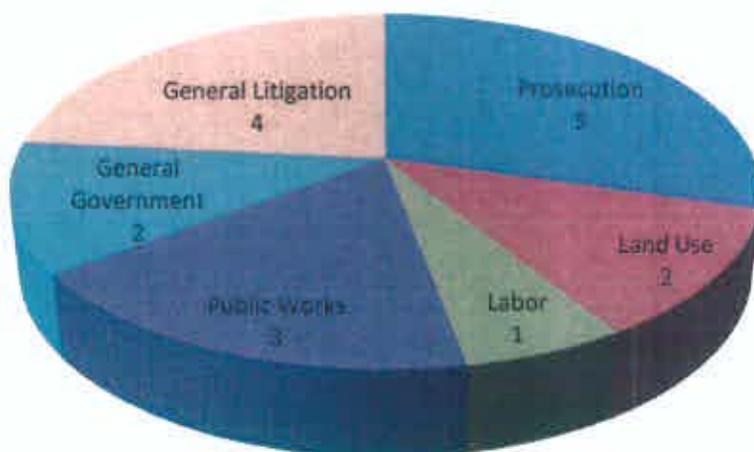


***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.

APPENDIX G



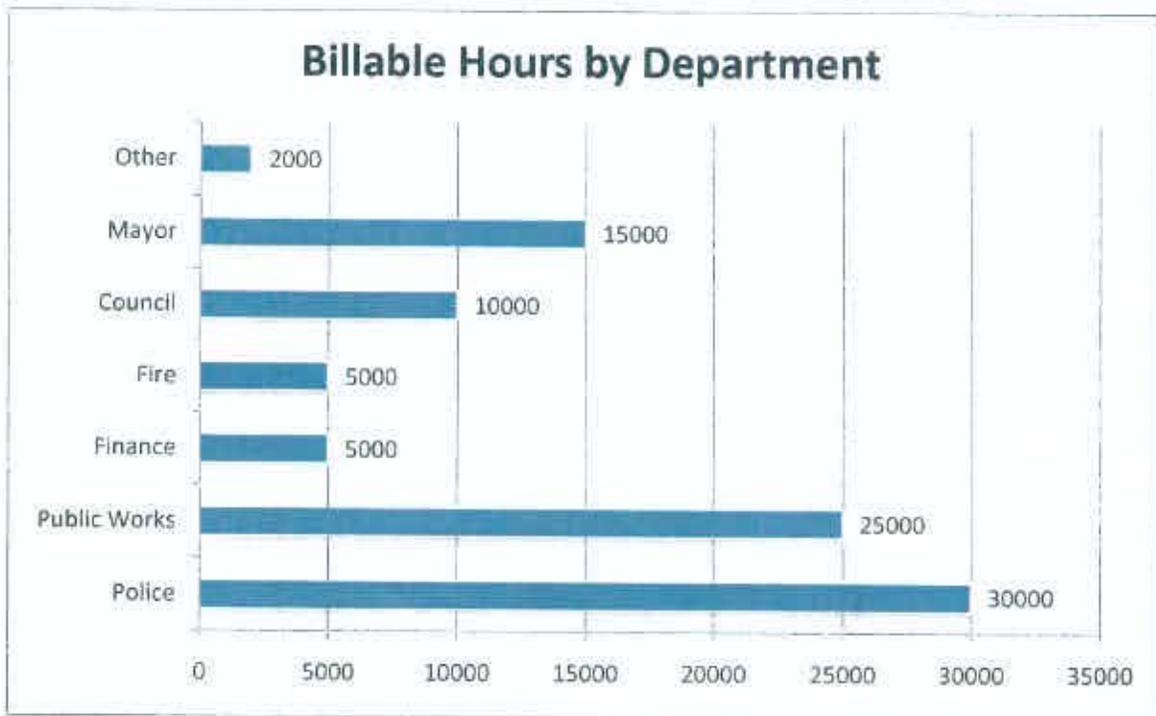
Allocation of Attorneys



***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.



APPENDIX H



***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.

APPENDIX I



Types of Claims Received

| Category | 06-07 | 07-08 | 08-09 | 09-10 | 10-11 | 5-year average |
|------------------------|------------|------------|------------|------------|------------|----------------|
| Public Works | 210 | 200 | 230 | 170 | 190 | 200 |
| Police Matters | 130 | 140 | 138 | 136 | 120 | 132.8 |
| City Vehicle Accidents | 50 | 55 | 40 | 47 | 38 | 46 |
| Other | 60 | 62 | 47 | 55 | 52 | 55.2 |
| Total | 450 | 457 | 455 | 402 | 400 | 432.8 |

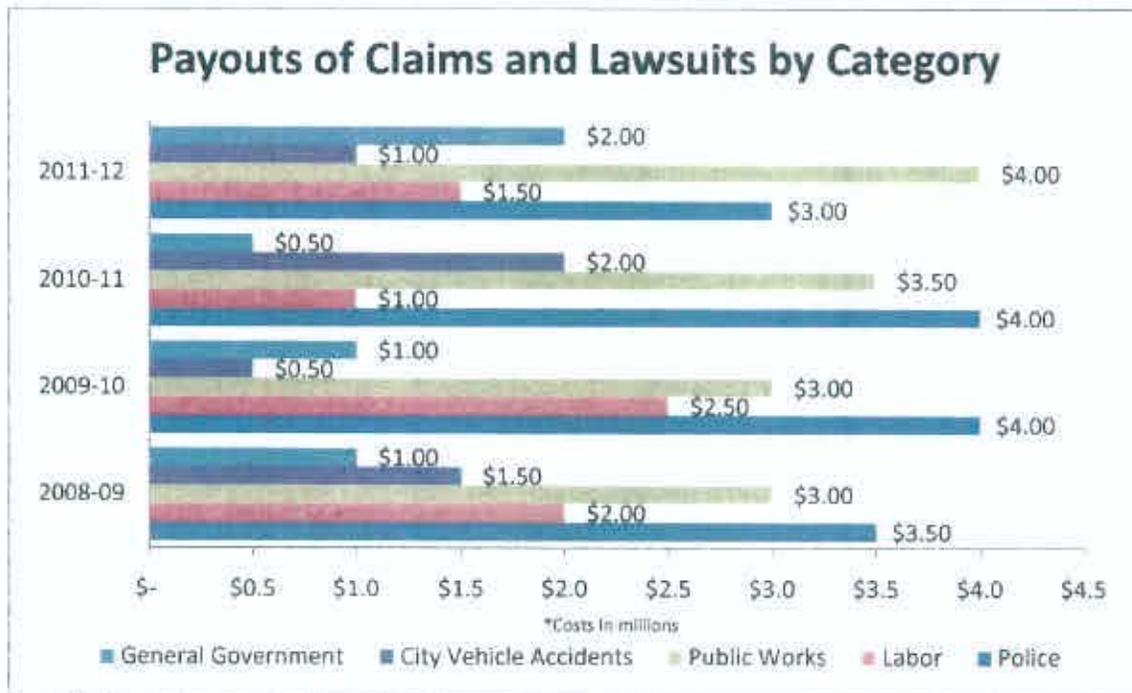
Types of Lawsuits Received

| Category | 06-07 | 07-08 | 08-09 | 09-10 | 10-11 | 5-year average |
|------------------------|------------|------------|------------|------------|------------|----------------|
| Public Works | 45 | 40 | 42 | 38 | 38 | 40.6 |
| Police Matters | 34 | 30 | 31 | 20 | 28 | 28.6 |
| City Vehicle Accidents | 21 | 30 | 27 | 32 | 24 | 26.8 |
| Other | 10 | 15 | 10 | 10 | 20 | 13 |
| Total | 110 | 115 | 110 | 100 | 110 | 109 |

***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.



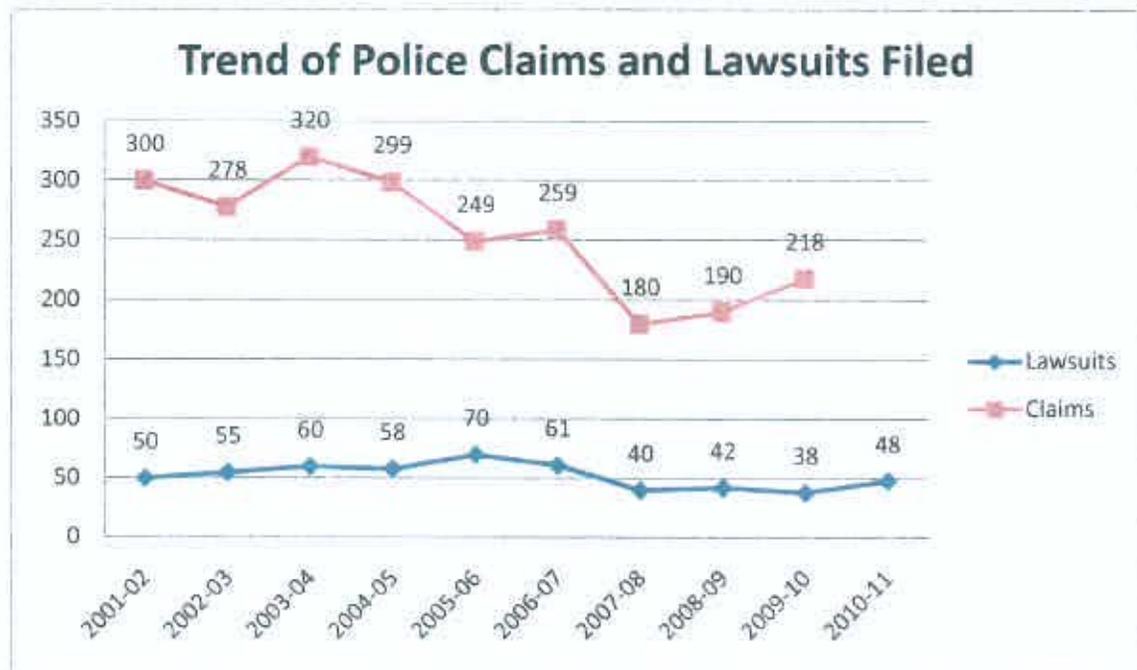
APPENDIX J



***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.



APPENDIX K



***Information contained in the graphs and charts herein are wholly inaccurate, and are used only for example purposes.

June 10, 2011

Council Adoption: 06/09/11

Mayor Approval:

Mayor Veto:

Override Request:



TO: MAYOR ASHLEY SWEARENGIN

RECEIVED

FROM: REBECCA E. KLISCH, CMC
City Clerk

2011 JUN 16 PM 4:08
CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 06/09/11, Council adopted the attached Resolution No. 2011-115 entitled **Approve Council Management & Transparency Policy for City Atty's Office, as amended to include a one year review**, by the following vote:

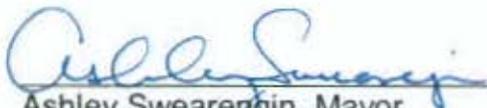
| | | |
|---------|---|-------------------------------------------|
| Ayes | : | Baines, Borgeas, Olivier, Quintero, Brand |
| Noes | : | None |
| Absent | : | Westerlund |
| Abstain | : | Xiong, |

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before June 20, 2011. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Ashley Swearengin, Mayor

Date: 6-16-11

COUNCIL OVERRIDE ACTION:

Date: _____

| | |
|---------|---|
| Ayes | : |
| Noes | : |
| Absent | : |
| Abstain | : |