

City and County of San Francisco

OFFICE OF THE CONTROLLER

OFFICE OF THE CITY ATTORNEY:

The City Attorney Satisfies Its Clients and Its Key Programs Are Successful but It Should Be More Accountable for Its Affirmative Litigation and Should Better Measure Its Effectiveness





CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CONTROLLER

Edward Harrington
Controller

January 4, 2002

Audit Number 00046

Louise H. Renne, City Attorney
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Dear Ms. Renne:

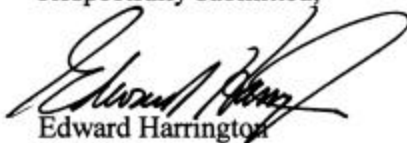
The Controller's Audits Division presents its report concerning the performance audit of the Office of the City Attorney (City Attorney) of the City and County of San Francisco (City).

This report concludes that the City Attorney satisfies its clients and fulfills its mission by providing legal services of the highest quality. The City Attorney also has successful programs in key areas such as affirmative litigation and claims administration. However, some areas could be improved. Specifically, the report recommends that future city attorneys seek consensus from the Board of Supervisors and the Mayor's Office before committing city resources to risky, lengthy affirmative litigation cases. In addition, the City Attorney should analyze the claims it receives to improve the City's risk management by determining where risk can be minimized and losses controlled. The report also concludes that the City Attorney has not developed a strategic planning process that would strengthen the goals and programs of the department and allow it to show the results the City has gained from the large increases in the City Attorney's staff and budget in recent years. Finally, the audit reports that the City Attorney's system for establishing work orders and billing client departments for its services does not serve its clients well.

We conducted this audit according to generally accepted government auditing standards. Such an audit provides reasonable assurance that its objectives have been achieved, but does not guarantee the discovery of non-compliance, including fraud or abuse.

The City Attorney's response is attached to this report. The Controller's Audits Division will work with the department to follow up on the status of the recommendations made in this report.

Respectfully submitted,



Edward Harrington
Controller

TABLE OF CONTENTS

Executive Summary	S-1
Introduction	1
Chapter 1	5
The City Attorney Is Successfully Conducting Affirmative Litigation and Claims Management but Could Further Improve Its Practices	
Chapter 2	21
The City Attorney Satisfies Its Clients but Should Better Measure the Quality of Its Services and Plan for the Future	
Chapter 3	33
The City Attorney Should Improve Its Accountability to Other Departments That Pay for Its Services	
Appendix	A-1
Office of the City Attorney Customer Survey	
Office of the City Attorney's Response to the Audit	B-1

TABLE OF EXHIBITS

Introduction

Exhibit 1	Functions of the City Attorney's Major Teams	3
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Chapter 1

Exhibit 2	Costs and Estimated Settlement Amounts of Selected Affirmative Litigation Cases	7
Exhibit 3	Number of Claims Received by the City Attorney	12
Exhibit 4	The City's Average Open Balance of Claims	12
Exhibit 5	Percentage of Claims Closed by the Claims Unit	12
Exhibit 6	Percentage of Unassigned Claims	13
Exhibit 7	Percentage of Claims Paid	13
Exhibit 8	Percentage of Claims That the City Attorney Sent to Litigation	14

Chapter 2

Exhibit 9	Change in Expenditures and FTE Positions, Fiscal Year 1996-97 Through Fiscal Year 2000-01	25
Exhibit 10	A Standard Strategic Planning Process for Organizations	28

EXECUTIVE SUMMARY

Results in Brief

Ninety-five percent of the surveyed departments, boards, commissions, and other clients of the Office of the City Attorney (City Attorney) of the City and County of San Francisco (City) believe the department provides legal services of the highest quality. Further, the City Attorney has led the way on a number of critical legal issues, including affirmative litigation such as the high-profile, successful lawsuits against the tobacco industry, Old Republic Title Company, and Bank of America, in code enforcement, energy, telecommunications, and in human rights ordinances such as the City's Equal Benefits Ordinance. Overall, the City Attorney is rated very highly by its clients and is succeeding in fulfilling its mission. However, there are areas for improvement.

The City Attorney should be more accountable to other city decision makers and to its clients. For example, although the City Attorney has the authority under the San Francisco Charter (charter) to bring lawsuits in favor of the City and its affirmative litigation has been successful, future city attorneys should consistently and more formally seek the consensus of the Board of Supervisors (board) and the Mayor's Office (mayor) before committing hundreds of thousands or millions of dollars in city general fund money to these risky, lengthy cases. If the board and mayor are better apprised of the potential costs and have more say in the affirmative litigation cases that the City Attorney selects, then the policy makers can make better decisions about resource allocation and the City Attorney's Office will have more support for the cases it pursues.

While the City Attorney implemented a number of significant administrative changes that have led to greater efficiency in the processing of claims, the City Attorney can do more in this area. It should analyze the claims it receives to improve the City's citywide risk management. Doing so would allow the City to use data that the City Attorney already records to determine where the City can best minimize risk and control losses. In this way, the City Attorney could save the City money in claims and litigation costs. Additionally, employees in the claims unit have raised issues concerning the safety, privacy, and resources available to them. Although we did not verify the validity of these concerns, management should look at

them to see if changes are warranted and possible.

The vast majority of the City Attorney's clients are satisfied with the legal information and advice they are given, and with the timely responses by the City Attorney to their questions. Nonetheless, a few clients believe that areas of the City Attorney's operations need improvement, including timeliness of responses, advice on risk management, and billing. While we have not tried to verify these complaints, the City Attorney should consider whether there are issues in these areas of its operations and whether it can make improvements.

In addition, to further its accountability to other city decision makers, the City Attorney should try to develop performance measures that gauge the effectiveness of its work and regularly collect specific client feedback on the quality of its services. The new performance measures the City Attorney should implement would allow it to assess the effectiveness of its work and to show how the City has gained from the 19 percent increase in the City Attorney's staff and the 61 percent increase in its expenditures in the past five years. The City Attorney cannot now show that it is accomplishing its mission because it lacks a strategic planning process that would link its mission to a more specific set of goals, objectives, and performance measures. The department's current performance measures are not adequate to show that the City Attorney is accomplishing its mission to provide legal services of the highest quality.

Finally, the City Attorney's system for billing and work ordering client departments is not an effective way for the City Attorney to charge client departments for its services, and the City Attorney is not providing good service to client departments in its billing process. Several client departments reported to us that bills are often late, not sufficiently informative, and regularly exceed the dollar amounts agreed to in budgeted work orders. As a result, clients often do not know what City Attorney services they are paying for and cannot accurately plan their expenses for the fiscal year because they lack a reliable estimate of their City Attorney costs. To be more accountable to its clients, the City Attorney should improve its billing process to better meet its clients' needs and improve its work orders by making sure it has work order agreements

with its major clients. It should include specific scopes of work in the agreements.

Key Recommendations

To improve its operations, the Office of the City Attorney should act on all of the recommendations presented in this report, including the key recommendations outlined below.

To improve its accountability to city policy makers with respect to its affirmative litigation program, the City Attorney should:

- Work with the Board of Supervisors and Mayor's Office to formalize a process for selecting and funding affirmative litigation cases that seeks the consensus of the Board of Supervisors and the Mayor's Office and by doing long-term planning of affirmative litigation efforts, including projections of the costs and benefits (both policy and fiscal) of pursuing each case.
- Track the costs and settlement amounts of each affirmative litigation case throughout the process and prepare to report these amounts to other city decision makers.

To further improve its administration of claims and to determine if it can improve working conditions for claims staff, the City Attorney should:

- Monitor more claims disposition data, such as the percentage of claims sent to litigation and the number of claims paid versus the number of claims denied, to better demonstrate the efficiency and effectiveness of the claims unit.
- Determine if it is necessary and possible to provide more reliable city cars for claims investigators and adjusters, and to provide more physical security for the front desk staff of the claims unit.
- Issue monthly reports to the Board of Supervisors indicating the number and dollar amount of claims and litigation, by cause, both citywide and by department.

To help gauge its success in delivering the highest-quality legal services and to improve its accountability to policy makers, clients, and the public, the City Attorney should:

- Periodically conduct formal client surveys to assess the overall quality of its services and identify areas for improvement.
- Develop performance measures that help it and others gauge the effectiveness and cost-effectiveness of its

affirmative litigation work.

To improve the satisfaction of its clients with the bills they receive, the City Attorney should do the following:

- Review its billing process to be sure that it is charging clients promptly and giving clients the information that they need.
- Work with the Controller to determine which departments are major clients of the City Attorney; those departments that have a consistently high volume of work should have work orders.
- Work with client departments to include more information on work order agreements. Specifically, the agreements should list how many hours of work that the City Attorney will perform at what hourly rate and how the City Attorney and the department will manage changes to the expected volume of work. Those departments without work orders should also be informed as to the costs of the work they request.

We conducted this audit according to generally accepted government auditing standards. Such an audit provides reasonable assurance that its objectives have been achieved, but does not guarantee the discovery of non-compliance, including fraud or abuse.

Department Response

The Office of the City Attorney states that it agrees with most of the recommendations in the report and has already begun implementing them to further improve client service. The City Attorney's main disagreement is with the report's recommendation that the City Attorney change the process for selecting and funding affirmative litigation cases. The department's complete response is attached to this report.

INTRODUCTION

The Office of the City Attorney (City Attorney) is the legal counsel for the City and County of San Francisco (City). When the City is sued, the City Attorney represents the City and appears in court as defense counsel, and when the City's interests are infringed, the City Attorney files suit to protect them. The City Attorney also serves as legal counsel to all city officials and departments, boards, commissions, and other entities by providing numerous legal services and advice. The position of city attorney is elected to a four-year term.

The City Attorney's mission, as it appears in the City's annual budget, is to provide the highest quality legal services possible to the Mayor's Office, Board of Supervisors (board), San Francisco Unified School District, and to departments, boards, and commissions of the City.

The general responsibilities of the City Attorney include the following:

- Representing the City in legal proceedings.
- Providing advice or written opinions to any officer, department head, board, commission, or other unit of local government.
- Making recommendations to the board for or against the settlement or dismissal of legal proceedings.
- Approving as to form all surety bonds, contracts, and ordinances.
- Examining and approving title to all real property that the City will acquire.
- Preparing reviews annually and making available to the public a codification of city ordinances.
- Investigating, evaluating, and recommending disposition of all claims made against the City.

DUTIES OF THE CITY ATTORNEY

The City Attorney has a number of mandated duties and responsibilities under the San Francisco Charter (charter). The charter requires the City Attorney to represent the City in legal proceedings in which the City has an interest and to represent city officers and officials when directed to do so by the board unless the cause of action against the officer or official is in the favor of the City. For example, the City Attorney successfully defended the City's Equal Benefits ordinance. The City Attorney must begin legal proceedings when a cause of action exists in favor of the City, except for the collection of taxes and delinquent revenues, which the attorney for the Tax Collector performs. Also, the City Attorney is required to provide advice or written opinions to any officer or department head or to any board, commission, or other unit of city government. The department must also submit recommendations to the Board of Supervisors on the settlement or dismissal of legal proceedings. The charter requires the City Attorney to approve as to form all surety bonds, contracts, and, before enactment, all ordinances as

well as to examine and approve title to all real property that the City will acquire. The City Attorney also must prepare, review, and make available to the public all ordinances of the City and also prepare and make available to the public an annual edition of the charter. Finally, the City Attorney is responsible under the charter for establishing a claims bureau with the power to investigate, evaluate, and settle claims for money or damages.

Besides fulfilling the City Attorney's basic duties to defend and give legal advice to the City, the outgoing city attorney has chosen to pursue activities on behalf of the City, some of which have wide local and national significance. For example, the City Attorney was involved with the creation of the First Source Hiring program that helps create job opportunities through city contractors for former recipients of public benefits. The City Attorney also has assigned employees to work with the Office of the District Attorney on infractions of quality-of-life laws and attempts to connect violators with needed social services. Further, to enforce building codes and ordinances to eliminate blighted property in the City, the City Attorney has cooperated with the Planning Department, Department of Building Inspection, District Attorney, Police Department, Fire Department, and the Department of Public Health. The City Attorney also engages in investigations of possible illegal activities such as investigating the evidence that pointed to abuses of the City's minority contracting program.

Under its charter authority to represent the City in legal proceedings in which the City has an interest, the City Attorney has also chosen to undertake "affirmative litigation," or legal initiatives that include but extend beyond local concerns and impacts. To do so, the City Attorney has joined or initiated suits that have statewide or national interest. In particular, the City Attorney has led efforts to institute joint action among local and state governments involving tobacco control, gun safety, home-buyer escrow protections, and bank management of bond money for public works projects. In some cases, particularly in the tobacco litigation, the City Attorney has won sizeable settlements. Of equal or greater importance in the City Attorney's estimation, these suits have effected changes in a company's or an industry's practices that the City Attorney deems favorable for both San Franciscans and the public at large.

THE CITY ATTORNEY'S ORGANIZATION

The City Attorney's budget for fiscal year 2001-2002 is \$43,622,706, and its authorized number of positions is 349, of which 185 are attorney positions, and 164 are support staff positions. The City Attorney's staff of attorneys and support staff is organized into four major teams: the litigation team, the administrative team, the general law team, and the claims and investigations team. Other teams of attorneys and support staff work in such specialized areas as construction, code enforcement, contracts and intellectual property, energy, environment, labor, telecommunications, and other legal specialties. Exhibit 1, on the next page, summarizes the functions of each of the four major teams:

Exhibit 1
Functions of the City Attorney's Major Teams

Team	Description
Litigation Team	Defends the City in lawsuits filed against it and prosecutes civil actions in which the City is a plaintiff. Trial attorneys handle matters from enforcement of city building codes to prosecution of fraud and unfair competition actions against corporate defendants such as tobacco companies and Bank of America. These attorneys also represent the City in actions ranging from personal injury and property damage to child custody, welfare fraud, breach of contract, and workers' compensation cases.
Administration Team	Manages the operations of the office. Staff is responsible for secretarial, clerical, personnel, administrative, and information systems support, including management of the department's law library and coordination of the in-house continuing legal education program and special projects.
General Law Team	<p>Acts as the City's general counsel. Attorneys in this division draft all municipal ordinances and city contracts. They also advise officials and agencies on a wide range of legal issues. Their expertise covers every aspect of municipal government. Areas of specialization include the following:</p> <ul style="list-style-type: none"> • Appellate advocacy • Child protection and family services • Construction • Contracts and intellectual property • Environmental protection • Finance and real estate • Government ethics • Health, education, and social services • Labor relations • Public utilities • Taxation • Telecommunications • Transportation
Claims and Investigations Team	Investigates all claims filed against the City. Division staff also investigates allegations of civil law violations, which the District Attorney may prosecute.

**THE CITY ATTORNEY'S BUDGET AND STAFFING
HAVE EXPANDED SIGNIFICANTLY IN RECENT YEARS**

The City Attorney's budget and level of staffing have increased significantly in the past five years. Expenditures have increased every year from fiscal year 1996-97 through 2000-01. Total expenditures have increased 61 percent, while total positions have increased 19 percent. Of the three programs shown in the budget—legal initiatives (including affirmative litigation), claims, and legal service—legal service accounts for most of the

increased spending over the past five years. Spending has increased both because the cost of salaries and benefits has increased and because of greater overall demand by the City Attorney's clients.

SCOPE AND METHODOLOGY

The purpose of this audit was to assess the performance of the primary services, activities, and management controls of the Office of the City Attorney and to identify areas for improvement. We met with the city attorney and many members of her senior staff to obtain an understanding of their duties and responsibilities and to identify the principal functions that staff attorneys perform for their clients. We evaluated the office's management controls—that is, the tools it uses to operate, including those related to strategic planning, policies and procedures, and performance measurements—to determine if it is achieving its objectives. To achieve our purpose, we reviewed the department's recent budgets, its most recent annual report, and other documents.

In addition, we reviewed the City Attorney's affirmative litigation activities to gauge its monetary success and to evaluate the extent to which the City Attorney should be accountable to the Board of Supervisors for its activities in this area. The changes in public policy or industry practice that can result from affirmative litigation are as important or more important than the monetary settlements that may come to the City, but we did not attempt to assess the City Attorney's success in that dimension. With respect to claims administration, we evaluated the quantitative trends in its operations, and we met with all the employees of the claims unit to gather their opinions on the unit, their jobs, and their workplace. We did not review any claims to determine whether the claims unit correctly adjudicated the claims.

To assess how satisfied clients of the City Attorney are with the services they receive, we conducted a mail survey of the City's departments, boards, commissions, and others. The survey asked both closed- and open-ended questions designed to measure the respondents' satisfaction with the City Attorney's services and to elicit clients' comments about particular problems they experienced or concerns they had.

We assessed the adequacy of the City Attorney's performance measures within the context of a model strategic planning process. We also assessed opportunities that the City Attorney may have to enhance its risk management efforts for its clients citywide.

Finally, to identify needed improvements, we reviewed and analyzed the City Attorney's system for work orders and for billing its clients for services.

CHAPTER 1

THE CITY ATTORNEY IS SUCCESSFULLY CONDUCTING AFFIRMATIVE LITIGATION AND CLAIMS MANAGEMENT BUT COULD FURTHER IMPROVE ITS PRACTICES

CHAPTER SUMMARY

The City Attorney's major affirmative litigation cases—where the City is suing another party, such as those against the tobacco industry and Bank of America—have been financially very successful in that they resulted in settlements far exceeding the City's costs to pursue them. In addition, they have resulted in changes in public policy and industry practices whose importance, in the opinion of the City Attorney, eclipses the monetary impact of these cases. However, like any lawsuit, there is no guarantee that such cases will always pay for themselves in the future. In addition, the City Attorney has no systematic, planned processes to select these legal initiatives, to fund them, or to measure its performance in them. By choosing to take on these cases and by spending millions of dollars in city money to do so, the City Attorney risks spending general fund money for little or no gain. Because of this financial risk, and because affirmative litigation cases often affect other policy decisions in the City, we believe that the Board of Supervisors (board) and Mayor's Office (mayor) should be better apprised of the potential costs and more involved in selecting the affirmative litigation cases the City Attorney pursues.

Because the board and mayor are not now formally involved in selecting affirmative litigation cases, there is greater potential for a lack of continuity in the City's affirmative litigation program when a new city attorney takes office. For example, if the City were to drop or lose one of the three major affirmative litigation cases it filed in 2001 because of a new city attorney's policy or budget priorities, the City risks losing some or all of the more than \$450,000 already spent on these cases. However, if other elected city officials participate more in affirmative litigation case selection, then there will more likely be more support outside the City Attorney's Office for these cases and less risk that a new city attorney will drop or divert resources from existing cases.

The City Attorney's claims unit of the Claims and Investigations Team has made a number of administrative changes and is more efficiently and effectively processing claims; however, management needs to pay further attention to staff safety, privacy, and resource needs. The claims staff reports that there are factors that detract from the efficiency of its work and lower morale. The staff cites a need for safety in its reception area, privacy when conducting interviews, and resources such as reliable city cars and quicker access to electronic databases.

While the City Attorney is not required to perform claims trend analysis on its claims data, doing so would vastly improve citywide risk management and could save the City money in claims and litigation costs. Some city departments do some of their own claims

analysis, but nothing is done on a citywide level. As the claims administrator for the whole City, the City Attorney is the only office that records claims data for all departments. A recent report by the Budget Analyst's Office of the board recommended that the City Attorney produce monthly claims reports to the board sorted by both cause and department, but the City Attorney has not begun to do this. In addition, claims trend analysis is a common practice in other jurisdictions, where claims data is used to drive safety programs and identify areas of liability and loss. The City Attorney should work closely with the Department of Administrative Services' Risk Management Program to analyze the City's claims data and use it to better equip the City as a whole to identify and mitigate risk in the future.

AFFIRMATIVE LITIGATION HAS BEEN SUCCESSFUL BUT THE BOARD OF SUPERVISORS AND MAYOR'S OFFICE NEED TO HAVE MORE PARTICIPATION IN THE SELECTION OF AFFIRMATIVE LITIGATION CASES

The City Attorney's affirmative litigation—legal initiatives such as cases against Bank of America, the tobacco industry, and the gun industry—has been a success for the City, bringing in major monetary settlements and, in the City Attorney's opinion, initiating positive public policy. However, there are inherent risks in taking on these lengthy cases, some of which could be expensive for the City's general fund if the litigation results in a decision that is not in the City's favor. The City Attorney states that it may file suit without speaking with any member of the Board of Supervisors or the Mayor's Office but agrees that it is essential for it to get the support of the board and mayor in advance, to the extent possible, for any affirmative litigation effort, unless there is a reason not to. The City Attorney says that it has obtained this support through regular, informal discussions with the board and mayor. However, we believe the City Attorney's affirmative litigation should be subject to formal consideration by the board and mayor to ensure that this support exists. Both the City Attorney's current funding process for affirmative litigation cases and its process for selecting cases need to be more formalized to better ensure that all city decision makers who have budget authority are aware of the potential costs and committed to these cases so that future funding will more likely be made available. In addition, the City Attorney should establish some measures of effectiveness for its affirmative litigation program to allow city decision makers to judge how the City Attorney is handling these cases and if the City should pursue such cases in the future.

Past Affirmative Litigation Cases Have More Than Paid for Themselves but There Is Always a Risk That Future Cases Will Not

Although the current city attorney's affirmative litigation cases have more than paid for themselves with millions of dollars recovered by the City in settlements, these cases are often expensive, lengthy endeavors that, like all litigation, have no guarantee of cost recovery. Since 1995, the City Attorney has pursued several major affirmative litigation

cases, all but one of which (the Bank of America case) were still considered open by the City Attorney as of November 2001 because the City is still receiving settlement payments. Not only are these cases lengthy, but they are also expensive to pursue. The City Attorney estimates that it has spent more than \$9 million to pursue the Bank of America, tobacco industry, gun industry, and Old Republic Title Company cases through fiscal year 2001. This figure does not include recent affirmative litigation cases such as those against Pacific Gas & Electric Company and lead paint manufacturers. The costs and estimated settlement amounts of selected affirmative litigation cases appear in Exhibit 2 below.

Exhibit 2
Costs and Estimated Settlement Amounts of Selected Affirmative Litigation Cases

	Bank of America	Tobacco Industry	Old Republic Title Co.	Gun Industry	Total to Date
Date Filed	April 1995	June 1996	March 1998	May 1999	NA
Date Settled	November 1998	November 1998	Still Open	Still Open	NA
Date Closed	November 1998 (work continued until June 1999)	Still Open	Still Open	Still Open	NA
Duration of City Attorney's Work on Case	3.5 years	5 years to date	3.5 years to date	2 years to date	NA
Funding Source	City and Non-City Clients	General Fund	General Fund	General Fund	NA
Total Cost Through Date Closed or, If Open, Through June 2001	\$5,241,715*	\$1,480,751*	\$1,324,293*	\$1,684,409*	\$9,731,168
Estimated Settlement Amount	More than \$15 million*	\$586 million over 25 years (\$44,709,307 to date)*	\$10,692,398 to date* (some of this settlement is still in dispute)	Not yet available	Over \$70 million
Note: The City Attorney filed three other major cases in 2001: the energy case (filed in January), lead paint case (filed in January) and PG&E bankruptcy case (filed in April).					

NA Not Applicable

* Unaudited amount provided by the City Attorney.

The City Attorney has been able to minimize the costs to the City by entering into contingency agreements with outside law firms and by finding outside funding from clients (who share in the settlements) for some cases. However, the City Attorney still spends a considerable amount of the City's general fund money on these cases while knowing there may be no payback.

***The City Attorney Has Not Adequately Tracked
Affirmative Litigation Costs and Settlement Amounts***

The City Attorney does not systematically track settlement amounts and affirmative litigation costs so this information was not readily available for us to review. Some figures in Exhibit 2 are estimates developed by the City Attorney at our request because the City Attorney did not have records of the exact amounts available. In addition, the City Attorney had to consult with the Treasurer's Office to verify some of the settlement

amounts the City Attorney gave us because the City Attorney is not required to report regularly on the costs and settlements from these cases. Without consistent internal tracking and accounting of these cases, the City Attorney has no way of knowing at a given time how much it is spending on these cases.

As a program that the City Attorney highlights in its annual budget, legal initiatives (which includes affirmative litigation) should be accounted for more systematically. Although there is a field in the City Attorney's management information system (CityLaw) to record settlement amounts, the City Attorney does not use it. The cost and settlement information we did receive was presented to us in an ad hoc manner.

During city budget hearings in spring 2001, a member of the board's Finance Committee asked the City Attorney for a report on affirmative litigation, including financial information. As of October 25, 2001, the City Attorney's chief financial officer reported that her office was working on the report but has not yet finished it.

Affirmative Litigation Is Not Subject to a Formal Case Selection Process

The City Attorney has not used a formal process that involved other city officials in selecting the affirmative litigation cases it has pursued. According to the City Attorney's Chief of Special Litigation, the current city attorney chooses which cases to pursue using as her criteria San Francisco's stake in the case and if she believes that San Francisco's involvement in the case would have a positive impact on the outcome. The City Attorney takes on affirmative litigation cases as opportunities present themselves. The city attorney told us that in almost all cases, she spoke to members of the board and mayor before taking on an affirmative litigation case. However, a more formal process would ensure that the board and mayor get the chance to comment on the policy and budget implications such cases may have for the City as a whole. These discussions could be held in closed session to provide the secrecy necessary for such sensitive matters. Without a process that ensures the consensus of the board and mayor, future city attorneys may not have strong support from the other city officials who could affect case funding and overall support of affirmative litigation cases.

The City Attorney Has No Measures for the Quality of Its Affirmative Litigation Program

Although affirmative litigation cases have been a responsibility of the City Attorney's Litigation Division since 1995, the City Attorney does not report any performance measures for its affirmative litigation, which has clearly been an area of emphasis and a source of pride for the current city attorney. Descriptions of the office's affirmative litigation are featured prominently in the City Attorney's budget narrative and its annual community report as a major success of the office. However, without measures of quality or effectiveness, the City Attorney cannot ensure accountability and determine performance. Examples of such measures could include the percentage of affirmative

litigation cases that result in the declared, desired outcome or the ratio of the settlement dollars awarded the City to the city dollars spent on the case.

In its major affirmative litigation cases, such as lawsuits against the gun industry or manufacturers of lead paint, the City Attorney is often not acting directly on behalf of a city department. The city attorney is elected, and the City Attorney's ultimate client is the entire citizenry of San Francisco. Therefore, the City Attorney would be better able to demonstrate the advisability of taking on these cases and its performance in the affirmative litigation program to the residents of San Francisco and their other elected representatives if it had goals, objectives, and performance measures for this program. Intended results for an affirmative litigation case could include a change in public policy, a change in the practices of private industry, or settlement dollars coming to the City.

***Affirmative Litigation Is Not Subject to a
Long-term Planning or Budgeting Process***

The City Attorney has not done long-term planning or budgeting for its affirmative litigation program. In recent years, the board has approved lump sums of money for affirmative litigation and these amounts have appeared in both the City Attorney's yearly budget (as City Attorney legal initiatives) and in supplemental appropriations to the City Attorney's Plaintiff Litigation Fund. The board approved \$1.3 million for affirmative litigation in fiscal year 1999-2000. For fiscal year 2001-2002, the City Attorney estimated that it would need more than \$2 million to pursue its current affirmative litigation cases. However, the board approved only \$950,000 in the budget for affirmative litigation cases, which is to be spent through January 2002, when the current city attorney will leave office.

Because of the nature of the cases, it is difficult to predict the level of effort, including staff time and resulting costs that will be required. However, we believe that the City Attorney, board, and mayor could better strategize and budget for the City's affirmative litigation if the City Attorney at least attempted to plan the level of effort it intends to spend in this area over two to three years. The City Attorney could do this planning as part of the three-year strategic plan that is required of every department. (See Chapter 2.) If necessary, the City Attorney could keep confidential these affirmative litigation plans—or at least the names of the entities it plans to sue and the amounts budgeted per case—if the City Attorney finds confidentiality advisable and permissible.

***Some Peer Jurisdictions Require That
Other Elected Officials Consider and
Approve Affirmative Litigation Cases***

Joint decision making on affirmative litigation between a city or county's attorney and its city council or board of supervisors occurs in other local governments and promotes accountability. While elected city attorneys such as San Francisco's may have more discretion in the cases they select than do appointed city attorneys and county counsels, we found examples of both appointed and elected local government attorneys who

consult with their legislative bodies on affirmative litigation. Among the several other large cities and counties we contacted, we found that appointed head attorneys in Chicago, Philadelphia, and New York City all seek recommendations from either their legislative bodies or other city officials on the affirmative litigation cases that the head attorneys pursue. In addition, the City of Oakland's city attorney is an elected official who is required to get approval from the city council to pursue any affirmative litigation case.

***After the Current City Attorney Leaves Office,
the Handling of Affirmative Litigation Cases
May Lose Continuity***

When the current city attorney leaves office in January 2002, there will be at least three active, major affirmative litigation cases that the next city attorney may or may not choose to pursue: the energy (Dynegy, Inc.) case, PG&E bankruptcy case, and lead paint industry case. According to the litigation team, some of these cases are entering crucial phases. The City Attorney had spent over \$450,000 on these three cases as of November 2001. If the board and mayor are more involved in selecting cases filed at the end of a city attorney's term and more formally declare their support for such cases when they are initiated, there would be less risk that the next city attorney would unilaterally choose to stop pursuing these cases. Discontinuing a major case after many hours and city dollars have been spent would be a waste of city resources and, if ordered by the court, could lead to the City's paying the defendants' legal expenses.

CLAIMS ADMINISTRATION IS SUCCESSFUL, BUT THE CITY ATTORNEY NEEDS TO IMPROVE THE RESOURCES OF ITS CLAIMS STAFF

The City Attorney has recently implemented improvements to its claims administration process, and data trends indicate that the City Attorney is now processing and disposing of claims more efficiently and effectively. However, it should continue its efforts to improve the resources available to its staff. The City Attorney's claims unit is responsible for processing most of the City's claims. The claims unit received approximately 3,900 claims in 2001. According to the manager of the claims unit, over half of the claims received are related to incidents with the Municipal Railway, with the others related to all other city departments. The claims unit consists of one manager, seven adjusters, eight investigators, and eight support staff. The efficient, effective processing of claims helps the City by limiting the City's legal liability and saving money. For example, good claims administration can reduce the likelihood of expensive lawsuits against the City and can reduce the number of frivolous claims that are filed when claimants realize that the City will promptly deny such claims.

***The Claims Unit Has Recently
Implemented Various Strategies to
Improve the Administration of Claims***

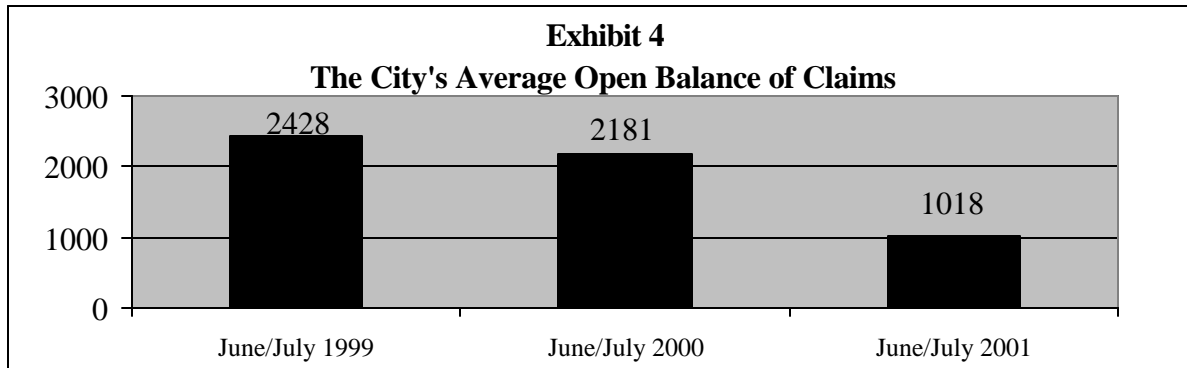
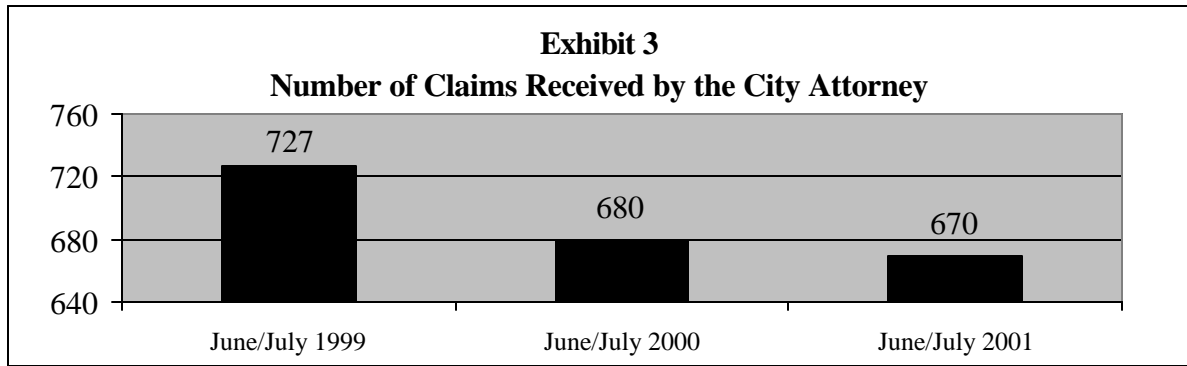
The claims unit improved the claims administration process in 2001. According to the new manager, who was assigned to the unit in February 2001, he implemented a number of changes to the process, including the following:

- Ending the practice of leaving claims unassigned. The unit now assigns all claims as soon as it receives them.
- Revamping all claims forms and form letters to make them more user-friendly and legally sound.
- Translating the claims form instructions from English into four other languages and putting an electronic copy of the claims form in English on the City's Web site.
- Referring to the Litigation Team as soon as possible the most serious cases that have a high probability of going to litigation, such as those involving a fatality, major injury, or major property damage.
- Doing management reviews of the cases that adjusters and investigators have had the most difficulty closing to see if it is possible to avoid litigation.
- Holding regular team meetings to allow staff to voice concerns and ask questions.
- Training claims unit staff on the new claims module of the CityLaw database.

To assess the claim unit's level of functioning and to try to determine whether and how recent changes may have affected the claims process, we reviewed selected claims data and reports for recent years. We analyzed claims activity in a two month period (June and July) in each of three years, 1999-2001. We did not review claims to determine whether the claims unit correctly adjudicated the claims.

***General Claims Process
Trends Have Improved***

Since 1999, the City Attorney's processing of claims has generally improved. For example, the open claims balance has decreased significantly, the percentage of claims closed has increased, unassigned claims have almost been eliminated, and the length of time claims are open has decreased. As Exhibit 3 on the next page indicates, our sample shows that the number of claims received decreased by 57 from 1999 to 2001, an 8 percent decrease. As Exhibit 4 shows, the claims unit's average balance of open claims decreased by 1410, a 58 percent decrease. Such a precipitous decline in the average balance of open claims, which is the number of claims open and active at any point, indicates that the claims unit has been successful in its efforts to dispose of (deny, settle, refer, and close) claims promptly.



In our 1999 and 2000 sample the claims unit closed 880 and 859 claims respectively, or as Exhibit 5 shows, 15 to 16 percent of the claims that were open. In our 2001 sample, the claims unit closed 747 claims or 27 percent of claims. Thus, in two years, the claims unit almost doubled the rate at which it closes claims without an increase in the claims unit's staff, a dramatic improvement.

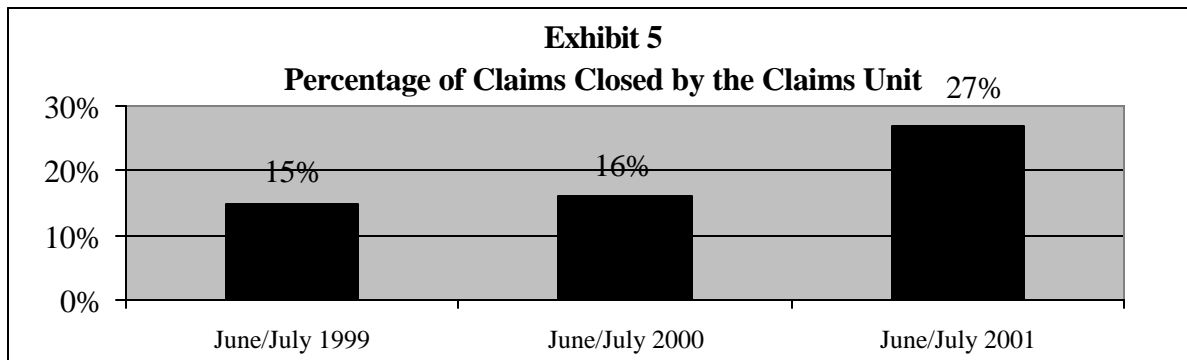
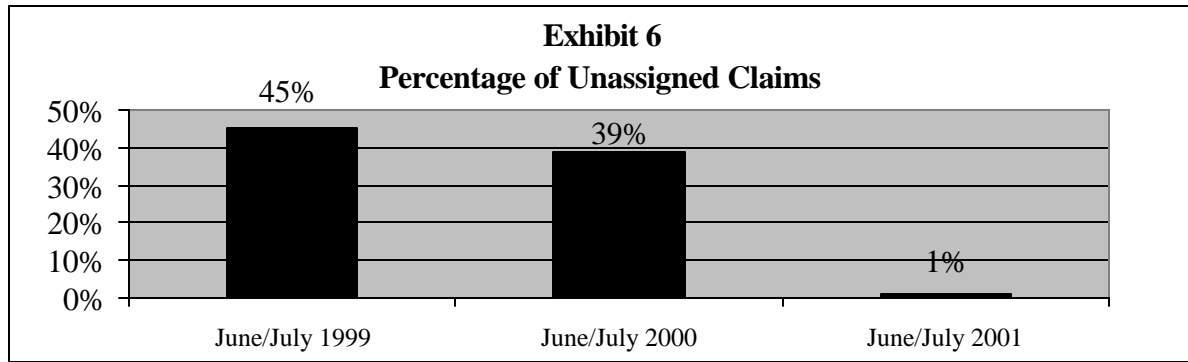


Exhibit 6, on the next page, shows that more than one-third of claims were unassigned during the months we reviewed for 1999 and 2000. In our 2001 sample, however, unassigned claims had plummeted to less than 1 percent of all claims. By assigning all claims to an investigator or adjuster, the claims unit created greater workloads of active claims for each member of its staff. However, even with these greater workloads, the staff increased the number of claims closed each month.

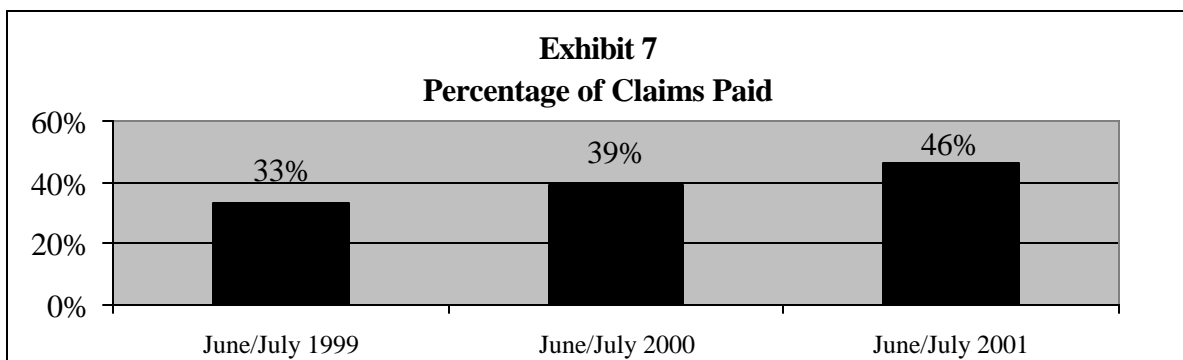


Consistent with the trends of fewer open claims and more claims closed, the claims unit has shortened the length of time claims are open. The percentage of claims open more than 40 days has dropped significantly, from 85 percent in 1999 to 60 percent in 2001. The percentage of claims open over 60 days also decreased, from 77 percent in 1999 to 55 percent in 2001.

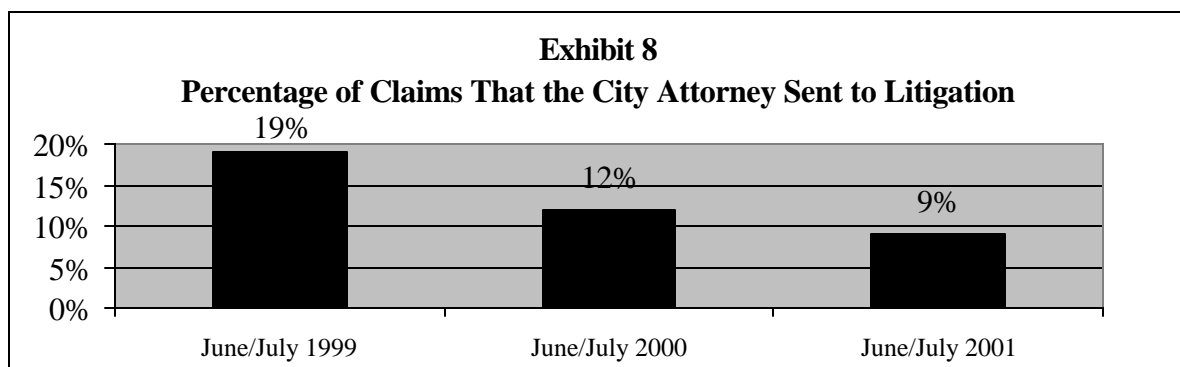
Lower balances of open claims, increases in the rate at which staff closes claims, the elimination of unassigned claims, and a decrease in the average duration of claims are all indicators that the claims process is more efficient. More efficient processing of claims helps prevent claims from unnecessarily becoming expensive lawsuits that can cost the City large sums of money. In addition, with every claim assigned, there will be less chance that a claim can “slip through the cracks” and miss response or other processing deadlines that can also cost the City money.

***Claims Disposition and Settlement
Trends Are Relatively Constant***

The claims unit’s work is resulting in a greater percentage of claims paid or denied by the City Attorney and a smaller percentage that the City sends to litigation. Exhibit 7 shows that the percentage of claims paid has steadily increased from 33 percent in 1999 to 46 percent in 2001. In addition, while a larger proportion of claims are being paid, the percentage of claims being denied also increased, from 27 percent in 1999 to 34 percent in 2001. The fact that both payments and denials of claims have become more frequent indicates that the claims unit is not compromising its assessment of liability by paying more in claims to achieve its higher rate of closed cases.



Consistent with increased rates of claims denied and paid, the percentage of claims going to litigation is decreasing. As shown in Exhibit 8, the percentage of claims sent to litigation went from 19 percent in 1999 to 9 percent in 2001. Although the City Attorney does not track this statistic as one of its performance measures, some other US cities look at it as an indicator of claims success. According to the International City and County Management Association's Center for Performance Measurement, cities with a population of 100,000 or more sent an average of 11 percent of their claims to litigation in fiscal year 2000. San Francisco's most recent 9 percent litigation referral rate matches the median of other cities of its size. Decreasing the number of claims sent to litigation is an important accomplishment of the City Attorney as it generally costs less to settle a claim than to litigate a case arising from a claim.



***The City Attorney Has Satisfactory Performance
Measures to Assess Its Claims Administration***

Although the City Attorney does not regularly track all of the claims processing and disposition trends we analyzed, staff does track some of these trends, as well as several others, as separate performance measures, and these measures are adequate. Compared to other City Attorney functions, claims work is relatively simple to measure, largely because claims are resolved in a limited number of ways. Claims are a significant area of expenditure for the City, with over \$4.1 million in claims settlements paid out in fiscal year 2000-01.

The City Attorney can measure the efficiency of its claims administration process by calculating the average number of days from case filing to final disposition. On this measure, the City Attorney reports a projection of 191 days for fiscal year 2000-01, and has this average as its target for fiscal year 2001-02. The department also measures its success by reporting the percentages of claims settled and denied over time as well as the average settlement amount per claim. These measures will be more useful when the claims unit has data from several years it can compare to show trends over time. For example, because the claims unit is settling more cases and sending fewer to litigation, the percentages of cases settled and denied are changing over time. If this change causes the City to save money, the unit should calculate and report these cost savings in addition to its other measures.

Claims Staff Expressed General Satisfaction With Their Work but Raised Concerns About Safety, Privacy, and Office Resources

The overall claims process is improving and the staff is generally satisfied with management. However, the City Attorney should consider if improvements are needed in the areas of workplace and vehicle safety, workplace privacy, and access to office resources, as was reported to us by staff. In a series of group interviews, claims unit staff members voiced some serious concerns that they feel need more attention by management. Although we did not investigate the accuracy of staff's assertions, there was enough agreement among the responses we heard that we report them here for management's consideration.

Adjusters and investigators told us that they lack safe, reliable city cars. Investigators and adjusters often need to use cars at all hours of the day and night to get to accident scenes to collect information. Claims unit employees said that the cars that are assigned to them are often unavailable because they are in the shop for repair and that when the cars are available, they are not "freeway-worthy." The city attorney said her department's past requests for budget authority to purchase new cars have been rejected.

The claims unit's support staff is concerned about the safety of their reception area. Currently there is only a counter separating the public from the workspace of the support staff in the claims unit. According to the support staff, there are occasions when angry claimants enter the office and threaten the safety of the staff. It is unclear whether the staff had reported this concern to management, but the staff told us it would like to see security measures, such as a glassed-in reception window and a security guard posted in this area.

The investigators also discussed their lack of quiet, private space to conduct confidential, face-to-face interviews and phone calls in the office. The need for privacy to conduct sensitive interviews is obvious. Investigators also reported that they frequently must make audio recordings of in-person and phone interviews, and these recordings become legal evidence. They report that often when they do record these conversations in the open office setting in which they work, the recording picks up background noise, making the tape difficult to understand. Some investigators said that they have conducted interviews from home to have privacy and quiet. According to claims unit staff, the current situation does not allow them to conduct their work in a professional manner and compromises the confidentiality and legal integrity of the evidence they are collecting for their investigations.

Finally, the investigators and adjusters believe that their lack of adequate access to certain office resources makes elements of their job inefficient. For example, at least one employee in the office has access to the database of the California Department of Motor Vehicles (DMV) and other specialized databases but the City Attorney has not authorized

other employees to have this access. The claims unit often needs information from these databases for its investigations. Because of this situation, it is difficult for those without direct access to get the information they need promptly. Although it may be appropriate to limit the number of employees who have access to confidential records and data, there could be a procedure established to ensure that those without access get the information they need promptly.

THE CITY ATTORNEY'S ANALYSIS OF CLAIMS DATA WOULD BENEFIT CITYWIDE RISK MANAGEMENT

Although the City Attorney is not required to analyze characteristics of and trends in the claims it receives, doing so would improve San Francisco's citywide risk management by allowing the City to use data that the City Attorney already records to determine where the City can best minimize risk and best control losses. Claims against the City vary in type and cause, and the City Attorney's claims unit tracks all claims in its CityLaw database. This well-maintained database can provide reports based on the type, cause, and dollar amount of claims. The City Attorney says it provides reports to departments when they request them. However, if the City Attorney analyzed the information on claims in the CityLaw database throughout the years, it could identify trends and the most significant areas of liability and loss for the City. Using this analysis, the City Attorney could more effectively assist the City's Risk Management Program in the Department of Administrative Services to conduct more focused and comprehensive risk management efforts that would save the City money.

Some Departments Analyze Their Claims, but This Analysis Does Not Occur Citywide

Some departments such as the Municipal Railway analyze claims made against them; however, no entity does this for the City as a whole. Logically, the City Attorney is best situated to take on this function. An analysis of the claims data that the City Attorney keeps would allow all departments that are subject to claims to use safety and training programs or other means to focus on reducing risk and—ultimately—the number of claims filed. Because risk management in the City is often left to individual departments, in-depth claims analysis rarely occurs. Departments have little incentive to do this analysis and to implement loss prevention programs because claims are paid from the City's general fund, and safety and loss prevention programs specific to a department would come out of its own departmental budget. This lack of incentive may partially explain why comprehensive, focused risk management programs for departments and the City as a whole have not been realized.

The Budget Analyst Has Recommended That the City Attorney Produce Monthly Reports Listing Claims by Cause and Department

In March 2001 the Budget Analyst's Office of the Board Supervisors issued an analysis of claims and litigation cases over a three-year period (July 1996 – June 1999). This

report, which analyzed the most common types of claims and the amount they cost the City to process and litigate, found that city vehicle accidents are the most common cause of claims against the City. The report recommends that the City Attorney begin to report monthly to the Board of Supervisors a summary of claims and litigation cases by cause code for all departments supported by the general fund. The report also recommends that all departments designate a position that will be responsible for risk management functions, including tracking and analyzing claims.

***Peer Jurisdictions Analyze Claims
to Better Manage Their Risks***

Analyzing claims data to manage risks and control loss is a common practice among other cities and counties. Of the seven jurisdictions we contacted, all do some form of claims analysis to help focus their liability and loss programs. The City of Los Angeles, for example, issued a directive in 2001 that requires its city attorney to issue claims summary reports to its risk management division. These reports help the division create a loss and liability prevention plan for the whole city. In Philadelphia, claims data analysis drives that city's safety program and is used to help departments set initiatives in the budget. Additionally, the International City and County Management Association's fiscal year 2000 data report looked at the training, safety, and loss control activities of dozens of jurisdictions with populations over 100,000. Of the 45 jurisdictions included, all but 12 do some form of claims analysis or reporting to city management. San Francisco was listed as one of the 12 that do not.

***The City Attorney Can Enhance
the City's Risk Management
Efforts and Save the City Money***

The City Attorney's Office does not have a formalized risk management program; instead, it conducts risk management in an ad hoc manner. For the City as a whole, risk management is a decentralized function that benefits from the Department of Administrative Services' Risk Management Program. According to that program's risk manager, he and the Office of the City Attorney collaborate on contract review only. Other than that, the two offices do not collaborate on risk management issues. The claims data is available, but neither the Risk Management Program nor the City Attorney sees it as its responsibility to analyze claims data. Indeed, because this task has not been assigned to either organization, neither has hired or made available staff to perform this function. Thus, a valuable resource for the City is going untapped. If the claims information that the City Attorney maintains in the CityLaw database received proper analysis, it would give the City a useful picture of where the areas of greatest potential risk and liability exist.

The City risks losing money because it does not analyze its claims trends. Such an analysis could prevent or make less frequent specific types of incidents, such as vehicle accidents, that happen often across departments. However, as stated above, individual departments do not have a financial incentive to institute safety or related programs to

manage risk because the current city practice is to fund departments' safety programs from departmental budgets but to fund the costs of departments' claims and litigation cases from the general fund litigation reserve. Claims data analysis could help identify such incidents and allow the City to save money in claims and litigation settlements. Without performing claims analysis, the City has no way of pinpointing these areas or quantifying these trends on a citywide level. Thus the City is missing the opportunity that may exist to reduce loss and liability and to reduce the amount paid out in claims.

RECOMMENDATIONS

To improve the Office of the City Attorney's affirmative litigation program, the City Attorney should do the following:

Work with the Board of Supervisors and the Mayor's Office to develop a formal process for selecting affirmative litigation cases that is mutually agreeable. This process should seek consensus from the board and mayor on the cases to be pursued.

- Assist in formalizing the process for funding affirmative litigation cases by planning affirmative litigation efforts as far in advance as possible, including projecting the costs and benefits (both policy and fiscal) of pursuing each case and sharing these projections with the Board of Supervisors and the Mayor's Office.
- Track the costs and settlement amounts of each affirmative litigation case throughout the process and be prepared to report these figures to city decision makers outside the department.
- Provide updates to the Board of Supervisors on the status of open affirmative litigation cases as the City Attorney does all closed litigation cases. If necessary and permissible, these updates could be confidential and presented in closed session.

To further improve its administration of claims and determine if it needs to improve working conditions, the City Attorney should take these steps:

- Continue to track and monitor claims processing data to demonstrate the efficiency and effectiveness of the claims unit.
- Begin to monitor more claims disposition data, such as the percentage of claims sent to litigation and the number of claims paid versus the number of claims denied.
- Determine if it is necessary and possible to provide more reliable city cars for investigators and adjusters.
- Consider if it is necessary and possible to provide more physical security for the front desk staff of the claims unit.
- Provide a small, dedicated conference room or other quiet space, equipped with a telephone, for investigators and inspectors to use.

- Increase the efficiency of investigations by developing a way for more of the claims investigators and adjusters to get information promptly from the database of the state Department of Motor Vehicles and any other databases that these employees need to consult.

To reiterate and expand on the recommendations made by the March 2001 report of the Budget Analyst for the Board of Supervisors, we recommend the following:

- In conjunction with the Risk Management Program, the City Attorney should hire or otherwise obtain the services of an analyst, to conduct claims trend analysis and to produce monthly claims and quarterly trend reports.
- The City Attorney should issue monthly reports to the Board of Supervisors that indicate the number and dollar amounts of claims and litigation, by cause, for each department and for the City as a whole.
- The Mayor's Office of Finance and Legislative Affairs and the Controller's Office should evaluate the current city practice of funding departments' safety programs from departmental budgets and of funding departments' claims and litigation cases from the General Fund Litigation Reserve.

CHAPTER 2

THE CITY ATTORNEY SATISFIES ITS CLIENTS BUT SHOULD BETTER MEASURE THE QUALITY OF ITS SERVICES AND PLAN FOR THE FUTURE

CHAPTER SUMMARY

The mission of the Office of the City Attorney (City Attorney) is to provide the highest-quality legal services possible to its clients. Based on the opinion of almost all of the organizations the City Attorney serves, it is fulfilling its mission. Our survey found that 95 percent of respondents believe that the services they received from the City Attorney over the past year were of the highest quality. (See survey form in the appendix to this report.) However, the City Attorney should develop its own processes to ensure that it can assess and demonstrate the degree to which it is achieving its mission. Such processes include a strategic planning process, with specified goals and objectives, that is required of every city department. In addition, the performance measures that the City Attorney employs do not gauge the quality or effectiveness of the department's work. With significant growth in departmental spending and staffing over the past five years, the City Attorney must be able to measure not just the quantity of its work, but its work's quality and effectiveness as well.

Some of the City Attorney's ability to provide satisfactory service may result from its expanded staffing and budget in recent years. Over the past five years, the City Attorney's staffing increased by 19 percent and overall spending increased by 61 percent. With such increases in staffing and spending, the City Attorney should improve its ability to show how these added resources have increased the quality and effectiveness of its services.

BACKGROUND

The administrative code requires each department to submit with its budget the overall mission and goals of the department and a strategic plan to achieve the mission and goals. Departments must also identify policy outcome measures that reflect the mission and goals and that can be used to gauge progress toward attaining the goals. The department head must report the programs and activities conducted by the department, their cost, and the extent to which the department achieved its mission, goals, and objectives during the previous fiscal year. The charter is the basis of these requirements.

Further, beginning in 2003, city departments will have to comply with the Performance and Review Ordinance of 1999. This ordinance requires each department head to submit a departmental efficiency plan that includes a customer service element, a strategic planning element, an annual performance element, and a performance evaluation element for the previous fiscal year.

The City Attorney's ultimate client is the people of the City and County of San Francisco and, according to its mission statement, the City Attorney provides legal services to the Mayor's Office, the Board of Supervisors, and the San Francisco Unified School District, as well as to departments, boards, and commissions of the City and County of San Francisco (City). As direct recipients of legal services provided by the City Attorney, these entities, as well as the residents of San Francisco, are the clients of the City Attorney.

CLIENTS' GENERAL SATISFACTION MAY PARTLY ARISE FROM THE CITY ATTORNEY'S RECENT GROWTH

Our survey of the City's departments, boards, commissions, and other entities, which are all clients of the City Attorney, indicated that they are generally very satisfied with services they receive. Clients are generally satisfied with the quality and timeliness of the legal advice they receive from their assigned deputy city attorneys and also with the other services provided by the City Attorney, including legal representation and guidance in administrative matters. Although some clients indicated that they had particular problems with the timeliness of responses to requests for information or with the quality of advice they received from the City Attorney, these responses were exceptions to the overall high level of satisfaction reflected in the responses. However, a significant number of clients are dissatisfied with the City Attorney's billing process. Clients that indicated billings were a problem cited lack of billing detail and of timeliness of the billings they receive. A more thorough discussion of the City Attorney's billing process and clients' opinions of it appears in Chapter 3.

One reason that the City Attorney can provide service that satisfies its clients is that it possesses the necessary resources, primarily in the form of deputy city attorneys dedicated to the interests of their clients. These attorneys are organized into more than 20 specialized teams, including traditional city attorney functions, such as a labor team to advise city departments and officials on employment and labor law matters, a tax team to provide advice on issues related to taxation, and a litigation team to defend the City when it is sued. The City Attorney has significantly increased its budget and staffing in recent years, thus enlarging its practice with new functions and specialized teams, such as expanded affirmative litigation efforts by the litigation team, a code enforcement team created in 1991, and an energy team established in 1998. According to the City Attorney, these increases have been driven by increased demand for services.

Survey Methodology

We distributed survey forms to 113 city departments, boards, commissions, and other clients of the City Attorney, including such entities as the San Francisco Redevelopment Agency and the San Francisco Unified School District. We received 70 completed questionnaires for a response rate of 62 percent. We believe that this rate indicates that the clients who responded represent fairly all clients of the City Attorney. We tabulated

and analyzed the survey responses and drew conclusions based on all those responses. For numerical responses, we used averages, and for the written responses to each open-ended question, we summarized according to major themes or the frequency of similar responses.

Clients of the City Attorney Expressed Satisfaction With Its Services

Our survey of City Attorney clients found that most are satisfied with the services they receive. Of the 64 respondents that had an opinion on this item, 61 (95 percent) agreed or strongly agreed that the services received from the City Attorney over the past year were of the highest quality. These responses were on a four-point scale ranging from strongly agree to strongly disagree. We found that clients more often rely on the City Attorney to provide general legal information and advice or guidance on specific matters, and they rely less often on the City Attorney to represent them in legal proceedings. Of the 69 clients that indicated the level of responsiveness by the City Attorney, 67 (97 percent) indicated that they are always or almost always able to contact their assigned deputy city attorneys and receive a response in a reasonable period of time. The vast majority (64 of 70, or 92 percent) of clients indicated that the responses they receive from the City Attorney are always or almost always sufficient to answer their questions and satisfy their concerns. In addition, the majority (36 of 40, or 90 percent) of clients that had been involved in litigation indicated that the representation they received from the City Attorney was of the highest quality.

The types of services clients need from the City Attorney vary, but a majority of clients seek a broad range of legal advice and guidance. Clients told us that they seek clarification on the interpretation of ordinances, the administrative code, charter provisions, and other laws, rules, and regulations. Clients also seek advice on appropriate actions to take with respect to employment, labor, and personnel issues. Some clients receive guidance in modifying or formulating policies and procedures and in responding to other situations that pose potential liability for the City, while others indicated that they request advice specific to their functions, including questions on regulatory issues, contracting, drafting legislation, or law enforcement issues.

The City Attorney Could Better Meet Its Clients' Desire for Risk Management Advice

Apparently, the City Attorney is not meeting all of its clients' needs for advice on risk management. When we asked clients about the type of advice they seek from the City Attorney, most (44 of 70, or 63 percent) indicated that they seek guidance from the City Attorney in controlling potential risks and losses, or risk management. However, when asked if the City Attorney had provided advice or training in risk management, only 45 percent of the clients responding indicated that the City Attorney had done so.

Those clients that indicated that they had received risk management advice or training listed various areas in which the City Attorney had provided advice or training. These areas include leasing issues, changes in law or compliance issues, insurance requirements, the Sunshine Ordinance, confidentiality of medical information, sexual harassment training, personnel issues, and other issues. The City Attorney engages in numerous efforts to control clients' and the City's exposure to liability, but these survey results indicate that risk management is an area that may require a more comprehensive approach. As Chapter 1 discusses, the City Attorney has information in its claims administration database that it can analyze and use to help reduce the number of future claims and therefore the total cost of claims to the City.

***Some Clients Have Had Problems
With Advice From or Representation
by the City Attorney***

When responding to our survey question about how well the City Attorney had advised or represented them, 51 of 68 (75 percent) of the client departments indicated that they had not experienced problems in this area. However, 17 clients (25 percent) indicated that they have had some problems. For example, some clients cited difficulty obtaining timely responses from their deputy city attorney, attorneys being "obstructionist" rather than helpful, attorneys giving policy advice instead of legal advice, and attorneys giving conflicting advice from one department to another. Some clients also noted that roles of attorneys who represent more than one department were unclear and that conflicts of interest sometimes arise when attorneys represent multiple departments. One department noted that the attorneys assigned to it had filed a suit on behalf of the department's commission without informing the department, and had not adhered to the department's budget for legal services.

These problems may be the exception, not the norm, but the City Attorney should seriously consider these reported problems. The City Attorney should determine how it might act to resolve these types of problems when they arise so that all parties—client department personnel as well as the attorneys involved—can develop better working relationships and improve the City Attorney's service.

***The City Attorney Has
Increased Spending and Expanded Its
Staff Significantly in Recent Years***

Expenditures and staffing of the City Attorney have increased significantly over the past five years, possibly contributing to its ability to satisfy its clients. Exhibit 9 compares total expenditures by program and full-time equivalent (FTE) positions in fiscal year 1996-97 and fiscal year 2000-01.

Exhibit 9
Office of the City Attorney
Change in Expenditures and FTE Positions
Fiscal Year 1996-97 Through Fiscal Year 2000-01

	FY 1996-97	FY 2000-01	PercentageChange
Legal Initiatives (Affirmative Litigation)	\$0	\$484,953	NA
Claims	2,247,226	1,905,325	(15%)
Legal Service	26,344,036	43,619,895	66%
Total Expenditures	\$28,591,262	\$46,010,173	61%
Attorney Positions	147	187	27%
Support Staff Positions	125	137	10%
Total FTE Positions	272	324	19%

The City Attorney's implementation of new legal initiatives (affirmative litigation), other programs, and the cost of providing legal services have contributed to overall growth in spending. For example, affirmative litigation first appeared as a budget line item in fiscal year 1999-2000 and amounted to \$835,309 in actual expenditures, although the cost of legal initiatives declined to \$484,953 in fiscal year 2000-01. Expenditures for costs associated with investigating and settling claims has declined, so claims have not been a factor in increased spending in recent years.

The most significant growth in expenditures has occurred in legal services, and in the costs of new attorney positions to provide those services. Expenditures for legal services have grown each year between 8 and 21 percent, and they have risen a total of 66 percent for the five-year period. In addition, the City Attorney has increased its staff significantly over the past five years. While total expenditures have risen 61 percent, the number of full-time equivalent (FTE) positions has increased 19 percent, from 272 to 324. In five years, the number of FTE attorney positions has increased by 40 (27 percent), and other FTE support staff positions have increased by 12 (10 percent). Salaries and fringe benefits constitute the majority of the City Attorney's total operating costs; in fiscal year 2000-01, they composed 74 percent of total expenditures.

We cannot identify all the factors that have contributed to the increases in costs of legal services. City departments, boards, commissions, and other entities using the City Attorney may be demanding services more often than before, or the current city attorney may have chosen to provide more legal services over time, or both. In any case, the City Attorney should be able to demonstrate to the board and the mayor how this growth in the costs of operating the department has contributed to the quality of services that the City Attorney provides.

THE CITY ATTORNEY LACKS REQUIRED COMPONENTS OF A COMPREHENSIVE PERFORMANCE MANAGEMENT SYSTEM

The City Attorney has developed a mission statement and some performance measures as required under the charter and administrative code, but it has not developed goals or objectives that would help the department determine whether it is achieving its mission. In addition, the City Attorney has not developed a strategic planning process that would guide its efforts in the future. Without a strategic planning process, the City Attorney cannot demonstrate that it has a clear idea of its long-term direction or what kind of organization it intends to be in the future. While we recognize that the nature of municipal law is client-driven and that its practice is difficult to plan and measure, the charter and administrative code do not exempt the City Attorney from the strategic planning requirements that apply to all city departments.

The Department Is Meeting Some but Not All Requirements in the Charter and Administrative Code

The City Attorney's budget for 2001-02 presents the mission of the department, specific services provided by the department, and policy outcome (performance) measures. However, because the City Attorney lacks other essential components of a comprehensive performance management system—specifically goals, objectives, and a strategic planning process—it does not comply with the requirements of the charter or administrative code. More importantly, without defined goals and objectives, the City Attorney is limited in its ability to manage the course of its operations beyond the short term.

We found no references to departmental goals, objectives, or strategic planning during our audit of the City Attorney. Further, the City Attorney's director of administrative services said that the City Attorney does not formally develop a set of goals and objectives, and it does not engage in a strategic planning process. He emphasized that under the current city attorney's leadership, all employees know what is expected of them and to whom they are responsible. He also said it is unclear that the City Attorney would be a better organization if it routinely engaged in the process of strategic planning and of developing goals and objectives.

In 2003, the City Attorney, like all city departments, will have to comply with the rigorous requirements of the Performance and Review Ordinance of 1999. According to staff of the performance management unit of the Controller's Office, the City Attorney is not close to meeting this deadline, nor does it seem concerned with compliance.

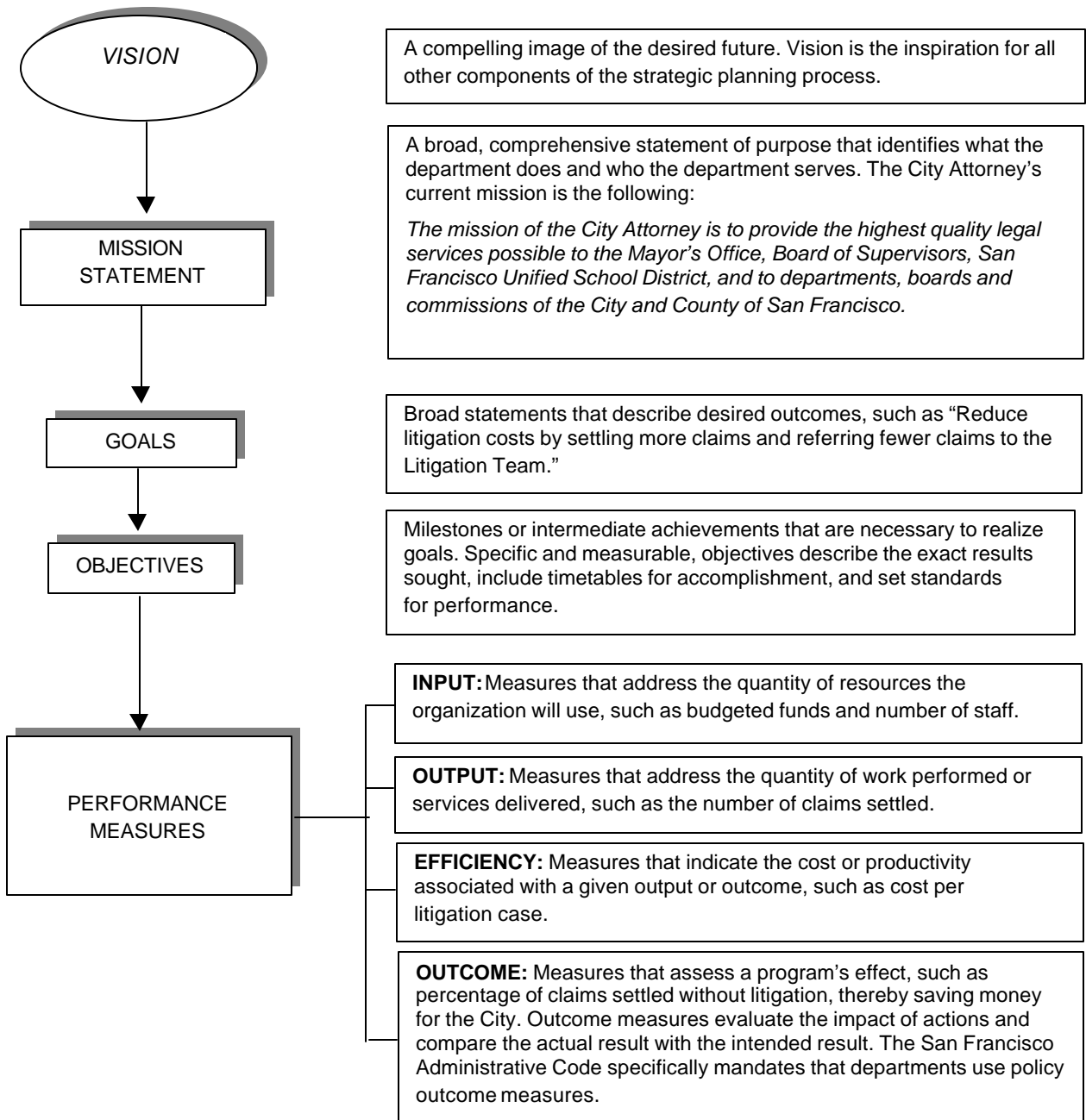
***A Model Strategic Plan Links an
Organization's Vision, Mission,
Goals, Objectives, and
Performance Measures***

Using authoritative literature and the Controller's Performance Measurement Instructions, we developed a model of the strategic planning process, which Exhibit 10 on the following page describes. Each step in strategic planning is essential to the step that follows, beginning with the vision statement. A vision statement consists of principles, standards, or qualities that an organization considers worthwhile as well as the fundamental beliefs on which the organization bases its practices. For example, a city attorney's vision of its role should focus on providing optimal legal service for its clients, thus the city attorney minimizes legal liability for that city. Reflecting the vision and intent of the organization, the mission statement clarifies the organizational purpose without providing details of the method for achieving it.

The strategic plan's goals and objectives specify how an organization will accomplish its mission. Goals identify the general changes or results that must be achieved for the organization to fulfill the vision and carry out the mission. Goals can be internal or external to the organization, depending on the result desired. For example, for a city attorney, an internal goal may be to close as many claims as possible within a specific period, while an external goal may be to improve the condition of the city's housing through enforcement of housing codes. After an organization determines its goals, it needs to develop and link them to specific activities—or objectives—to achieve the goals. Finally, the organization must establish specific ways to measure its performance.

Exhibit 10
A Standard Strategic Planning Process for Organizations

A future-oriented process of diagnosis of problem areas, objective setting, and strategy building that is an essential part of quality management. This process relies on careful consideration of an organization's capacities and environment and leads to significant decisions about allocation of resources. Strategic planning emphasizes effective uses of resources to achieve meaningful results.



THE CITY ATTORNEY LACKS MEASURES OF THE QUALITY OF ITS WORK BUT COULD DEVELOP THEM

The City Attorney's commitment to the use of performance measures, one of the essential components of a performance management system, has been weak and relatively recent. Although the City Attorney now has some performance measures in place, their value is limited without the associated goals and objectives from which the measures should come. The City Attorney's performance measures emphasize the volume of its work and the resources used to perform this work, but they do not help decision makers evaluate its quality or effectiveness. Additionally, the City Attorney uses measures to report on only a portion of its work, so it cannot demonstrate its accomplishments to its clients, including the citizens of San Francisco, and other stakeholders. As noted above, the City Attorney has increased both its staff and its budget. Without ways to gauge its effectiveness, the City Attorney cannot justify this growth to stakeholders, and it cannot be certain that it is achieving its stated mission to provide the highest-quality legal services to the City.

As required by the administrative code, a department's performance measures are to reflect its mission and goals and can be used to gauge the department's progress toward attaining its goals. Because the City Attorney's mission is to provide the "highest quality legal service," the City Attorney's performance measures should measure the quality of its legal service. Measuring the quality of legal service is a challenge. Nevertheless, the City Attorney could benefit from surveying its clients, as we did for this audit, and from incorporating effectiveness measures, as we discuss later in this chapter.

The City Attorney's Performance Measures Are Only Partially Related to the Work That the Department Emphasizes in Its Budget

To comply with administrative code requirements, the City Attorney describes its mission, services, and performance measures in its budget for fiscal year 2001-02. However, the performance measures do not satisfy the standard purpose for such measures; they do not provide benchmarks by which the City Attorney or anyone else can evaluate whether the City Attorney is fulfilling its mission effectively. The City Attorney's services include representing the City's interests in lawsuits and claims; drafting and reviewing legislation, contracts and other legal documents; representing the City in personnel and labor matters; defending the validity of locally enacted laws or the actions of city officials; and protecting city consumers and neighborhoods. In addition, the City Attorney's budget discusses its affirmative litigation work on behalf of the City, outlining its suits against gun and lead paint manufacturers, its consumer protection cases, and the work of the City Attorney's Code Enforcement Task Force.

The City Attorney's budget also lists its performance measures, and it reports the cost, quantity, and timeliness of its work in legislation, claims, advice to city government, and litigation. Most measures show the time and money spent on legal service and the general

volume of work, but they do not gauge the effectiveness of the City Attorney's work, nor do they allow others to appraise the City Attorney's efforts in key areas of interest to policy makers and the public.

Claims measures are the most useful of the City Attorney's performance measures because the department can use them to assess both its efficiency and its effectiveness in the claims area. By reporting the percentages of claims settled and denied as well as the average settlement amount per claim and the duration of cases, the City Attorney can analyze data from more than one year to show trends. For example, the department can report changes in average settlement amounts or percentages of cases settled over time and explain the reasons for increases or decreases. If these changes lead to the City Attorney's saving money for the City, the claims unit should calculate and report any cost savings.

On the other hand, as Chapter 1 notes, the City Attorney does not report any performance measures for its affirmative litigation work. While affirmative litigation may not be as large or consistent a part of the department's workload as claims or general litigation, the major cases, such as lawsuits against the gun industry or manufacturers of lead paint, are high-profile endeavors that represent a significant departmental effort and that are featured prominently in the budget book. In addition, the city attorney undertakes these cases at his or her discretion, so there is no specific client department overseeing the City Attorney's work on them. Because the "client" is the citizenry of San Francisco and these cases are so costly, the City Attorney has a responsibility to report its effectiveness in this area and provide a means for the public to evaluate its work.

***Without Data or Any Measures of
Quality, the City Attorney Cannot Show
That It Is Achieving Its Mission***

The City Attorney's performance measures for legislation, advice, and litigation are less successful than those for claims management, because these measures simply show the volume of work without providing information about the quality of the work. For example, listing the number of requests for advice or "board-generated work assignments" is an input measure that simply quantifies a part of the City Attorney's workload. Reporting the amounts of time and money spent giving advice to city government does not indicate the relative satisfaction of the City Attorney's clients, which would be an indicator of the quality of the advice provided. Further, reporting the value of settlements is meaningless without context. The City Attorney will settle different kinds of cases for different amounts of money, so raw numbers do not reflect performance. As in the case of claims settlements, litigation settlement amounts may mean more when the City Attorney and decision makers can compare data from multiple years. However, simple cost and workload measures are not useful to the department without measures that also gauge the effectiveness of the City Attorney, or how well it uses its money and time.

The director of administrative services for the City Attorney said that in the past, the department has resisted developing measures, and he believes that much of its work is

subjective and difficult to measure. Budgets for fiscal years 1999-2000 and 2000-2001 show only one performance measure per year; both concern improvements to automated information systems.

According to the Controller's Performance Management unit, the department's difficulties with performance measures come from two sources. First, the nature of the work makes it hard to gauge success: The City Attorney does not feel a simple win/loss record or measures of money saved or collected are valid measures. Second, no one is managing the process. The director of administrative services produces the measures for the budget, but the attorneys may not collect information in a way that would be useful to the process. In addition, the director of administrative services may not communicate adequately with the attorneys when he generates the measures; late in the process for fiscal year 2001-02, at least one deputy city attorney disagreed with the numbers reported.

***The City Attorney Should Establish
Measures of Effectiveness***

Although city attorneys in other jurisdictions do not usually measure the quality of their work, the San Francisco City Attorney could devise ways to measure how effectively it is doing its job. While most other jurisdictions that we analyzed focused on output and timeliness measures rather than on quality, two jurisdictions report effectiveness measures that the City Attorney could use to help show the effectiveness of their legal services. The city of Austin, Texas, includes cases settled within a certain range in their "win-loss" record, which puts the city's work in a context by showing acceptable settlement amounts. This practice is also a way to measure good work that may not have resulted in a "win" for the city. Similarly, San Diego, California, compares award amounts to the original demands, a ratio that illustrates the city attorney's success at negotiating and litigating cases in which the city may have been at fault.

The City Attorney could also survey its clients regularly. As described above, client questionnaires are a good way to learn how well or how poorly an agency delivers services, and such surveys could help the department improve certain aspects of its performance.

RECOMMENDATIONS

To help gauge its success in delivering the highest-quality legal services, the City Attorney should take these steps:

- Conduct or contract for periodic surveys of its clients to assess the overall quality of services it delivers and to discover areas in which it needs to improve.
- Ensure its claims unit calculates and reports any cost savings that its work produces.
- Develop a way to measure the effectiveness and cost-effectiveness of its affirmative litigation work.
- Incorporate into its performance measures the same types of effectiveness measures used by other jurisdictions.

In the budget process for fiscal year 2002-03, the City Attorney should improve its budget accountability to the Board of Supervisors, to the Office of the Mayor, and to the general public. To do so, the City Attorney should provide the Board of Supervisors with information and analysis showing specific justifications for proposed future spending increases.

CHAPTER 3

THE CITY ATTORNEY SHOULD IMPROVE ITS ACCOUNTABILITY TO OTHER CITY DEPARTMENTS THAT PAY FOR ITS SERVICES

CHAPTER SUMMARY

The Office of the City Attorney (City Attorney) does not have an effective system for billing and work orders to charge client departments for its services, and the City Attorney's billing process is not providing good service to client departments. Indeed, client departments report considerable dissatisfaction with both the billing format and the billing process. Several departments reported to us that bills are often late, lack sufficient information, and regularly exceed the dollar amounts agreed to in budgeted work orders. Financial staffs of some departments are frustrated by the negative effects these conditions have on their fiscal operations. Bills that are late and insufficiently detailed hinder the ability of client departments to manage their budgets and control their costs.

The problems with work orders reported to us are not unique to the City Attorney. In fact, because the City and County of San Francisco (City) lacks an adequate policy or procedure for how and when departments establish work orders, the City Attorney is just one of many departments using a system for charging other departments for its services that is inconsistent and, in some cases, unreasonable. The City does not ensure that departments that are parties to a work order clearly state the types of work covered. Further, the City has no policy or list to identify the departments that can or should enter into work orders for efforts made on their behalf by another department. Although these problems with work orders constitute a citywide issue, the City Attorney has a responsibility to do everything under its power to improve the satisfaction of its client departments with the work order and billing processes that it uses.

BACKGROUND

City departments use work orders to budget for the services they receive from other departments. According to the City's budget instruction manual, work order agreements must be signed by both the requesting and performing departments and must specify the cost and services to be performed. The amount stated in the work order agreement must match the expenditure entry in the requesting department's budget. Work order budgets should include an estimate for increases in labor costs and other costs where appropriate, and performing departments must ensure that the total cost of the work that they anticipate doing for other departments is supported by budgeted requests. Each year, requesting departments are to arrange all work orders with performing departments during December through February for the following fiscal year's budget. For the fiscal year 2001-02 budget, performing departments were to notify requesting departments of

their costs by January 10, 2001, to allow the requesting departments time to budget for any changes to the work order expenses.

The last step in the work order process is for the requesting department to pay the performing department via the City's financial system. The City Attorney records the financial transactions, or journal entries, relating to the work performed in the City's online accounting system, the Financial Accounting Management Information System (FAMIS); this process reimburses the City Attorney for its work and liquidates the client department's encumbrance. Although the work order payments have already been made to the City Attorney in FAMIS, the City Attorney also sends "bills" to its client departments. The City Attorney sends the fourth quarter bills after the fiscal year has ended on June 30 so that the bills can reflect all charges for the entire fiscal year.

SOME CLIENT DEPARTMENTS HAVE EXPRESSED DISSATISFACTION WITH THE CITY ATTORNEY'S BILLING PROCESS

Some client departments report considerable dissatisfaction with both the City Attorney's billing format and billing process. Criticisms include the comments that bills are not sufficiently informative, are not sent in a timely manner, and regularly exceed the budgeted work order amounts. Departments have expressed frustration over the impact these issues have on their fiscal operations. Many departments cannot accurately plan their expenses for the next fiscal year without having a reliable estimate of their City Attorney costs.

Almost Half of Survey Respondents Are Dissatisfied With the City Attorney's Billing Process

A majority of City Attorney clients are satisfied with the bills they receive, however, many are not. Of the 29 clients who responded to a question on our survey about satisfaction with the City Attorney's billing, 16 (55 percent) reported that they are "somewhat satisfied" or "very satisfied" with the billing process. However, the remaining 13 respondents (45 percent) indicated that they are somewhat or very dissatisfied. We believe that this level of dissatisfaction indicates a significant problem about which the City Attorney should be concerned.

Twenty-one respondents wrote comments on their surveys concerning the City Attorney's billing. Comments mentioned the need for more frequent billing, instances in which the City Attorney billed to an incorrect fund, inappropriate bills, delayed bills, and bills that do not include enough detail about the work covered. For example, the Department of Human Services wrote, "We've requested breakdowns of charges and haven't been able to get them. In past years we've discovered inappropriate (non-DHS) charges to our work order. Billings are not timely." On its survey, the San Francisco International Airport stated, "The Construction Division of the City Attorney's Office is not adhering to its [work order] budget. The Airport is not able to obtain bills on a timely

basis. I also have concerns the City Attorney Office's overhead rate is excessive." Although we could not confirm that all of these concerns are justified, it is in the interests of the City Attorney to determine how its billing process can better meet the needs of city boards, commissions, departments and other organizations that it charges for its services.

***Some Client Departments
Believe That City Attorney Bills
Lack Sufficient Documentation***

Several departments we contacted said that their City Attorney work orders and bills do not contain enough information. In fairness to the City Attorney, the detail included in work orders is the responsibility of both the requesting and performing department and, to the extent that lack of detail in work orders leads to a lack of detail in the City Attorney's bills, both the City Attorney and its clients departments are at fault. The Controller's budget instructions for fiscal year 2001-02 say that work order agreements should include a description of the services to be delivered, including units of service and delivery dates. However, we found that typical work orders that the City Attorney has with its client departments usually specify only dollar amounts. No services or hours appear on the work orders. Nonetheless, the lack of specificity in work orders does not prevent the City Attorney from making its bills clearer and more detailed.

Many client departments are unhappy with the bills they receive from the City Attorney. For example, the deputy director for Administration and Finance of the Department of Parking and Traffic said that typical bills from the City Attorney show the project titles or names associated with the cases, but they do not show the names of the deputy city attorneys who did the work or the types of work they performed. The Health Service Board wrote in its response to our survey, "Some charges are unclear. Would like to see description of services provided clearer and more detailed." The principal administrative analyst for the San Francisco Municipal Railway (Muni) said that she does not know how the City Attorney assigns different activities to charge, and the bills are difficult to verify. On its survey questionnaire, the Emergency Communications Department said that the description of services on the City Attorney's bills does not distinguish by fund, and the bills sometimes charge to the wrong fund. The principal accountant for the Department of Telecommunications and Information Services said that the City Attorney's bills do not provide enough information for the department to know what the charges cover. He also noted that the City Attorney does not provide supporting documentation unless specifically requested to do so. Further, the principal administrative analyst for Muni said that because the City Attorney prepares bills that are year-to-date and does not show subtotals for earlier months or quarters, she cannot tell when the City Attorney completed work being billed without the financial staff's performing their own comparisons and calculations using previous bills.

Our survey also found that when client departments receive their bills, the departments are often unable to distinguish between services they requested and other services provided by the City Attorney. Of 32 responses to a question about distinguishing between requested services and other services, 22 (69 percent) said that the City

Attorney's billings did not allow them to make this distinction. The director of the Office of Contracts Management for the Department of Human Services estimated that the department had requested only one-third of the work on City Attorney bills and that it was unsure about which services were included in the remaining two-thirds of the costs. In addition, two departments reported that they have been billed for services that their departments did not request.

The City Attorney's chief financial officer said that the City Attorney can provide more information on its bills if asked to do so, and some departments reported that they have worked with the City Attorney to receive more informative bills. The Public Utilities Commission's director of budgets, for example, told us that the department used to overrun its budget with the City Attorney regularly and had to ask its commissioners to transfer funds to cover the shortfall. To provide more accountability, Public Utilities Commission staff worked with the deputy city attorney for the department and with the City Attorney's chief financial officer to establish a more regular, detailed billing system. The Rent Board also asked for and received quarterly bills that include descriptions of which attorneys are working on which cases so that the director can more easily compare City Attorney expenses to budgeted amounts.

***Bills That Exceed
Work Order Budgets
Cause Problems for Clients***

The City Attorney's annual billings regularly exceed the budgeted work order amounts. Of the 59 work orders between the City Attorney and client departments in fiscal year 2000-01, 26 (44 percent) exceeded their budgeted amounts. For example, two divisions of the Department of Human Resources have work orders with the City Attorney, and the City Attorney billed amounts that exceeded both divisions' work orders for two of the past three fiscal years. The City Attorney's bills to the Department of Human Resources for collective bargaining work in fiscal year 2000-01 exceeded the amount budgeted by \$405,207 (42 percent).

Several departments complained about the frequency with which the City Attorney in recent years has exceeded the agreed upon amounts in its work orders. Representatives of Muni, the Department of Parking and Traffic, and the Department of Human Services all said that they regularly exceed or expect to exceed their work order budgets with the City Attorney. The Department of Parking and Traffic cited traffic litigation cases as an example: These cases are handled completely outside the department's control, and litigation costs came to more than double the budgeted amount at the end of fiscal year 2000-01. The director of the San Francisco International Airport (Airport) also expressed dissatisfaction with the City Attorney's undertaking work that the Airport did not request and that exceeded the amount budgeted to pay for the City Attorney's services. The San Francisco Transportation Authority's response to our survey indicated that it is very dissatisfied with the City Attorney's billing process because "billings have more than doubled the size of the contract, with no prior reports, interim billings, or warnings."

The City Attorney's chief financial officer and managing attorney explained that City Attorney bills to client departments exceed work order amounts when cases and circumstances change, requiring unforeseen City Attorney work and expenses. The chief financial officer also noted that some departments, such as Muni and the Department of Human Resources, have underbudgeted for City Attorney expenses.

***Some Clients Report That
Bills Are Not Prompt***

In addition to the amounts billed by the City Attorney for its work, the timeliness of bills has also been a problem for departments. Nine of the 21 (43 percent) written comments that concern billing on the survey responses cite timeliness as an issue. In interviews, staff of Muni's Budget and Analysis Division described problems with late bills from the City Attorney, while the Public Utilities Commission described past problems with late bills but said they made arrangements with the City Attorney's chief financial officer to address the problem. When City Attorney bills are not prompt and the billed amounts exceed what was budgeted, departments have difficulty planning their work order expenses for the next fiscal year.

When the City Attorney records a transaction in FAMIS, money is transferred from the client department's account to the City Attorney's. Thus, when the client department receives the City Attorney's bill, the money has already been transferred. In some cases, the fourth quarter bill, which the City Attorney issues after the fiscal year has ended, represents the bulk of the client department's costs. For example, for fiscal year 2000-01, the Department of Human Services' fourth quarter bill was 30 percent of the yearly total, and the Department of Parking and Traffic's fourth quarter bill for traffic cases was 61 percent of the yearly total.

Large fourth quarter bills, combined with total billed amounts that often exceed budgeted amounts for the year, understandably cause frustration among client departments. Delayed bills that exceed work order amounts cause problems for departments both at the end of the fiscal year when fiscal officers must find extra money to cover their costs and when departments are planning their budgets for the next year. Departments must submit their budgets to their commissions for review and comment in February. If fourth quarter bills are not timely and are larger than planned, departments have only a short time to recoup the money needed for the unexpected expenditure before the final accounting for the fiscal year is due.

**SOME CLIENTS' FRUSTRATION MAY STEM FROM THE
LACK OF AN ADEQUATE POLICY FOR WORK ORDERS**

Neither the City as a whole nor the City Attorney has a policy governing which departments that request work should use work orders. In general, fee-generating departments and departments that receive money from sources other than the City's general fund are supposed to have work orders to pay performing departments, such as

the City Attorney, for work done on their behalf. However, there is no written policy. Further, city departments do not apply this informal policy consistently. Consequently, some fee-generating departments do not use work orders to pay the City Attorney for the its services, resulting in unfairness to some departments in the budget process. In addition, some client departments believe that the City Attorney is charging them for activities that their work orders do not directly cover.

***No Policy Indicates
Which Departments Should Have Work
Orders With the City Attorney***

Because the City lacks a written policy specifying which departments should enter work orders, some departments that receive revenues from fees or other sources besides the general fund and should have work orders with the City Attorney do not have work orders. On the other hand, some general fund-supported departments do have work orders with the City Attorney. For example, the City Attorney has entered work order agreements with the departments of Telecommunications and Information Services, Elections, and Emergency Communications, departments that are funded primarily by their work for other city departments and by the general fund. Conversely, the San Francisco Public Library (Library) does not have a work order with the City Attorney although the Library has a dedicated funding stream from local taxes. In addition, the Planning Department (Planning) does not have a work order with the City Attorney, although Planning generates most of its revenues by charging for its services. Planning receives a consistent and substantial volume of legal service from the City Attorney, but neither the City Attorney's chief financial officer nor Planning's fiscal officer could explain why there is no work order between their departments.

***Some Clients Departments Believe That
the City Attorney Charges for Certain
Activities That Their Work Orders Do Not Specify***

Some client departments believe that the City Attorney is charging them for activities that are outside their work orders' intended scope of services. For example, the City Attorney charges the Rent Board for part or all of the cost of defending the City against lawsuits filed in response to rent-related laws that the Board of Supervisors passes. The executive director of the Rent Board believes these costs should be paid from the City's general fund because the Rent Board's fees cover only the department's expenses, and the general fund has to subsidize the Rent Board's cost overruns anyway. A deputy director of the Department of Human Resources expressed frustration with the work order arrangement that department has with the City Attorney. Specifically, he feels the existence of a work order between his department and the City Attorney does not make sense because the money that his department uses to pay the City Attorney comes from the general fund. He also asserted that the Department of Human Resources has no control over the amount or type of work the City Attorney does for it. The Department of Telecommunications and Information Services said on its response to our survey, "We are billed for telecom policy work that is not requested by DTIS but is external. We are

constantly asked for more money, but most funds are provided directly to them as GF [General Fund] in their budget.” Finally, in its survey response, the Tax Collector said that the City Attorney bills for services it performs to satisfy its own duties under the San Francisco Charter.

These comments appear to indicate that the City Attorney and its client departments have not agreed as to whether it is acceptable for the City Attorney to charge for services that the client department has not requested and that are not directly attributable to actions of the client department. In addition, the City has no established policy relevant to this issue, and this lack of a policy can allow for misunderstandings between requesting and performing departments over what a work order covers. This situation, in turn, does not promote the accountability of performing departments in their billing and can lead to dissatisfied client departments.

The City Attorney Can Establish Its Own Work Order Policy, and the Controller Is Changing Accounting Procedures for Work Orders

A more complete, reasonable work order policy should identify the departments that must establish work orders with performing departments and the kind of work that a work order should include. Logically, departments that do not derive most of their revenues from the general fund and large departments that are consistent and high-volume users of legal services should have work orders with the City Attorney. Small departments that use the City Attorney only occasionally may not need work orders, especially if City Attorney costs are ultimately paid by the general fund. In the absence of a city policy on this matter, the City Attorney could establish its own.

The Controller's Office is revising some of the work order procedures in FAMIS. The director of the Controller's Accounting Operations and Systems Division explained that under the previous system, departments could not reduce the amount of money allocated for work orders without approval because such changes would alter the service department's budget as well. Under the new system, implemented July 30, 2001, client departments have five days to review and approve work order bills from performing departments. If a client department disputes the bill, it can now make a journal entry in FAMIS that reserves the funds until the dispute is resolved. Beginning in July 2002, the system will be able to show a running tally of departments' work order expenditures. This procedure will enable departments to monitor and approve their expenditures more easily. According to the director of the Controller's Accounting Operations and Systems Division, until the system can show running tallies, client departments would benefit from quarterly projections by performing departments.

RECOMMENDATIONS

To improve the satisfaction of its clients with the bills they receive, the Office of the City Attorney should do the following:

- Review its billing process to be sure that it is charging enterprise and other departments promptly and giving clients the information that they need.
- Better inform client departments of customized billing arrangements that the City Attorney can make available to them.
- Work with the Office of the Controller to determine which departments are major clients of the City Attorney; those departments that have a consistently high volume of work should have work orders. Small departments with an inconsistent volume of work should not.
- Collaborate with client departments to include more information on work order agreements. Specifically, the City Attorney should list the hours and hourly rate for the work it will perform as well as how the City Attorney and the department will manage changes to the expected volume of work. Departments without work orders should also be informed as to the costs of the work they request.

We conducted this audit according to generally accepted government auditing standards. Such an audit provides reasonable assurance that its objectives have been achieved, but does not guarantee the discovery of non-compliance, including fraud or abuse. We limited our review to those areas specified in the audit scope section of this report.

Staff: Mark Tipton, Audit Manager
Millicent Bogert
Carrie Fassett
John Haskell

Appendix
Office of the City Attorney Customer Survey

CONTROLLER'S AUDITS DIVISION
OFFICE OF THE CITY ATTORNEY CUSTOMER SURVEY

Please answer the following questions to the best of your ability. When finished, return by interdepartmental mail to the Controller's Audits Division at the address shown in the cover letter. Thank you.

GENERAL

1) Which deputy city attorney is assigned to your office? (optional) _____

2) About how often do you rely on a deputy city attorney to provide you with:

a) general legal information (circle one)

b) advice or guidance on particular matters (circle one)

c) legal representation (circle one)

Daily	Weekly	Monthly	Few Times A Year	Never
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5

ADVICE

3) Have you requested legal advice from your deputy city attorney?

Yes____ No____

4) How often are you able to contact your deputy city attorney and receive a response in a reasonable period of time? (circle one)

Always	Almost Always	Some- times	Rarely	Never
1	2	3	4	5

5) How often is the advice you receive from your deputy city attorney sufficient to answer your question(s) and satisfy your concern(s)? (circle one)

Always	Almost Always	Some- times	Rarely	Never
1	2	3	4	5

6) What type of advice do you seek from your deputy city attorney?

**Check all
that apply**

a) Clarification or interpretation of ordinances, administrative code, Charter provisions, rules and regulations, other laws and statutes, etc. ☐

b) Appropriate action to take with respect to employment, labor, or personnel issues. ☐

c) Guidance in modifying or formulating new policies and procedures. ☐

d) Guidance in formulating appropriate responses to special situations that may pose potential liability to the City. ☐

e) Guidance in controlling potential risks and losses. ☐

f) Other advice (please specify) ☐

7) Have you had any particular problems with how the City attorneys have advised or represented your department?

Yes____ No____

8) If you answered Yes to question 7, can you explain what kind(s) of problem(s) you had?

Appendix

Office of the City Attorney Customer Survey

LITIGATION –	Answer only if your office has been represented by the City Attorney's Office in any litigation in the past 2 years.
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9) For litigation that has been concluded:

- a) Has the outcome been satisfactory for your department? Yes____ No____
- b) Regardless of the litigation's outcome, in your opinion, was the representation your department received from the City Attorney's Office of the highest quality? If not, please describe why. Yes____ No____

OTHER

- 10) Has the City Attorney's Office worked with your office, either by providing training or advice, in the area of risk management? Yes____ No____

(Risk management is the identification, measurement and control of potential or incurred loss.)

- a) If you indicated Yes in question 10, please describe.

- 11) Do the City Attorney's billings allow your office to distinguish between services that you requested and other services the City Attorney's Office provided to your office? Yes____ No____

- 12) How satisfied are you with the current process by which the City Attorney's Office bills your office? (circle one)

Very Satisfied	Somewhat Satisfied	Somewhat Dissatisfied	Very Dissatisfied
1	2	3	4

- a) If you are not very satisfied, please explain why. _____

- 13) The services received from the City Attorney's Office over the past year were of the highest quality. (circle one)

Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion
1	2	3	4	5

- 14) (optional) Please provide the name of your Department, Board, Commission or other organization. _____

Thank you for completing the survey.
Please return to the Controller's Audits Division, City Hall, Room 392.

**RESPONSE TO THE AUDIT
OFFICE OF THE CITY ATTORNEY**



LOUISE H. RENNE
City Attorney

MEMORANDUM

TO: Ed Harrington
Controller

FROM: Louise H. Renne
City Attorney

DATE: January 4, 2002

RE: Response to Performance Audit

GENERAL COMMENTS

We are pleased that the report – which the Controller's Audits Division informs us is one of the most positive performance audits it has produced for any City agency – recognizes that the City Attorney's Office is well run, provides outstanding service to its clients, operates successful programs in key areas such as affirmative litigation and claims administration, and is succeeding in fulfilling its mission under the Charter.

We are especially pleased that the Controller's Audits Division found that 95% of the surveyed City departments, boards, commissions and officials rate the legal services we provide to be of the highest quality. We take pride in providing exceptional legal services to our clients, in offering fulfilling careers for our talented lawyers and support staff, and in producing public benefits for San Francisco. That is why this Office is consistently recognized as one of the premier public law offices in the country.

The opportunity for us to work with the Controller's Audits Division has been valuable. We agree with most of the recommendations the Audits Division makes in the report and have already begun implementing them to further improve client service. Below, we outline specific responses to the recommendations.

Our principal disagreement is with the Audits Division's recommendation that the City Attorney change the process for selecting and funding affirmative litigation cases to shift decision-making authority to the Board of Supervisors and Mayor. The City Attorney's Office already advises the Board and the Mayor both before filing significant cases and through the annual budget process. In addition, the cumbersome approach suggested is not workable in a litigation environment and will not achieve the objectives sought.

The affirmative litigation program has been tremendously successful. For example, in the tobacco cases, the City has received over \$44 million to date, and all told, through 2025, the City will receive approximately \$500 million. In the Bank of America case, the City has received approximately \$15 million. In the Old Republic case, the City has already received approximately \$3 million and is entitled to another \$7.6 million under the judgment this Office obtained against the title company.

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 2
RE: Response to Performance Audit

The affirmative litigation program as currently structured works well for three main reasons:

- The ability of the City Attorney to bring such actions on her own initiative is a fundamental part of the Charter's time-tested system of checks and balances. The Charter contemplates an independent City Attorney, who is accountable to the voters and has an independent obligation to the people to pursue claims in favor of the City.
- This Office's management of the program is consistent with how law firms operate and how litigation decisions are made. The City Attorney's Office already does appropriate planning for affirmative litigation matters.
- The current affirmative litigation process already addresses the auditors' concern about continuity in the cases when a new City Attorney takes office.

We begin our response by discussing below the reasons why our current procedure for affirmative litigation is sound. We then respond to each of the recommendations that the auditors make in the report.

GENERAL RESPONSE TO AFFIRMATIVE LITIGATION RECOMMENDATIONS

The ability of the City Attorney to bring such actions on her own initiative is a fundamental part of the Charter's time-tested system of checks and balances. The Charter contemplates an independent City Attorney who is accountable to the voters and has an independent obligation to the people to pursue claims in favor of the City.

The Audits Division's recommendation for a process that shifts authority for affirmative litigation cases to the Board and the Mayor conflicts with the balance of powers under the Charter. The City Attorney is an elected official with decision-making authority in legal matters.

Under the Charter, the City Attorney has an independent obligation to the people to pursue claims in favor of the City.

Section 6.102 of the Charter specifically calls for the City Attorney to begin legal proceedings whenever a cause of action exists in favor of the City. Moreover, under California Business and Professions Code sec. 17200 *et seq.*, the State Legislature has specifically – and uniquely – authorized city attorneys to bring actions to end fraudulent and unfair and illegal business practices.

In 1932, an elected Board of Freeholders rewrote the San Francisco Charter. The purpose was to restructure City government and protect it from corruption that had plagued the City. The drafters of the new Charter considered whether the City Attorney should continue to be elected; they decided to retain the City Attorney as an elected official. Their reasoning for this choice was important - an appointed City Attorney would always be beholden to the appointing authority. The drafters believed that the City Attorney should be accountable only to the people. An elected City Attorney would be an objective legal

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 3
RE: Response to Performance Audit

advisor, whose primary duty was to the public and not individual officials. Francis Keesling, a member of the Board of Freeholders and chairperson of the 1932 drafting committee, wrote “The City Attorney is retained as elective because his duty is to the city and the people. Made appointive by either a Mayor or a Chief Administrative Officer, he would be exposed to the possibility of conflicting allegiance.”

The City Attorney owes a duty to the people to be fair, just, and independent, and to give the best possible professional legal advice. The autonomy of the City Attorney enables her to give the difficult, objective advice that a department or commission does not want to hear, and to file suits on behalf of the City where a claim exists, without fear of being fired. In addition, an independent, elected City Attorney performs an important role in investigating and safeguarding the public interest against undue influence and misconduct by city officials.

The Charter intends for that this independence of the City Attorney to be a part of San Francisco’s separation of powers and its checks and balances on executive and legislative power. For decisions regarding affirmative litigation, the City Attorney answers ultimately to the voters. Long-standing legal doctrines recognize and affirm that a public agency that is vested with prosecutorial discretion – such as the City Attorney – must be allowed to bring lawsuits apart from the internal political process that may hinder an independent, professional legal determination.

For example, suppose that several members of the Board of Supervisors and the Mayor had an association with a lumber company. The City Attorney learns through investigation, a whistleblower, or from another political agency, that the lumber company has defrauded the City out of millions of dollars, but the Mayor and the Board members oppose pursuing the lumber company. Under the Charter, the City Attorney has the discretion to determine that a cause of action exists in favor of the City. The City Attorney can, and must, bring suit to protect the City’s interests whether the Board and Mayor agree or not. In the ensuing budget process for the office, the City Attorney can make the case in a public forum for continuing the litigation and can encourage other decision-makers to take proper actions.

The Charter contemplates this independent action by the City Attorney. Under this system, the City Attorney’s Office has received national accolades time and time again for its approach to affirmative litigation and its willingness and ability to take on consumer protection actions against tobacco companies, energy producers, banks, title insurance companies, and gun makers.

The City Attorney already regularly advises the Board, the Mayor and other City Officials regarding affirmative litigation.

With one exception – in which the City Attorney informed the Board and Mayor immediately prior to filing a lawsuit – the City Attorney has advised the Board and the Mayor well in advance of suing. In that instance, the City Attorney was required to proceed in court immediately against energy producers because the statute of limitations was due to expire. In addition, she determined from other actions of the Board and the Mayor that they would support an effort to hold energy companies accountable for fixing

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 4
RE: Response to Performance Audit

prices and cheating San Francisco consumers out of millions of dollars. At that time, the Board and Mayor had been exploring ways to deal with the crisis in energy prices. And indeed, they supported the lawsuit.

The current procedure for advising the Board and the Mayor adheres to the Charter as well as to the legal profession's code of conduct. It serves the best interests of successful litigation for San Francisco.

The City Attorney, and all Deputy City Attorneys, are officers of the court. Their performance is governed by an ethical code and by guidelines that require, as does the Charter, that the City Attorney work with the policy-makers.

Further, in most instances, filing a suit without advising the policy-makers makes no practical sense. The City Attorney might initiate litigation only to have the Board and Mayor cut staffing or the budget, making it difficult if not impossible for the City Attorney to continue the litigation. The state and federal courts would frown on such an approach.

The current program provides for consultation within this time-tested framework.

To add a layer of red tape that would constrain the program without providing any additional strategic benefits to support the City's legal posture would seriously impair the City's ability to defend its rights in court. It is for this reason that the Charter provides for legal decisions on behalf of the City to be made by the City Attorney.

As noted above, the Charter sets out a balance of power and contemplates that the City Attorney will consult with members of the Board and Mayor's Office when appropriate. The City Attorney determines what cases are brought, and the Mayor and the Board determine staffing and budget levels. These arenas are where the policy issues can best be addressed.

An inter-departmental approval requirement could seriously jeopardize the City's interests for no real advantage.

Large affirmative litigation cases have arisen at most only two or three times per year. There is no predictable formula by which the City Attorney can anticipate and select these cases. The cases arise through investigation, information from whistleblowers or consultation with other municipal law offices. The City Attorney's Office independently evaluates potential claims. It must do so without compromising either the facts or sources that alert the City to the potential claim.

The element of surprise is an important aspect in litigation, especially in litigation against large well-financed and well-represented corporations. While the auditors suggest that the proposed changes in procedure could still protect the City's interests, the City's lawyers know that the City might lose

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 5
RE: Response to Performance Audit

significant advantage. Even a closed session might inform other parties of a possible lawsuit because of the notice requirements of the public meeting laws.

A clear example where the suggested process could have impaired the City's interests is the litigation involving the attempt by the Florida buyers in 1992 to move the San Francisco Giants. If the City Attorney had been compelled to go through a contrived approval process like the one the Controller's Audits Division suggests, the out-of-town buyers would have been alerted to our preemptive lawsuit. They could have tried to sue the City in Florida court. San Francisco could well have lost the team.

Another more recent example is the lawsuits this Office filed a few months ago against the Modesto and Turlock Irrigation Districts to seek a court declaration that San Francisco could terminate the energy supply contracts under the so-called "protection clause" and prevent them from invoking binding arbitration provisions. Under the current procedure, this Office advised the members of the Board, the PUC and the Mayor in connection with our filing of the lawsuits. Again, the change in process that the Controller's Audits Division suggests could have put San Francisco in an unfavorable defensive position, with millions of dollars at stake.

In the report the auditors mention that other city attorney offices are required to obtain the consent of the Board and Mayor before bringing litigation. Where this requirement applies in other jurisdictions, the city attorneys are not elected or, in the case of Oakland, the enabling provisions of its charter vary considerably from San Francisco's.

Before bringing cases, the City Attorney plans and creates budgets for affirmative litigation efforts.

The City Attorney's budget contains an hour-by-hour analysis of work on each affirmative litigation matter. The Mayor and the Board have recognized the importance of efforts being carried over from year-to-year and have generally budgeted at least as much for an effort as the previous year. These officials have also seen the beneficial results obtained by the City Attorney and have made their judgments accordingly.

To date the affirmative litigation program has more than paid for itself. For example, in the Tobacco cases, the City has received over \$44 million to date and another \$5 million is expected shortly. All told, through 2025, the City will receive approximately \$500 million. In Bank of America, the City received approximately \$5 million in fees as well as a litigation premium of approximately \$10 million. In Old Republic, the City has already received approximately \$3 million and is entitled to another \$7.6 million under the judgment this office obtained against the title insurance company.

The auditors are correct that there is a risk in the future that the costs of the cases might outweigh the monetary settlements the City can collect. But the success of the program cannot be measured by dollars alone. For example, success in the gun case could be measured by increased public safety, not necessarily a large financial award. Even here, though, San Francisco may benefit from reduced expenses, such as lower costs of emergency service at San Francisco General, that could easily justify the amount spent on

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 6
RE: Response to Performance Audit

the case. In addition, because these cases are often on the cutting edge, it is often not possible to estimate accurately from the outset what the cost or recovery will be.

The City Attorney has minimized the City's exposure in every one of the affirmative litigation cases.

The staffing and budgetary checks and balances noted above reduce the City's exposure in these cases. But the City Attorney also employs other proactive methods to minimize exposure. The City Attorney has spread risk by working with other municipalities to share expenses and by using plaintiff's law firms on contingency bases under contracts the Board has approved. The City Attorney has built coalitions with counsel of other public agencies and private law firms to share expenses in each and every affirmative matter undertaken.

This Office's management of the program is consistent with how law firms operate and how litigation decisions are made. The City Attorney's Office already does appropriate planning for affirmative litigation matters.

The City Attorney's Office is a professional service organization. Professional service firms must be managed and operated differently from other City departments. The City Attorney's product is high quality legal advice. The City Attorney's Office must respond to the cases and requests for advice with which it is presented. Long-term planning cannot anticipate the types and nature of cases that may arise.

There is no quantitative planning formula to evaluate the merits of litigation, especially complex affirmative litigation cases. Decisions regarding these cases involve professional judgment, expertise, and experience.

Often there are non-monetary reasons to undertake litigation. Some litigation may not result in the large money judgements obtained by the City Attorney in Tobacco, Bank of America or Old Republic, but may result in consumer protection through reform of industry practices. For example, if the City spends money on legal fees against the gun industry, and through the litigation obtains added screening procedures or safety measures on weapons, that is a success that cannot be quantified. The auditors acknowledge that public policy results may be as or more important than monetary settlements. But the auditors review the affirmative litigation program only to gauge its monetary risk and success. The analysis in this regard is incomplete.

The current affirmative litigation process already addresses the auditor's concern about continuity in the cases when a new City Attorney takes office.

The auditors' recommendation to shift decision-making authority for legal matters to a combination of the Board, Mayor and City Attorney seems motivated only by hypothetical concern that a new City Attorney might abandon affirmative litigation efforts that a predecessor had begun. But decisions about whether or not to undertake affirmative litigation cases in the first place should not be driven by this concern. These

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 7
RE: Response to Performance Audit

cases often take a long time to reach resolution; there is no guarantee or policy rationale that they be completed during the term of any given City Attorney.

Moreover, there are other ways to address the concern over continuity without undermining San Francisco's interests in litigation. As noted above, the City Attorney's Office generally would not bring cases if it thought it would be unable to pursue them because the policy-makers would not support those efforts. Both the checks and balances that are part of the budget process and the City Attorney's ethical obligations as a lawyer mitigate this concern. The City Attorney serves her clients and ultimately is answerable to the voters; the City Attorney cannot change course without good reason and without accountability.

RESPONSES TO SPECIFIC RECOMMENDATIONS***Affirmative Litigation Program***

Controller's Audits Division Recommendation: Work with the Board of Supervisors and Mayor's Office to formalize the process for selecting and funding affirmative litigation cases and seek the consensus of the Board and Mayor's Office and do long term-planning of affirmative litigation efforts, including projections of costs and benefits (both policy and fiscal) of pursuing each case.

Response:

- For the reasons discussed above, the City Attorney's Office disagrees with this recommendation. The current process works well. The budget process provides checks and balances. Most important, a contrived process seeking formal approval before filing affirmative litigation cases is inconsistent with the Charter and would jeopardize the City's interests in litigation. The City Attorney will, however, examine ways to improve the office's decision-making in the context of the affirmative litigation program.
- As noted above, affirmative litigation is not susceptible to the type of long-term planning suggested in the report. The City Attorney cannot predict when and how these cases will arise or how they will be resolved. The City Attorney must be innovative and act quickly and decisively to ensure success in affirmative litigation. The Office provides detailed budget projections at the outset of the cases, and keeps policy-makers advised about the progress of the actions, about any significant changes or developments, and about the progress toward goals for each case filed. The Office cannot be any more specific without giving away the City's advantage in litigation.

Controller's Audits Division Recommendation: Track the cost and settlement amounts of each affirmative litigation case throughout the process and report these amounts to other City decision-makers.

Response: The City Attorney's Office tracks both the cost and settlement amounts for each case in its affirmative litigation program. The City Attorney's Office will endeavor to work with other decision-makers and report these amounts using available information in a more meaningful way.

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 8
RE: Response to Performance Audit

Administration of Claims

Controller's Audits Division Recommendation: Monitor claims disposition data, such as the percentage of claims sent to litigation and the number of claims paid versus the number of claims denied, to better demonstrate the efficiency and effectiveness of the claims unit.

Response:

- With recently improved information technology abilities, the Office has greatly expanded its reporting capabilities. The City Attorney's Office will continue to improve monitoring and reporting of claims data.
- Moreover, quantitative monitoring measures are helpful, but they alone do not provide a useful picture of claims in a way that can help San Francisco reduce its exposure and payouts. The City Attorney has already undertaken a number of proactive steps that could help reduce risk and increase revenues to the City. For instance, the Labor Team of the City Attorney's Office has developed training programs to help reduce claims by employees.
- Additionally, while there is no mandate under City law for a city-wide collection effort, the City Attorney has developed a proposal for a revenue recovery task force consisting of the Treasurer, City Administrator, Controller, the City Attorney and representatives from the Mayor's Office and Board of Supervisors to coordinate city-wide efforts to pursue moneys owed to the City. The City Attorney is committed to continuing to examine ways to improve and expand these efforts, but will need additional funding from the Board of Supervisors and Mayor to do so. In the past, the policy-makers rejected many of our requests for funding for these sorts of programs.

Controller's Audits Division Recommendation: Determine if it is necessary and possible to provide more reliable City cars for claims investigators and adjusters and to provide more physical security for the front desk staff of the claims unit.

Response: Staff had not previously reported to management any issues regarding security. The City Attorney's Office will investigate to determine if any changes are warranted and appropriate. With regard to more reliable vehicles, this Office agrees with the recommendation and has attempted to obtain new vehicles. The City Attorney's Office has requested new cars every year in the budget process. These requests have been denied. The City Attorney's Office is now exploring whether vehicles can be traded for newer used vehicles. The Office will continue to seek ways to obtain more reliable vehicles.

Controller's Audits Division Recommendation: Issue monthly reports to the Board of Supervisors indicating the number and dollar amount of claims and litigation, by cause, both citywide and by department.

Response: With its constantly improving computer system, the City Attorney's Office now has the capacity to provide such reports. This Office will work with the Board to determine if the Supervisors want such reports and, if so, in what form.

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 9
RE: Response to Performance Audit

Client Service and Accountability

Controller's Audits Division Recommendation: Periodically conduct formal client surveys to assess the overall quality of its services and identify areas for improvement.

Response: The City Attorney intends to implement this recommendation. Attached is a draft survey. While this office has endeavored to obtain regular, informal feedback from clients about service, a written process could help the Office continue to improve the quality of legal services.

Controller's Audits Division Recommendation: Develop performance measures that help it and others gauge the effectiveness and cost-effectiveness of its affirmative litigation work.

Response:

- The goals of the City Attorney's Office are clear: to provide outstanding legal service to the City and County, to provide fulfilling careers to lawyers and staff, and to achieve the best possible legal results for San Francisco.
- The Audits Division acknowledges that city attorneys in other jurisdictions do not usually measure the quality of their work. The City Attorney's Office nevertheless has taken steps to measure quality in the most efficient and accurate way available: by soliciting client feedback.
 - The limited examples of performance measures that the Controller's Audits Division cites from two other jurisdictions are quantitative, not qualitative, measures relating to claims disposition. Quantitative measures, however, give an incomplete and potentially misleading indication of the quality of legal services. For example, the City Attorney's Office could not have a plan that calls for paying out less in claims because it does not know what claims it will receive. Nor can there be a plan to accrue more revenue from affirmative litigation because no one can know what cases will arise and how they will end. Neither can the Office promise to provide advice more quickly, because it is impossible to know the complexity of the advice that will be sought. The Office can, and does, commit to providing advice in a timely manner, and it can, and does, measure the performance of such a goal through regular client feedback. As noted above, we will improve our process of obtaining client feedback consistent with the auditors' recommendation.
 - The main quantitative measure that private law firms use to gauge performance is the number of hours billed. As the audit states, the City Attorney's Office already reports hours billed in the annual budget. But even for private law firms, quantitative evaluations are not a complete measure of performance.
- The audit's suggestion that the City Attorney lacks a strategic plan does not appreciate that the strategic plan is the enabling Charter provision providing for an elected City Attorney with specific responsibilities. The Office of the City Attorney is a law office that represents its client, the City and County of San Francisco, by responding to the legal needs of the City as they occur. If a claim arises, the City Attorney brings a lawsuit or defends the City against one, as the case may be. When legal advice is sought, the City Attorney provides its best counsel.

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 10
RE: Response to Performance Audit

- The City Attorney's Office will comply with all applicable requirements of the Performance and Review Ordinance of 1999 (Admin. Code chapter 88), including the requirement to submit an efficiency plan by the beginning of 2003.
- In the report, the auditors suggest that the City Attorney has chosen to pursue a number of matters that are beyond the "basic duties" of the Office. The Charter does not divide the City Attorney's duties into basic and non-basic categories. The audit's suggestion misses the point about how legal services are provided. The supposed non-basic initiatives that the Audits Division identifies, such as the First Source and Equal Benefits programs, were responses to specific requests for legal assistance that the policy-makers made to the City Attorney.
- The increases in City Attorney staff and budget over the years respond to the increased demand for services. Both the volume of requests for legal advice and the complexity of those requests have increased substantially. The increase in the number of hours billed reflects the growth in demand. Although not noted in the audit report, it is very possible that client departments have grown at corresponding rates. The increases in City Attorney staff have occurred in three situations:
 - General increases in the number of service requests or cases. The Government Team has grown due to the tremendous increase in Board and associated department requests for services. Similarly, the Labor Team had one attorney in 1987 covering all labor matters including hiring and promotions at the Police and Fire Departments. This level of representation was inadequate at that time, and the team has continued to grow with the steady increase in employment and ADA cases.
 - Growth in areas that are financially self-sustaining with non-City funds. As noted above, the increase in staff for affirmative measures has paid for itself many times over. Similarly, the Code Enforcement Team has grown, but pays for itself from the proceeds of settlements or judgments from code violators. In the past year alone, the Code Enforcement Team has obtained settlements or judgments over \$3 million. Overall, the percentage of the City Attorney's budget attributable to the General Fund has declined over the years.
 - New initiatives by City policy-makers. For example, the City Attorney built a Telecommunications Team to serve DTIS, and in anticipation of State deregulation, the City Attorney created an Energy Team to advise the PUC, the Mayor, the Board, and other departments, as well as to protect the City's interests before state and federal regulators.

Attached is a staffing summary to demonstrate the areas of growth for the City Attorney's Office. The Office increases its size when the need arises. And the City Attorney's Office saves the City money by furnishing expert, specialized services in-house rather than through expensive outside counsel.

Billing

Controller's Audits Division Recommendation: Review billing process to be sure that the City Attorney is charging promptly and giving clients the information that they need.

Memorandum

TO: Ed Harrington
DATE: January 4, 2002
PAGE: Page 11
RE: Response to Performance Audit

Response:

- As the auditors state in their report, most of our clients are satisfied with the bills they receive from us. Still, this office will work to improve our billing process.
- While the City Attorney's Office continues to endeavor to provide more helpful detail in its bills, the amount of its bills is driven by the requests for advice and service received. Unfortunately, departments consistently underbudget for these services. Many departments have no controls on who they allow to ask for service. The City Attorney's Office has fully supported those departments that have designated a person to control requests for advice. But again, if asked for work by a client, the Office has an obligation to provide it.
- This Office has a much smaller billing division than a private law firm of comparable size would have. Given the size and funding of the billing division, it does a good job.

Controller's Audits Division Recommendation: Work with the Controller to determine which departments are major clients of the City Attorney; those departments that have a consistently high volume of work should have work orders.

Response: The City Attorney's Office agrees with this recommendation and will work with the Controller to implement a more consistent practice in this area.

Controller's Audits Division Recommendation: Work with client departments to include more information on work order assignments. Specifically, the agreements should list how many hours of work that the City Attorney will perform, at what hourly rate and how the City Attorney and the department will manage changes to the expected volume of work. Those departments without work orders should also be informed as to the costs of the work they request.

Response:

- This Office will work with client departments to improve the understanding about budgets for significant matters.
- Budgeting for legal matters is not a precise science and depends of many assumptions. The City Attorney will attempt to identify what those assumptions are and provide an even more accurate and appropriate range of costs to assist clients in appropriately budgeting for legal services.
- As noted above, often departments underbudget requests and increase the scope of work during the project. At those times, this Office will endeavor to inform these clients more quickly about the budget implications of charges in direction and scope.
- The City Attorney's Office agrees that departments without work orders should understand the costs associated with the work they request. This Office will endeavor to create reports that provide the information on a regular basis.

Thank you for the opportunity to respond to the audit report.

cc: Mayor
Board of Supervisors
Civil Grand Jury
Public Library
Buget Analyst
KPMG LLP