



Office of the City Attorney

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To: Members of the Budget & Finance Policy Committee

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Budget Narrative – CAO Major Accomplishments from July 1, 2024 – Present

During the last budget cycle, the City Attorney’s Office has consistently provided high quality legal support and vigorously defended the City’s interests in a complex legal and political landscape that presents significant ongoing budget pressures. On the litigation front, most prominently, CAO has responded to persistent sanctuary and other federal funding threats from the Trump administration, necessitating a flurry of new affirmative litigation that has safeguarded millions in City resources. The City has also faced a proliferation of lawsuits related to homeless encampments, necessitating frequent emergency motion practice and an upcoming trial. Finally, CAO is currently defending an unprecedented number of employment lawsuits from a single department division. Although the office has expertly navigated these often difficult and emergent legal issues, this growing body of time-sensitive work has demanded considerable and mounting resources from our office.

CAO has also continued to play an instrumental role in ensuring that all City legislation, including Council’s most trailblazing policies, is legally compliant and mitigates unnecessary risk. Recent examples for which CAO drafted or provided significant input include the EMBER Ordinance, the Sanctuary City Ordinance, the Middle Housing zoning amendments, and the Resolution Limiting Use of City Property. In many cases, CAO’s involvement in drafting or closely reviewing language contributed to the City avoiding legal challenges to these policies.



The office has also provided proactive support to departments and commissions on a wide range of issues, including major land use, human resources, ethics and transparency, elections, and public safety and police accountability priorities. CAO has balanced this important work with responding to a record number of Public Records Acts requests, which have continued to surge in recent years. Although our office has invested in tools that assist in managing PRAs more efficiently, this body of work increasingly taxes our office's resources.

In short, several emerging pressures on CAO's budget are tied to imperative work that cannot be put off or accomplished with fewer resources. In fact, absent full funding needed to manage several upcoming trials and cases involving frequent emergency motion practice, the City could be exposed to unnecessary liability.

Support for Groundbreaking Legislation

Sanctuary City Ordinance and Related Policies

The City Attorney's Office has played a lead role in advancing the City's status as a sanctuary jurisdiction at the forefront of modern immigration policy. Our office drafted a legally compliant, effective, and widely-supported Sanctuary City Ordinance in collaboration with various community stakeholders, advised on concomitant updates to the Sanctuary Contracting Ordinance, developed and presented a City-wide training on Sanctuary City Ordinance compliance, drafted a policy limiting the unauthorized use of city property for non-city purposes, which would include commandeering a city lot for immigration enforcement staging, and advised the Council on various other immigration enforcement-related issues. Our office continues to closely collaborate with local and state jurisdictions nationwide to ensure that Berkeley stays on the cutting edge of the modern sanctuary movement.

EMBER Ordinance

The City Attorney's Office played a key role in protecting the City from a CEQA challenge to the EMBER ordinance, a critical disaster preparedness law that created new defensible space requirements in the Berkeley Hills areas most susceptible to wildfires. The ordinance faced significant public resistance due to its mandate to remove and/or replace landscaping within 30 feet of homes, a measure intended to avoid a repeat of the devastating 2025 wildfires in Southern California. Our office analyzed relevant CEQA



exemptions, helped the Fire Department strengthen its record in order to rely on multiple exemptions, advised on ordinance and staff report language, and drafted the Notice of Exemption, which shortened the statute of limitations for an opponent to bring a CEQA challenge. As a result, the statute of limitations passed without a challenge, an impressive result given that CEQA is one of the primary strategies opponents use to halt or delay controversial City actions.

Middle Housing zoning changes and other entry-level homeownership support initiatives

The City Attorney's Office also helped develop legally defensible Middle Housing zoning changes to upzone historically redlined neighborhoods and allow for multi-unit housing development throughout the City. These amendments and the process through which they were adopted were not challenged in court, despite the substantial public controversy they engendered, a testament to CAO's careful crafting. Our office also closely collaborated with the Planning Department to navigate complex legal issues presented by a number of other initiatives aimed at reducing costs for entry-level homeownership, such as ordinance amendments that allow ADUs to be sold as condominiums and ordinance amendments and a template for a new restricted covenant that together will allow for streamlined small-lot subdivisions pursuant to SB 684.

Litigation Defending the City's Interests in Court

Defensive Litigation

Homeless Encampment-Related Litigation

A sharp rise in litigation over abatement of Berkeley's homeless encampments has required an unprecedented investment of City Attorney resources over the past year. These lawsuits have proliferated as advocates for the unhoused pursue new legal theories in the aftermath of a major Supreme Court loss. The cases frequently involve emergency requests for relief that present novel legal issues, which demand intensive fact gathering, legal research, and brief drafting on compressed timelines controlled by plaintiffs and the courts. Effectively defending the City in this posture requires substantial coordination



across multiple departments to gather accurate information, determine strategy, and ensure compliance with evolving court directives.

The City has faced lawsuits from both nearby business owners and encampment residents, compounding this work and creating conflicting pressures and demands. Despite these challenges, we have vigorously defended the City's interests in more than seven separate lawsuits, including a proposed class action. CAO has opposed more than a dozen substantive motions in these matters, requiring extensive briefing and declarations, and appeared in court at least two dozen times. CAO has been active in taking plaintiff depositions and exchanging written discovery in these matters. The office recently appealed two adverse rulings that we believe are inconsistent with governing law and is preparing for trial in the lawsuit filed by nearby business owners, set for summer 2026.

Related to this litigation, although not exclusively, the City has seen a massive uptick in encampment residents filing disability accommodation requests related to planned abatement actions. These requests have consumed considerable CAO resources that are required to ensure that such requests are handled in a legally compliant manner and consistent with applicable court directives.

CAO anticipates that this challenging litigation environment will continue to consume disproportionate resources through the next two fiscal years, given the pending appeals, proposed class action, and case set for trial this summer.

RealPage First Amendment Lawsuit

CAO successfully resolved a novel First Amendment lawsuit filed by RealPage, Inc. that sought to enjoin a groundbreaking City ordinance banning the use of coordinated pricing algorithms in setting rents in the City. When RealPage first sued, CAO moved aggressively to defend the City's ordinance on the merits but later pivoted when necessary to keep the City's litigation costs to a minimum as it pursued an agreement to resolve the case. Ultimately, through negotiation with RealPage's counsel, CAO was able to ensure that RealPage dropped the case while still allowing for Council to enact a revised version of the ordinance that protects tenants from the most aggressively anticompetitive use of algorithmic software, in line with the Council's policy goals.



Tort, Civil Rights & Other Public Liability Litigation

The City is currently defending more than 36 active public liability and/or civil rights cases, ranging from slip-and-fall cases to allegations of excessive police use of force. The City defends these cases aggressively, including engaging in extensive discovery, and seeks to resolve cases on the pleadings or at the summary judgment stage, where possible. Although the City maintains insurance coverage for many of these matters, the City pays up to the first \$500,000 in litigation and settlement costs for each case from its Public Liability Fund.

Employment Litigation and Labor Arbitrations/Charges

CAO is currently defending seven active employment suits, six of which have been brought by current and former employees of a single division against the City and a former supervisor. At least five of these cases are set to go to trial between summer 2026 and summer 2027. Each case involves depositions, document discovery, and motion practice to attempt to dispose of some or all claims before trial. While we have been partially successful in dismissing some claims from certain suits, it is likely that at least some claims will survive summary judgment and go to trial, absent mutually agreeable settlements. If any of these cases proceeds to trial, it will require a large commitment of CAO resources.

Although not litigation strictly speaking, CAO has also seen a rise in employee discipline and union grievance disputes being advanced to arbitration in the past year. CAO is currently anticipating at least four arbitrations in the next six to nine months. All of these arbitrations, which are essentially informal trials without a jury, require significant attorney preparation and hearing time.

In addition, the City has defended against several unfair labor practice charges that City unions have filed with the Public Employee Relations Board related to alleged management policy changes.

Affirmative Litigation

Proactively Challenging Trump Administration Attacks

The City Attorney's Office has proactively challenged the Trump administration's threats to withhold federal funding based on the City's sanctuary status and other



progressive values. Due to the CAO's diligence, the City is now a plaintiff in three separate lawsuits that have secured court orders safeguarding at least \$60 million in federal funding that the City relies on to provide key services like supportive housing, emergency response, and transportation improvements. CAO has also monitored and advised on numerous time-sensitive federal grants questions and key federal policy changes that impact the City's federally funded programs. The office has also tracked litigation brought by other groups to ensure that it adequately protects the City's interests, such that the City does not need to mount its own challenge, saving critical resources.

CAO has also coordinated with local jurisdictions and the state Department of Justice to prepare for litigation challenging potential National Guard and/or mass immigration agent deployments; vetted and joined many amicus briefs with other jurisdictions supporting sanctuary jurisdictions like Rochester who have been targeted by the Trump administration for lawful sanctuary activities; and responded to a threatening letter from the federal Attorney General in response to City's placement on short list of sanctuary jurisdictions. CAO is prepared to bring affirmative challenges to emerging federal issues that impact the City, as well as to defend the City if the administration were to sue the City for its sanctuary, DEI, or other lawful activities.

Monsanto Settlement

CAO helped secure a \$2,192,556 settlement award from the City's participation in affirmative litigation against Monsanto related to PCB contamination in local waterways. The majority of these settlement funds were transferred to an unrestricted General Fund account and allocated towards general Council fiscal policies. None of this money went to provide legal services despite a portions of these funds being earmarked .

Opioid Manufacturers/Distributors Settlement

The City Attorney's Office has facilitated the City's participation in a number of nationwide settlement agreements with companies that have contributed to the opioid crisis. Our office has ensured that the Council was timely informed about, and authorized participation in, these settlement agreements, which earmarked funds for the City of Berkeley. These settlement proceeds have allowed HHCS to receive over \$1.5 to fund



intervention, treatment, education, and recovery services to address the impacts of the opioid crisis within the City.

Other Key Policy and Project Support

Land Use

Pier Ferry and associated development in the Waterfront

The City Attorney's Office has closely advised Parks, Recreation, and Waterfront on how to successfully shepherd the City's long-anticipated new electric ferry through the environmental review and permitting process in the face of a number of sophisticated and staunch opponents seeking to weaponize CEQA to delay or stop the project. Relatedly, our office has advised on a legally compliant pathway for leasing the derelict H.S. Lordships building to a new tenant.

Gilman Gateway Project

The City Attorney's Office was instrumental in the development a new zoning district—the Manufacturing, Research, and Development District—to enable redevelopment of the old Pacific Steel Foundry site and revitalize life sciences and other industries in West Berkeley. Our office also ensured that the accompanying CEQA environmental review was not only legally defensible but also included strong mitigation measures that will protect residents potentially harmed by air pollution and other environmental impacts associated with construction. Neither the zoning ordinance amendments nor the CEQA review was challenged in court.

Navigating CEQA for 2274 Shattuck (UA Theater Project

When a developer proposed to turn the former UA Theater building into a housing development, the City faced the threat of a CEQA lawsuit both from advocates seeking to preserve the building they viewed as historically significant, and from the developer who claimed that the project was exempt from CEQA. The City Attorney's Office helped the City navigate new provisions of the Housing Accountability Act enacted by AB 1633, which allows an applicant to sue a city if it fails to find a project exempt from CEQA, and arguably



changes the standard of review for granting CEQA exemptions to a proposed housing development. One interpretation is that AB 1633 requires a reviewing court to give less deference to a local agency in its CEQA determination. The office reviewed the applicant's proffered evidence that the project was exempt as well the City's peer review of this evidence, conducted legal analysis, and provided a risk assessment for Council who made the final determination that the City should find that the project was CEQA-exempt. Despite a strong showing by opponents at ZAB and Council meetings on this project, the City approved the project and managed to avoid a costly CEQA lawsuit.

Ashby Bart

CAO was instrumental in helping the City successfully navigate negotiations with BART to exchange the City's air rights over the current BART parking station for full ownership of the parcel across the street. The City's agreement with BART, which was signed in December 2024, will create nearly 1,000 new housing units on both sites, many of which will be affordable to Berkeleyans of all income levels. It will also create numerous community benefits, including a street-level plaza to activate pedestrian spaces in a historically marginalized community. CAO's legal support helped the City avoid environmental or other litigation which may have slowed down the construction of these units and ensured that the City received a fair exchange for its property and important community benefits for the City. CAO continues to provide ongoing support to the project, including by discussing legal issues with state agencies and helping to shape the RFP process to ensure that the City is able to build affordable housing on the site in an expeditious and legally compliant manner.

Rematriation of 1900 4th Street

Our office took the lead on entering into a historic agreement, in partnership with Segora Te' Land Trust and the Confederated Villages of Lisjan Nation, to rematriate a site in the West Berkeley Shellmound to indigenous control. This also resolved a long-running lawsuit brought by the former property owners against the City through a global settlement.

Brown Act and Ethics Compliance Issues



Remote Meeting Accommodations Policy

In response to a lawsuit from a member of the Commission on Disability, CAO was instrumental in crafting the City's new accommodations policy, which allows all members of City boards and commissions to attend meetings remotely as an accommodation upon self-attesting to a disability-related need to do so. The California Attorney General later affirmed that the creation of a policy like Berkeley's is fully compliant with the federal Americans with Disabilities Act and the state Brown Act, which ensures open and public access to government meetings.

Brown Act Training

On May 5, 2025, staff and attorneys from the City Attorney's Office provided training to the City Council on compliance with the Ralph M. Brown Act, which governs meetings of all City legislative bodies. The City Attorney's Office regularly provides guidance on Brown Act compliance to City staff and officials.

Navigating Disruptions to City Operations in light of Gaza Protests

The City Attorney's Office also represented the City in Brown Act litigation arising from the City Council's handling of persistent disruptions at numerous meetings in late 2023 and early 2024. Although the City prevailed before the Superior Court, plaintiffs appealed and ultimately obtained a ruling that the practices the Council employed to continue City business during the disruptions did not comply with the Brown Act. CAO subsequently represented the City in settlement negotiations and advised on future practices to ensure compliance with the appellate decision.

Ethics/Conflict of Interest Work

The City Attorney's Office regularly provides guidance to City staff and officials on a variety of issues related to conflicts of interest and other government ethics topics. This work includes advising Councilmembers and commissioners on possible conflicts that may exist with regard to specific items of business that come before their respective legislative bodies. This work involves navigating complex state and local rules regarding conflicts, often in the context of high-profile legislative proposals.



Our office also regularly advises councilmember offices and the City Auditor on reimbursement of travel expenses and the permissible uses of council office budget funds.

CalPERS and Other Human Resources Support

CalPERS Audits

Our office has helped navigate complex legal issues in response to CalPERS audits which scrutinized how the City reported certain special compensation types for Police and Fire employees. We facilitated conversations with CalPERS to understand the legal basis for their concerns, negotiated with union attorneys, and drafted MOU amendments to ensure that the MOU's method of compounding special compensation described the parties' agreement adequately and accurately. We also provided template response letters that City staff and individual retirees could send CalPERS to preserve appeal rights and avoid immediate penalties. Our office's involvement protected numerous retirees from having their pensions reduced and avoided significant penalties for the City.

FLSA Compliance Work

CAO has spearheaded an ongoing project with Payroll, Human Resources, and the City Manager's Office, to ensure that the City is fully compliant with FLSA's complex regular rate and overtime rules for all bargaining units.

Surveillance Technology, Public Safety, and Police Accountability

Police Accountability Board Support

In the past several years, CAO has provided ongoing support to the Police Accountability Board, including by resolving novel and cutting-edge legal issues pertaining to police oversight and the PAB's role under the Charter. With CAO's legal guidance, and the help of labor negotiators retained by CAO, the City has also now almost completed negotiations for the PAB's permanent regulations, which have helped the City to avoid administrative proceedings before the state Public Employment Relations Board.

CAO has also worked with the Police Department and with the PAB on the acquisition of new surveillance technology to ensure open public reporting on the use of such technology and to protect the City's data from improper access by federal immigration authorities.



Gun Violence Restraining Orders

The City Attorney's Office supports the Police Department by representing it in civil court seeking gun violence restraining orders (GVROs) stemming from acts of violence and threats of violence perpetrated in the community. State law permits a civil court to grant a GVRO for up to five years prohibiting a person from possessing firearms based upon clear and convincing evidence that the person poses a significant danger of causing harm to themselves or others through continued possession of firearms.

Oftentimes, these civil restraining orders are sought where criminal prosecution is unlikely or where the Department has identified a need to bar someone from obtaining firearms regardless of a pending criminal case.

During the last budget cycle, the City Attorney's Office has successfully argued for and obtained restraining orders in seven cases. Two successful cases of particular note are a GVRO awarded after a resident threatened to shoot anyone who came onto his property after a 9-year-old boy entered his yard to retrieve a ball, and a GVRO awarded after a business owner repeatedly fired a pistol at random from a commercial rooftop.

2024 and 2026 Election Support

Youth Voting (Measure Y1 Implementation)

Among other measures, the City Attorney's Office supported the implementation of youth voting for 16- and 17-year-olds for the first time in BUSD School Board elections in 2024. In doing so, our office worked in close coordination with the City Clerk and in coordination with counsel for Berkeley Unified School District (BUSD), as well as representatives from the Alameda County Registrar of Voters and other stakeholders.

This work included drafting a new chapter of the Municipal Code (BMC Ch. 2.15) to implement Charter amendments adopted by voters in 2016 permitting youth voting, negotiating with stakeholders regarding youth voting processes, and assessing legal risk and recent caselaw.

Public Records Act Requests

The CAO manages a high volume of PRA requests. This volume has more than tripled since 2019. In FY25, the CAO managed 701 PRAs, 337 of which were directed to the CAO, 87 to the City Manager's Office, 235 that were multidepartment requests and 42 that



were directed to the Mayor and Council. Even where PRAs are directed to other departments, CAO provides significant legal advice and assistance.

In FY26, thus far, CAO has managed 477 PRAs, 231 of which were directed to the CAO, 81 to the City Manager's Office, 129 that were multidepartment requests, and 36 that were directed to the Mayor and Council. CAO has observed trends across these requests, including use of AI tools by requestors, which has made some requests more complex and difficult to respond to.

Office and Insurance/Risk Modernization

Insurance Risk Pool/Risk Manager Position

Our office handles management of all claims against the City through the Bay Cities Joint Powers Insurance Authority (BJCPA), among other insurance coverage and risk management functions. In the FY25/26 Budget Cycle, the City Council approved funding for a Risk Manager position to bring critical expertise to the management of claims and insurance issues, as well as increase capacity of the attorneys within CAO that currently cover the work.

Office Modernization Efforts including IT Infrastructure

CAO has invested in two technology tools—an e-discovery platform and a document management program—that are necessary to handle in-house litigation document discovery and process high-volume PRA productions.

Logikcull is a cloud-based legal technology platform focused on e-discovery. It is used by legal teams to streamline the process of collecting, processing, reviewing, and producing electronically stored information for litigation, investigations, PRAs and compliance matters. In modern litigation, this kind of e-discovery tool is critical to meet our obligations under court rules and procedures. With a sharp increase in PRAs filed over the past few years, this tool also allows legal and support staff to effectively and efficiently manage large volume responses to PRAs.

Filevine is a comprehensive, cloud-based legal case management and practice management platform designed to help manage documents, client communication, and deadlines. The CAO is currently customizing the platform to fit the workflow processes of the office as well as organizing historical documents for migration to the platform. The platform will empower CAO staff to effectively manage cases and projects and work



collaboratively with internal staff and external partners. The platform, once implemented, will enhance the CAO's intake process, organization and management of cases and provide better navigation and searchability of historical records, allowing CAO to continue providing timely and accurate advice.