

CITY ATTORNEY BUDGET

FISCAL YEARS 2025 and 2026

FARIMAH FAIZ BROWN
BRENDAN DARROW
SARA STEPHENS
JAMES CHANG
ROSANNE MASSIMINO
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May 13, 2024

MARTIN LUTHER KING JR
CIVIC CENTER

2180
Milvia Street





**“A small town with a big voice...
needs great lawyers”**

Our mission is to provide the City with the highest caliber legal services and advice and to protect and defend the interests of this dynamic City by all legal and ethical means.

CHARTER AUTHORITY

The City Attorney is the Chief Legal Officer of the City of Berkeley and advises and represents the Council and all City Boards, Commissions, and Departments, except for the Rent Stabilization Board, Housing Authority, and Board of Education.

The Berkeley Charter Section 113 States: “Upon presentation of a proposed budget by the City Attorney, the Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney’s department (subject to available resources), which shall be under the administrative control of the City Attorney.”

OVERVIEW

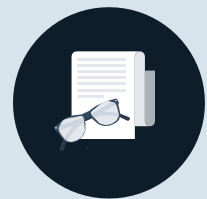
The City Attorney's Office provides legal advice and support to all City departments, the City Council, the City Manager, and City boards and commissions, as well as the Library Board.



LEGISLATION



LITIGATION



ADVICE & REVIEW



COMMISSION WORK



**INFORMATION & OPEN
GOVT**



**RISK MANAGEMENT
REVIEW**

CITY ATTORNEY

ATTORNEYS

ADMINISTRATIVE TEAM



FARIMAH FAIZ BROWN



BRENDAN DARROW



JAMES CHANG



LAURA IRIS MATTES



LAUREN PACKARD



EMILE DURETTE



ROSANNE MASSIMINO



SAMUEL HARVEY



SARAH STEPHENS



ASHLEY CARTER



MARC SHAPP



STEPHEN HYLAS



RUBI QUIHUIS



KASSANDRA PEREZ



CELESTINE SEALS



HERSCHEL WINHELD

CITY ATTORNEY

ORGANIZATION CHART



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CITY ATTORNEY'S OFFICE

Major Achievements

ACCOMPLISHMENTS

- ✔ **Supported Major Projects:**
 - ✔ *Re-Imagining Public Safety*
 - ✔ *Willard Park Clubhouse replacement*
 - ✔ *Public Records Act Modernization and Accountability*
- ✔ **Historic settlement of *Ruegg & Ellsworth v. City of Berkeley***
- ✔ Successful resolution of litigation over 1900 Fourth Street which facilitated the rematriation of the West Berkeley Shellmound site to the Sogorea Te' Land Trust.

ACCOMPLISHMENTS

- ✔ **Supported Major Land-Use Projects:**
 - ✔ *Southside and Middle Housing Re-Zoning*
 - ✔ *North Berkeley BART Objective Design Standards Development*

- ✔ *Ashby BART Transit Oriented Development negotiations*
- ✔ *Wildfire Urban Interface Task Force*
- ✔ *Planning for Development at the Marina (Waterfront-Specific Plan, Pier/Ferry Project)*

ACCOMPLISHMENTS

In the past year, we have assisted in the drafting and legal review of the following noteworthy ordinances:

- ✓ Bird Safe Buildings
- ✓ Berkeley Election Reform Act amendments
- ✓ Accessory Dwelling Unit Ordinance amendments
- ✓ Berkeley Businesses Zoning amendments
- ✓ Southside Zoning amendments
- ✓ Fair Workweek Ordinance
- ✓ Prevailing Wage Requirements in the Southside Plan Area
- ✓ Relationship Nondiscrimination Ordinance
- ✓ Building REACH codes (proposed)
- ✓ Building Emissions Savings Ordinance Updates

ACCOMPLISHMENTS

- ✔ **Supported City Staff in Implementation, Compliance, and Litigation arising from the following local ordinances:**
 - ✔ *Controlled Equipment*
 - ✔ *Surveillance Technology*
 - ✔ *Open Government*
 - ✔ *Berkeley Election Reform Act*
 - ✔ *Fair Workweek*
 - ✔ *Vacancy Tax*
 - ✔ *Natural Gas Ban*

FISCAL RESPONSIBILITY

The CAO's legal work advances the City's fiscal interests:

Fiscally Responsible Litigation Defense

- Secured a complete dismissal of a wrongful death case arising from a traffic collision near Ashby Avenue where plaintiff initially sought hundreds of thousands of dollars.
- Obtained early dismissal of a lawsuit claiming \$200,000 in damages stemming from a building inspector's report of the plaintiff's rental property.
- Negotiated sensible settlements in cases of injury to people or property where the City's liability had been established.

FISCAL RESPONSIBILITY

Leveraging Public Property Rights for Affordable Housing

The CAO is facilitating negotiations with BART for Transit-Oriented Development projects that further the City's housing goals and ensure fair compensation

Revenue from Litigation

Through affirmative litigation, the CAO advances the interests of the City and its residents, workers, and broader communities

- Example: \$2.2M settlement with the Monsanto Corporation for PCB contamination of the SF Bay.

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CITY ATTORNEY'S OFFICE

Challenges & Opportunities

LOOKING AHEAD: CHANGES, CHALLENGES & OPPORTUNITIES

Rapid Changes in State Land Use Laws

- Over 100 substantial housing-related bills since 2016.
- 56 housing-related bills signed by Governor in the 2023 legislative session alone.
- With the housing crisis expected to continue, we anticipate an increasing need for extensive legal advice to ensure the City rapidly adopts to the changing legislative landscape.

LOOKING AHEAD: CHANGES, CHALLENGES & OPPORTUNITIES

Support for New Policy Initiatives

- The City Attorney sends staff to all City Council Policy Committee Meetings and provides legal advice throughout the legislative process.
- The number and complexity of new, often groundbreaking ordinances and policies requires significant attorney time.
- The CAO conducts legal research, analyzes alternatives and the most defensible path forward, assists with drafting legislation, and also defends the legislation in court.

LOOKING AHEAD: CHANGES, CHALLENGES & OPPORTUNITIES

Increasing Number of Complex Litigation Matters

- An evolving legal landscape and the need to support City Council and staff priorities has resulted in an increasingly complex litigation being handled by the CAO.
- The City is also pursuing a number of initiatives proactively including affirmative lawsuits to protect the City's interests.
- When the City Council enacts groundbreaking legislation or City policy, it falls to the City Attorney's Office to help craft and defend it.
- Complex litigation requires additional resources and time for the City Attorney's Office.

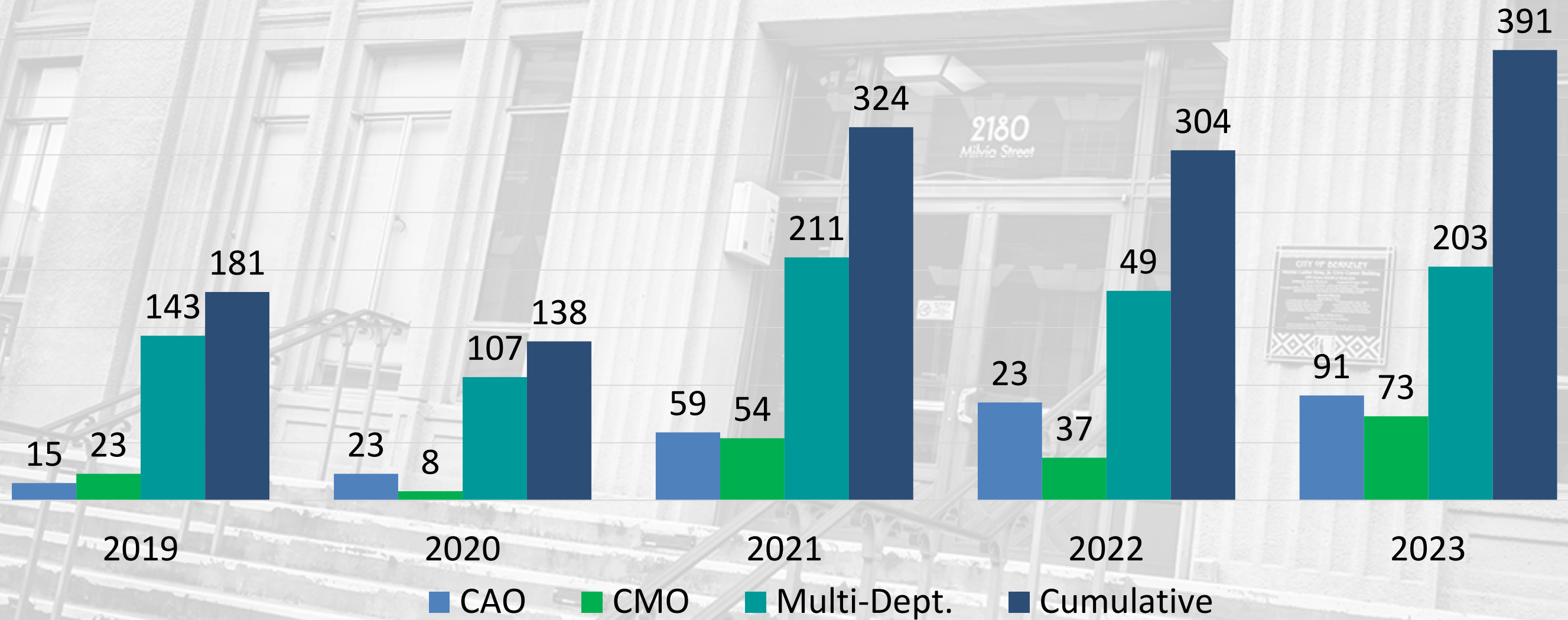
LOOKING AHEAD: CHANGES, CHALLENGES & OPPORTUNITIES

Substantially Increased Volume of Public Records Act Requests

- The number and scope of PRA requests fielded by the CAO has steadily increased over the past five years.
- PRA requests rose from 181 in 2019 to 390 in 2023 – a 115% increase.
- Responding to these requests increasingly calls for the review and production of voluminous electronic records due to the proliferation of email and text messaging and the advent of new police record disclosure laws.

PUBLIC RECORDS REQUEST

HANDLED BY CAO



LOOKING AHEAD: CHANGES, CHALLENGES & OPPORTUNITIES

The City is either considering or actively pursuing a number of development projects:

- A Waterfront Specific Plan and Pier/Ferry Project at the Berkeley Waterfront
- A new biotechnology campus at the Berkeley Forge site.
- Housing development at the West Berkeley Service Center property
- Renovation and redesign of the Civic Center area.

The CAO plays a critical role in the negotiation of term sheets with developers, ensuring compliance with CEQA, NEPA, and other permitting requirements, and drafting, reviewing, and finalizing a wide variety of transactional documents.

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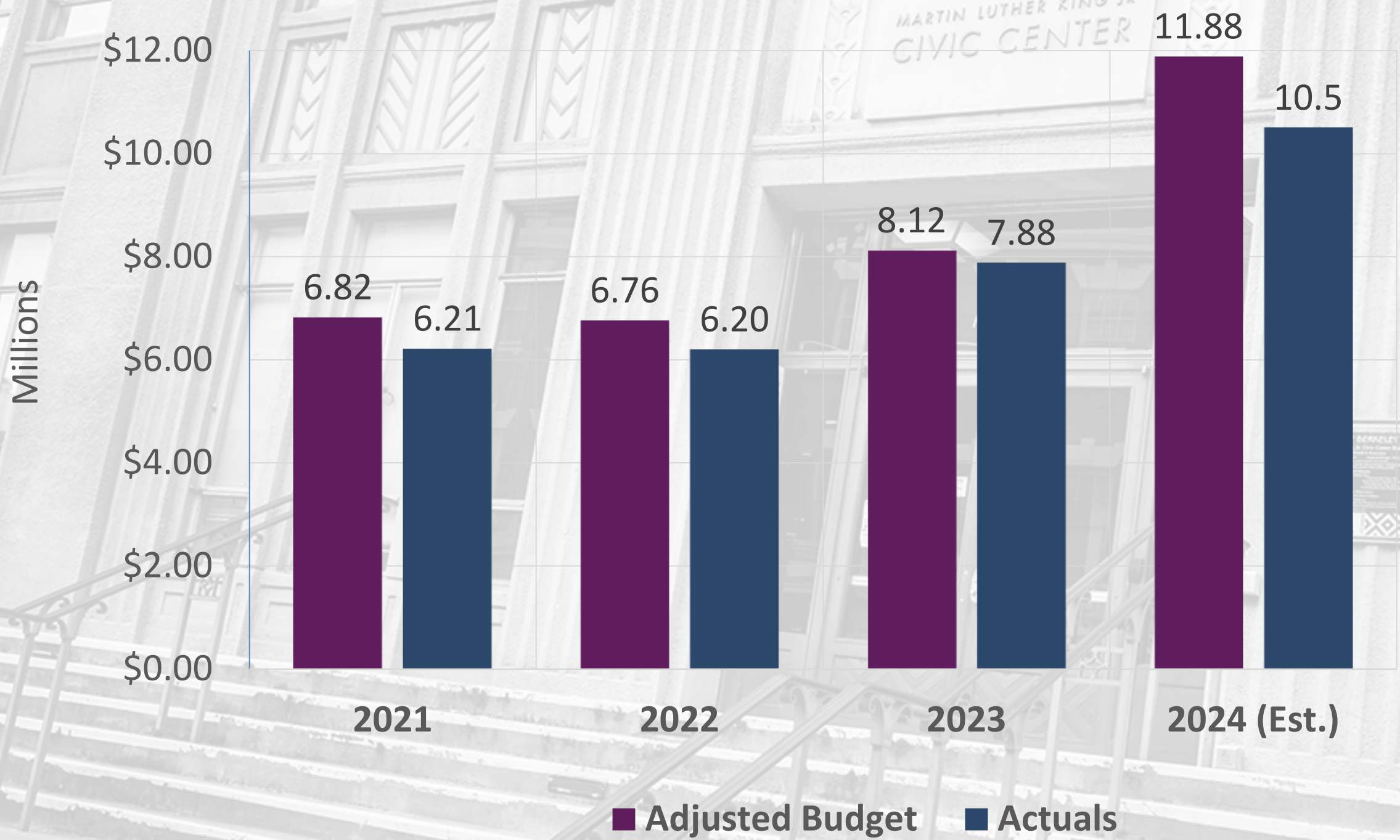
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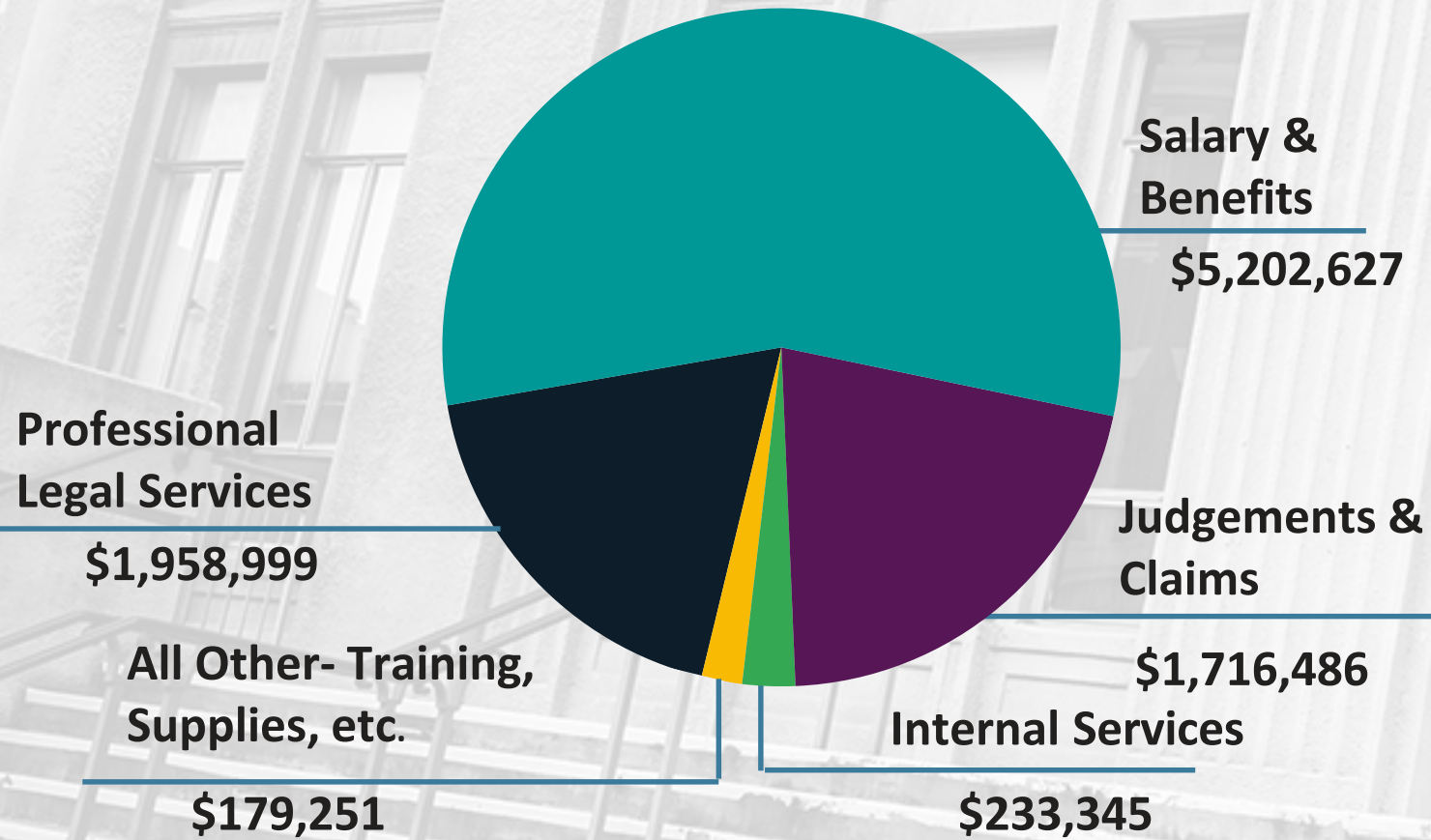
Major FY 2025 & FY 2026 Proposed Budget

BUDGET VS ACTUALS

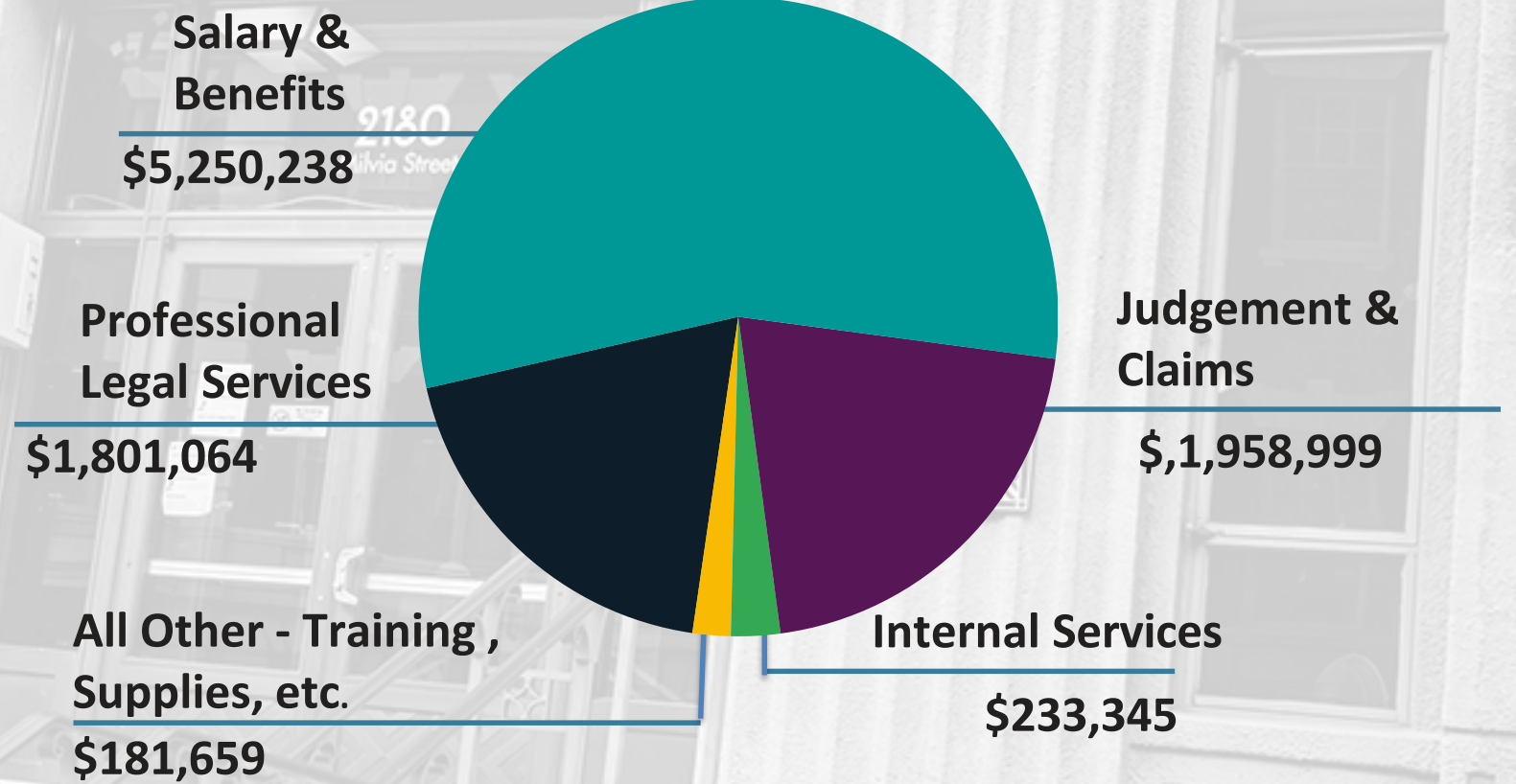


OPERATING BUDGET BY EXPENDITURE TYPE

FY 25 Operating Budget
\$9,290,707



FY 26 Operating Budget
\$9,425,304



BUDGET

REALISTIC BUDGETING FOR JUDGMENTS AND CLAIMS

The City faces approximately \$1.96M in likely exposure to judgments and claims in FY 25 and FY 26.

The City Attorney's Baseline Budget also adjusts other lines for inflation wherever necessary:

\$5.2M in Personnel

\$2.13M in Non-personnel

\$1.96M in Judgments & Claims

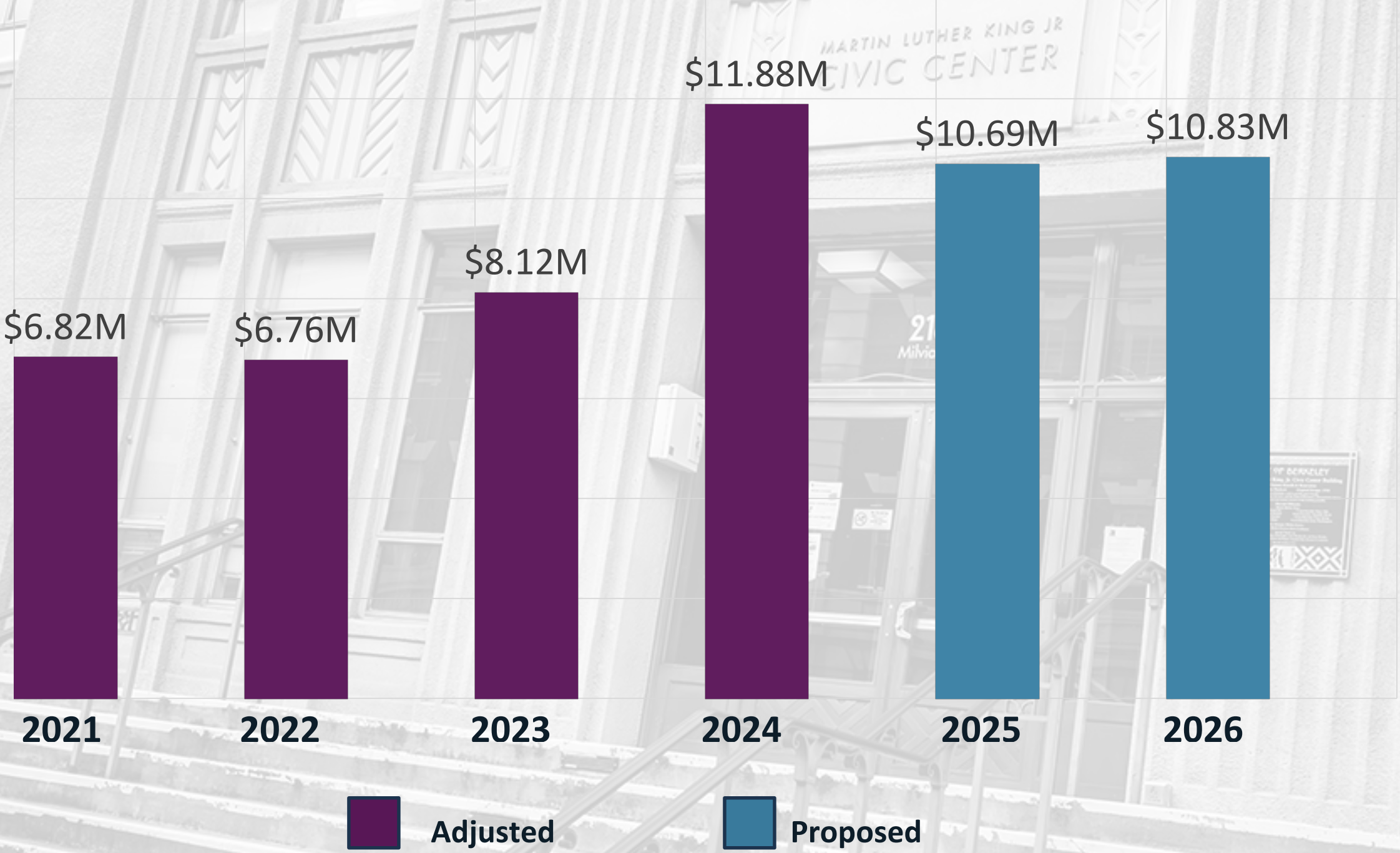
\$9.29M total

NEW FUNDING REQUESTS

(FY 2025 & FY 2026)

DESCRIPTION	FY 2025 Cost	FY 2026 COST	ONGOING
Deputy City Attorney I (2.0 FTE)	\$366,121	\$366,121	Yes
Risk Manager (1.0 FTE)	\$258,967	\$298,967	Yes
Outside Legal Expertise for: <ul style="list-style-type: none">• Aging Infrastructure• PAB Labor Negotiations• Environmental Law	\$500,000	\$500,000	Yes
Affirmative Litigation	\$200,000	\$200,000	Yes
Deferred Maintenance of office facilities	\$76,662.58	\$38,197.55	No

BUDGET OVER TIME



FUNDING REQUESTS

SPECIALIZED EXPERTISE

The City requires specialized legal expertise to meet the following needs:

Aging Infrastructure: Obsolescence of sewer mains, creek culverts, and roads poses increased exposure risk for City over next 30 years.

Environmental Law: Second order exposure risk from aging infrastructure in terms of environmental contamination.

Police Oversight Labor Issues: The Police Accountability Board requires ongoing support in negotiating implementing regulations with the Berkeley Police Association. Negotiations of this type often result in allegations of unfair labor practices that must be defended at the Public Employee Relations Board.

FUNDING REQUESTS

ACCOUNTING FOR & PILOTING AFFIRMATIVE LITIGATION

The City Council has expressed a desire for the City Attorney to pursue more affirmative litigation.

The Public Liability Fund is currently holding substantial revenues (\$2.2M) from our involvement in a case against Monsanto.

CAO seeks Council approval to set aside the Monsanto proceeds as an *Affirmative Litigation Receipts Fund* account separate from the Public Liability Fund that maintains its balance across budget cycles.

The CAO is also seeking an appropriation of \$200,000 annually from the affirmative litigation receipts in FYs 25 & 26 as seed money to fund affirmative litigation.

FUNDING REQUESTS

BUILDING INTERNAL CAPACITY

Deputy City Attorney I (2.0 FTE):

Hiring two new entry-level attorneys would provide additional capacity for civil litigation and Public Records Act requests, freeing up more senior attorneys to shorten response times on requests for legal advice from the City Council and City Staff.

Risk Manager (1.0 FTE):

The City does not currently employ a full-time Risk Manager; instead the work of risk management is absorbed by Deputy City Attorneys. There are good reasons why the City of Berkeley faces substantial long-term risks; the City would benefit from the dedication of additional time and expertise to this issue.

MARTIN LUTHER KING
CIVIC CENTER

THANK YOU FOR YOUR SUPPORT

FARIMAH FAIZ BROWN
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SARA STEPHENS
JAMES CHANG
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KASSANDRA PEREZ

MAY 13, 2024

FARIMAH FAIZ BROWN
BRENDAN DARROW, KEITH
NESBIT
JUNE 8, 2023

