

RECEIVED **Regular City Council Meeting**

**November 4, 2021**

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CITY OF FRESNO  
CITY CLERK'S OFFICE

# **FRESNO CITY COUNCIL**



## **Information Packet**

### **ITEM(S)**

**File ID 21-777, 4:45 P.M.**

**WORKSHOP - Police Department Alternative Dispute Resolution (ADR) Program**

**Contents of Supplement: PowerPoint Presentation**

### **Item(s)**

#### **Supplemental Information:**

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FRESNO

FRESNO PD ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM

# History

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2015 – City/FPOA enter into Workers' Compensation Alternative Dispute Resolution Program (ADR Program)

- Goal: Eliminate and reduce program inefficiencies, excessive cost and delays in delivering injury-related medical care
- Objective: Reduce costs, accelerate the delivery of care, return to work and overall claim resolution
  - Net savings generated to be shared equally between the City and FPOA

# Enabling Legislation: California Labor Code section 3201.7

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- Allows an employer with a collective bargaining agreement with a labor organization to negotiate a workers' compensation carve-out program.
- When the employer and labor organization negotiate a workers' compensation alternative dispute resolution process, labor and management are replacing the trial court of the Workers' Compensation Appeals Board with their own negotiated process.
- This process becomes the exclusive jurisdiction for the covered union members to enforce their *statutory* rights to workers' compensation benefits.
- Reducing litigation, reducing claim life and thereby generating cost savings has been the outcome in Los Angeles and San Francisco, and is proving to be the case in Oakland, Pasadena, the County of Santa Barbara, as well as the Golden Gate Bridge District and the Alameda-Contra Costa Transit District. It has also proven to be the case in the private sector.
- The carve-out idea was developed in the building and construction trades, and currently most all construction trade unions and their signatory employers enjoy the availability of a workers' compensation carve-out option. The fundamental concept is that in the vast majority of cases, the interests of the employee and employer are aligned with the goals of maximum recovery with the timely provision of quality medical care, early return to work and achieving the ability to continue in their trade/profession.

# What does an ADR program accomplish?

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- When executed correctly, it expedites the delivery of benefits, provides medical care more quickly and returns injured members to work more expeditiously than in the highly litigated traditional workers' compensation system.
- The key is to provide the union member with an alternative to an attorney, the ombudsperson, and to utilize the ombudsperson to resolve disputes and move cases so that attorneys are less necessary.
- The employer will save money by reducing litigation, closing cases more quickly and reducing the loss development that comes with long claim life
- The employee will become more informed about the benefits available, and not available, in workers' compensation and welcome the human touch of an ombudsperson that is selected not only by the employer, but by the labor organization as well.
- The labor organization has a seat at the table with the employer to allow a collaboration on workers' compensation issues that has the potential to improve the delivery of benefits for the employer and for the employees.

# ADR Professionals

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- The ADR Director oversees the work of the other ADR professionals, provides training to those professionals, as well as to the claims staff handling the claims within the jurisdiction of the program. The ADR Director also provides subject matter expertise to the Joint Committee and consultation to the Committee in their negotiation and management of an ADR program.
- The Ombudsperson's role is to provide aid, counsel and advocacy for the injured union member in order to try and make sure that they are receiving what they are entitled to; no more but no less. The conversations with the ombudsperson are confidential. The ombudsperson's mission is to take care of the injured employee's needs so that it is less necessary for injured employees to retain legal counsel (although they have that right). The ombudsperson's ability to establish credibility with the work force is essential in order to reduce litigation and maximize program performance.
- The Mediator attempts to facilitate a resolution of claim disputes and, if the case is ready for full resolution, a settlement agreement.
- The Arbitrator will hear and decide issues that cannot be resolved by agreement, just as a workers' compensation judge would do in the traditional system. The arbitrator's decisions are subject to appeal with the Reconsideration Unit of the Workers' Compensation Appeals Board.

# ADR Program Results FY2015-FY2020

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## Average Number of Litigated Cases per Year

Pre ADR: 35 (3 year average)

ADR: 17 (5 year average)

## Average Number of Lost Days per Claim

Pre ADR: 52 (3 year average)

ADR: 17 (5 year average)

## Overall Cost Savings (in %):

FY15-16: 16.9%

FY16-17: 27.4%

FY17-18: 6%

FY18-19: 5%

FY19-20: -12%

Average: 8.66%

# LTA (Long Term Absence) & ADR Effectiveness

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## LTA List

- The LTA list was used as a measurement of ADR program success in the past. The LTA list is comprised of all employees who are off for industrial and non-industrial injuries, and is not the appropriate measurement for the success or effectiveness of the ADR Program.
- Injury & accident prevention would be the best approach to reduce the LTA list.

## ADR Program Effectiveness

- A more appropriate measurement of expedited return-to-work under the ADR Program would be to look at the average Lost-Time days per claim. In other words, once an employee is off work, is the program returning them to full duty faster than pre-ADR? The answer is YES.
- The average Lost-Time days per claim is down to 32, as compared to 52 days for pre-ADR claims.
- This translates into police officers returning to duty **20 days** faster than pre-ADR.

# Cumulative Trauma (CT) Claims Findings

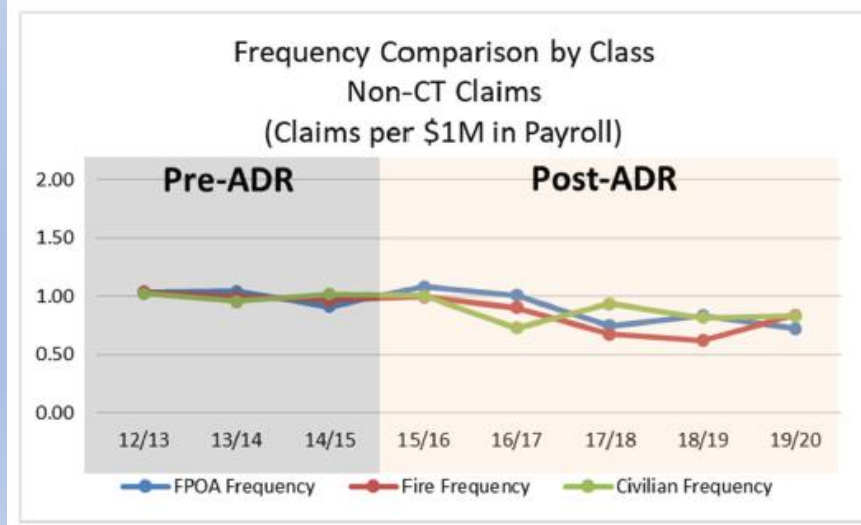
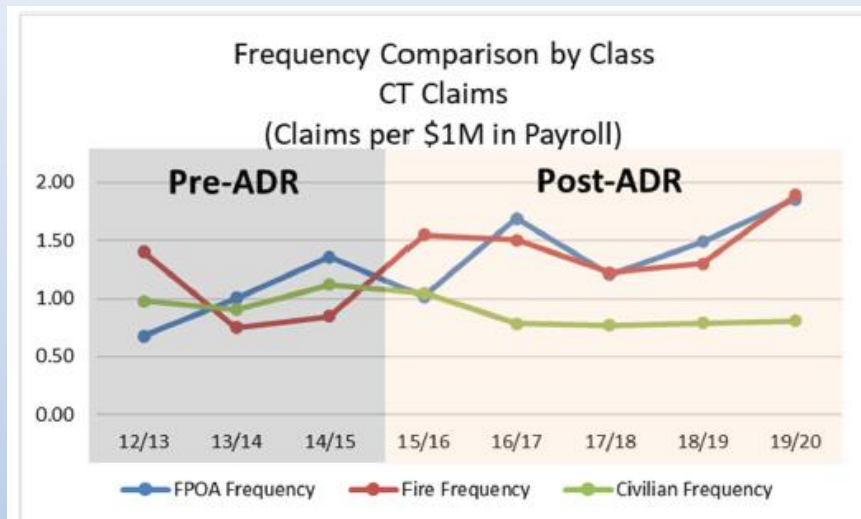
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Post-ADR FPOA Cumulative Trauma (CT) claims show a significant cost increase when compared to pre-ADR CT claims experience. This was identified as a primary reason for the program performing in the negative in FY20. An analysis was completed in August of 2021 on FPOA CT claims. The result of the analysis supports the following findings:

- Similar increases in CT claim expenses were observed Fire and Civilian CT claims between these periods (FY15-FY20), with Fire Department showing the largest increase, followed by FPOA claims, and the smallest increase for Civilian claims. Because the trend was consistent across all City claims, there is no evidence to suggest the ADR program was the cause of the FPOA trend increase for CT claim frequency and cost.
- Comparison of post-ADR FPOA non-CT claims to pre-ADR non-CT claims shows an estimated savings of \$0.23 million to \$1.29 million.
- Increased FPOA retirements have increased CT claim costs by an estimated 2.8% to 3.9%

# Cumulative Trauma (CT) Claim Increase

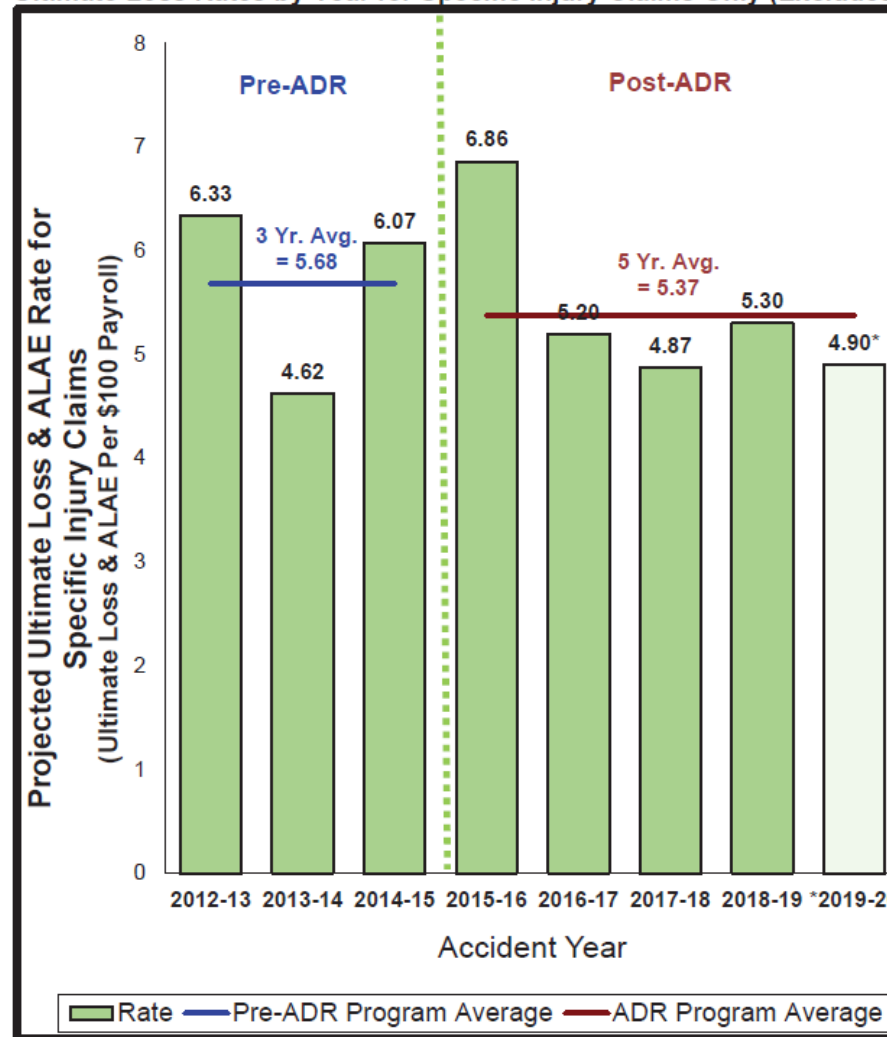
- Steady rise in CT claims for both Police and Fire
- Fire does not have an ADR program, and experienced a nearly identical increase
- 2021 Actuarial analysis found the increase in CT claims was not a result of the ADR Program



# Non CT Claims Loss Rates

- The most recent ADR actuarial report confirms a reduction in Loss Rate for non-CT claims.
- This demonstrates the program is effective in all areas, including reducing costs (saving money) for non-CT claims which comprise the majority of our ADR claims.

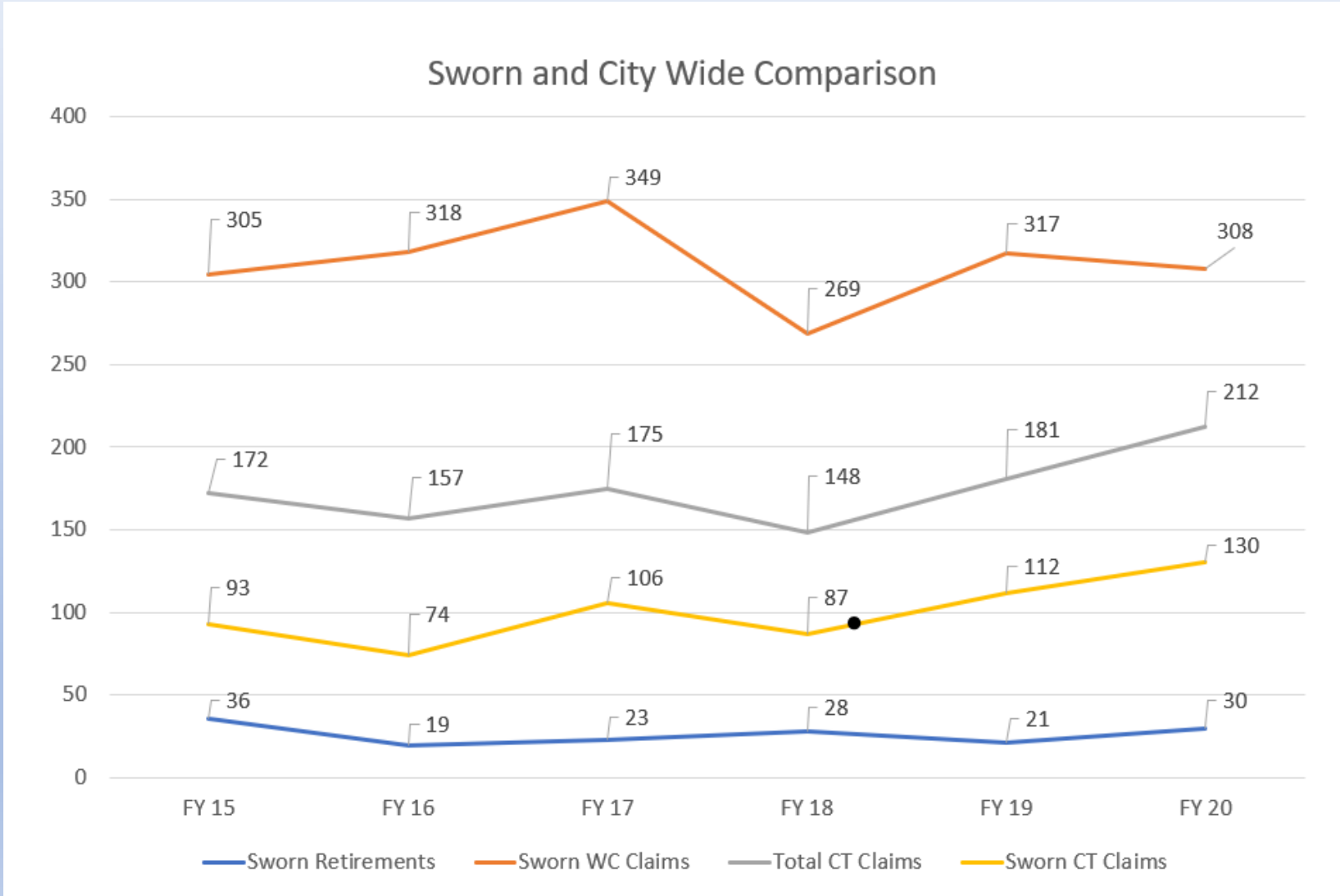
Ultimate Loss Rates by Year for Specific Injury Claims Only (Excludes CT)



\*2019-20 loss rate shown is preliminary and subject to greater variability than other, more mature years.

# CT Claims Appear to Correspond to Retirements

- Retirement stats show direct correlation between sworn CT claims and sworn retirements.
- For example, from FY19 to FY20, retirement claims increased by 9, and CT claims increased by 8.

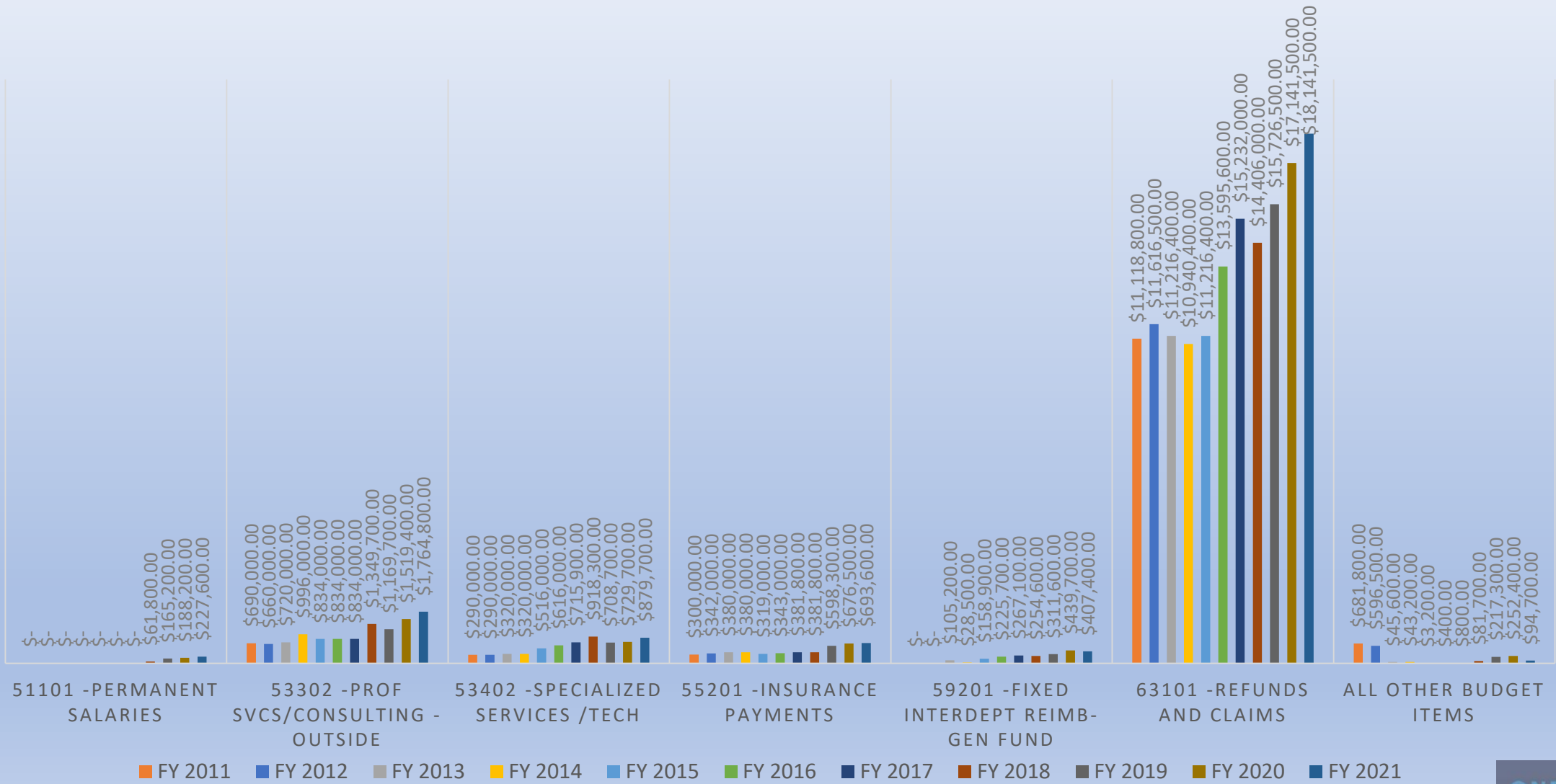




# 10 Year WC Budget Comparison

Budget	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
51101 -Permanent Salaries	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 61,800.00	\$ 165,200.00	\$ 188,200.00	\$ 227,600.00
53302 -Prof Svcs/Consulting - Outside	\$ 690,000.00	\$ 660,000.00	\$ 720,000.00	\$ 996,000.00	\$ 834,000.00	\$ 834,000.00	\$ 834,000.00	\$ 1,349,700.00	\$ 1,169,700.00	\$ 1,519,400.00	\$ 1,764,800.00
53402 -Specialized Services /Tech	\$ 290,000.00	\$ 290,000.00	\$ 320,000.00	\$ 320,000.00	\$ 516,000.00	\$ 616,000.00	\$ 715,900.00	\$ 918,300.00	\$ 708,700.00	\$ 729,700.00	\$ 879,700.00
55201 -Insurance Payments	\$ 300,000.00	\$ 342,000.00	\$ 380,000.00	\$ 380,000.00	\$ 319,000.00	\$ 343,000.00	\$ 381,800.00	\$ 381,800.00	\$ 598,300.00	\$ 676,500.00	\$ 693,600.00
59201 -Fixed Interdept Reimb-Gen Fund	\$ -	\$ -	\$ 105,200.00	\$ 28,500.00	\$ 158,900.00	\$ 225,700.00	\$ 267,100.00	\$ 254,600.00	\$ 311,600.00	\$ 439,700.00	\$ 407,400.00
63101 -Refunds and Claims	\$ 11,118,800.00	\$ 11,616,500.00	\$ 11,216,400.00	\$ 10,940,400.00	\$ 11,216,400.00	\$ 13,595,600.00	\$ 15,232,000.00	\$ 14,406,000.00	\$ 15,726,500.00	\$ 17,141,500.00	\$ 18,141,500.00
All Other Budget Items	\$ 681,800.00	\$ 596,500.00	\$ 45,600.00	\$ 43,200.00	\$ 3,200.00	\$ 400.00	\$ 800.00	\$ 81,700.00	\$ 217,300.00	\$ 252,400.00	\$ 94,700.00
Total	\$ 13,080,600.00	\$ 13,505,000.00	\$ 12,787,200.00	\$ 12,708,100.00	\$ 13,047,500.00	\$ 15,614,700.00	\$ 17,431,600.00	\$ 17,453,900.00	\$ 18,897,300.00	\$ 20,947,400.00	\$ 22,209,300.00

# 10 Year WC Budget Comparison (cont'd)



# 10 Year WC Comparison - Summary of Changes

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- 51101 -Permanent Salaries
  - Change is due to addition of 2 Senior Risk Analysts
- 53302 -Prof Svcs/Consulting - Outside
  - Increase is change is increase in Risico TPA Management fees
    - The primary driver of cost is due to the increase of claim counts
- 53402 -Specialized Services /Tech
  - Investigative services, to CMS/MSA yearly compliance, Steve Siemers Mediation and OSIP assessments. Defense Attorney consultation on Labor code specific issues, not file specific

# 10 Year WC Comparison - Summary of Changes (cont'd)

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- 55201 -Insurance Payments
  - Increase in excess insurance costs which is factored by increase in wages and industry costs
- 59201-Fixed Interdept Reimb-Gen Fund
  - Total cost of providing City Services by allocating indirect costs such as City Clerk and City Manager to direct program cost areas.
- 63101 -Refunds and Claims
  - Increase in RISICO OJI Vouchers
    - Increase in wages
      - 4850 is 100% of wages for the first year
      - State Average Weekly Wage also increased from 2011 to 2021 for non 4850 claims
    - Permanent disability award rates increased 3 times from 2011 to 2021

# Challenges and Opportunities

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## ***Past Challenges:***

- Lack of buy in
- Use of Long-Term Absence count as a metric for success
- Competing philosophies between Risk, Third Party Administrator and ADR Joint Committee

## ***Opportunities Going Forward:***

- Administration has directed staff to fully implement program (new Leadership)
- Continued Focus on reducing Average Loss Time days per claim
- Enhanced Focus on injury prevention in the Department
- Regular meetings & communication with TPA to ensure staff training is occurring
- New contract for Mariotto Resolutions
- New contract for Steve Siemers Dispute Resolution



**QUESTIONS**