



# City of Santa Clara

1500 Warburton Avenue  
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## Agenda Report

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19-1138

Agenda Date: 10/29/2019

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### REPORT TO COUNCIL

#### SUBJECT

Action on the Settlement in the Case of *Lo v. City of Santa Clara, et al.* and Approval of the Related Budget Amendment

#### BACKGROUND

*Lo v. City of Santa Clara et al.*, arises from an auto vs. train accident which occurred in January 2017, on the railroad crossing at the Lafayette and Agnew intersection. Mrs. Bridget Lo was tragically killed in that accident. Her surviving family members filed suit against the railroad and the City, alleging that the design, maintenance and operation of the railroad crossing as well as the adjacent intersection were dangerous.

#### DISCUSSION

This settlement was brought before Council in closed session on September 17, 2019, at which time Council approved the settlement. No report out of closed session was completed at that time because the settlement was not yet final, as required by California Government Code §54957.1(a)(3). The settlement has now been finalized and a copy of the Settlement Agreement is on file with the City Clerk's Office.

The total settlement with the Plaintiffs (Mrs. Lo's husband and two children) is \$3.5 million. Of this total sum, the City's net liability is \$2,808,807.71 which reflects the amount remaining on the City's insurance deductible. The City will pay the full \$3.5 million to the plaintiffs and the City's insurance carrier will refund to the City the sum of \$691,192.29 which represents the portion of the total settlement amount that exceeds the city's insurance deductible. . The settlement forecloses any possible further liability for the City based upon this incident.

City Charter Section 1305 requires that appropriation for non-budgeted expenditures, such as the payment of a verdict or settlement, be approved by a five-vote majority of the Council. The Reserve for Future Claims in the Special Liability Insurance Fund is a reserve fund established to cover jury verdicts, settlements, and payments of the City's insurance deductible in claims matters. Staff further requests approval of payment from the Special Liability Insurance Fund in the amount of \$3,500,000 to plaintiffs and their counsel, in accordance with the terms of the settlement agreement, with the understanding that approximately \$700,000 will be refunded to the City by the City's insurance carrier

#### ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

**FISCAL IMPACT**

The budget amendment below recognizes the anticipated insurance refund and allocates funding from the Reserve for Future Claims to the Insurance and Claims expenditure appropriation in the Special Liability Insurance Fund for the payment of the recommended settlement in the amount of \$3.5 million.

**Budget Amendment  
FY 2019/20**

	Current	Increase/ (Decrease)	Revised
<b>Special Liability Insurance Fund</b>			
<u>Revenues</u>			
Insurance Payment	\$0	\$691,192	\$691,192
<u>Reserves</u>			
Reserve for Future Claims	\$4,000,000	(\$2,808,808)	\$1,191,192
<u>Expenditures</u>			
Insurance and Claims	\$4,399,866	\$3,500,000	\$7,899,866

**COORDINATION**

This Report has been coordinated with the Finance Department and the City Manager's Office.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

1. Approve payment from the Special Liability Insurance Fund in the amount of \$3,500,000 to plaintiffs and their counsel in the case of *Lo v. City of Santa Clara, et al.*, in accordance with the terms of the settlement agreement; and
2. Approve a Budget Amendment recognizing insurance refund revenue and appropriating funds from the Reserve for Future Claims in the Special Liability Insurance Fund in the amount of \$3,500,000.

Reviewed by: Brian Doyle, City Attorney

Approved by: Deanna J. Santana, City Manager