



## Agenda Report

18-690

Agenda Date: 5/22/2018

### REPORT TO COUNCIL

#### SUBJECT

Action on Payment of Settlement to Austin Calhoun and his Attorney and Related Budget Amendment

#### BACKGROUND

In November 2017, a Santa Clara County Superior Court jury returned a verdict in favor of plaintiff Austin Calhoun and against a City employee (who was acting in the course and scope of his employment with the City) in the amount of \$1.766 million. The City is responsible for payment of this sum. As a result of the City's post-trial motions and further negotiations with the plaintiff, the amount due has been reduced to \$1.55 million, which amount was within the City Council's settlement limits as previously authorized in closed session.

#### DISCUSSION

City Charter Section 1305 requires that appropriation for non-budgeted expenditures, such as the payment of a jury verdict, be approved by a five-vote majority of the Council. Staff requests approval of an appropriation from the Special Liability Reserve Fund, which is a reserve fund established to cover jury verdicts, settlements and payments of the City's insurance deductible in claims matters, to the Special Liability Insurance Fund. Staff further requests approval of payment of the sum of \$1.55 million to plaintiff Austin Calhoun and his attorney.

After the verdict was entered, the City Council in closed session authorized the City Attorney to file appropriate post-trial motions and to enter into negotiations with the Plaintiff for settlement of the case, within certain limits. 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 and Release is on file with the City Clerk's Office. The case has been settled within the limits of authority granted by Council in closed session.

#### 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

Approval of the appropriation and payment to plaintiff will result in a reduction in the Special Liability Reserve Fund of \$1.55 million.

BUDGET AMENDMENT

	2017-18 Current	Increase/ (Decrease)	2017-18 Revised
<u>Fund 082 - Special Liability Insurance</u>			
<u>Expenditures</u>			
Special Liability Insurance Claim (Program 0141) - Contractual Services (87870)	\$2,536,273	\$1,550,000	\$4,086,273
<u>Use of Reserves</u>			
Special Liability Insurance Claim (Program 0141)	\$4,000,000	(\$1,550,000)	\$2,450,000

**COORDINATION**

This Report has been coordinated with the Finance Department.

**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) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

1. Approve payment of \$1.55 million from the Special Liability Insurance Fund to plaintiff Austin Calhoun and his attorney; and
2. Approve Transfer of \$1.55 million from the Special Liability Reserve Fund to the Special Liability Insurance Fund.

Reviewed by: Brian Doyle, City Attorney

Approved by: Deanna J. Santana, City Manager