



Agenda Report

18-1492

Agenda Date: 12/4/2018

REPORT TO COUNCIL

SUBJECT

Action on Approval of a Budget Amendment to Fund Settlement in the Case of Smee v. City of Santa Clara

BACKGROUND

Smee v. City of Santa Clara arises from an auto vs. pedestrian accident in a marked crosswalk at the intersection of Kiely Boulevard and Malabar Avenue. Mr. Smee sustained significant personal injuries and initiated suit against the at-fault driver and the City. His claims against the City are related to the design and maintenance of the crosswalk where the accident occurred. Mr. Smee's employer, AutoNation (owner of the Mini dealership located on Kiely Boulevard), is also involved in the suit as it pertains to the amounts expended for Mr. Smee's medical care.

DISCUSSION

This settlement was brought to Council in closed session on June 12, 2018, at which time Council approved the settlement amount. 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 City's total liability on this case is \$2 million, and the settlement forecloses any possible further liability for the City based upon ongoing claims of Auto Nation. 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 is required in order to make the payment. Staff further requests approval of payment from the Special Liability Insurance Fund in the amount of \$2 million to plaintiffs, Mr. and Mrs. Smee (and their counsel), in accordance with the terms of the settlement agreement.

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

Payment of this settlement will result in a reduction of the Special Liability Reserve in the amount of \$2 million. In order to appropriate the funding needed for this settlement payment, the budget amendment below reduces the Special Liability Reserve by \$2 million and appropriates it to the Insurance Claims Expense account of the Special Liability fund.

**Budget Amendment
FY 2018/19**

	Current	Increase/ (Decrease)	Revised
Special Liability Fund (082)			
<u>Expenditures</u>			
Special Liability Reserve	\$4,000,000*	(\$2,000,000)	\$2,000,000
Insurance Claims Expense	\$125,000	\$2,000,000	\$2,125,000

*Reserve balance is contingent upon approval of the FY 2017/18 Budgetary Year-End Report and Related Budget Amendment scheduled for City Council approval on December 4, 2018

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 an appropriation from the Special Liability Reserve Fund to the Special Liability Insurance Fund in the amount of \$2,000,000
2. Approve payment from the Special Liability Insurance Fund in the amount of \$2,000,000 to plaintiffs and their counsel in the case of *Smee v. City of Santa Clara* in accordance with the terms of the settlement agreement

Reviewed by: Brian Doyle, City Attorney

Approved by: Deanna Santana, City Manager