

CONSENT CALENDAR December 17, 2013

To: Honorable Mayor and Members of the City Council

From: () Christine Daniel, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: Settlement of Freddia Smith v. City of Berkeley, ACSC No. RG 11 595053

RECOMMENDATION

Adopt a Resolution approving the settlement of the Alameda County Superior Court Action No. RG 11 595053 entitled *Smith v. City of Berkeley*, in the amount of \$71,000.

FISCAL IMPACTS OF RECOMMENDATION

The City will spend \$71,000 from the Public Liability Fund. Council approval is required for settlements exceeding \$15,000. (BMC section 7.12.020.)

CURRENT SITUATION AND ITS EFFECTS

There is a pending lawsuit seeking damages.

BACKGROUND

This lawsuit arises from an accident on September 20, 2009 in which the plaintiff, Freddia Smith, tripped on uneven sidewalk on the 1800 block of Fairview Street and sustained serious injuries requiring surgery.

RATIONALE FOR RECOMMENDATION

The Council has already received a confidential memorandum reflecting the City Attorney's advice regarding this matter.

<u>ALTERNATE ACTIONS CONSIDERED</u>

These issues are discussed in the Confidential Memorandum to the Mayor and Council.

CONTACT PERSON

Zach Cowan, City Attorney, 981-6998 Matthew J. Orebic, Deputy City Attorney, 981-6998

Attachment:

1: Resolution

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE CITY ATTORNEY TO SETTLE THE PUBLIC LIABILITY LAWSUIT OF FREDDIA SMITH V. CITY OF BERKELEY, ALAMEDA COUNTY SUPERIOR COURT ACTION NO. RG 11 595053.

WHEREAS, a public liability lawsuit has been filed in the Alameda County Superior Court, Action No. RG 11 595053, against the City of Berkeley by Freddia Smith arising from personal injuries Ms. Smith sustained as a result of an accident caused by an uneven sidewalk on the 1800 block of Fairview Street on September 20, 2009; and

WHEREAS, it is in the best interests of the City of Berkeley to settle this lawsuit, and a settlement figure of \$71,000 has been reached by the City Attorney and plaintiff's attorney.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Attorney is authorized, in accordance with Berkeley Municipal Code Section 7.12.020, to settle this matter by a total payment of \$71,000 from Public Liability Fund 881 1702 410 8101 in settlement of the above-entitled lawsuit. Said payment will be made with two checks. The first will be paid to Medicare to satisfy its lien for medical treatment in the amount of \$7,704.57. The second check will be for the balance of the settlement in the amount of \$63,295.43 made payable to Freddia Smith and her attorney of record, Scott Bonzell.