



Office of the City Manager

CONSENT CALENDAR  
December 8, 2008

To: Honorable Mayor and Members of the City Council  
From: *PK* Phil Kamlarz, City Manager  
Submitted by: Zach Cowan, Acting City Attorney  
Subject: Timothy Clement v. City of Berkeley; Settlement

RECOMMENDATION

Adopt a Resolution approving the settlement of the Alameda County Superior Court Action No. RG 07 331421 entitled *Clement v. City of Berkeley*, in the amount of \$50,000.

FISCAL IMPACTS OF RECOMMENDATION

The City will spend \$50,000 from the Public Liability Fund. Council approval is required for settlements exceeding \$15,000. (BMC section 7.12.020.)

Public Liability Fund No. 881 1702 410 8101 \$50,000

CURRENT SITUATION AND ITS EFFECTS

There is a pending lawsuit seeking damages.

BACKGROUND

This lawsuit arises from personal injuries sustained as a result of a trip and fall accident on an uneven sidewalk at Heinz and 10<sup>th</sup> Streets on February 28, 2006.

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

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

CONTACT PERSON

Zach Cowan, Acting City Attorney	981-6950
Matthew J. Orebic, Deputy City Attorney	981-6950

Attachments:  
1: Resolution

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

AUTHORIZING THE CITY ATTORNEY TO SETTLE THE PUBLIC LIABILITY LAWSUIT OF CLEMENT V. CITY OF BERKELEY, ALAMEDA COUNTY SUPERIOR COURT ACTION NO. RG 07 331421

WHEREAS, a public liability lawsuit has been filed in the Alameda County Superior Court, Action No. RG 07 331421 against the City of Berkeley by Timothy Clement arising from personal injuries allegedly sustained as a result of a trip and fall accident on an uneven sidewalk at Heinz and 10<sup>th</sup> Streets on February 28, 2006; and

WHEREAS, plaintiff in the above-entitled lawsuit alleges that he has sustained personal injuries as a direct result of said accident; and

WHEREAS, it is in the best interests of the City of Berkeley to settle this lawsuit, and a settlement figure of \$50,000 has been reached by the City Attorney and plaintiff's attorney.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Attorney, in accordance with Section 7.12.020 of the Berkeley Municipal Code, to settle this matter by a payment of \$50,000 from Public Liability Fund 881 1702 410 8101 to Dykman and Wester, In Trust, in settlement of the above-entitled lawsuit.