

CITY COUNCIL REPORT



Meeting Date: May 22, 2018
General Plan Element: *Provide for the orderly administration of the affairs of the City*
General Plan Goal: *Fiscal management*

ACTION

Adopt Resolution No. 11143 authorizing settlement of the claims in the lawsuit titled Kathleen Gonzalez v. City of Scottsdale, et al., filed in Maricopa County Superior Court, CV2017-090023.

Background

This litigation stems from a purported trip and fall on February 17, 2016, on a City sidewalk in front of the Cortesian Apartments, located at 7749 E. Camelback Road. Plaintiff fractured her left shoulder and suffered other minor scrapes and bruises. Plaintiff filed a Notice of Claim, seeking \$223,325 in damages against the City. The City denied the claim and Plaintiff filed a lawsuit. The City denied liability and named the Cortesian Apartments as a non-party at fault. As property owner, it has a duty imposed by Scottsdale City Code (section 47-47) to maintain the sidewalk in front of the apartment complex. Plaintiff subsequently amended her complaint to add the Cortesian Apartments as a co-defendant.

On April 3, 2018, the parties participated in a mediation. At the time, the parties were unable to reach a settlement, but did make progress towards a resolution. After the mediation, the parties continued to negotiate and, subject to City Council approval, the parties reached a global resolution of the claims involved in this litigation. The proposed settlement requires the City to pay \$45,000.00 of a total \$60,000.00 settlement to Plaintiff. The insurer for the Cortesian Apartments will pay the remaining \$15,000.00.

ANALYSIS & ASSESSMENT

Recent Staff Action

The matter is still in the litigation phase and is being handled by the City Attorney's Office with assistance from Risk Management. Both Risk Management and the City Attorney's Office feel that settlement at this time is in the best interests of the City because it will avoid substantial costs of litigation and eliminate the uncertainties inherent in going to trial.

Policy Implications

None.

Significant Issues to be Addressed

None.

Community Involvement

No community involvement is necessary on this item.

RESOURCE IMPACTS

Available funding

The proposed settlement will require a total payment of \$45,000.00 from the City. Funds are available in the City's Risk Management Operating Budget, Account No. 710 23740 52481.

Staffing, Workload Impact

Approval of the proposed settlement brings this claim to a conclusion and will eliminate the need for staff resources from the Legal Department, Risk Management and other Departments to be spent on this case.

Future Budget Implications

The proposed total settlement of \$45,000.00 may be included in the City's primary property tax rate for the next year. The eligibility of settlement and judgment payments for possible inclusion in the City's primary property tax rate is based upon an Arizona Attorney General opinion. The City of Scottsdale has a long-standing practice of including paid tort settlements equal to or greater than \$20,000.00 in the City's primary tax rate to reimburse the Self-Insured Fund for payment of the claim.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 11143 and authorize settlement of this claim as proposed.

Proposed Next Steps

If the settlement is approved, City representative(s) will execute settlement documents as proposed and obtain a dismissal of the litigation.

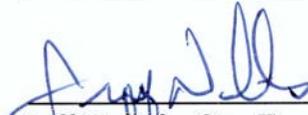
RESPONSIBLE DEPARTMENT(S)

General Government, City Attorney's Office – Civil Division
Risk Management

STAFF CONTACTS (S)

Marc Fredrics, Adjuster, Risk Management, mfredrics@scottsdaleaz.gov
Bruce Washburn, City Attorney, bwashburn@scottsdaleaz.gov

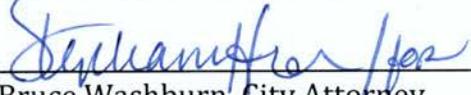
APPROVED BY



Jeff Nichols, City Treasurer
(480) 312-2364
jenichols@scottsdaleaz.gov

5/2/18

Date



Bruce Washburn, City Attorney
(480) 312-2405
bwashburn@scottsdaleaz.gov

5/2/18

Date

ATTACHMENTS

1. Resolution No. 11143

RESOLUTION NO. 11143

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING SETTLEMENT OF THE LAWSUIT TITLED KATHLEEN GONZALEZ V. CITY OF SCOTTSDALE, ET AL., FILED IN MARICOPA COUNTY SUPERIOR COURT, CV2017-090023.

WHEREAS, plaintiff in the lawsuit titled Kathleen Gonzalez v. City of Scottsdale, *et al.*, filed in Maricopa County Superior Court, CV2017-090023 asserted claims against the City of Scottsdale and others, seeking to recover for damages arising from a trip and fall accident that occurred on or about February 17, 2016; and

WHEREAS, the parties have agreed to resolve the disputed issues and compromise their claims by settling the claims; and

WHEREAS, it is in the best interest of the City to effectuate a settlement of claims against the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Scottsdale, Maricopa County, Arizona as follows:

Section 1. That the City Council authorizes settlement funds to be paid from the City's Risk Management Operating Budget (710 23740 52481) for settlement of the aforementioned claims in the amount of forty-five thousand dollars (\$45,000.00).

Section 2. That the City Council approves the settlement set forth above and authorizes and directs the City Manager, the City Treasurer, the City Attorney, and their respective staffs to execute such documents and take such other actions as are necessary to carry out the purpose of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this 22nd day of May, 2018.

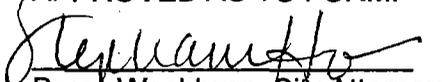
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Carolyn Jagger, City Clerk

W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:


Bruce Washburn, City Attorney

By: Stephanie Heizer, Assistant City Attorney