

CITY COUNCIL REPORT



Meeting Date: January 8, 2019
General Plan Element: *Provide for the orderly administration of the affairs of the City*
General Plan Goal: *Fiscal management*

ACTION

Request: Adopt **Resolution No. 11346** approving the City's making an Offer of Judgment in the amount of Sixty-Five Thousand Dollars (\$65,000.00) to the Plaintiff in *Marcellus v. City of Scottsdale, et al.*, Maricopa County Superior Court No. CV2015-091140, or otherwise resolving the pending litigation.

Background:

Robert Marcellus was injured when a driver struck him from behind while riding his bicycle on Dynamite/Rio Verde Road near 120th St. After settling claims against the driver who struck him, Marcellus filed a lawsuit against the City alleging that it should have installed bike lanes or wider paved shoulders on this segment of the roadway. The City has denied liability and the case has been proceeding through litigation for several years. Recently, the parties attempted to settle the case through a mediator but Mr. Marcellus has indicated that he will not accept any amount that is anywhere near the valuation the City places on the claim. In situations such as this, Rule 68, Arizona Rules of Civil Procedure, makes available to a party a means of potentially limiting its exposure. That Rule provides that a party can offer to have a judgment entered for a certain sum, and if the offeree does not accept the offer and then fails to obtain a more favorable judgment then the offeree has to pay the successful party's reasonable expert witness fees and double the taxable costs incurred after the offer. Because of the disparity in the parties' settlement positions, this is an appropriate case for the use of an offer of judgment. The City wishes to submit an Offer of Judgment in the amount of sixty-five thousand dollars (\$65,000.00). If the offer is not accepted and it becomes possible at a later time to settle the case on terms no less favorable to the City than the offer of judgment, then the City wishes to be able to proceed with such settlement.

ANALYSIS & ASSESSMENT

Recent Staff Action

Staff from the City Attorney's Office and from the Risk Management Department have worked in the defense of this matter.

Policy Implications

Each litigation is unique so there are no broader policy implications inherent in this decision.

Significant Issues to be Addressed

The City has a risk of having to pay \$65,000.00 at this time in order to settle this case if it makes the proposed offer of judgment, but even if it occurred it would not result in an unreasonable settlement.

Community Involvement

No community involvement is necessary as this matter is in litigation.

RESOURCE IMPACTS

Available Funding

Funding is available in the Risk Management operating budget.

Staffing, Workload Impact

Approval of this Resolution will have no staffing or workload impact.

Future Budget Implications

The proposed payment of \$65,000.00 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.

Cost Recovery Options

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt **Resolution No. 11346** approving the City's making an Offer of Judgment in the amount of sixty-five thousand dollars (\$65,000.00) to the Plaintiff in *Marcellus v. City of Scottsdale, et al.*, Maricopa County Superior Court No. CV2015-091140, or otherwise resolving the pending litigation.

Proposed Next Steps

If the Resolution is adopted an offer of judgment will be made in accordance therewith.

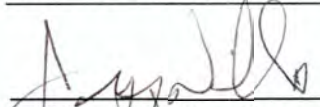
RESPONSIBLE DEPARTMENT(S)

City Attorney's Office; Financial Services

STAFF CONTACTS (S)


Bruce Washburn, City Attorney, bwashburn@scottsdaleaz.gov

APPROVED BY



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

12/6/2018
Date

FOR 

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

12/6/2018
Date

ATTACHMENTS

1. Resolution No. 11346

RESOLUTION NO. 11346

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, CONCERNING MARCELLUS v. CITY OF SCOTTSDALE, et al., CAUSE NO. CV2015-091140, CURRENTLY PENDING IN MARICOPA COUNTY SUPERIOR COURT, AUTHORIZING THE CITY TO EXTEND AN OFFER TO CONFESS JUDGMENT TO PLAINTIFF ROBERT MARCELLUS IN THE AMOUNT OF \$65,000.00 PURSUANT TO RULE 68, ARIZONA RULES OF CIVIL PROCEDURE, OR TO OTHERWISE SETTLE THE MATTER ON TERMS NO LESS FAVORABLE TO THE CITY.

WHEREAS, the CITY OF SCOTTSDALE has been defending claims asserted by Plaintiff Robert Marcellus in *Marcellus v. City of Scottsdale, et al.*, Maricopa County Case No. CV2015-091140; and

WHEREAS, it is in the best interest of the City to extend an offer of judgment to Plaintiff in accordance with Rule 68, Arizona Rules of Civil Procedure; and

WHEREAS, it is in the best interest of the City to be able to settle the pending litigation for an amount equal to or less than the amount of the offer of judgment should the City Attorney determine that such a settlement can and should be made at some future time;

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

Section 1. That the City Council authorizes the City Attorney's Office to extend an offer to confess judgment to Plaintiff Robert Marcellus in the amount of Sixty-Five Thousand Dollars (\$65,000.00) in accordance with Rule 68, Arizona Rules of Civil Procedure.

Section 2. That the City Council authorizes the City Attorney to settle the pending claims with Robert Marcellus for an amount less than or equal to Sixty-Five Thousand Dollars (\$65,000.00).

Section 3. That the City Council authorizes and directs the City Attorney to execute any and all documents necessary to carry into effect the intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 8th day of January, 2019.

ATTEST:

CITY OF SCOTTSDALE, an Arizona
municipal corporation

By: _____
Carolyn Jagger
City Clerk

By: _____
W.J. "Jim" Lane
Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
Bruce Washburn, City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney