

CITY COUNCIL REPORT



Meeting Date: September 17, 2019
General Plan Element: *Provide for the orderly administration of the affairs of the City*
General Plan Goal: *Fiscal management*

ACTION

Adopt Resolution No. 11591 authorizing settlement of *Marcellus v. City of Scottsdale*. Consider adopting Resolution No. 11591 authorizing settlement in the amount of \$120,000 of Robert Marcellus's negligence lawsuit against the City styled *Marcellus v. City of Scottsdale*, Case No. CV2015-091140, currently pending in the Maricopa County Superior Court.

Background

This litigation stems from a bicycle accident which occurred on May 17, 2014 while Plaintiff was riding his bicycle on E. Rio Verde Drive near N. 120th Street in the City of Scottsdale. Plaintiff alleges he was riding westbound on the shoulder of E. Rio Verde Drive and was struck by another driver. Plaintiff is claiming injuries and damages as a result of his accident due to the design of the roadway and his allegations that the City should have provided a bike lane or wider paved shoulder in the subject area. The City denies any liability and contends Plaintiff is at least partially, if not wholly, at fault for the accident and any associated damages.

Before filing suit, the Plaintiff filed a Notice of Claim and supplements with the City seeking \$1,000,000 as a settlement. Robert Marcellus' claim for lost wages and past and future medical bills is over \$250,000. In addition, if the matter were to proceed to trial, Marcellus will also claim damages for pain and suffering as well.

The City has reached a tentative settlement of this particular litigation subject to the approval of the City Council. The recommended settlement is the amount of One Hundred Twenty Thousand Dollars (\$120,000) and will lead to the dismissal of the case and termination of the litigation.

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. The parties have been preparing for trial to start September 23. Plaintiff's attorney contacted the City Attorney's office regarding settlement of the case before the trial, leading to this tentative settlement, contingent upon approval by the City Council.

Policy Implications

Each litigation is unique. There are no known broader policy implications inherent in this decision.

Significant Issues to be Addressed

Given the risk of litigation and the additional costs of moving forward to a trial, the City Attorney's Office and Risk Management Department believe a settlement amount of \$120,000 is in the best interests of the City. Settlement of this action will resolve the uncertainty of litigation.

Community Involvement

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

RESOURCE IMPACTS

Available funding

Funding is available in the Risk Management operating budget.

Staffing, Workload Impact

Approval of the proposed settlement brings this litigation to a conclusion and will eliminate the need for staff resources from the City Attorney's Office, Risk Management and other Departments to be spent on this case, as well as eliminating the risk and uncertainty of litigation.

Future Budget Implications

The proposed settlement of \$120,000.00 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

None.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 11591 and authorize settlement and release of this litigation in the amount of \$120,000 as proposed.

Proposed Next Steps

If the settlement is approved, City representative(s) will execute settlement documents as proposed and the City will pay the settlement amount within a reasonable time thereafter.

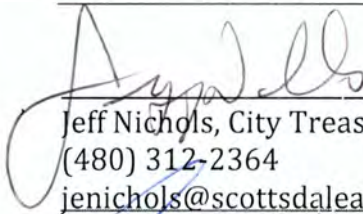
RESPONSIBLE DEPARTMENT(S)

City Attorney's Office – Civil Division
Risk Management

STAFF CONTACTS (S)

Joe Padilla, Acting City Attorney, jpadilla@scottsdaleaz.gov

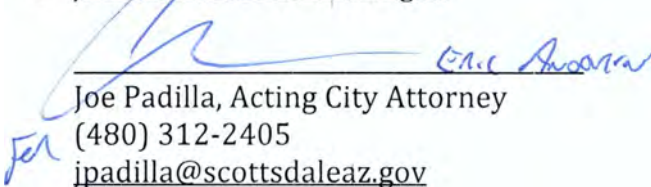
APPROVED BY



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

9/3/19

Date



Joe Padilla, Acting City Attorney
(480) 312-2405
jpadilla@scottsdaleaz.gov

Date

ATTACHMENTS

1. Resolution No. 11591

RESOLUTION NO. 11591

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPÁ COUNTY, ARIZONA, CONCERNING MARCELLUS v. CITY OF SCOTTSDALE ET AL., CAUSE NO. CV2015-091140, CURRENTLY PENDING IN MARICOPA COUNTY SUPERIOR COURT

WHEREAS, Robert Marcellus brought suit against the City of Scottsdale seeking to recover monetary damages for injuries resulting from a bicycle accident which occurred on May 17, 2014 in Scottsdale; and

WHEREAS, the City has decided to resolve the disputed issues and compromise the claims by settling herein; and

WHEREAS, it is in the best interest of the City to effectuate a settlement of the matter of *MARCELLUS v. CITY OF SCOTTSALE*, Maricopa County Superior Court Case No. CV2015-091140.

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

Section 1. That the City Council authorizes \$120,000 to be paid from the City's Risk Management Operating Budget (710-01065-52481) for settlement of *MARCELLUS v. CITY OF SCOTTSDALE*, Maricopa County Superior Court Case No. CV2015-0091140.

Section 2. That the City Manager, City Treasurer, the City Attorney, and their respective staffs are authorized and directed 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 this ____ day of _____, 2019.

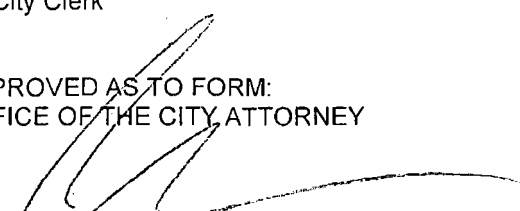
ATTEST:

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:  _____
Joe Padilla, Acting City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney