



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Julia H. Cooper  
Jennifer Schembri

**SUBJECT: SETTLEMENT OF CLAIMS  
WITH SJPOA**

**DATE:** February 18, 2020

Approved

Date

2-19-20

## **RECOMMENDATION**

Approve a settlement between the City and the San Jose Police Officers' Association (SJPOA) in the amount of \$763,305.99 to affected SJPOA members and \$10,000 for attorney fees to the SJPOA and authorize the City Attorney to execute a Settlement Agreement.

## **OUTCOME**

Settle claims brought by the SJPOA with a payment by the City in the amount of \$88,692.47 to 179 affected SJPOA members for the inclusion of health-in-lieu payments into the calculation of the regular rate for Fair Labor Standards Act (FLSA) overtime and payment in the amount of \$674,613.52 to 343 affected SJPOA members for compensatory time off payouts under the FLSA, plus the payment of \$10,000 for attorney fees to the SJPOA.

## **BACKGROUND**

In late 2015, the City and SJPOA began meeting regarding the SJPOA's questions on the City's calculation of overtime under the FLSA. The parties met several times between 2016 and 2019.

On June 2, 2016, the Ninth Circuit Court of Appeals ruled in *Flores v. City of San Gabriel* (*Flores*) that the FLSA required employers to include cash payments made in lieu of health benefits into the regular rate for the calculation of overtime. Similar to the City of San Gabriel, the City of San Jose had not included cash payments made in lieu of health benefits into the regular rate for the calculation of overtime under the FLSA.

The City of San Gabriel appealed the Ninth Circuit's decision to the United States Supreme Court. On May 15, 2017, the Supreme Court denied the City of San Gabriel's petition for review, thus making the Ninth Circuit's decision in *Flores* controlling law within the Ninth Circuit. The City began including cash payments for health in lieu benefits in the regular rate calculation for FLSA overtime purposes on June 18, 2017.

During the discussions with the SJPOA, the City also determined that compensatory time off payments were calculated incorrectly, as the City was using base pay instead of the FLSA regular rate of pay. The rate at which compensatory time off payments were made was corrected prospectively on August 26, 2018.

On February 22, 2019, the City proposed a settlement whereby the City would pay 179 affected SJPOA members a total amount of \$88,692.47 in back pay for the inclusion of health/dental in lieu compensation into the regular rate of pay for purposes of the payment of FLSA overtime for the period of June 1, 2013 through June 17, 2017, and would pay 343 affected SJPOA members a total amount of \$674,613.52 in back pay for compensatory time off payouts under the FLSA for the period of June 1, 2013 through August 25, 2018. In addition, the SJPOA requested an additional amount of \$10,000 for attorneys' fees.

### **ANALYSIS**

Under the proposed settlement, 179 affected SJPOA members will receive a total amount of \$88,692.47 in back pay for the inclusion of health/dental in lieu compensation into the regular rate of pay for purposes of the payment of FLSA overtime for the period of June 1, 2013 through June 17, 2017, and 343 affected SJPOA members would receive a total amount of \$674,613.52 in back pay for compensatory time off payouts under the FLSA for the period of June 1, 2013 through August 25, 2018. In addition, the SJPOA will receive \$10,000 for attorneys' fees. In exchange, the SJPOA agrees, among other things, that it will not file a lawsuit(s) or make any other type of claim relating to these FLSA issues on behalf of its members, nor will it seek liquidated damages and costs on behalf of its members in any claim of lawsuit relating to these FLSA issues.

### **CONCLUSION**

This is a negotiated settlement, which does not admit liability, to avoid risks inherent in litigation. City staff recommends approval of this settlement.

### **EVALUATION AND FOLLOW-UP**

No additional follow up action with the City Council is expected at this time.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the March 3, 2020 Council Meeting.

### **COORDINATION**

This memo has been coordinated with the City Attorney's Office, the San Jose Police Department, and the City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **COST SUMMARY/IMPLICATIONS**

The total cost of the settlement, \$773,305.99, as recommended in this memorandum will be paid by the General Liability Claims appropriation in the General Fund.

### **BUDGET REFERENCE**

The table below identifies the fund and appropriation proposed to fund the settlement as recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Current Total Appn	Rec Budget Action	2019-2020 Adopted Operating Budget Page	Last Budget Action (Date, Ord No.)
001	0018	General Liability Claims	\$13,233,335	(\$773,305.99)	IX-36	10/22/2019 Ord. No. 30325

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**CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/  
JULIA H. COOPER  
Director of Finance

/s/  
JENNIFER SCHEMBRI  
Director of Employee Relations  
Director of Human Resources

For questions, please contact Allison Suggs, Assistant Director, Employee Relations at (408) 535-8157.