



# CITY OF SANTA BARBARA

## CITY COUNCIL AGENDA REPORT

**AGENDA DATE:** July 16, 2013

**TO:** Mayor and Councilmembers

**FROM:** Administration Division, Finance Department

**SUBJECT:** Funding of Final Judgment in the Ruben Barajas, et, al. v. City of Santa Barbara (SBSC Case No. 1383054.)

**RECOMMENDATION:** That Council:

- A. Approve a payment out of the Self-Insurance Fund for damages in the amount of \$636,546 in connection with the above-referenced Barajas case; and
- B. Defer the final funding decision to a future Council discussion on the use of one-time General Fund revenues as recommended by the Finance Committee.

### **DISCUSSION:**

The City recently received a jury verdict relating to an inverse condemnation lawsuit. "Inverse condemnation" is a constitutional principle which requires the payment of "just compensation" when the property rights of a private property owner are adversely impacted by the actions of a public entity. In the present case, the Santa Barbara Superior Court ruled that the City's decision to abandon a small portion of Ealand Place resulted in an "inverse" impact on the access rights of the two remaining property owners on the vacated "cul-de-sac" portion of Ealand Place. Subsequent to the legal ruling, a jury determined that the City owes the plaintiffs damages resulting from the action of abandoning the cul-de-sac, as well as attorney's fees and legal costs required to obtain the judgment. The damages awarded total \$311,500 and attorney fees and costs awarded are \$325,046.22, for a total amount of \$636,546.22. The judgment awarded to the Plaintiffs by the jury was consistent with the amount of damages supported by the City expert trial witnesses and it is substantially less than what Public Works staff has estimated it would cost to make just a short-term repair to the cul-de-sac. Consequently, the City Attorney's office believes the damages award to be appropriate and fair.

However, this damages award does not fall into the types of liability exposures typically covered by the City's self-insurance program or by the City's excess insurance for liability claims. As such, City reserves which have been specifically set aside for this type of award are not available. Since this claim relates to streets maintenance, it is considered a general governmental claim and, as a result, should not be charged to a

City restricted fund or enterprise fund. Consequently, staff has identified a few options that are available for funding this judgment, each of which is discussed below.

### Streets Fund

The decision to abandon Ealand Place was a public interest/cost-benefit analysis made by the Council (on staff's recommendation) in order to avoid the likely higher costs which would have resulted if the City was required to repair the abandoned portion of Ealand Place to City public streets standards and, thereafter, to permanently maintain it as a public street. This cost-benefit decision was based primarily on the fact that this small portion of Ealand Place now only provides access to one existing home and two vacant lots, (one which is vacant as a result of the 2008 Tea Fire) and on the fact that the Ealand Place cul-de-sac is located on a very active and unrepairable landslide. As a result, the most appropriate funding source for this claim may be the Streets Fund, since this fund will realize savings by not having the City responsible for maintaining the abandoned portion of Ealand Place.

The Streets Fund receives revenues from various sources, including Measure A, half of the utility users taxes collected from utility companies, and gas taxes. Currently, the Streets Fund does not have sufficient reserves to pay for this judgment, and its Fiscal Year 2014 revenues have already been programmed. As a result, if the charge is made to the Streets Fund, it would require deferring some streets work, or creating a negative fund balance at the end of Fiscal Year 2014.

### General Fund Reserves

The General Fund has approximately \$22 million in reserves in connection with Council-adopted reserve policies. These reserves are not 100% funded, but each year, pursuant to the same reserves policies, 50% of the year-end surplus is used to either reduce the shortfall or otherwise prevent an increase in the gap since reserve requirements go up as the budget increases each year.

### One-Time Funds Received in Fiscal Year 2013

The City's General Fund has received unbudgeted, one-time, revenues in Fiscal Year 2013 totaling approximately \$4 million. Staff will be coming to Council in Fiscal Year 2014 with capital and other one-time projects that may be good candidates for funding from the one-time funds. One possible option is to allocate a portion of these one-time monies to cover the cost of this judgment.

### Self-Insurance Fund

The Self-Insurance Trust Fund provides a funding source that covers a variety of exposures to loss or damages resulting from legal liability. The types of exposure include workers' compensation, general liability, automobile liability, and property

claims, to name a few. The Risk Management division charges each operating program a “premium” to cover the typical exposures to loss resulting from daily operations as determined to be appropriate on an actuarial basis.

The Self-Insurance Fund does not collect a premium for some types of potential legal exposures relating to municipal operations, including liability for inverse condemnation damages. As a result, the Self-Insurance Fund’s annual budget does not accumulate assets in its operating accounts or its reserves specifically to pay awards or settlements resulting from these types of claims.

However, the Self-Insurance does have funds that have been accumulated, pursuant to the bi-annual actuarial study, to pay for outstanding general liability and workers compensation claims. As of the current date, the Self-Insurance Fund has almost \$6 million in assets accrued. Therefore, these monies could be used to cover the cost of this inverse condemnation judgment. If these funds are used, it would be appropriate to increase premiums charged to the General Fund or Streets Fund over time to recover these monies since ultimately the Self-Insurance Fund will have to make up the loss of those funds in order to maintain an adequate reserve.

#### **Finance Committee Recommendation**

City staff had recommended to the Finance Committee that the Self-Insurance Fund initially cover the costs of the awarded damages, but that the Streets Fund repay the Self-Insurance Fund over a ten-year period. However, the Finance Committee was concerned about reducing the level of funding for streets maintenance, which is already underfunded.

Consequently, the Finance Committee recommended deferring the funding decision for now and including this loss in the discussion of how the \$4 million in one-time General Fund revenues are used. Staff anticipates bringing that item to the City Council in the fall of 2013.

In the meantime, staff recommends Council approve the payment of \$636,546 and charge the cost to the Self-Insurance Fund until a final decision is made.

**SUBMITTED BY:** Robert Samario, Finance Director

**APPROVED BY:** City Administrator's Office