

Portland, Oregon
FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT
For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator John Buchler		2. Telephone No. 503-823-5256	3. Bureau/Office/Dept. OMF/Risk Management
4a. To be filed (hearing date): July 14, 2011	4b. Calendar (Check One) Regular Consent 4/5ths <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>		5. Date Submitted to Commissioner's office and FPD Budget Analyst: July 6, 2011
6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed		6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed	

1) **Legislation Title:** *Pay Claim of Brownstone Homes, involving BDS (Ordinance)

2) **Purpose of the Proposed Legislation:**

This ordinance will close OMF Risk Management File No. G2009-0438-01 for a total of \$32,500.

3) **Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?**

- | | | | |
|--|------------------------------------|------------------------------------|--------------------------------|
| <input checked="" type="checkbox"/> City-wide/Regional | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast | <input type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East |
| <input type="checkbox"/> Central City | | | |

FINANCIAL IMPACT

4) **Revenue:** Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

This legislation will have no impact on City revenue.

5) **Expense:** What are the costs to the City as a result of this legislation? What is the source of funding for the expense? *(Please include costs in the current fiscal year as well as costs in future years. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the level of confidence.)*

Cost to the City is \$32,500. The source of funding is the City's Insurance and Claims Fund. All cost of the settlement is in the current fiscal year.

6) Staffing Requirements:

- **Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?** *(If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)*

No.

- **Will positions be created or eliminated in *future years* as a result of this legislation?**

No.

(Complete the following section only if an amendment to the budget is proposed.)

7) Change in Appropriations *(If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed.)*

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]

PUBLIC INVOLVEMENT

8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:

☐ **YES:** Please proceed to Question #9.

☒ **NO:** Please, explain why below; and proceed to Question #10.

This Ordinance settles a tort lawsuit filed against the City of Portland by Brownstone Homes. The City Attorney's Office and Risk Management have concluded that it is not appropriate to have public involvement in settlement negotiations regarding tort claims or lawsuits against the City.

9) If "YES," please answer the following questions:

a) What impacts are anticipated in the community from this proposed Council item?

b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?

c) How did public involvement shape the outcome of this Council item?

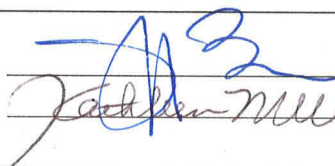
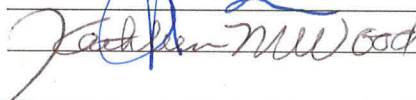
d) Who designed and implemented the public involvement related to this Council item?

e) Primary contact for more information on this public involvement process (name, title, phone, email):

10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.

No future public involvement is anticipated or necessary. Approval by City Council of this Ordinance will fully settle a tort lawsuit against the City of Portland.

Jeff Baer, Director, BIBS
Kate Wood, Risk Manager

APPROPRIATION UNIT HEAD (Typed name and signature)



CITY OF PORTLAND, OREGON

Office of Management and Finance Risk Management Services

Sam Adams, Mayor
Kate Wood, Risk Manager
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Phone: 503-823-5101 • Fax: 503-823-6120
www.portlandonline.com

DATE: July 6, 2011
TO: Mayor Sam Adams
FROM: John Buehler
503-823-5256 *JB*

FOR MAYOR'S OFFICE USE ONLY

Reviewed by Bureau Liaison _____

RE: *Pay Claim of Brownstone Homes, involving BDS (Ordinance)

1. INTENDED THURSDAY FILING DATE: July 14, 2011
2. REQUESTED COUNCIL AGENDA DATE: July 20, 2011
3. CONTACT NAME & NUMBER: John Buehler, 503-823-5256
4. PLACE ON: ☒ CONSENT ☐ REGULAR
5. BUDGET IMPACT STATEMENT ATTACHED: ☒ Y ☐ N ☐ N/A
6. (3) ORIGINAL COPIES OF CONTRACTS APPROVED AS TO FORM BY CITY ATTORNEY ATTACHED: ☐ Yes ☐ No ☒ N/A

7. BACKGROUND/ANALYSIS

Risk Management Services and the City Attorney's Office have reached a compromise settlement of a lawsuit brought against the City by Brownstone Homes Condominium Association ("Brownstone Homes"), in the sum of \$32,500. The lawsuit being settled was brought by the owners' association of a 140 unit condominium complex in northwest Portland. Brownstone claimed that it incurred \$65,000 in repair costs due to the City's prior approval of improperly installed seismic straps.

The Brownstone project was constructed beginning in 2000 under permits issued by BDS. In 2000-01 BDS inspectors inspected Brownstone's buildings for structural code compliance. In the course of those inspections a BDS inspector saw that "seismic straps" had been installed incorrectly on some of the buildings. BDS initially ordered corrections, but subsequently determined that the installed method was sufficient, and that a different method would be required only for the buildings that had not been completed. BDS gave final approval and issued certificates of occupancy for the five buildings with incorrect strap installations.

In 2009, Brownstone Homes engaged a contractor to replace defective siding at the project. Once the siding was taken off, a BDS inspector who inspected the siding work also noticed the improperly installed seismic straps. BDS then determined that its prior approval of the strapping method was incorrect. It directed Brownstone Homes' siding contractor to remove the improperly installed straps on the five affected buildings, and to install straps directly to the framing. The cost to make the repairs, over and above the cost of the unrelated siding repair work already contracted, was \$65,000.

The lawsuit against the City has been defended by Deputy City Attorney Scott Moede. The facts underlying the claim were largely undisputed, and an outside expert hired by the City's defense counsel confirmed that the claimed additional repair costs were reasonable and necessary. Although a number of legal issues were presented in the case, the attorneys for Brownstone and the City engaged in settlement negotiations in an effort to resolve the lawsuit short of trial. A settlement was reached based upon the City paying 50% of the damages. This amount is \$32,500. Risk Management and management at BDS concur with the City Attorney's recommendation to settle on this basis.

8. FINANCIAL IMPACT

Approval of the settlement would result in a payment of \$32,500 from the liability fund.

9. RECOMMENDATION/ACTION REQUESTED

Approve settlement of Brownstone Homes property damage lawsuit in the sum of \$32,500.

ORDINANCE No.

*Pay claim of Brownstone Homes involving Bureau of Development Services (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Brownstone Homes has filed a property damage lawsuit against the City for damages suffered in a permit inspection issue involving the BDS on February 15, 2009.
2. The claim has been investigated by Risk Management Services. The investigation indicates there is risk the City may be found liable. Therefore, in order to avoid the risk of an adverse jury award, we feel it is prudent to compromise the lawsuit at this time.
3. Risk Management Services recommends the lawsuit be compromised for the total sum of \$32,500, subject to the claimant providing the City with a release in a form to be approved by the City Attorney.

NOW, THEREFORE, the Council directs:

- a. The Mayor and the Auditor are hereby authorized to draw and deliver a check in the amount of \$32,500 made payable to Brownstone Homes Condominium.
- b. Risk Management Services will execute a payment authorization in the amount set forth in sub-paragraph (a) above.

Section 2. The Council declares that an emergency exists in order to avoid undue and costly delay in settling this lawsuit; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council,

Mayor Sam Adams
Prepared by John Buehler
Date prepared: July 7, 2011

LaVONNE GRIFFIN-VALDE
Auditor of the City of Portland
By

Deputy

Agenda No.
ORDINANCE NO.
 Title

*Pay Claim of Brownstone Homes, involving BDS (Ordinance)
 Bureau of Development Services

INTRODUCED BY Commissioner/Auditor: Mayor Sam Adams	CLERK USE: DATE FILED <u>JUL 15 2011</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland By: <u><i>Paul</i></u> Deputy ACTION TAKEN: JUL 20 2011 REFERRED TO COMMISSIONER OF FINANCE AND ADMINISTRATION
BUREAU APPROVAL Bureau: OMF/Risk Management Bureau Head: Jeff Baer, Director BIBS <i>kel</i> Kate Wood, Risk Mgr	
Prepared by: John Buehler Date Prepared: July 7, 2011	
Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date July 20, 2011	
City Attorney Approval	

AGENDA TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input checked="" type="checkbox"/> <i>Pulled</i>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Leonard	4. Leonard		
Adams	Adams		