

FINANCIAL IMPACT STATEMENT

For Council Action Items

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

1. Name of Initiator Becky Chiao		2. Telephone Number 503-823-6124		3. Bureau/Office/Department OMF/Risk Management	
4a. To be filed (date) December 24, 2009	4b. Calendar (Check One) Regular <input checked="" type="checkbox"/> Consent <input type="checkbox"/> 4/5ths <input type="checkbox"/>			5. Date Submitted to FPD Budget Analyst December 16, 2009	

1) **Legislation Title:** *Pay Claim of Marlin Anderson, Mary Bailey, Matthew Chase and Jack Golden.

2) **Purpose of the Proposed Legislation:** This ordinance will close OMF Risk Management File No. G2008-0175-01, G2008-0175-02 for a total of \$30,000.00. Please see memorandum for detail.

3) **Revenue:**

Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated please identify the source.

This legislation will have no impact on City revenue.

4) **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)

Cost to the City is \$30,000.00. The source of funding is the City's Insurance and Claims Fund. All cost is in the current fiscal year.

Staffing Requirements:

5) 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.

6) 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 Center Code column if new center needs to be created. Use additional space if needed.)

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Amount

Jeff Baer, Director, BIBS

Kate Wood, Risk Manager

Kathleen McWood



CITY OF PORTLAND, OREGON

Office of Management and Finance Risk Management Services

Sam Adams, Mayor
Kate Wood, Risk Manager
1120 S.W. Fifth Avenue, Room 709 • Portland, OR 97204-1912
Phone: 503-823-5101 • Fax: 503-823-6120
www.portlandonline.com

DATE: December 16, 2009

TO: Mayor Sam Adams

FROM: Becky Chiao
503-823-6124

FOR MAYOR'S OFFICE USE ONLY

Reviewed by Bureau Liaison _____

RE: *Pay Claim of Marlin Anderson, Mary Bailey, Matthew Chase and Jack Golden (emergency)

1. **INTENDED THURSDAY FILING DATE:** December 24, 2009
2. **REQUESTED COUNCIL AGENDA DATE:** January 6, 2010
3. **CONTACT NAME & NUMBER:** Becky Chiao, 503-823-6124
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

This ordinance would settle a class action brought on behalf of homeless individuals without shelter challenging the enforcement of the City's anti-camping, temporary structures and park exclusion ordinances as unconstitutional.

Individual plaintiffs allege that they were harmed and suffered the loss of property in the past when they were told by police to move from the public right of way. The settlement would provide seven individuals with amounts between \$200 and \$500 for a total of \$2,400 and \$27,600 to the Oregon Law Center for their attorneys fees on this case.

The plaintiffs sought an injunction from a court ruling that the City's ordinances are illegal because there are no other alternative places for many homeless people to sleep. In order to address this complaint, the ordinance would authorize the City to enter into a settlement agreement with the plaintiffs that sets out reasonable time and place restrictions on when the camping and structures ordinances will be enforced and provides a commitment that the City will continue with efforts to assist with outreach and services for homeless residents of Portland.

It is the recommendation of Risk Management and the City Attorney's office that this settlement be approved by ordinance in order to resolve the lawsuit and clarify policies regarding when and where people can sleep on public property

8. FINANCIAL IMPACT

Approval of the settlement would result in a payment of \$30,000.00 from the liability fund.

9. RECOMMENDATION/ACTION REQUESTED

Submit the attached Ordinance for approval by City Council as an emergency ordinance.

Please notify the City of Portland no less than five (5) business days prior to events for ADA accommodation at 503-823-5101, TTY at 503-823-6868, or by the Oregon Relay Service at 1-800-735-2900.

Equal Employment Opportunity and Affirmative Action Employer

RELEASE AND HOLD HARMLESS AGREEMENT

I

FOR THE SOLE CONSIDERATION of the sum of \$30,000 (inclusive of attorneys' fees) and the non-monetary terms set out below, the undersigned plaintiffs in United States District Court for the District of Oregon case 08-1447 AA, hereby release and forever discharge Police Chief Rosanne Sizer, Portland Police Officers J. Hurley, J. Fulitano, the City of Portland, its agents, officers, employees, officials, and all other persons, firms, corporations or other entities liable or who might be claimed to be liable from any and all claims for damages and/or injuries from or relating to the events alleged in their complaint.

Non-monetary terms of settlement:

- A. The City will condition any funding of homeless shelter capacity on the contractual commitment of the shelter facility to allow meaningful access to the shelter by housing outreach workers.
- B. The City will not enforce its camping law (PCC 14A.50.020 or successor) against persons who camp on public property or public rights of way that are open to the public if they comply with the following rules:
 - a. A camp may not contain more than four people after 10:00 p.m.
 - b. A camp must be out of sight and earshot or more than 50 yards away from any other camp.
 - c. Campers may not set up a campsite until 9:00 p.m.
 - d. A camp must be quiet after 10:00 p.m.
 - e. A camp must not cause any health or sanitation problems.
 - f. A camp must not draw significant complaints from neighbors.
 - g. A camp must be off the sidewalks and roadways and away from nighttime high volume traffic areas.
 - h. A camp must be packed up and removed from the site by 7:00 a.m.
- C. The City will not enforce its prohibition against the erection of structures on public property (PCC 14A.50.050) against tents or other structures designed for the primary and limited purpose of protecting outdoor sleepers from the elements when the occupants of a campsite comply with the rules set out in subsection B and no more than two sleeping structures are present at a site.

- D. The City will not enforce its camping law against people sleeping at night in vehicles as long as they comply with the rules set out in subsection B and the camp is limited to one vehicle and no more than two adults.
- E. The City agrees that it will not consider sleeping in a bedroll, without more, to meet the definition of "camp" in PCC 14A50.020.
- F. The City will conduct a pilot project to examine the feasibility and benefits of providing storage to homeless people living on the street. The City will issue a request for proposals for the creation and management of two types of storage: one for documents and other small valuables and one for larger items. The purpose of this effort will be to reduce the need for homeless people to carry large amounts of personal property through the community and reduce the potential for nuisances and conflicts with the police over nuisance abatement. The City will endeavor to establish storage capacity on both sides of the Willamette River. If the City is able to find contractors willing to run the pilot project, it will fund the project for at least two years. Continued operation will depend on whether, in the City Council's judgment, the project proves to be practical and politically viable.
- G. The City will review and improve the procedures used during the collection, storage and return of property found at campsites. The City will endeavor to better connect property owners who are not present when their property is taken with the process by which they can recover their property. The City will document more carefully what is collected at campsites and what is left behind or taken away as trash.
- H. The City will continue with its effort to provide more public bathrooms.
- I. The City will fund an outreach effort that is sufficient to consistently make contact with aggregations of campers before they reach a size of eight.
- J. The City will not rouse non-obstructing, otherwise lawful sleepers before 7:00 a.m.
- K. The City will make these guidelines available to the public, and the City's police officers will tell potential campers and outdoor sleepers about these guidelines.

II

IT IS UNDERSTOOD AND AGREED that the payment and promises made under this agreement are not to be construed as an admission of liability. Chief Sizer, Officers Hurley and Fulitano and the City of Portland expressly deny liability to the plaintiffs or any other person for injuries or damages arising out of the aforementioned events.

III

IT IS FURTHER UNDERSTOOD AND AGREED that this agreement releases Chief Sizer and Officers Hurley and Fulitano, and the City of Portland, its employees, agents and officers from any and all claims arising out of the above-described causes of action, and claims against the proceeds of said action including, but not limited to, medical liens, hospital liens,

Social Security Administration liens, Medicare liens, workers' compensation liens and all other liens against the above-described causes of action at the time of execution hereof.

IV

THE UNDERSIGNED AGREES AND WARRANTS that all expenses incurred to date or which will be incurred in the future, which are related in any way to claims being released herein, have either been paid or will be paid from the proceeds of this settlement and that the plaintiffs will hold Chief Sizer, Officers Hurley and Fulitano, and the City of Portland, its agents, employees and officers harmless from any claim for any such expense whenever incurred and, if any suit is filed against them to collect such claim, the plaintiffs will accept the tender of defense of any such claim, defend at their expense and pay any judgment entered therein and agree to compensate the Chief, the officers, and/or the City of Portland for any expense or liability incurred as a result of the filing of such suit.

V

THE UNDERSIGNED HEREBY DECLARE that they have read this Release and Hold Harmless Agreement and that it is fully understood and voluntarily accepted for the purpose of making a full and complete settlement and compromise of any and all claims, in whatever legal form or theory the plaintiffs might assert, whether disputed or otherwise, arising out of the events described in their complaint in the United States District Court for the District of Oregon, entitled:

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MARLIN ANDERSON, MARY BAILEY, MATTHEW CHASE, JACK GOLDEN, on behalf of themselves and all others similarly situated,

Civil No. 08-1447 AA

PLAINTIFFS,

v.

CITY OF PORTLAND; CITY OF PORTLAND POLICE CHIEF ROSANNE SIZER, in her individual and official capacity; CITY OF PORTLAND POLICE OFFICER J. HURLEY, in his individual and official capacity; CITY OF PORTLAND POLICE OFFICER J. FULITANO, in his individual and official capacity; CITY OF PORTLAND POLICE OFFICERS DOES 1 THROUGH 50,

DEFENDANTS.

VI

THE UNDERSIGNED EXPRESSLY AGREES to voluntarily dismiss, forthwith, the action filed on December 12, 2009, in the United States District Court for the District of Oregon, entitled:

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

MARLIN ANDERSON, MARY BAILEY, MATTHEW CHASE, JACK GOLDEN, on behalf of themselves and all others similarly situated,

Civil No. 08-1447 AA

PLAINTIFFS,

v.

CITY OF PORTLAND; CITY OF PORTLAND POLICE CHIEF ROSANNE SIZER, in her individual and official capacity; CITY OF PORTLAND POLICE OFFICER J. HURLEY, in his individual and official capacity; CITY OF PORTLAND POLICE OFFICER J. FULITANO, in his individual and official capacity; CITY OF PORTLAND POLICE OFFICERS DOES 1 THROUGH 50,

DEFENDANTS.

with prejudice and without any award of attorney fees or costs to any party.

VII

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this Release and Hold Harmless Agreement is intended to, and does, cover not only all known losses and damages, but any further losses and damages not now known or anticipated which may later develop or be discovered, including all effects and consequences thereof.

VIII

The parties agree to ask the court to retain jurisdiction in this matter for a period of three (3) years for the purpose of enforcing this agreement or resolving any disputes about performance under this agreement.

THE TERMS SET FORTH HEREIN are contractual and not a mere recital.

DATED this _____ day of _____, 2009.

Marlin Anderson, plaintiff

SUBSCRIBED AND SWORN TO BEFORE me this _____ day of _____,
2009, by Marlin Anderson.

Notary Public for Oregon
My commission expires:

Mary Bailey, plaintiff

SUBSCRIBED AND SWORN TO BEFORE me this _____ day of _____,
2009, by Mary Bailey.

Notary Public for Oregon
My commission expires:

Matthew Chase, plaintiff

SUBSCRIBED AND SWORN TO BEFORE me this _____ day of _____,
2009, by Matthew Chase.

Notary Public for Oregon
My commission expires:

Jack Golden, plaintiff

SUBSCRIBED AND SWORN TO BEFORE me this _____ day of _____,
2009, by Jack Golden.

Notary Public for Oregon
My commission expires:

**David Landrum, Attorney for Defendants Sizer,
Hurley, Fulitano and City of Portland**

SUBSCRIBED AND SWORN TO BEFORE me this _____ day of _____,
2009, by David Landrum.

Notary Public for Oregon
My commission expires:

ORDINANCE No.

*Pay Claim of Marlin Anderson, Mary Bailey, Matthew Chase and Jack Golden. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Marlin Anderson, Mary Bailey, Matthew Chase and Jack Golden, through their attorneys at Oregon Law Center, filed a class action lawsuit for damages and non-monetary against the City. In the lawsuit, claimants make claims for property damage and violations of civil rights involving the Portland Police Bureau.
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 \$30,000.00, subject to the claimant providing the City with a release in a form to be approved by the City Attorney.
4. The parties mutually wish to bring their dispute to an end without further litigation and the proposed settlement would accomplish that objective.

NOW, THEREFORE, the Council directs:

- a. The Mayor and the Auditor are hereby authorized to draw and deliver a check in the amount of \$30,000.00 made payable to the Oregon Law Center Client Trust Account.
- b. Risk Management Services will execute a payment authorization in the amount set forth in sub-paragraph (a) above.
- c. The Mayor, Police Chief and Director of the Housing Bureau to enter into a settlement agreement on behalf of the City with terms approved of by the City Attorney's office substantially similar in form as Attachment "A".

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 force and effect from and after its passage by the Council.

Passed by the Council,

Mayor Sam Adams
Prepared by Becky Chiao
Date prepared: December 16, 2009

LaVONNE GRIFFIN-VALADE

Auditor of the City of Portland
By

Deputy

Agenda No.
ORDINANCE NO.
 Title

* Pay claim of Marlin Anderson, Mary Bailey, Matthew Chase and Jack Golden (Ordinance)

INTRODUCED BY Commissioner/Auditor: Mayor Sam Adams	CLERK USE: DATE FILED <u>DEC 31 2009</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams <i>[Signature]</i> 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: <i>[Signature]</i> Deputy
BUREAU APPROVAL Bureau: OMF/Risk Management Services <i>88</i> Bureau Head: Jeff Baer, Director BIBS <i>[Signature]</i> <i>Kate Wood, Risk Mgr</i> Prepared by: Becky Chiao Date Prepared: 12/16/2009 Financial Impact Statement <u>X</u> Completed ___ Amends Budget ___ Not Required Portland Policy Document If "Yes" requires City Policy paragraph stated in document. ___ Yes <u>X</u> No Council Meeting Date January 6, 2009 City Attorney Approval	ACTION TAKEN: JAN 06 2010 REFERRED TO COMMISSIONER OF FINANCE AND ADMINISTRATION.

AGENDA TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: (for presentation, testimony and discussion) CONSENT <input type="checkbox"/> REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 10-15 min (for presentation, testimony and discussion)
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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	