

CLOSED SESSION REPORTING OUT FORM

Date of Meeting: *Tuesday, June 4, 2013*

The Council made a final decision in Closed Session on one item of
Litigation/Anticipated Litigation:

NAME OF CASE:

Charles Toney v. City of Oakland
ACSC Case No. RG-12632052

This matter is listed as **Item No. 1(d)** on the Closed Session Agenda:

The Council authorized settlement in the amount of **\$ 12,000.00**

This case arose out of incidents that occurred on **Nov. 16, 2011**

FACTS OF THE CASE:

Around 10:00 a.m. on November 16, 2011, Mr. Toney was sweeping the sidewalk in front of his home at 5157 Fairfax Avenue at approximately 10 am that morning when his left foot hit a two inch lip in the sidewalk caused by the roots of an official City tree. He fell on his left side injuring his left shoulder and left knee. Mr. Toney was 63 years old at the time and in excellent physical condition, lifting weights and running four miles a day.

Doctors diagnosed Mr. Toney with a sprained shoulder and a sprained knee, including traumatic effusion to the knee ("water on the knee"). His treatment consisted of three months of chiropractic care. His shoulder is now completely healed. His knee did not fully heal and his physicians believe he is unlikely to ever resume recreational running. Total medical damages were \$5,340. Mr. Toney claims no lost wages.

Motion Made by: Councilmember Gibson McElhaney

Motion Seconded by: Councilmember Kaplan

6 AYES: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President
Kernighan =

NOES: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President
Kernighan =

2 ABSENT: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President
Kernighan =

ABSTENTIONS: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf
President Kernighan =

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The Council made a final decision in Closed Session on one item of **Litigation/Anticipated Litigation:**

NAME OF CASE:

Alison Fletcher v. City of Oakland, et al.
ACSC Case No. RG-12620055

This matter is listed as **Item No. 1(e)** on the Closed Session Agenda:

The Council authorized settlement in the amount of \$ 25,000.00

This case arose out of incidents that occurred on Feb. 21, 2011

FACTS OF THE CASE:

Plaintiff Alison Fletcher was jogging midmorning on Glen Arms Drive in the Oakland hills when she tripped on a three-inch uplift in the sidewalk caused by the roots of an adjacent tree. Ms. Fletcher was in excellent physical condition at the time of her fall. The homeowner planted the street tree in question in 1993 pursuant to a requirements of the Planning Department to plant street trees at the time her home was rebuilt post the 1991 Hills fire.

Plaintiff scraped her chin and broke the small finger on her left hand, requiring surgery to pin the joint and had several rounds of physical therapy. She has some residual pain and the movement of her hand is restricted. Plaintiff's medical treatment totals \$49,416.181 so far, and is expected to undergo another surgery. She claims past and future medicals of approximately \$79,000. Plaintiff was also unable to perform her job duties for three months after the fall incurring \$65,910 in lost wages.

Motion Made by: Councilmember Schaaf

Motion Seconded by: Councilmember Kaplan

6 AYES: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President Kernighan =

NOES: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President Kernighan =

2 ABSENT: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President Kernighan =

ABSTENTIONS: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President Kernighan =

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Date of Meeting: *Tuesday, June 4, 2013*

The Council made a final decision in Closed Session on one item of **Litigation/Anticipated Litigation:**

NAME OF CASE:

Sharon Tatmon v. City of Oakland
ACSC Case No. RG11574069

This matter is listed as **Item No. 1(f)** on the Closed Session Agenda:

The Council authorized settlement in the amount of **\$ 12,000.00**

This case arose out of incidents that occurred on **Sept. 27, 2010**

FACTS OF THE CASE:

Plaintiff Sharon Tatmon, 58, seeks damages for injuries she sustained when she tripped and fell in front of 2469 62nd Avenue. She alleges that the roots of a City tree lifted and cracked the sidewalk, creating a dangerous condition of which the City had constructive notice.

Plaintiff sustained injuries to her left knee, neck and back and has complained of persistent pain in her neck and knee due to swelling and bruising. She also claims that this incident weakened her knee, causing it to give out on subsequent occasions. Ms. Tatmon claimed medical specials of \$29,576.00 for emergency room treatment, physical therapy and ongoing doctor visits. She has no wage loss claim. The owner of the residence at the injury site has repaired the sidewalk and has agreed to pay \$20,000.00 to settle this action for a total settlement of \$35,000.00, including the

Motion Made by: Councilmember Schaaf

Motion Seconded by: Councilmember Kaplan

6 AYES: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President Kernighan =

NOES: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President Kernighan =

2 ABSENT: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President Kernighan =

ABSTENTIONS: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President Kernighan =

CLOSED SESSION REPORTING OUT FORM

Date of Meeting: *Tuesday, June 4, 2013*

The Council made a final decision in Closed Session on one item of **Litigation/Anticipated Litigation:**

NAME OF CASE:

Rolls-Royce Engine Services-Oakland Inc. v. City of Oakland, et al.
ACSC Case No. RG13671709

This matter is listed as **Item No. 1(c)** on the Closed Session Agenda:

The Council authorized acceptance of appellant's proposed settlement in the amount of \$ **223,804.00**

This case arose out of incidents that occurred in **Tax years 2007-10**

FACTS OF THE CASE:

Appellant, Rolls-Royce Engine Services-Oakland, Inc., operates a business in Oakland involving the overhaul of aircraft engines. They are subject to Oakland Business taxes. For a many years they were classified as a "manufacturer" for tax purposes. In 2010 the City conducted an audit and determined that Appellant should be reclassified as a "servicer", which is taxed at a higher rate. Appellant opposed the new classification in a hearing before the City's Business Tax Board and the board upheld the reclassification. Appellant paid the full tax amount due (\$223,804) plus interest (\$83,816) and appealed the board's ruling in Superior Court. Through settlement discussions the parties have agreed to accept the tax and interest paid by Appellant in settlement of the matter.

Motion Made by: Councilmember Kaplan

Motion Seconded by: Councilmember Gibson-McElhaney

7 AYES: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf
President Kernighan =

NOES: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf President
Kernighan =

1 ABSENT: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf
President Kernighan =

ABSTENTIONS: Brooks Gallo Gibson McElhaney Kalb Kaplan Reid Schaaf
President Kernighan =