



# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Richard Doyle,  
City Attorney

**SUBJECT:** Estate of Rios v. City of San Jose

**DATE:** December 4, 2008

## RECOMMENDATION

Approve settlement and authorize City Attorney to negotiate and execute a Settlement Agreement and Release providing for the settlement and dismissal of the subject lawsuit for the total amount of \$70,000.

## OUTCOME

This proposed settlement will resolve a wrongful death lawsuit, against the City of San Jose and five individual police officers, which alleges that the use of excessive force during an arrest contributed to the death of Jose Rios.

## BACKGROUND

On November 18, 2005, an off-duty San Jose police officer heard loud screaming coming from a parking lot and went to investigate. He saw a large man, later identified as Jose Rios, standing at the passenger door of an SUV, reaching into the vehicle, and he saw a woman in the vehicle screaming for help. Rios appeared to have his arm around the woman's neck.

The officer and a citizen unsuccessfully attempted to persuade Mr. Rios to leave the woman alone. A call was made for police assistance, as the off-duty officer and citizen attempted to physically move Mr. Rios away from the vehicle. The officer also used pepper spray, with no apparent effect.

Once other police officers arrived at the scene, Mr. Rios continued to resist efforts to subdue and handcuff him, including the deployment of a Taser and the use of batons, which appeared to have no effect. Ultimately, the officers brought Mr. Rios to the ground, and two sets of handcuffs were applied.

After he was subdued, Mr. Rios continued to yell and struggle. Paramedics arrived almost immediately and began to monitor him. He suddenly became quiet and stopped

moving; the paramedics started CPR. Mr. Rios was taken by ambulance to Valley Medical Center, and was declared dead at the hospital.

An autopsy was performed and showed numerous blunt force impacts, and a 98% narrowing of the left descending coronary artery, which was described as consistent with chronic cocaine abuse. Toxicology revealed a significant level of cocaine in decedent's blood. The Coroner listed the "Cause of Death" as: "Cardiopulmonary arrest following violent struggle with police in individual with acute cocaine intoxication with psychosis." A "Contributory Cause of Death," was listed as "Status post tasing and pepper spraying; obesity; cardiovascular disease due to chronic cocaine abuse."

### **ANALYSIS**

Plaintiffs are Christine Rios, the wife of decedent; her minor son, Angel Rios; and Decedent's Estate. Plaintiffs claim two distinct theories for recovery: that the officers used excessive force; and that Christine and her son were "seized" by investigating officers and not allowed to leave the police station for hours.

Because of the risks and costs inherent in litigation, the City Attorney's Office negotiated a settlement with Plaintiffs in the amount of \$70,000.00, inclusive of all fees and costs. The City Council approved this settlement in Closed Session on October 21, 2008. This settlement is also subject to approval by the federal court of a minor's compromise.

### **PUBLIC OUTREACH/INTEREST**

This memorandum has been posted on the City's website for the December 16, 2009 agenda.

### **COORDINATION**

The Police Chief, involved officers, and the City Manager were all advised of the proposed settlement.

### **COST SUMMARY/IMPLICATIONS**

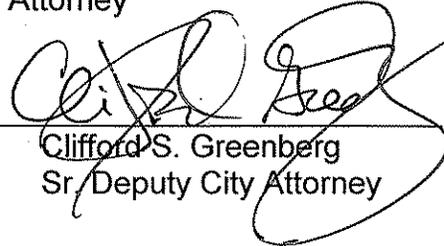
The settlement will be paid out of the City's claims reserve fund.

CEQA

Not a Project.

RICHARD DOYLE  
City Attorney

By



Clifford S. Greenberg  
Sr. Deputy City Attorney

cc: Debra Figone

For questions please contact RICHARD DOYLE, City Attorney, at (408) 535-1900