



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** *Teresa and Jose Banelos v.*  
*CSJ*

**DATE:** June 9, 2011

## RECOMMENDATION

Approve settlement in the case of *Teresa Banelos and Jose Banelos v. City of San Jose, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Teresa Banelos in the amount of \$165,000, and with Jose Banelos in the amount of \$10,000.

## OUTCOME

To resolve a lawsuit against the City of San José for alleged personal injuries resulting from an allegation of a dangerous condition of public property.

## BACKGROUND

On March 15, 2010, Plaintiffs Teresa and Jose Banelos, a married couple in their early 70s, had just left an exercise class at the Mayfair Community Center. They approached the wheelchair ramp intending to cross Kammerer Avenue. Teresa Banelos suddenly slipped and fell as she stepped onto the wheelchair ramp. It was alleged that City workers had allowed some reflective "spheres," which were intended to imbed in the freshly-painted crosswalk, to blow onto the wheelchair ramp, creating a slipping hazard.

## ANALYSIS

Plaintiff Teresa Banelos broke her hip in four places and was transported to the hospital via ambulance. She subsequently underwent a surgical procedure to repair her broken hip, and was hospitalized and in a rehabilitation facility for a combined total of approximately 17 days. Teresa Banelos' claimed medical expenses were \$201,716.62. She has residual limitations consistent with her injuries. Jose Banelos was not injured, but sued for loss of consortium. In light of the risks and costs inherent in litigation, including the potential exposure to a higher jury verdict, the City Attorney's Office recommends settlement of this lawsuit for a total payment of \$175,000.00 to Plaintiffs and their attorneys.

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**PUBLIC OUTREACH/INTEREST**

This memorandum and the related settlement agreements are posted on the City's website for the June 21, 2011 agenda.

**COORDINATION**

This settlement has been coordinated with the City Manager's Office and the Department of Transportation.

**BUDGET REFERENCE**

The settlement will be paid out of the City's General Liability Claims reserve fund, Appropriation 0018.

**CEQA**

Not a Project; PP10-066(h), Settlement Agreement.

RICHARD DOYLE  
City Attorney

By



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MICHAEL J. DODSON  
Sr. Deputy City Attorney

cc: Debra Figone, City Manager

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