

## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

**Date Issued:** September 20, 2007

**IBA Report Number:** 07-89

**City Council Docket Date:** September 24, 2007

**Item Number:** 202

**Subject:** Settlement of Binding Arbitration Award in Favor of the San Diego Chargers

### OVERVIEW

This item requests authorization to pay the San Diego Chargers an amount not to exceed \$1.98 million to resolve all claims against the City resulting from the Binding Arbitration Award on February 3, 2007 for the 2002, 2003, 2004 and 2005 football seasons. Funds for this action are requested to be transferred from the Unallocated Reserve to the Public Liability Fund for expenditure to the San Diego Chargers.

### FISCAL/POLICY DISCUSSION

Binding arbitration was agreed to after the Chargers Football Company LLC demanded to be compensated for present and future lost revenue, due to the loss of seats that resulted after renovation of Qualcomm Stadium in order to comply with the Americans with Disabilities Act (ADA) requirements.

During the Fiscal Year 2008 budget development process, the Mayor identified the need in his May Revision to supplement the budget by \$1.4 million in the Qualcomm Stadium Fund for costs related to payments to the Chargers under this agreement.

Following communication with the City Attorney's office, additional information was provided that was not included in the materials accompanying this action:

- The \$1.4 million payment budgeted in Fiscal Year 2008 is required for the 2006 football season, and is in addition to the \$1.98 million request.
- Payments under the agreement may either be annual or on a per game basis. It may be easier to audit for the full year than to do an audit after each game, so an annual payment may make economic sense.

- The \$1.98 million payment is comprised of the following annual amounts:
  - 2002                                 \$204,941.87
  - 2003                                 \$165,182.93
  - 2004                                 \$434,598.49
  - 2004 post season                 \$144,110.74
  - 2005                                 \$1,031,505.57
  
- If the Chargers meet the requirements set forth in the arbitration decision then annual payments may be due as long as (1) the Chargers are in Qualcomm Stadium and/or (2) the configuration of the stadium, i.e. number of seats, remains the same.
  
- The amount of the future payments is based on a formula approved by the arbitrator, which depends on the percentage of actual seats sold.

Based on discussions with representatives from the City Auditor and Comptroller's Office, it is our understanding that actions to increase appropriations by utilizing funds from the Unallocated Reserve require an amendment to the annual Appropriation Ordinance, and cannot be done by resolution. It is our understanding that an amendment to the Appropriation Ordinance is currently being prepared, and is planned to be provided in advance of the Council meeting.

Additional questions have been raised and answers were not received by the time this report was issued. Council members may wish to ask these questions or others during the Council meeting.

1. This action requests funding from the Unallocated Reserve, however the last report from Risk Management on the status of the Public Liability fund shows available funds of \$2.57 million. Can the Public Liability Fund be utilized first, before accessing the Unallocated Reserve?
  
2. Why are payments for past seasons coming from the Public Liability Fund and Reserve Funds, while some payments due under the same agreement are coming from the Qualcomm Stadium Fund?
  
3. Have any estimates been prepared for payments for future years?

**CONCLUSION**

The IBA believes the proper actions should be taken in a timely manner by the Mayor and City Council to comply with the order of the Superior Court to pay the judgment to the San Diego Chargers. Since additional information on this subject has come to our attention, we felt it would be best to provide it to the City Council and the public, to assist in the review and decision-making process. Additionally, it should be noted that the settlement agreement will have an ongoing fiscal impact, as long as the Chargers remain at Qualcomm Stadium.

**[SIGNED]**

\_\_\_\_\_  
Elaine DuVal  
Fiscal & Policy Analyst

**[SIGNED]**

\_\_\_\_\_  
APPROVED: Andrea Tevlin  
Independent Budget Analyst