

**CITY COUNCIL OF THE CITY OF SAN DIEGO
THE SPECIAL CLOSED SESSION MEETING REPORT
FOR FRIDAY, AUGUST 23, 2013
CITY ADMINISTRATION BUILDING
COMMITTEE ROOM – 12TH FLOOR
202 ‘C’ STREET
SAN DIEGO, CA 92101**

REPORTING THE RESULTS OF THE SPECIAL CLOSED SESSION MEETING

Only items that can be disclosed are reported out in the Open Session of the regular City Council meeting. Public comment on Special Closed Session items are taken in Open Session. Please refer to the City Clerk’s minutes for Open Session for more information. City Attorney Jan Goldsmith reports the results of the Special Closed Session meeting of August 23, 2013, as follows:

SPECIAL CLOSED SESSION MEETING FOR FRIDAY, AUGUST 23, 2013, AT 1:00 P.M.

ROLL CALL:

Present: Council President Gloria, Council President Pro Tem Lightner, and Councilmembers Faulconer, Kersey, Zapf, Alvarez, and Emerald.

Absent: Councilmember Cole (absent for the meeting)
Councilmember Sherman (absent for the meeting)
Mayor Filner (absent for the meeting).

SPECIAL CLOSED SESSION ITEM:

Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(d)(1):

SCS-1 *McCormack Jackson v. City of San Diego, et al.*

San Diego County Superior Court Case No. 37-2013-00058613-CU-OE-CTL

Attorney Assigned: J. Goldsmith, City Attorney

Motion: To approve the settlement agreement

Moved: Councilmember Emerald, District 9

Seconded: Councilmember Zapf, District 6

Vote: Passed 7 to 0, with Councilmembers Cole and Sherman absent.

Report: This item was reported out by City Attorney Jan Goldsmith on Friday, August 23, 2013, at 3:55 p.m.

Today, in a Special Closed Session, the City Council voted on Special Closed Session Item Number One, *McCormack Jackson v. City of San Diego*, San Diego County Superior Court Case No. 37-2013-00058613-CU-OE-CTL.

The motion passed 7 to 0, with Councilmembers Cole and Sherman absent.

1. **What is not involved in settlement:** Agreement does not include the following, if any:
 - criminal charges;
 - money owed to the City of San Diego (“City”) for unauthorized expenditures;
 - claims made based upon alleged conduct not in capacity as mayor.
2. **Resignation.** Mayor Filner (“Filner”) has resigned effective 5 p.m., on August 30, 2013. The City has accepted the signed resignation.
3. **Explanation of California law on legal liability.** Under California law, the City is strictly liable for sexual harassment of City employees by City supervisors, including a mayor. The City cannot avoid liability by claiming lack of knowledge of the conduct or that the conduct violated the City’s anti-harassment policies. The City may, however, seek reimbursement from a mayor for any damages it is forced to pay arising out of a mayor’s sexual harassment conduct.
 - a. **Claims against the City/Filner for Filner’s alleged conduct in capacity as mayor.** For claims made by current or former employees, City volunteers or City contractors, the City will provide a joint legal defense through the City Attorney’s office for the City and Filner. This does not extend beyond these categories of claimants. Providing a joint defense does not significantly increase City expenses and is commonly done. Should judgment be rendered against the City based upon Filner’s conduct, the City reserves the right to seek reimbursement from Filner through litigation.
 - b. **One exception.** The City will dismiss its cross-complaint filed against Filner in the lawsuit brought by Irene McCormack Jackson against the City and Filner, provide a joint legal defense through the City Attorney’s office and be responsible for the judgment except any punitive damages awarded against Filner.
 - c. **Cap on outside counsel fees.** Filner will sign waivers needed to allow the City Attorney’s office to provide a joint legal defense for the City and Filner. He may, however, retain outside counsel at his own expense except that the City will pay no more than \$98,000 as a total cap for any and all outside counsel independent advice or representation.
 - d. **Settlement.** The City has complete control over decisions on settlement of claims, if any, but may not settle without a complete release of the City and Filner.
4. **Had the settlement been rejected:**
 - a. Mayor has no obligation to resign. He could resign at any time before the day of a recall election, thereby cancelling the recall election and triggering a new special election. The recall and subsequent new special election could take up to twelve months.

- b. Recall does not remove the City's liability for sexual harassment claims.

This case arises from a claim by an employee against the City of San Diego and Mayor Filner alleging sexual harassment.

REPORTED BY: /s/ Jan I. Goldsmith
Jan I. Goldsmith
City Attorney