

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Jane Kim, Chair
Government Audit and Oversight Committee

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight Committee

DATE: July 17, 2017

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, July 18, 2017

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, July 18, 2017. This item was acted upon at the Government Audit and Oversight Committee Meeting on July 17, 2017 at 12:00 p.m., by the votes indicated.

Item No. 47 File No. 170731

Ordinance authorizing settlement of two lawsuits filed by BHR Operations LLC, dba Crowne Plaza and dba Holiday Inn Fisherman's Wharf, et al. against the City and County of San Francisco for \$1,613,554.74 to be distributed as follows: BHR Operations LLC \$379,969.68, Hotel Nikko of San Francisco Inc. \$201,741.40, Datam S.F. LLC \$277,953.69, RP/Kinetic Parc 55 Owner, LLC \$25,601.63, S.F. Hilton LLC \$447,301.52, W2005 Argent Hotel Realty LLC \$42,857.19, British Airways Plc \$163,369.38, Cathay Pacific Airways Ltd \$74,760.25; the lawsuits were filed in San Francisco Superior Court, as Case No. CGC-10-498514 entitled BHR Operations LLC, dba Crowne Plaza and dba Holiday Inn Fisherman's Wharf, et al. v. City and County of San Francisco, et al. filed on April 9, 2010, and Case No. CGC-10-505526 entitled British Airways Plc v. City and County of San Francisco, et al. filed on November 19, 2010; other material terms of the settlement include the City's retaining transient occupancy taxes collected by the Tax Collector, and the plaintiffs' agreement to pay transient occupancy taxes in the future according to the Tax Collector's regulations; the lawsuits involve a dispute between the City and the hotel and airline industry about whether airline crew rooms are exempt from the City's transient occupancy tax.

RECOMMENDED AS COMMITTEE REPORT:

Vote: Supervisor Jane Kim - Aye
Supervisor Aaron Peskin - Aye
Supervisor London Breed - Aye

File No. 170731

Committee Item No. 5

Board Item No. 47

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: July 17, 2017

Board of Supervisors Meeting:

Date: July 18, 2017

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Committee Report Request Memo - July 12, 2017</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
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Prepared by: John Carroll

Date: July 14, 2017

Prepared by: John Carroll

Date: July 17, 2017

1 [Settlement of Lawsuit - BHR Operations LLC, dba Crowne Plaza and dba Holiday Inn
2 Fisherman's Wharf, et al. - \$1,613,554.74]

3 **Ordinance authorizing settlement of two lawsuits filed by BHR Operations LLC, dba**
4 **Crowne Plaza and dba Holiday Inn Fisherman's Wharf, et al. against the City and**
5 **County of San Francisco for \$1,613,554.74 to be distributed as follows: BHR Operations**
6 **LLC \$379,969.68, Hotel Nikko of San Francisco Inc. \$201,741.40, Datam S.F. LLC**
7 **\$277,953.69, RP/Kinetic Parc 55 Owner, LLC \$25,601.63, S.F. Hilton LLC \$447,301.52,**
8 **W2005 Argent Hotel Realty LLC \$42,857.19, British Airways Plc \$163,369.38, Cathay**
9 **Pacific Airways Ltd \$74,760.25; the lawsuits were filed in San Francisco Superior Court,**
10 **as Case No. CGC-10-498514 entitled BHR Operations LLC, dba Crowne Plaza and dba**
11 **Holiday Inn Fisherman's Wharf, et al. v. City and County of San Francisco, et al. filed on**
12 **April 9, 2010, and Case No. CGC-10-505526 entitled British Airways Plc v. City and**
13 **County of San Francisco, et al. filed on November 19, 2010; other material terms of the**
14 **settlement include the City's retaining transient occupancy taxes collected by the Tax**
15 **Collector, and the plaintiffs' agreement to pay transient occupancy taxes in the future**
16 **according to the Tax Collector's regulations; the lawsuits involve a dispute between**
17 **the City and the hotel and airline industry about whether airline crew rooms are exempt**
18 **from the City's transient occupancy tax.**

19
20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby
22 authorizes the City Attorney to settle the actions entitled BHR Operations LLC, dba Crowne
23 Plaza and dba Holiday Inn Fisherman's Wharf, et al. v. City and County of San Francisco, et
24 al., San Francisco Superior Court, Case No. CGC-10-498514 and British Airways PLC v. City
25


1 and County of San Francisco, et al., San Francisco Superior Court, Case No. CGC-10-
2 505526, by the payment of a \$1,613,554.74 refund comprising penalties and interest collected
3 by the Tax Collector. Other material terms of the settlement include San Francisco's retaining
4 all of the underlying transient occupancy tax payments and a portion of the interest collected
5 by the Tax Collector, and the plaintiffs' agreement to pay transient occupancy taxes in the
6 future according to the Tax Collector's regulations. The lawsuits involve a dispute between
7 the City and the hotel and airline industry about whether airline crew rooms are exempt from
8 the City's transient occupancy tax, aka "hotel tax."

9 Section 2. The first of the above-named actions was filed in San Francisco Superior
10 Court on April 9, 2010, and the following parties were named in the lawsuit: Defendant City
11 and County of San Francisco; Plaintiffs BHR Operations LLC, dba Crowne Plaza and dba
12 Holiday Inn Fisherman's Wharf, Hotel Nikko of San Francisco, Inc., Datam S.F., LLC, dba
13 Hotel Nikko, RP/Kinetic Parc 55 Owner, LLC, S.F. Hilton LLC, dba Hilton San Francisco Union
14 Square, W2005 Argent Hotel Realty LLC, American Airlines, Inc., Asiana Airlines, Inc., British
15 Airways, plc, Cathay Pacific Airways Limited, Cia. Mexicana de Aviacion, S.A. de C. V., Japan
16 Airlines International Co., Ltd., Korean Air Lines Co., Ltd., and United Air Lines, Inc. The
17 second of the above-named actions was filed in San Francisco Superior Court on November
18 19, 2010, and the following parties were named in the lawsuit: Defendant City and County of
19 San Francisco and Plaintiff British Airways PLC.

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APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney



JEAN ALEXANDER
Chief Tax Attorney

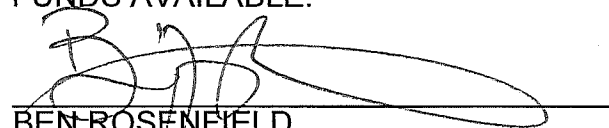
RECOMMENDED:

TREASURER & TAX COLLECTOR



JOSE CISNEROS
Treasurer

FUNDS AVAILABLE:



BEN ROSENFELD
Controller

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Member, Board of Supervisors
District 6



City and County of San Francisco

COB,
Leg Rep,
SFO Clerk

JANE KIM
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DATE: July 12, 2017

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Kim
Chairperson

RE: Government Audit and Oversight Committee
COMMITTEE REPORT

2017 JUL 18 AM 8:00
COUNCIL CHAMBERS
CITY AND COUNTY OF SAN FRANCISCO

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee, I have deemed the following matters are of an urgent nature and request they be considered by the full Board on Tuesday, July 18, 2017, as Committee Reports:

- File No. 170727 Settlement of Lawsuit - Alfred Fred Pittman - \$30,000**
Ordinance authorizing settlement of the lawsuit filed by Alfred Fred Pittman against the City and County of San Francisco for \$30,000; the lawsuit was filed on June 20, 2013, in United States District Court, Case No. 13-CV-02095; entitled Alfred Fred Pittman v. City and County of San Francisco; the lawsuit involves alleged civil rights violations.
- File No. 170728 Settlement of Lawsuit - Barbara Burke and Miles Burke - \$65,000**
Ordinance authorizing settlement of the lawsuit filed by Barbara Burke and Miles Burke against the City and County of San Francisco for \$65,000; the lawsuit was filed on May 20, 2015, in San Francisco Superior Court, Case No. CGC-15-545917; entitled Barbara Burke and Miles Burke v. City and County of San Francisco, Does 1-10; the lawsuit involves personal injury from an alleged dangerous condition of public property.
- File No. 170729 Settlement of Lawsuit - San Francisco Apartment Association, et al. - \$130,440**
Ordinance authorizing settlement of the lawsuit filed by San Francisco Apartment Association, Coalition For Better Housing, and San Francisco Association of Realtors against the City and County of San Francisco for \$130,440; the lawsuit was filed on January 28, 2014, in San Francisco Superior Court, Case No. CPF-14-513452; entitled San Francisco Apartment Association, et al. v. City and County of San Francisco; the lawsuit involves a claim for attorney's fees and costs following Petitioners' challenge to Section 317(e)(4) of Ordinance No. 287-13 on the grounds it is preempted by the state Ellis Act.



JANE KIM

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File No. 170730 Settlement of Lawsuit - Jose H. Lima Osorio - \$57,500

Ordinance authorizing settlement of the lawsuit filed by Jose H. Lima Osorio against the City and County of San Francisco for \$57,500; the lawsuit was filed on March 9, 2016, in San Francisco Superior Court, Case No. CGC-16-550862; entitled Jose H. Lima Osorio v. City and County of San Francisco, et al.; the lawsuit involves alleged personal injuries when plaintiff was struck by a vehicle while in the crosswalk.

File No. 170731 Settlement of Lawsuit - BHR Operations LLC, dba Crowne Plaza and dba Holiday Inn Fisherman's Wharf, et al. - \$1,613,554.74

Ordinance authorizing settlement of two lawsuits filed by BHR Operations LLC, dba Crowne Plaza and dba Holiday Inn Fisherman's Wharf, et al. against the City and County of San Francisco for \$1,613,554.74 to be distributed as follows: BHR Operations LLC \$379,969.68, Hotel Nikko of San Francisco Inc. \$201,741.40, Datam S.F. LLC \$277,953.69, RP/Kinetic Parc 55 Owner, LLC \$25,601.63, S.F. Hilton LLC \$447,301.52, W2005 Argent Hotel Realty LLC \$42,857.19, British Airways Plc \$163,369.38, Cathay Pacific Airways Ltd \$74,760.25; the lawsuits were filed in San Francisco Superior Court, as Case No. CGC-10-498514 entitled BHR Operations LLC, dba Crowne Plaza and dba Holiday Inn Fisherman's Wharf, et al. v. City and County of San Francisco, et al. filed on April 9, 2010, and Case No. CGC-10-505526 entitled British Airways Plc v. City and County of San Francisco, et al. filed on November 19, 2010; other material terms of the settlement include the City's retaining transient occupancy taxes collected by the Tax Collector, and the plaintiffs' agreement to pay transient occupancy taxes in the future according to the Tax Collector's regulations; the lawsuits involve a dispute between the City and the hotel and airline industry about whether airline crew rooms are exempt from the City's transient occupancy tax.



JANE KIM
金貞妍

- File No. 170732 Settlement of Lawsuit - Betsy Isabel Ayala - \$75,000**
Ordinance authorizing settlement of the lawsuit filed by Betsy Isabel Ayala against the City and County of San Francisco for \$75,000; the lawsuit was filed on July 7, 2015, in San Francisco Superior Court, Case No. CGC-15-546742; entitled Betsy Isabel Ayala v. City and County of San Francisco, et al.; the lawsuit involves alleged personal injury on a City street.
- File No. 170752 Settlement of Lawsuit - Zhen Qiang Zhang - \$75,000**
Ordinance authorizing settlement of the lawsuit filed by Zhen Qiang Zhang against the City and County of San Francisco for \$75,000; the lawsuit was filed on November 13, 2014, in San Francisco Superior Court, Case No. CGC-14-542708; entitled Zhen Qiang Zhang v. City and County of San Francisco, et al.; the lawsuit involves an employment dispute.
- File No. 170753 Settlement of Lawsuit - Pedro Figueroa Zarceno - \$190,000**
Ordinance authorizing settlement of the lawsuit filed by Pedro Figueroa Zarceno against the City and County of San Francisco for \$190,000; the lawsuit was filed on January 17, 2017, in United States District Court for the Northern District of California, Case No. 17-cv-00229 JST; entitled Pedro Figueroa Zarceno v. City and County of San Francisco, et al.; the lawsuit involves unlawful arrest.
- File No. 170754 Settlement of Lawsuit - Stuart Kohler - \$75,000**
Ordinance authorizing settlement of the lawsuit filed by Stuart Kohler against the City and County of San Francisco for \$75,000; the lawsuit was filed on November 8, 2016, in United States District Court, Case No. 16-CV-6502; entitled Stuart Kohler v. City and County of San Francisco et al.; the lawsuit involves alleged civil rights violations.
- File No. 170794 Settlement of Lawsuit - Sarah Loomis - \$95,000**
Ordinance authorizing settlement of the lawsuit filed by Sarah Loomis against the City and County of San Francisco for \$95,000; the lawsuit was filed on February 19, 2016, in San Francisco Superior Court, Case No. CGC-16-550399; entitled Sarah Loomis v. Nathaniel David Mansker, City and County of San Francisco, et al.; the lawsuit involves alleged personal injury from vehicle collision.

Member, Board of Supervisors
District 6



City and County of San Francisco

JANE KIM

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File No. 170795 Settlement of Lawsuit - Sonia Meyerson - \$52,500

Ordinance authorizing settlement of the lawsuit filed by Sonia Meyerson against the City and County of San Francisco for \$52,500; the lawsuit was filed on April 22, 2015, in San Francisco Superior Court, Case No. CGC-15-545451; entitled Sonia Meyerson v. City and County of San Francisco, et al.; the lawsuit involves alleged personal injury on a City street.

File No. 170796 Settlement of Lawsuit - Bernard Sandoval - \$120,000

Ordinance authorizing settlement of the lawsuit filed by Bernard Sandoval against the City and County of San Francisco for \$120,000; the lawsuit was filed on June 25, 2015, in San Francisco Superior Court, Case No. CGC 15-546562; entitled Bernard Sandoval v. City and County of San Francisco; the lawsuit involves an employment dispute.

File No. 170797 Settlement of Lawsuit - Paula Ginsburg - \$225,000

Ordinance authorizing settlement of the lawsuit filed by Paula Ginsburg against the City and County of San Francisco for \$225,000; the lawsuit was filed on February 17, 2016, in San Francisco Superior Court, Case No. CGC-16-550470; entitled Paula Ginsburg v. City and County of San Francisco, and Does 1 to 25, Inclusive; the lawsuit involves alleged personal injury on a City sidewalk adjacent to Alta Plaza Park.

These matter will be heard in the Government Audit and Oversight Committee on July 17, 2017,
at 12:00 p.m.

LEGISLATION RECEIVED CHECKLIST

Date 6/19/17

File Number (if applicable) 170731

- Legislation for Introduction (**NEW**) ▶▶▶ Legislative Clerk
- Legislation Pending in Committee (**AMENDED**) ▶▶▶ Committee Clerk
- Legislation for Board Agenda (**AMENDED**) ▶▶▶ Deputy Clerk

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (*if applicable*) in **Word** format
 - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

RECEIVED
 BOARD OF SUPERVISORS
 2017 JUN -9 PM 3:22
 AK

Ordinance

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Grant Resolution

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (*if applicable*) in **Word** format
 - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Resolution

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Joy Perez 554-3869
Name and Telephone Number

City Attorney
Department