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CITY OF OAKLAND



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June 7, 2016

**HONORABLE CITY COUNCIL**  
Oakland, California

**Subject: Communities for a Better Environment v. City of Oakland  
Alameda County Superior Court No. RG13-706245  
California Court of Appeal Action # A146619  
(Planning Commission Interpretation of Oakland Planning  
Code re Crematoria) (City Attorney File No. X03842-A)**

President Gibson-McElhaney and Members of the City Council:

Pursuant to Section 401 of the City Charter, the City Attorney has prepared and requests your approval of a resolution authorizing the compromise and settlement of the above-entitled action. Due to the risk of an adverse decision by the California Court of Appeal and a further award of attorneys' fees under the circumstances settlement is recommended in the sum of Forty Thousand Dollars and No Cents (\$40,000.00) payable to Plaintiff Communities for a Better Environment (CBE).


This action arises from a decision of the Oakland Planning Department to grant a building permit to Stewart Enterprises, Inc. to build a crematorium in East Oakland and an interpretation by staff with the Oakland Planning Department and the Oakland Planning Commission regarding permit requirements for crematoria. CBE disagreed with planning staff's and the Planning Commission's decisions and filed suit. The Alameda County Superior Court did not award CBE any damages but did award CBE \$61,875.00 in attorneys' fees in that lawsuit.

The Council authorized settlement of this case in Closed Session on Tuesday, May 17, 2016 (moved by Councilmember Desley Brooks and seconded by Councilmember Rebecca Kaplan – 6 Ayes, 2 Absent – Councilmembers Campbell-Washington and Gibson McElhaney).

Respectfully submitted,

BARBARA J. PARKER  
City Attorney

Attorneys Assigned:  
Charles E. Vose  
Selia Warren

  
\_\_\_\_\_  
City Attorney's Office

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# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

**RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE ATTORNEYS' FEES AWARD IN THE CASE OF COMMUNITIES FOR A BETTER ENVIRONMENT v. CITY OF OAKLAND, ET AL, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG13-706245, CALIFORNIA COURT OF APPEAL ACTION NO. A146619, IN THE AMOUNT OF FORTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00) (PLANNING COMMISSION INTERPRETATION OF OAKLAND PLANNING CODE RE CREMATORIA)**

**WHEREAS**, Communities for a Better Environment (CBE) filed suit against the City of Oakland as a result of an interpretation of the Oakland Planning Code concerning the requirements for permits for a proposed crematorium in East Oakland obtained by Stewart Enterprises, Inc.; and

**WHEREAS**, Alameda County Superior Court Action RG13-706245 resulted in an award of attorneys' fees against the City of Oakland and in favor of CBE in the amount of \$61,875.00; and

**WHEREAS**, the City appealed the award and that appeal is currently pending in California Court of Appeal Action No. A146619; and

**WHEREAS**, in order to avoid the risk of an adverse decision by the State Court of Appeal and a further award of attorneys' fees under the circumstances; now therefore, be it

**RESOLVED**: That the City Attorney is authorized and directed to compromise and settle the case of Communities for a Better Environment v. City of Oakland, et al., City Attorney's File No. X03842-A, for the sum of Forty Thousand Dollars and No Cents (\$40,000.00); and be it

**FURTHER RESOLVED**: That the City Attorney is further authorized to dismiss the pending appeal in the California Court of Appeal; and be it

**FURTHER RESOLVED**: That the City Attorney is further authorized and directed to take whatever steps as may be necessary to effect said settlement; and be it

**FURTHER RESOLVED:** That the sum of Forty Thousand Dollars and No Cents (\$40,000.00) be payable to Plaintiff Communities for a Better Environment.

IN COUNCIL, OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES: BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLÉN, KALB, KAPLAN, REID AND  
PRESIDENT GIBSON MCELHANEY

NOES:

ABSENT:

ABSTENTION:

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California