

May 4, 2023

CLOSED SESSION REPORT OF FINAL ACTION

Date of Meeting: *Thursday, May 4, 2023*

Litigation Negotiations

NAME OF ACTION:

Tulsee Nathu, Daxa “Mina” Patel; Javanti Nathu, Ii Ram 6801 I-40 West, Amarillo, Tx, Ltd; and 1000 Ram Inc. v. City of Oakland, United States District Court Northern District of California Case No. 14-cv-01626-JSC; United States Court of Appeal for the Ninth Circuit Case No. 23-15062

This matter is listed as **Item No. 1(c)** on the Closed Session Agenda:

The council authorized settlement for a waiver of costs to which the City is otherwise entitled in the amount of **\$28,579.25**.

This case arose out of a land use decision made by the City Council on **June 16, 2020**.

FACTS/ISSUES:

Plaintiffs are hotel developers who proposed to build a hotel at 0 Mandela Parkway. On June 16, 2020, the City Council upheld the appeal of Unite Here Local 2850, a hospitality workers union that challenged the Planning Commission’s approval of the plaintiffs’ application, on the grounds that the Planning Commission erred in making required findings for the Minor Variance for front setback reduction, and for failure to “meet with the spirit and intent” of Planning Code section 17.103.050(A)(2).

Plaintiffs filed suit in federal district (“District Court”) alleging multiple constitutional violations, including Equal Protection Violations under the Fourteenth Amendment, and Takings and Due Process claims under the Fifth Amendment. Plaintiffs sought an administrative writ of mandate to overturn the City Council’s decision and alleged \$48 million in damages.

The City defeated plaintiffs’ claims in a motion for summary judgment and the District Court dismissed the trial court action. Plaintiffs subsequently appealed to the United States Court of Appeals for the Ninth Circuit—the appeal is pending. Plaintiffs have now expressed a willingness to settle the case in exchange for the City’s agreement to waive costs to which the City is otherwise entitled. The City has determined that settlement waiving costs in the amount of in the amount of \$28,579.25, without admitting liability and to avoid further litigation, is in the City’s best interest.

The approved settlement resolves all claims made by plaintiffs in this matter.

Motion Made by: **Councilmember Fife**

Motion Seconded by: **Councilmember Ramachandran**

AYES: **Fife**, Gallo, Jenkins, **Kalb, Kaplan, Ramachandran**, Reid, and **President Fortunato Bas**= **5**

NOES: Fife, Gallo, Jenkins, Kalb, Kaplan, Ramachandran, Reid, and President Fortunato Bas =

ABSENT: Fife, **Gallo, Jenkins**, Kalb, Kaplan, Ramachandran, **Reid**, and President Fortunato Bas = **3**

ABSTENTIONS: Fife, Gallo, Jenkins, Kalb, Kaplan, Ramachandran, Reid, and President Fortunato Bas =