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OAKLAND CITY COUNCIL

77633

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

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
03 JAN 22 AM 11:10

**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF ALI SHIRAZIAN V. CITY OF OAKLAND RELATING TO MODIFICATION OF A VARIANCE FOR OPERATION OF A GAS STATION LOCATED AT 4035 PARK BOULEVARD INCLUDING WAIVER OF CODE ENFORCEMENT LIENS AND REFUND OF OTHER FEES IN A TOTAL AMOUNT NOT TO EXCEED \$19,000.00**

**WHEREAS**, in 1996, the City Council adopted Resolution No. 73346 C.M.S. ("Resolution"), which modified conditions of approval of a 1965 variance (Case File No. A96-143, VM65-567) (the "Variance") for operation of a gas station located at 4035 Park Boulevard; and

**WHEREAS**, the owner of 4035 Park Boulevard, Ali Shirazian brought a lawsuit challenging the adoption of the Resolution contending that evidence did not support conditions requiring completion of on- and off-site contaminant remediation prior to reopening of the gas station; and

**WHEREAS**, in February 1998, the Alameda Superior Court upheld the Resolution; and

**WHEREAS**, Petitioner Shirazian filed an appeal of the Alameda Superior Court's decision to the California Court of Appeal; and

**WHEREAS**, in July 2000, the California Court of Appeal upheld the City's condition requiring completion of on-site remediation, but reversed the Alameda Superior Court's ruling with respect to the condition requiring completion of off-site remediation prior to gas station reopening; and

**WHEREAS**, Petitioner Shirazian has filed an application to modify the Variance to allow the station to be reopened prior to completion of on-site remediation; and

**WHEREAS**, Petitioner Shirazian now wishes to convey the property at 4035 Park Boulevard to a party that proposes to pursue residential development and abandon any rights to operate a gas station on the site; and

**WHEREAS**, it is in the interest of all the parties to expeditiously approve a settlement with Shirazian and to facilitate conversion of the site to uses compatible with the surrounding neighborhood; and

**WHEREAS**, at its closed session meeting of January 14, 2003, the City Council took final action authorizing the City Attorney to settle this case consistent with the staff report accompanying this item and authorized the City Attorney and City staff to take immediate steps to effectuate the settlement;

**NOW, THEREFORE, BE IT**

**RESOLVED:** That the City Attorney is authorized and directed to compromise and settle the case of *Ali Shirazian v. City of Oakland* (Alameda Superior Court Case No. 785997-5; California Court of Appeal Case No. A083116; Our File No. A000084) in an amount not to exceed \$19,000.00 as detailed below; and be it

**FURTHER RESOLVED:** That the City Attorney is further authorized and directed to take whatever steps may be necessary to effect said settlement, including without limitation negotiating and executing a settlement agreement that provides for (1) Petitioner to dismiss the lawsuit; (2) Petitioner to relinquish any right to operate a gas station on the site; (3) Petitioner to abandon its application for modification of the variance conditions of approval and support revocation of the Variance; (4) each party bears its own attorneys' fees and costs; (5) City waives code enforcement liens it has caused to be placed on the Alameda County Secured Tax rolls for the 4035 Park Boulevard property to date (currently estimated at \$12,893.70); (6) City agrees to refund fees in the amount of \$830.00, which were submitted by Petitioner in connection with his 2002 application to modify the variance conditions of; and (8) City does not waive any of its rights to future code enforcement or other measures to facilitate any contaminant remediation.

**FURTHER RESOLVED:** That the Council hereby ratifies and endorses all steps that have been taken by the City Attorney's office and City staff to effectuate this settlement consistent with the Council's January 14, 2003 final action on this matter.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 04 2003, 2003

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN ~~AND~~

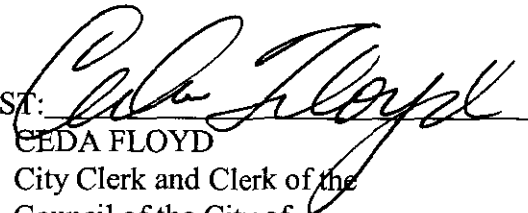
~~PRESIDENT DE LA FUENTE~~ - 7

NOES- ~~0~~

EXCUSED DE LA FUENTE - 1

~~ABSENT~~

ABSTENTION- ~~0~~

ATTEST:   
CEDA FLOYD  
City Clerk and Clerk of the  
Council of the City of  
Oakland, California