

Barbara J. Parker

CITY ATTORNEY'S OFFICE

2023 DEC 15 PM 3:40

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

89992

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE, AND SETTLE THE CASE OF ENVIRONMENTAL DEMOCRACY PROJECT (“EDP”) V. CITY OF OAKLAND; CITY OF OAKLAND PLANNING AND BUILDING DEPARTMENT; CITY OF OAKLAND OFFICE OF CITY ADMINISTRATOR; AND DOES 1 THROUGH 20 (RESPONDENTS AND DEFENDANTS) AND I METALS, INC. A CALIFORNIA CORPORATION; AND DSM MANAGEMENT, INC., A CALIFORNIA CORPORATION (REAL PARTIES IN INTEREST), CITY ATTORNEY FILE NO. X05462, FOR FORTY-ONE THOUSAND THREE HUNDRED FIFTY-FOUR DOLLARS AND ZERO CENTS (\$41,354.00)) AND THE TERMS SET FORTH BELOW (DEPARTMENT OF PLANNING & BUILDING -CALIFORNIA ENVIRONMENTAL QUALITY ACT)

WHEREAS, Plaintiff Environmental Democracy Project (“EDP”) alleges that the City has unlawfully approved major cannabis cultivation projects without any analysis of environmental impacts under the California Environmental Quality Act (“CEQA”); and

WHEREAS, EDP alleges that the City has a pattern and practice of exempting all cannabis cultivation projects from CEQA and routinely grants permits to operate cannabis cultivation operation without conducting an analysis of the environmental impacts of the projects on the neighborhoods and residents of East Oakland; and

WHEREAS, EDP alleges that the City’s approval of cannabis cultivation projects did not meet the requirement for the exemption because they were new uses, rather than modifications to an existing industrial-type use; and

WHEREAS, EDP’s attorney’s fees are approximately \$41,354.00; and

WHEREAS, EDP filed Alameda County Superior Court Case No. 22CV020520 against the City of Oakland, the City of Oakland Planning and Building Department, the City of Oakland Office of City Administrator, I Metals, Inc. and DSM Management, Inc. alleging that City applied the pattern and practice of exempting cannabis cultivation projects to the real parties in interest; and

WHEREAS, the City has considered all the evidence, litigation costs and litigation risks in this case; and

WHEREAS, without admitting wrongdoing or liability, the City has determined to settle the claims against the City for Forty-One Thousand Three Hundred Fifty-Four Dollars and Zero Cents (\$41,354.00) for attorneys’ fees and the following terms:

- Within one year of execution of the settlement agreement, City staff must bring to the City Council for its consideration proposed amendments to its ordinances that would:
 - o Provide the public with notice of all cannabis cultivation permit approvals;
 - o Allow members of the public to administratively appeal cannabis cultivation permits that would result in a cumulative total of at least 20,000 square feet of indoor cultivation at one parcel or address;
 - o Require applicants for at least 20,000 square feet of indoor cultivation to obtain confirmation from PG&E that it can handle the applicant's load using PG&E protocols for load studies;
 - o Require cannabis cultivation applicants to obtain all legally required permits, including building, fire, and State cannabis permits;
 - o Require City staff to periodically inspect cannabis growth operations at least once a year;
 - o Require applicants for more than 20,000 cumulative square feet of growth to identify other such operators within 300 feet, and for the City to evaluate whether such other operators may result in certain cumulative impacts;
 - o Prohibit indoor cannabis operations within 600 feet of any schools or residential live-work uses; and
 - o Ban the use of fossil fuel generators for indoor cultivation (which the City already bans).

- The City must adopt express guidelines governing how it will exercise its discretion in taking enforcement actions for indoor cultivators who violate their permits or City ordinances.

Now, therefore, be it

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of Environmental Democracy Project (EDP) v. City of Oakland, the City of Oakland Planning and Building Department, the City of Oakland Office of City Administrator, I Metals, Inc. and DSM Management, Inc and Does 1 through 20, Alameda County Superior Court Case No. 22CV020520 for Forty-One Thousand Three Hundred Fifty-Four Dollars and Zero Cents (\$41,354.00) and the terms set forth above; 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,

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

DEC 05 2023

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS 8

NOES 0

ABSENT 0

ABSTENTION -

ATTEST:



ASHA REED

City Clerk and Clerk of the Council of the City of
Oakland, California