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2015 NOV -5 PM 4: 52

CITY OF OAKLAND



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November 17, 2015

CITY COUNCIL
OAKLAND, CALIFORNIA

Subject: RESOLUTION APPROVING SETTLEMENT OF INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 21 V. CITY OF OAKLAND, ET AL. (ALAMEDA SUPERIOR COURT CASE NO. RG15775714), BY AGREEING TO KEEP THE MAIN FLOOR AND GALLERIES TO THE CITY COUNCIL CHAMBERS OPEN AT THEIR LEGAL CAPACITY FOR CITY COUNCIL MEETINGS, PAYING PLAINTIFF \$37,000 FOR ATTORNEY'S FEES AND COSTS, AND RESERVING CITY AUTHORITY TO REGULATE CITY COUNCIL MEETINGS AND ACCESS TO CITY COUNCIL CHAMBERS PURSUANT TO LAW, IN EXCHANGE FOR PLAINTIFF'S DISMISSAL OF THE SUIT

Dear President McElhaney and Members of the City Council:

At closed session on October 20, 2015, the City Council considered a proposed settlement of the lawsuit by the International Federation of Professional & Technical Engineers (Plaintiff or Local 21) against the City and the City Administrator (Alameda County Superior Court Case No. RG15775714). We now bring the proposed settlement to the City Council in open session for approval.

The lawsuit, filed June 26, 2015, alleged that measures recently implemented by the City in June 2015 with respect to public access to the City Council chambers for public meetings (including closing the galleries, preventing standing in the aisles and back of the room, and enforcing legal capacity limits) violated the Ralph M. Brown Act and the City's Sunshine Ordinance.

On June 30, 2015, the Alameda County Superior Court issued an Order Granting in Part Plaintiff's Ex Parte Application for a Temporary Restraining Order (the "TRO"). The TRO required the City to keep the galleries open. But the Court denied Local 21's request for an order prohibiting the City from enforcing restrictions on standing in the aisles and back of the main floor, or from enforcing the main floor's legal capacity limits.

November 17, 2015

Subject: Int'l Federation of Prof. & Tech. Engineers, Local 21 v. City of Oakland et al.


Page 2

The parties engaged in settlement negotiations. The negotiations culminated in a court-supervised settlement conference on September 24, 2015, attended by the City Administrator and the City's outside counsel, at which the parties reached a tentative agreement. The key terms of the agreement are as follows:

- The parties recognize that the City reserves and maintains rights to regulate City Council meetings and access to City Council chambers consistent with the Ralph M. Brown Act, the City's Sunshine Ordinance and any other applicable laws (including without limitation to respond to public health and safety issues or disruptions of City Council meetings to the extent permitted by law).
- The City will continue to keep the galleries open for City Council meetings at the galleries' legal capacity, which has been designated as 49 persons for each gallery.
- The City will keep the main floor of the chambers open for City Council meetings at the main floor's legal capacity, which has been designated as 212 persons (which encompasses the entire main floor, including public, staff and Council areas). The City is not required to permit standing in the aisles or the back of the main floor except to the extent reasonably required for public speakers to queue-up to address the Council during "open forum" or for any particular agenda or public hearing item.
- The City does not admit any liability.
- Local 21 will dismiss the suit.
- The City will pay Thirty Seven Thousand Dollars (\$37,000) to Local 21 for reasonable attorneys' fees and costs, following dismissal of the suit.

We request that the City Council approve the Resolution and authorize the entry of the Settlement Agreement.

Respectfully submitted,

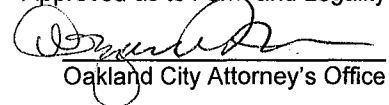

BARBARA J. PARKER
City Attorney

Attorney(s) Assigned:

Otis McGee, City Attorney's Office

Kevin D. Siegel, Burke, Williams & Sorensen LLP

2015 NOV -5 PM 4: 52


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION APPROVING SETTLEMENT OF INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 21 V. CITY OF OAKLAND, ET AL. (ALAMEDA SUPERIOR COURT CASE NO. RG15775714), BY AGREEING TO KEEP THE MAIN FLOOR AND GALLERIES TO THE CITY COUNCIL CHAMBERS OPEN AT THEIR LEGAL CAPACITY FOR CITY COUNCIL MEETINGS, PAYING PLAINTIFF \$37,000 FOR ATTORNEY'S FEES AND COSTS, AND RESERVING CITY AUTHORITY TO REGULATE CITY COUNCIL MEETINGS AND ACCESS TO CITY COUNCIL CHAMBERS PURSUANT TO LAW, IN EXCHANGE FOR PLAINTIFF'S DISMISSAL OF THE SUIT

WHEREAS, Int'l Federation of Prof. & Tech. Engineers, Local 21 v. City of Oakland, et al. ("Local 21") filed a lawsuit in Alameda County Superior Court (Case No. RG15775714) alleged that measures recently implemented by the City in June 2015 with respect to public access to the City Council chambers for public meetings (including closing the galleries, preventing standing in the aisles and back of the room, and enforcing legal capacity limits) violated the Ralph M. Brown Act and the City's Sunshine Ordinance; and

WHEREAS, on June 30, 2015, the Alameda Superior Court issued an Order Granting in Part Plaintiff's Ex Parte Application for a Temporary Restraining Order (the "TRO"). The TRO required the City to keep the galleries open. But the Court denied Local 21's request for an order prohibiting the City from enforcing restrictions on standing in the aisles and back of the main floor, or from enforcing the main floor's legal capacity limits; and

WHEREAS, the parties engaged in settlement negotiations, including at a court-supervised settlement conference on September 24, 2015; and

WHEREAS, consistent with the direction provided by the City Council in closed session, the parties have prepared a settlement agreement to resolve this lawsuit, the key terms of which are as follows:

- The parties recognize that the City reserves and maintains rights to regulate City Council meetings and access to City Council chambers consistent with the Ralph M. Brown Act, the City's Sunshine Ordinance and any other applicable laws (including without limitation to respond to public health and

safety issues or disruptions of City Council meetings to the extent permitted by law);

- The City will continue to keep the galleries open for City Council meetings at the galleries' legal capacity, which has been designated as 49 persons for each gallery;
- The City will keep the main floor of the chambers open for City Council meetings at the main floor's legal capacity, which has been designated as 212 persons (which encompasses the entire main floor, including public, staff and Council areas). The City is not required to permit standing in the aisles or the back of the main floor except to the extent reasonably required for public speakers to queue-up to address the Council during "open forum" or for any particular agenda or public hearing item;
- The City does not admit any liability;
- Local 21 will dismiss the suit;
- The City will pay Thirty Seven Thousand Dollars (\$37,000) to Local 21 for reasonable attorneys' fees and costs, following dismissal of the suit.

RESOLVED: The City Administrator, or her designee, is authorized to enter the Settlement Agreement, in substantially the same form as attached hereto, marked "Attachment A", subject to final approval by the City Attorney.

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

**SETTLEMENT AGREEMENT BETWEEN
IFPTE, LOCAL 21 AND THE CITY OF OAKLAND AND THE OAKLAND CITY
ADMINISTRATOR**

This Settlement Agreement (“Agreement”) is entered into as of October ____, 2015 (“Effective Date”) by and between (1) International Federation of Professional and Technical Engineers, Local 21 (“Local 21”) and (2) the City of Oakland and the Oakland City Administrator, collectively the (“City”). Local 21 and the City are each referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Oakland City Council has chambers at City Hall (1 Frank Ogawa Plaza) including on the third floor of City Hall (the “Main Floor”) and upstairs balconies on either side of the Main Floor (the “Galleries”). The City Council regularly conducts public meetings in these chambers.

B. In June 2015, the City pursued its goals of ensuring public access and participation in public City Council meetings, as well as public safety at public City Council meetings, by implementing changes and enforcing rules with respect thereto (including, for example, closing the Galleries, which have steep pitches and low railings, and enforcing capacity limitations for the Main Floor while taking measures to ensure members of the public could address the City Council during public comment periods).

C. On June 26, 2015, Local 21 submitted a cease and desist letter to the City, which claimed that the changes the City implemented were unlawful (“Cease and Desist Letter”).

D. On June 26, 2015, Local 21 also filed an action in Alameda Superior Court against the City and City Administrator, Case No. RG15775714 (the “Action”).

E. On June 30, 2015, Judge Evelio Grillo issued an Order Granting in Part Plaintiff’s Ex Parte Application for a Temporary Restraining Order (the “Order”).

F. Local 21 subsequently filed a motion for a preliminary injunction, which was set to be heard by Judge Stephen Pulido, as well as a First Amended Complaint. The City filed an Answer to the First Amended Complaint, denying liability.

G. The Parties stipulated that Judge Grillo’s Order would remain in effect until the preliminary injunction hearing.

H. The Parties entered settlement negotiations and reached a tentative agreement on September 24, 2015.

I. The Parties, wishing to avoid the uncertainties, delay and expense of continuing the Action, agree to settle upon the following terms.

TERMS

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. City Council Chambers – Access: Local 21 brought this action challenging the closing of the Galleries and restricting access to Main Floor seating and standing room in City Council chambers during public City Council meetings. Both Parties recognize that the City reserves and maintains its right to regulate City Council meetings and access to City Council chambers consistent with the Ralph M. Brown Act, the City's Sunshine Ordinance and any other applicable laws (including without limitation to respond to public health and safety issues or disruptions of City Council meetings to the extent permitted by law).

a. Galleries: the City will continue to keep the City Council chamber Galleries open for City Council meetings at the Galleries' legal capacity, which has been designated as 49 persons for each Gallery.

b. Main Floor: the City will keep the Main Floor of the City Council chambers open for City Council meetings at the Main Floor's legal capacity, which has been designated as 212 persons (which encompasses the entire Main Floor, including public, staff and Council areas). The City is not required to permit standing in the aisles or the back of the Main Floor except to the extent reasonably required for public speakers to queue-up to address the Council during "open forum" (the public comment period) for the meeting or for any particular agenda or public hearing item.

2. Cease and Desist Demand Letter Moot: Local 21 acknowledges Cease and Desist Letter of June 26, 2015 is moot.

3. Dismissal: Within seven days of full execution of this Agreement, Local 21 shall file and serve a request for entry of dismissal of the Action as to all causes of action and all parties.

4. No Admission: This Agreement is the result of a compromise and shall never, at any time for any purpose, be considered as an admission of liability or responsibility on the part of any Party herein released, nor shall the release of any claims or waiver of costs in consideration of the execution of the Agreement constitute or be construed as an admission of any liability whatsoever by any Party herein released. No dismissal filed in conjunction with the Agreement shall constitute a favorable or prevailing result for any Party.

5. Mutual Release: Except for the obligations specified herein, the Parties hereby release and forever discharge each other, together with their employees, officers, agents, representatives, trustees, directors, partners, stockholders, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them from any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorneys' fees, actions, and causes of actions of every

nature, character, and description whether known or unknown, directly or indirectly arising out of any matter, fact, and/or allegation related to the Action.

6. Waiver of California Civil Code Section 1542: The Parties, on behalf of themselves, attorneys, heirs, predecessors, successors, and assigns, acknowledge that each is aware of the provisions of Section 1542 of the California Civil Code, and expressly waives any rights or benefits that may be available under Section 1542, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

7. Fees and Costs: Within 21 days of the entry of Dismissal, the City shall pay Thirty Seven Thousand Dollars (\$37,000) to Local 21 for reasonable attorneys' fees and costs incurred in this Action. Payment shall be made to Leonard Carder LLP, c/o Eleanor Morton, 1188 Franklin Street, Suite 201, San Francisco, CA 94109. Each Party shall otherwise bear its own attorneys' fees and costs with respect to the Action, including without limitation the negotiation of this Agreement.

8. Entire Agreement:

a. The Agreement constitutes the full and entire agreement among the Parties with respect to the subject matter of this Agreement, superseding all prior agreements, negotiations and discussions among the Parties, and the Parties acknowledge that there is no other agreement, oral or written, regarding the subject matter of this Agreement. This Agreement may not be modified, except by a written instrument executed by each of the Parties.

b. The Parties acknowledge: (a) the Agreement and its reduction to final form is the result of good faith negotiations among the Parties through their respective counsel; (b) the Parties' counsel have reviewed and examined the Agreement before execution; and (c) the Parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a Court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the sentences, phrases, clauses or other wording or language of any kind shall not be construed for or against any Party in accordance with California Civil Code Section 1654, and that each party to this Agreement waives the effect of that statute.

9. Severability: If any word, phrase, clause, sentence, provision, or paragraph of this Settlement Agreement is or shall be held invalid or unlawful for any reason, the same shall be deemed severed from the remainder hereof, and stricken therefrom, and shall in no way affect or impair the validity of this Agreement or any other portion thereof, and this Settlement Agreement shall otherwise remain in full force and effect.

10. Binding Effect: This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, assigns and transferees.

11. Governing Law: This Agreement shall be interpreted and enforced according to, and the Parties' rights and obligations governed by, the domestic law of the State of California, without regard to its laws regarding choice of applicable law.

12. Captions and Paragraph Headings: Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

13. Authority to Execute: The undersigned warrant that they are fully authorized to execute this agreement on behalf of their principals.

14. Execution in Counterparts: This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date stated in the introductory clause.

City of Oakland

International Federation of Professional and
Technical Engineers, Local 21

By: _____
Name: Sabrina Landreth
Title: Oakland City Administrator

By: _____
Name: _____
Title: _____

Sabrina Landreth, City Administrator

By: _____
Sabrina Landreth
Oakland City Administrator

ATTEST:

City Clerk

APPROVED AS TO FORM:
OAKLAND CITY ATTORNEY

APPROVED AS TO FORM:
LEONARD CARDER LLP

By: _____
Barbara J. Parker
Attorneys for City of Oakland and Oakland
City Administrator

By: _____
Eleanor Morton
Attorneys for International Federation of
Professional and Technical Engineers, Local 21