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July 21, 2009

HONORABLE CITY COUNCIL
Oakland, California

**Subject: Barry Chersky, et al. v. City of Oakland
Alameda County Superior Court Case No. RG07332552
File No. 25724 (OFD)**

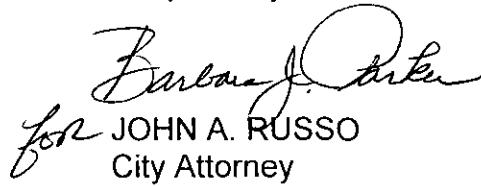
Dear President Brunner and Members of the City Council:

Pursuant to Section 401 of the Charter, the City Attorney has prepared a resolution and recommends settlement of the above-entitled matter. This matter was presented to council in closed session on May 19, 2009 and June 16, 2009.

The City cleared plaintiffs' property located at 6450 Buenaventura Avenue in Oakland of numerous plants pursuant to the City's Fire Suppression Assessment District Ordinance. Plaintiffs claimed that the City's clearing of the property exceeded the scope of the ordinance and amounted to a taking of plaintiffs' property.

Due to the potential for a higher award from the Court, settlement is recommended in the amount of Ninety-Nine Thousand Fourteen Dollars and Thirty-Six Cents (\$99,014.36). The amount of Thirty-Two Thousand Five Hundred Dollars and No Cents shall be made payable to plaintiffs Barry Chersky and Michael Baiad. The amount of Sixty-Six Thousand Five Hundred Fourteen Dollars and Thirty Six Cents (\$66,514.36) shall be made payable to plaintiffs' counsel David Stein. The settlement also provides for the release of a lien placed on plaintiffs' property in the amount of \$2,755.00, plus any related fees, penalties and interest.

Respectfully submitted,


for JOHN A. RUSSO
City Attorney

Attorney Assigned:
Charles E. Vose

2009 JUL -9 PM 3:08

Approved as to Form and Legality

Barbara J. Parker
Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

CEV:cr

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF BARRY CHERSKY, ET AL. v. CITY OF OAKLAND, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG07332552, CITY ATTORNEY FILE NO. 25724, IN THE AMOUNT OF \$99,014.36, PLUS THE RELEASE OF A LIEN IN THE AMOUNT OF \$2,755.00 PLUS ANY ASSOCIATED FEES, PENALTIES AND INTEREST. THIS CASE INVOLVES A CLAIM FOR DAMAGES RESULTING FROM AN ABATEMENT ACTION AT PLAINTIFFS' PROPERTY PURSUANT TO THE WILDFIRE SUPPRESSION ASSESSMENT DISTRICT ORDINANCE IN THE OAKLAND MUNICIPAL CODE (OFD)

WHEREAS: The City of Oakland cleared plaintiffs' property at 6450 Buenaventura Avenue in Oakland of numerous plants pursuant to the City's Fire Suppression Assessment District Ordinance; and

WHEREAS: Plaintiffs claimed that the City's clearing of the property exceeded the scope of the ordinance and amounted to a taking of plaintiffs' property; now, therefore, be it;

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of Barry Chersky, et al. v. City of Oakland, Alameda County Superior Court Case No. RG07332552, City Attorney's File No. 25724, for a sum not to exceed a total amount of Ninety-Nine Thousand Fourteen Dollars and Thirty-Six Cents (\$99,014.36). The amount of Thirty-Two Thousand Five Hundred Dollars and No Cents (\$32,500.00) shall be made payable to plaintiffs Barry Chersky and Michael Baiad. The amount of Sixty-Six Thousand Five Hundred Fourteen Dollars and Thirty Six Cents (\$66,514.36) shall be made payable to plaintiffs' counsel David Stein. The lien placed on plaintiffs' property at 6450 Buenaventura Avenue, Oakland, California in the amount of \$2,755.00 plus any related fees, penalties and interest, shall be released; and be it

FURTHER RESOLVED: That the sum of Sixty-Six Thousand Five Hundred Fourteen Dollars and Thirty Six Cents (\$66,514.36) shall be made payable to plaintiffs' counsel David Stein; and be it

FURTHER RESOLVED: That the sum of Thirty-Two Thousand Five Hundred Dollars and No Cents (\$32,500.00) be paid to plaintiffs Barry Chersky & Michael Baiad; and be it

FURTHER RESOLVED: That the lien placed on plaintiffs' property in the amount of \$2,755.00 shall be released from title to the property located at 6450 Buenaventura Way, Oakland, California, including any associated fees, penalties and interest; 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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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