

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: SETTLEMENT OF ATTORNEYS'
FEES IN ANDERSON v. CITY OF
SAN JOSE

DATE: February 3, 2021

RECOMMENDATION

Approve a settlement of Petitioners' demand for attorneys' fees in the case of *Anderson, et al. v. City of San Jose* in the amount of \$590,000.00, plus costs in the amount of \$1598.42, and authorize the City Attorney to execute a Settlement Agreement.

OUTCOME

Settle the attorneys' fees which Petitioners seek after prevailing in their lawsuit challenging the City's policy for the sale of surplus land with a payment by the City of \$590,000.00 for attorneys' fees, plus \$1598.42 in costs.

BACKGROUND

Petitioners are two low-income San Jose residents who rent housing and two organizations with the stated goal of promoting affordable housing. Beginning in July 2019, they sought declaratory relief that the City is required to comply with the California Surplus Land Act as amended by the state legislature in 2015 and a writ of mandate requiring the City's full compliance. The Surplus Land Act, Gov't Code section 54220 *et seq.*, requires a municipality to first offer surplus land for sale to entities that agree to develop affordable housing. The City's policy for the sale of surplus property generally followed the Surplus Land Act but provided for certain exemptions, including expanding the income range for buyers eligible for affordable housing and allowing exceptions for specific properties.

The City successfully argued in the trial court that, as a charter city, the home rule doctrine allows it to implement its own policy. Petitioners appealed. In November 2019, the Court of Appeal overruled the trial court, holding that the Surplus Land Act addresses a matter of statewide concern and therefore overrides charter cities' policies. The City petitioned the California Supreme Court for review, but the Court declined to hear the case. Therefore, the City concluded the litigation by agreeing to abide by the Surplus Land Act and not to follow the conflicting portions of the City's policy for the sale of surplus property.

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Petitioners, who have been represented by a coalition of public interest law firms, seek attorneys' fees as successful parties in litigation to enforce a right affecting the public interest under Code of Civil Procedure section 1021.5. They calculate their fees at nearly \$900,000.

ANALYSIS

Under the proposed settlement, Petitioners will receive payment from the City of \$590,000.00 for attorneys' fees and \$1598.42 for costs. This is a negotiated settlement between the parties to avoid the risks inherent in litigation of Petitioners' attorneys' fees.

PUBLIC OUTREACH/INTEREST

This memorandum and the Settlement Agreement have been posted on the City's website for the February 9, 2021 agenda.

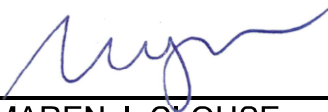
COST SUMMARY/IMPLICATIONS

The settlement will be paid from the City's claims reserve fund.

CEQA

Not Applicable. Not a Project; File No. PP10-066(h), Settlement Agreements.

NORA FRIMANN
City Attorney

By 
MAREN J. CLOUSE
Chief Deputy City Attorney

cc: David Sykes, City Manager
Jennifer Maguire, Assistant City Manager