



# CITY OF SAN MATEO

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## Agenda Report

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Agenda Number: 12

Section Name: {{section.name}}

File ID: {{item.tracking\_number}}

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**TO:** City Council

**FROM:** Prasanna W. Rasiah, City Attorney

**PREPARED BY:** City Attorney's Office

**MEETING DATE:** October 18, 2021

**SUBJECT:**

California Renters Legal Advocacy & Education Fund, et al. v. City of San Mateo, et al. – Settlement Agreement

**RECOMMENDATION:**

Adopt a Resolution to approve an agreement with the California Renters Legal Advocacy and Education Fund, Victoria Fierce and John Moon to settle a lawsuit in the amount of \$450,000, approve a supplemental budget appropriation from available fund balance of the General Fund in the same amount, and authorize the City Attorney to execute the agreement in substantially the form presented.

**BACKGROUND:**

In 2015, an application was submitted to build a four-story, ten-unit multifamily residential building at 4 West Santa Inez Avenue in San Mateo. Following denial by the Planning Commission on October 10, 2017, the City Council considered an appeal of the project. On February 5, 2018, the Council upheld the decision of the Planning Commission and denied the project, concluding that it failed to meet a stepback requirement in the Multifamily Design Guidelines (Guidelines). A lawsuit was then filed by the California Renters Legal Advocacy and Education Fund, Victoria Fierce and John Moon (collectively, Petitioners) as well as the San Francisco Bay Area Renters Federation, contending that the City's actions violated State law, namely the Housing Accountability Act (HAA).

On November 7, 2019, the San Mateo County Superior Court ruled in favor of the City and held that the stepback requirement in the Guidelines was an objective standard for purposes of the HAA and therefore could be applied to the project. The court went on to conclude that to the extent that the HAA conflicted with otherwise enforceable portions of the City's code regarding review of housing development projects, it was unenforceable as an impermissible intrusion into the City's municipal affairs under the California Constitution.

The Petitioners appealed the trial court decision, and the California Attorney General also intervened in the case. On September 10, 2021, the Court of Appeal reversed the trial court, concluding that the stepback requirement in the Guidelines was not objective for purposes of the HAA and therefore could not be applied to the project. The Court of Appeal also upheld the constitutionality of the HAA and instructed the trial court to direct the City to vacate its 2018 action upholding the Planning Commission decision, and instead reconsider the project in accordance with the Court of Appeal decision.

After discussions with counsel for Petitioners, outside counsel for the City as well as City staff reached a tentative settlement agreement, which is included as Attachment 2 for consideration by the Council. The proposed agreement provides that (1) the City will not appeal to the California Supreme Court or take other actions to challenge the decision, as specified, and (2) the Petitioners will be paid \$450,000 in attorney's fees and costs. Also, under the proposed agreement, if another person or entity files a request for depublication of the Court of Appeal decision (in which case it would no longer be binding law in California, but would still apply to the City), or if the California Supreme Court reviews the

decision, then the Petitioners could seek additional amounts for fees and costs incurred in responding to these actions. The project itself will return to the Council for reconsideration at a later date.

**BUDGET IMPACT:**

If the Council approves the proposed settlement agreement, payment in the amount of \$450,000 would be made to the Petitioners. This requires a supplemental budget appropriation by the Council from available fund balance of the General Fund (Fund 10) to transfer funds to the Comprehensive Liability Fund (Fund 88) and is included with the draft resolution.

**ENVIRONMENTAL DETERMINATION:**

This settlement agreement is not a project subject to CEQA, because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines Section 15378(b)(5).)

**NOTICE PROVIDED**

All meeting noticing requirements were met.

**ATTACHMENTS**

Att 1 – Proposed Resolution

Att 2 – Settlement Agreement

**STAFF CONTACT**

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