

RESOLUTION NO. 47-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA APPROVING EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN THE CITY OF PACIFICA AND PLAINTIFFS, SEAN GEARY, LINDA MILES, JARED CARR, HARRY BODE AND STEPHEN SANDERS PERTAINING TO ATTORNEYS' FEES AND COSTS RELATING TO LITIGATION IN GEARY, ET AL. V. CITY OF PACIFICA, CASE NO. 3:21-CV-01780

WHEREAS, On March 15, 2021 the ACLU, the Legal Aid Society of San Mateo County and Disability Rights Advocates filed a class action lawsuit (Geary, et al. v. City of Pacifica, Case No. 3:21-cv-01780) against the City of Pacifica on behalf of the Plaintiffs, Sean Geary, Linda Miles, Jared Carr, Harry Bode and Stephen Sanders, challenging the City's Oversized Vehicle (OSV) Ordinance and its Vehicular Habitation Ordinance in the United States District Court for the Northern District of California; and

WHEREAS, the lawsuit alleges that the OSV Ordinance (Pacifica Municipal Code Sections 4-7.1204 and 4-7.1205) and the Vehicular Habitation Ordinance (Pacifica Municipal Code 4-7.1114) are unconstitutional and further alleges that the OSV Ordinance violates the Americans with Disabilities Act, the California Disabled Persons Act, the Rehabilitation Act of 1973 and California Government Code §11135; and

WHEREAS, through the lawsuit, Plaintiffs sought a declaration that the OSV Ordinance and the Vehicular Habitation Ordinance are unconstitutional, a preliminary and permanent injunction directing the City to cease all efforts to enforce the Ordinances, restitution for fines and penalties collected under the Ordinances, and attorneys' fees and costs; and

WHEREAS, on July 14, 2021, the Court issued a limited injunction that required the City to make available on its website, at City Hall and at Pacifica libraries a list and map of the already existing places where OSVs can safely park; and

WHEREAS, Plaintiffs and the City reached a Settlement Agreement (Agreement Date of November 23, 2021) which has been filed with the Court [ECF 68], that provides for entry of a stipulated injunction (the "Injunction"), subject to the approval of the Court, on the terms set forth in the Injunction, including but not limited to staff's recommendation that the Council approve a Safe Parking Permit Program to be implemented by the Pacifica Resource Center; and the City's refund of certain fines paid resulting from citations received under the OSV Ordinance. The Settlement Agreement provides that the Parties will attempt to negotiate Plaintiffs' claim for attorneys' fees and costs in connection with the prosecution and settlement of the Action, which Defendant contests; and

WHEREAS, the Parties, through their counsel, conferred in good faith in negotiations for resolution of Plaintiffs' claim for attorneys' fees and costs incurred in connection with the litigation.

WHEREAS, the City and the Plaintiffs, through their attorneys, have negotiated a proposed settlement agreement pertaining to Plaintiffs' claim for attorneys' fees and costs.

WHEREAS, the Parties desire to enter into the settlement agreement attached hereto as Exhibit A to completely and finally resolve Plaintiffs' claims for attorneys' fees and costs in the Complaint.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pacifica hereby approves the settlement agreement attached hereto as Exhibit A and authorizes the City Manager to execute the Settlement Agreement between the City of Pacifica and Plaintiffs in substantially the form attached hereto as Exhibit A, with minor revisions that may be approved by the City Manager and the City Attorney, and to execute any other necessary documents to effectuate the terms of the Settlement Agreement.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 8th day of August, 2022, by the following vote:

AYES, Councilmembers: Beckmeyer, Bier, Bigstycck, O'Neill, Vaterlaus.

NOES, Councilmembers: n/a.

ABSENT, Councilmembers: n/a.

ABSTAIN, Councilmembers: n/a.


Mary Bier (Aug 18, 2022 11:39 PDT)

Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

SETTLEMENT AGREEMENT RE ATTORNEYS' FEES AND COSTS

This settlement agreement (“Agreement”) is made and entered into by and between Sean Geary, Linda Miles, Jared Carr, Harry Bode, and Stephen Sanders (“Plaintiffs”), and the City of Pacifica (“Defendant” or “City”) (together, “Parties”), through their undersigned counsel of record.

RECITALS

A. On March 15, 2021, Plaintiffs filed their Class Action Complaint in the action entitled *Geary, et al. v. City of Pacifica*, Case No. 3:21-cv-01780 in the United States District Court for the Northern District of California (“Action”), ECF No. 1, alleging various claims that Ordinance 480-C.S. (“Human Habitation Ordinance”) and Ordinance No. 855-C.S (“OSV Ordinance”) violated the constitutional rights of Plaintiffs and others who reside, have resided, or seek to reside in recreational vehicles (“RVs”) in the City. In their complaint, Plaintiffs sought declaratory relief, injunctive relief, restitution, attorneys’ fees, and costs. Defendant denies the factual allegations and legal claims contained in the complaint.

B. On June 1, 2021, the City filed a motion to dismiss the complaint, which was subsequently withdrawn without prejudice, that denies that it has violated Plaintiffs’ rights in any respect and maintains that it has valid defenses to the claims set forth in the complaint;

C. On July 14, 2021, the Court entered a preliminary injunction (“Preliminary Injunction”) and vacated the City’s motion to dismiss without prejudice, based on the stipulation of the parties. [ECF 55]

D. Plaintiffs and the City reached a Settlement Agreement (Agreement Date of November 23, 2021) which has been filed with the Court [ECF 68], that provides for entry of a stipulated injunction (the “Injunction”), subject to the approval of the Court, on the terms set forth in the Injunction. The Settlement Agreement provides that the Parties will attempt to negotiate Plaintiffs’ claim for attorney’s fees and costs in connection with the prosecution and settlement of the Action, which Defendant contests.

E. On April 6, 2022, the Court entered its Injunction on the stipulation of the Parties. [ECF No. 71]

F. The Parties, through their counsel, have conferred in good faith and have negotiated the terms of this Agreement to avoid the expense of continued litigation with respect to Plaintiffs’ request for attorneys’ fees and costs incurred in connection with this litigation.

G. The Parties desire now to settle completely all claims for attorneys’ fees and costs which are set forth in the Complaint, which was filed in the Action.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration for the mutual promises, covenants, and conditions contained herein, the Parties hereby agree as follows:

1. Settlement Payment

The City agrees that within ten (10) business days of the date when this Agreement is fully executed, the City will pay FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00) to Plaintiffs' attorneys for costs and attorneys' fees, of which the receipt and sufficiency hereof is acknowledged, in full consideration and inducement for this Agreement. Payment for Plaintiffs' attorneys' fees will be made in the following manner: Payee "American Civil Liberties Union of Northern California." Should payment be made through a wire transfer, the banking information is as follows:

Payee:	American Civil Liberties Union of Northern California
Bank:	MUFG Union Bank 400 California Street San Francisco, CA 94104
Routing Transit Number:	122000496
Account Number:	3121000941

2. Dismissal of Action

Upon receipt of the settlement payment pursuant to Paragraph 1 hereof, Plaintiffs shall promptly file a dismissal with prejudice of all claims presented by Plaintiff's Complaint, with the Court to retain jurisdiction for three years following the date of dismissal of the Action, substantially in the form attached as Exhibit 1 hereto.

3. Responses to Coastal Development Permit Appeals

Plaintiffs agree that they will support the City's submissions in response to any Coastal Commission appeals (including but not limited to the appeal of CDP-438-22 dated June 24, 2022 submitted by Dina Micheletti and the appeal of CDP-438-22 dated June 22, 2022 submitted by Jeff Guillet) with a "friend of the court" or interested-party submission, noting that the safe parking program results from a settlement that confers a significant benefit on vehicularly-housed Pacificans, and is actually in line with the environmental justice principles that the Commission is required to pursue.

4. Releases

Plaintiffs and their heirs, attorneys, agents, successors and assigns hereby release Defendant and its departments, heirs, successors, present and former employees, officers, members, councilmembers, attorneys, agents, insurers, successors and assigns from any and all claims, demands, obligations or causes of action, whether based on or arising under federal or state law, which Plaintiffs ever had, now have, or which may later appear, whether known or

unknown, for any expenses, fees and/or costs (including attorneys' fees and costs sought in connection with the prosecution and settlement of the Action), whether anticipated or unanticipated, resulting from, arising out of, connected directly or indirectly with or relating in any way to the OSV Ordinance and/or this Action.

Defendant and its departments, heirs, present and former employees, officers, members, councilmembers, attorneys, agents, insurers, successors and assigns hereby release Plaintiffs from any and all claims, demands, obligations or causes of action, whether based on or arising under federal or state law, which Defendants ever had, now have, or which may later appear, whether known or unknown, for any expenses, fees and/or costs (including attorneys' fees and costs sought in connection with the prosecution and settlement of the Action), whether anticipated or unanticipated, resulting from, arising out of, connected directly or indirectly with or relating in any way to the OSV Ordinance and/or this Action. This release does not restrict Defendant from enforcing the OSV Ordinance or any applicable law against Plaintiffs.

The above releases do not apply to any future claims to enforce the terms of this Settlement Agreement.

The Parties agree as further consideration and inducement for this Release that they shall apply to all unknown and unanticipated injuries, both to person and property, and all unknown and unanticipated damages and claims resulting from the matters and things herein above mentioned. The Parties acknowledge that they have been advised by legal counsel and are familiar with the provisions of California Civil Code § 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

5. Authorization

Each individual or entity that executes this Agreement represents and warrants, in their personal capacity, that they are duly authorized and empowered to enter into this Agreement on behalf of themselves or the Party they purport to represent. Plaintiffs' counsel specifically represent and warrant that they are authorized to enter into this Agreement on behalf of Plaintiffs and have received Plaintiffs' express permission to execute this Agreement on their behalf. Plaintiffs' counsel further represent and warrant that Plaintiffs have been fully informed of this Agreement and its terms, including but not limited to the binding effect of this Agreement, the release provisions, and the provisions stated in Paragraph 6 of this Agreement. Any dispute between Plaintiffs and their counsel or with respect to attorneys' fees shall in no way affect the validity of this Agreement.

6. Knowing and Voluntary

This Agreement is an important legal document that has been voluntarily and knowingly executed by the Parties. The Parties, and each of them, through their counsel, specifically represent that, prior to signing this Agreement:

- (a) they have each been provided a reasonable period of time within which to consider whether to accept this Agreement;
- (b) they have each carefully read and fully understand all of the provisions of this Agreement; and
- (c) they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment.

Plaintiffs, and each of them, further specifically represent that, prior to signing this Agreement, they have conferred with counsel of their choice to the extent desired concerning the legal effect of this Agreement, and that the legal effect of this Agreement has been adequately explained to them.

7. Denial of Liability

This Agreement provides for the settlement of disputed claims in this Action, the allegations of which are denied and contested, and nothing contained in this Agreement shall be construed as an admission by the City of any liability of any kind, all such liability being expressly denied.

8. Entire Agreement

This Agreement embodies the entire understanding and agreement between the Parties with respect to the matters referred to herein. This Agreement supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the parties to the same. No other representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or to bind any of the Parties. Each of the Parties acknowledges that they have not executed this Agreement in reliance on any such promise, representation, or warranty.

9. Modification

This Agreement may not be modified except by a writing executed by each Party or through court order.

10. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Facsimile signatures and signatures in PDF format transmitted by email shall be deemed originals.

11. Successors and Assigns

The obligations set forth in this Agreement shall be binding on the Parties and their successors and assigns.

12. No Waiver of Terms of Agreement

The failure to insist upon compliance with any term, covenant or condition contained in the Agreement shall not be deemed a waiver of that term, covenant, or condition.

13. Severability

If any provision of this Agreement or the application of this Agreement is adjudicated to be void, invalid or unenforceable, such action shall not make the entire Agreement void, but rather only such provision. All remaining provisions shall remain in full force and effect.

14. No Third Party Beneficiary

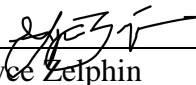
The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and is made solely and specifically for their benefit. No other person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement or the Injunction as a third-party beneficiary or otherwise.

IN WITNESS WHEREOF, the Parties, through their undersigned counsel, hereby enter into this Agreement.

For Plaintiffs:

American Civil Liberties Union of Northern California


Date: July 27, 2022

By: 

Grayce Zelphin
Counsel for Plaintiffs Sean Geary, Linda Miles, Jared Carr, Harry Bode, and Stephen Sanders


Disability Rights Advocates

Date: 7/27/2022

By: 
Thomas Zito
Counsel for Plaintiffs Sean Geary, Linda Miles, Jared Carr, Harry Bode, and Stephen Sanders

Legal Aid Society of San Mateo County

Date: _____

By: 
M. Stacey Hawver
Counsel for Plaintiffs Sean Geary, Linda Miles, Jared Carr, Harry Bode, and Stephen Sanders

Defendant

CITY OF PACIFICA

Date: _____

By: _____










For Signature: ResolutionNo47-2022_GearySettlementAgreement_AttorneysFeesAndCosts

Final Audit Report

2022-08-18

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