

RESOLUTION NUMBER R- 309044

DATE OF FINAL PASSAGE JUN 25 2014

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING PAYMENT FOR SETTLEMENT OF ATTORNEY'S FEES AND COSTS IN LAWSUITS FILED BY COASTAL ENVIRONMENTAL RIGHTS FOUNDATION, INC., SUPERIOR COURT CASE NOS. 37-2010-00095062, 37-2010-00102574, 37-2011-00092008, AND 37-2011-00102639.

WHEREAS, La Jolla Community Fireworks Foundation (LJCFF), a non-profit corporation, assumed sponsorship of the La Jolla Cove 4th of July Fireworks Show in 2009, and desires to sponsor and produce the show again in 2014 and thereafter; and

WHEREAS, The City of San Diego (City) is a municipal corporation with permitting authority over the La Jolla Cove Fireworks Show; and

WHEREAS, Coastal Environmental Rights Foundation (CERF) is a non-profit corporation with its principal place of business in Encinitas, California, and with a stated purpose of pursuing environmental protection; and

WHEREAS, on June 25, 2010, CERF filed a lawsuit against the City and LJCFF, *CERF v. City*, San Diego Superior Court Case No. 37-2010-00095062-CU-TT-CTL, Court of Appeal Case No. D060230 (CERF I). In CERF I, CERF alleged, among other things, that the City violated the California Environmental Quality Act (CEQA) when it permitted the 2010 La Jolla Cove Fireworks Show without first performing environmental review. CERF alleged the La Jolla Cove Fireworks Show was subject to CEQA because it required a discretionary park use permit and a discretionary special event permit. The City and LJCFF argued that the show was not subject to CEQA because it required only a ministerial park use permit, which they claimed was exempt from CEQA, and that the show did not require a special event permit; and

WHEREAS, on October 19, 2010, CERF filed a second lawsuit against the City, *CERF v. City*, Case No. SDSC 37-2010-00102574-CU-TT-CTL (CERF II). In CERF II, CERF alleged, among other things, that the City's current permitting scheme for issuing special events is a discretionary process, and the City has a "pattern and practice" of not complying with CEQA when issuing special event permits. That case is stayed at the trial court level pending resolution of CERF I. The City has conceded its current special event permitting scheme is a discretionary process. A hearing is set for July 18, 2014, on CERF's motion to lift the stay; and

WHEREAS, on May 24, 2011, the City amended San Diego Municipal Code (SDMC) section 63.0103 with the intent of clarifying that issuance of certain classes of park use permits require ministerial approval and therefore are not subject to CEQA. The City also amended SDMC section 22.4005 with the intent of clarifying that certain fireworks shows are exempt from the special event permitting process. The City determined that both amendments were exempt from CEQA; and

WHEREAS, on May 27, 2011, CERF filed a third lawsuit against the City and LJCF, *CERF v. City*, Case No. 37-2011-00092008-CU-TT-CTL, Court of Appeal Case No. D062636 (CERF III). In that case, CERF alleges, among other things, that the City violated CEQA when it adopted the May 24, 2011, SDMC amendments, and the City disputes all allegations; and

WHEREAS, on May 27, 2011, the trial court (the Honorable Linda Quinn presiding) issued a ruling in CERF I, which stated that the 2010 La Jolla Cove Firework Show required a discretionary park use permit and discretionary special event permit (analyzed under the pre-amended code sections) and that the May 24, 2011, amendments to SDMC section 63.0103 maintained a discretionary process for park use permits; and

WHEREAS, on June 3, 2011, the trial court (Judge Quinn) issued an order staying enforcement of its May 27, 2011, order; and on June 6, 2011, the trial court issued a “Supplemental Ruling,” stating that all park use permits and special event permits are subject to environmental review under CEQA; and on June 20, 2011, the court issued a final judgment in CERF I. The City and LJCFF have appealed from that judgment. CERF I is currently on appeal. The parties have briefed the matter, but a hearing date has not been set; and

WHEREAS, on November 14, 2011, the City again amended SDMC section 63.0103 with the intent of making certain park use permits ministerial, if the permitted event is within the “capacity” of the park where the event will be held. With the November 14, 2011, amendment, the City retained discretionary permitting authority over certain activities requiring a park use permit (e.g., sales of merchandise). In conjunction with the adoption of the amendments, the Park and Recreation Department articulated its interpretation that: “Park Capacity is the maximum number of people that may receive ministerial permits for those activities requiring park use permits pursuant to the [SDMC]. Park Capacity does not refer to the maximum number of people that may be permitted to use the park through a discretionary permit, or total number of people that may use the park at one time.” (This interpretation is hereafter referred to as “the Capacity Interpretation”). The City determined that the SDMC amendments were exempt from CEQA; and

WHEREAS, on December 16, 2011, CERF filed a fourth lawsuit against the City, *CERF v. City*, Case No. 37-2011-00102639-CU-TT-CTL, Court of Appeal Case No. D062634 (CERF IV). In that case, CERF alleged the City violated CEQA when it adopted the November 14, 2011, amendments, and that the Capacity Interpretation was arbitrary and capricious and contrary to law. City disputes these allegations; and

WHEREAS, on June 14, 2012, CERF III and CERF IV were tried before Judge William Dato. On June 15, 2012, Judge Dato issued a Proposed Statement of Decision and Judgment directing the City to rescind the amendments to SDMC sections 22.4005 and 63.0103. The final judgment was entered for both CERF III and CERF IV on August 23, 2012, and Judge Dato stayed the effectiveness of his rulings pending a hearing to determine whether the stays should be lifted; and

WHEREAS, the City appealed from both the CERF III and CERF IV judgments, and on September 24, 2012, the Court of Appeal granted the City's motion to hear the CERF I, CERF III, and CERF IV appeals together. CERF III and IV are not yet fully briefed on appeal; and

WHEREAS, the trial court's stays on enforcement of the CERF I, CERF III, and CERF IV judgments are still in effect. CERF has filed motions to lift the stays. Those motions are set for hearing on July 18, 2014; and

WHEREAS, CERF filed a motion for attorneys' fees in CERF I; Judge Quinn did not award any attorney fees in response to the motion; and

WHEREAS, the City and CERF stipulated to extend the due date for CERF to file attorney fee motions in CERF III and CERF IV until 60 days after a final appellate court ruling in those cases; and

WHEREAS, the parties agreed to terms of settlement to fully and finally resolve all four lawsuits without the need for further litigation, and a settlement agreement was approved by the City Council in Closed Session on April 29, 2014; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, as follows:

1. The Mayor, or his designee, is authorized to pay the sum of \$250,000 from the Public Liability Fund 720045, in settlement of each and every claim for attorney fees and costs

against the City of San Diego, its agents and employees, resulting from the following cases:

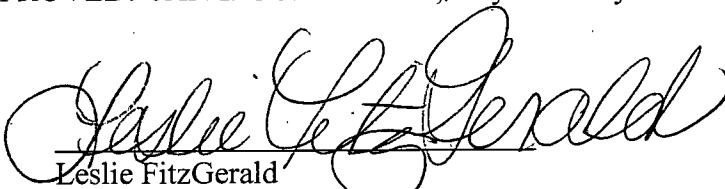
Coastal Environmental Rights Foundation, Inc. v. City of San Diego, Superior Court Case No. 37-2010-00095062-CU-TT-CTL (CERF I); *Coastal Environmental Rights Foundation, Inc. v. City of San Diego*, Superior Court Case No. 37-2010-00102574-CU-TT-CTL (CERF II); *Coastal Environmental Rights Foundation, Inc. v. City of San Diego*, Superior Court Case No. 37-2011-00092008-CU-TT-CTL (CERF III); and *Coastal Environmental Rights Foundation, Inc. v. City of San Diego*, Superior Court Case No. 37-2011-00102639-CU-TT-CTL (CERF IV).

2. The Chief Financial Officer is authorized to appropriate and expend \$250,000 from the Public Liability Fund 720045, contingent upon the City Comptroller first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

3. The City Comptroller is authorized to issue a check in the amount of \$250,000, made payable to Coastal Environmental Rights Foundation, Inc.

APPROVED: JAN I. GOLDSMITH, City Attorney


By


Leslie FitzGerald
Senior Chief Deputy City Attorney

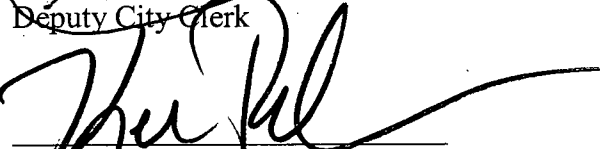
LAF:nja
05/22/14
Or.Dept: City Attorney
CC No. 3000007006
Doc. No. 792785

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 17 2014.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 6/25/14
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING CC 3000007006
 DEPT. NO.: 1515

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____

Purpose: _____

Date: _____ By: _____

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$250,000.00

Vendor: Case No . 37-2010-00095062-CU-TT-CTL

Purpose: To Pay settlement to Costal Environmental Rights Foundation

Date: June 2, 2014 By: Holly Hernandez

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
01	720045			OTHR-00000000-GG	512007	1515	151500011		\$250,000.00
TOTAL AMOUNT									\$250,000.00

FUND OVERRIDE

CC 3000007006

Passed by the Council of The City of San Diego on JUN 17 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 25 2014

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 309044