

RESOLUTION NUMBER R- 313940

DATE OF FINAL PASSAGE MAR 03 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SETTLEMENT AGREEMENT BETWEEN SAN DIEGO MUNICIPAL EMPLOYEES ASS'N (MEA), DEPUTY CITY ATTORNEYS ASS'N OF SAN DIEGO (DCAA), AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL 127 (LOCAL 127), SAN DIEGO FIREFIGHTERS LOCAL 145 (LOCAL 145) AND THE CITY OF SAN DIEGO

WHEREAS, four of the City's recognized employee organizations, the San Diego Municipal Employees Association (MEA); Deputy City Attorneys Association (DCAA); American Federation of State, County and Municipal Employees, AFL-CIO, Local 127 (AFSCME Local 127); and San Diego City Firefighters, Local 145 (Local 145) (collectively referred to as the "Unions"); challenged Proposition B on the grounds that the City violated the Meyers-Milias-Brown Act (MMBA) when former Mayor Jerry Sanders failed to engage in meet and confer with the City's impacted employee organizations; and

WHEREAS, the Unions filed unfair practice charges against the City with the California Public Employment Relations Board (PERB). *San Diego Municipal Employees Ass'n et al. v. City of San Diego*, PERB Case Nos. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M. After an administrative hearing, on December 29, 2015, PERB found that the City violated the MMBA and PERB regulations. *City of San Diego*, PERB Dec. No. 2464-M (2015) (PERB Decision); and

WHEREAS, the City filed a writ of extraordinary relief, appealing the PERB Decision to the Court of Appeal, which found in the City's favor and determined that PERB erred. *Boling v. Public Employment Relations Bd.*, 10 Cal. App. 5th 853 (2017); and

WHEREAS, the Unions successfully petitioned the California Supreme Court for review, and on August 2, 2018, the Court of Appeal opinion was reversed. *Boling v. Public Employment Relations Bd.*, 5 Cal. 5th 898 (2018). The California Supreme Court remanded the case back to the Court of Appeal to address the appropriate judicial remedy for the identified MMBA violation. The City filed a Petition for Certiorari with the United States Supreme Court on First Amendment grounds which was denied on March 18, 2019. *City of San Diego v. Public Employment Relations Bd.*, 139 S.Ct. 1337 (2019); and

WHEREAS, on March 25, 2019, the Court of Appeal issued its opinion on remand addressing the appropriate judicial remedy with minor modifications to PERB's Decision. *Boling v. Public Employment Relations Bd.*, 33 Cal. App. 5th 376 (2019); and

WHEREAS, on May 2, 2019, PERB issued a decision modifying its original order to comply with the Court of Appeal's remedy opinion. The May 2, 2019 PERB Decision states, in pertinent part, "Upon request by the Unions, [the City] join in and/or reimburse the Unions' reasonable attorneys' fees and costs for litigation undertaken to rescind the provisions of Proposition B, and to restore the status quo as it existed before the adoption of Proposition B." *City of San Diego*, PERB Decision No. 2464a-M, at 5 (May 2, 2019); and

WHEREAS, the Unions contend the City is responsible under PERB's Decision for their attorneys' fees and costs for legal services incurred in their defense of the PERB Decision, including the period after the initial PERB Decision (December 29, 2015 through to the March 2019 decision by the Court of Appeal (the "Pre-March 2019 attorneys' fee and cost claims")); and

WHEREAS, in Special Closed Session on January 10, 2022, the City Council, by the following votes: Yeas, Districts 1, 2, 3, 4, 6, 8, and 9; Nays, None, and Recused, Districts 5, and 7; approved the Settlement of the Pre-March 2019 attorneys' fee and cost claims for an amount consistent with the amounts set forth below; NOW, THEREFORE,

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

- 1) Authorizes the Mayor or his designee to pay the sum of \$667,249.91 from Public Liability Fund No. 720045, in settlement of any and all Pre-March 2019 claims for costs and fees of any type, including attorneys' fees and interest, against the City of San Diego, its agents and employees, arising from the Unions' defense of PERB Decision No. 2464-M (2015); and
- 2) Authorizes the Chief Financial Officer to expend an amount not to exceed \$667,249.91 from Public Liability Fund No. 720045, for the purpose of settling this claim.

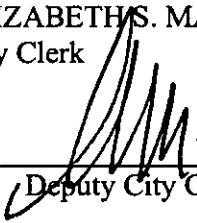
APPROVED: MARA W. ELLIOTT, City Attorney

By /s/M. Travis Phelps  
M. Travis Phelps  
Senior Chief Deputy City Attorney

MTP:msb  
February 9, 2022  
March 2, 2022 COR. COPY  
Or.Dept: City Attorney  
CC No. 3000014613  
Doc. No.: 2905356

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 01 2022

ELIZABETHS. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 3/2/22  
(date)

  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor



Passed by the Council of The City of San Diego on MAR 01 2022, by the following vote:

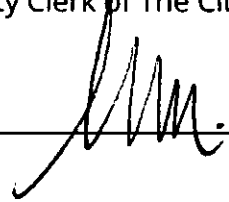
Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 03 2022.

**(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: TODD GLORIA  
Mayor of The City of San Diego, California.

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

By , Deputy

Office of the City Clerk, San Diego, California  
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