

November 16, 2023

CLOSED SESSION REPORT OF FINAL ACTION

Date of Meeting: *Thursday, November 16, 2023*

Litigation Negotiations

NAME OF ACTION:

Environmental Democracy Project (EDP) v. City of Oakland, the City of Oakland Planning and Building Department, the City of Oakland Office of City Administrator, I Metals, Inc. and DSM Management, Inc and Does 1 through 20
Alameda County Superior Court, Case No. 22CV020520

This matter is listed as **Item No. 1(a)** on the Closed Session Agenda:

The council authorized monetary settlement in the amount of **\$41,354.00**

This case arose out of incidents occurring on **September 16, 2020**

FACTS/ISSUES:

Plaintiff Environmental Democracy Project (EDP) alleges that the City has unlawfully approved major cannabis cultivation projects without an analysis of environmental impacts under the California Environmental Quality Act (“CEQA”).

EDP further alleges that the City has a pattern and practice of exempting all cannabis cultivation projects from CEQA and routinely grants permits to operate cannabis cultivation operation without conducting an analysis of the environmental impacts of the projects on the neighborhoods and residents of East Oakland.

EDP also alleges that the City’s approval of cannabis cultivation projects did not meet the requirement for the exemption because they were new uses, rather than modifications to an existing industrial-type use.

EDP’s attorney’s fees are approximately \$41,354.00

The City has determined that settlement of the claims for Forty-One Thousand Three Hundred Fifty-Four Dollars and Zero Cents (\$41,354.00) for attorneys’ fees and the following terms is in the best interest of the City:

- Within one year of execution of the settlement agreement, City staff must bring to the City Council for its consideration proposed amendments to its ordinances that would:
 - o Provide the public with notice of all cannabis cultivation permit approvals;

- o Allow members of the public to administratively appeal cannabis cultivation permits that would result in a cumulative total of at least 20,000 square feet of indoor cultivation at one parcel or address;
 - o Require applicants for at least 20,000 square feet of indoor cultivation to obtain confirmation from PG&E that it can handle the applicant's load using PG&E protocols for load studies;
 - o Require cannabis cultivation applicants to obtain all legally required permits, including building, fire, and State cannabis permits;
 - o Require City staff to periodically inspect cannabis growth operations at least once a year;
 - o Require applicants for more than 20,000 cumulative square feet of growth to identify other such operators within 300 feet, and for the City to evaluate whether such other operators may result in certain cumulative impacts;
 - o Prohibit indoor cannabis operations within 600 feet of any schools or residential live-work uses; and
 - o Ban the use of fossil fuel generators for indoor cultivation (which the City already bans)
- The City must adopt express guidelines governing how it will exercise its discretion in taking enforcement actions for indoor cultivators who violate their permits or City ordinances.

Motion Made by: Councilmember Janani Ramachandran

Motion Seconded by: Councilmember Noel Gallo

AYES: Fife, Gallo, Jenkins, Kalb, Kaplan, Ramachandran, Reid and President Fortunato
Bas=5

NOES: Fife, Gallo, Jenkins, Kalb, Kaplan, Ramachandran, Reid and President Fortunato Bas=

ABSENT: Fife, Gallo, Jenkins, Kalb, Kaplan, Ramachandran, Reid and President Fortunato
Bas=3

ABSTENTIONS: Fife, Gallo, Jenkins, Kalb, Kaplan, Ramachandran, Reid and President Fortunato Bas=