

SETTLEMENT AGREEMENT and GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made by and between Robert S. Means, Don Bloomer, and American Civil Liberties Union Of Northern California (“plaintiffs”) and the City of Milpitas, a municipal corporation; Thomas C. Williams, City Manager for the City of Milpitas; and Felix J. Reliford, Acting Planning and Neighborhood Services Director for the City of Milpitas (“defendants” or “the City”).

1. Claims have been made that the sign limitations in the City of Milpitas’s Single Family Residential Zone ordinance do not meet Constitutional standards for signs about political issues, including the limitation of such signs to one square-foot.
2. The City intends to conduct a comprehensive review of the Sign Ordinance (“comprehensive review”), as part of which Constitutional standards will be considered and revisions recommended for meeting those standards.
3. On or before November 6, 2012, the City will issue an administrative order suspending enforcement of Municipal Code Section XI-10-24.03 B 2 a, which limits the use of signs in Single Family Residential Zones. A copy of this suspension order is attached hereto as Exhibit A. This order follows the voluntary suspension of those same provisions by the City that is currently in place. Pursuant to this order, the Code Enforcement Division of the Planning and Neighborhood Services Department and all other City staff shall not take action to enforce this section of the Code unless and until the comprehensive review is completed.
4. This Order will be presented to the City Council by the City Attorney at the open session of the Council meeting of November 6, 2012.
5. The City agrees that this suspension order will remain in effect until the comprehensive review of the sign ordinance is completed.
6. In settlement of the matter of *Robert S. Means v. City of Milpitas*, Santa Clara County Superior Court case no. 112CV229072 (the “Civil Action”), the parties stipulate that attorneys’ fees and costs in the amount of \$20,000.00 shall be paid by defendant City of Milpitas to plaintiffs by check made payable to the American Civil Liberties Union Foundation of Northern California within ten days (10) after the City Council approves this Settlement Agreement and issues the suspension order.
7. Plaintiffs will file a voluntary dismissal with prejudice of their Complaint in *Robert S. Means v. City of Milpitas*, Santa Clara County Superior Court case no.

112CV229072, within five (5) days after receipt of the check to cover Plaintiffs' attorneys' fees and costs.

8. Plaintiffs hereby release and forever discharge defendants and the City of Milpitas' elected officials, employees, officers, directors, agents, attorneys, volunteers, legal successors, and assigns of and from any and all claims, actions, causes of action, whether now known or unknown, suspected or unsuspected, which they may now have, own, hold, or at any other time had, owned or held, against defendants and the City of Milpitas' elected officials, employees, officers, directors, agents, attorneys, volunteers, legal successors and assigns, based upon or arising out of any matter, cause, fact, thing, act, or omission whatsoever occurring or existing at any time to and including the date that plaintiffs execute this Agreement arising directly out of or in any way connected with, or based upon, or in any way related to, the subject matter of the Civil Action (collectively, the "released matters").
9. Plaintiffs represent that they are not aware of any claims they may have against defendants as to the subject matter described above, other than the claims that are released by this Agreement. Plaintiffs further acknowledge they have been advised by legal counsel and are familiar with California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs hereby expressly waive any right or benefit which they may have under Section 1542 of the California Civil Code or any similar provision of the statutory or non-statutory law of any other jurisdiction to the full extent that they may lawfully waive those rights and benefits pertaining to the subject matter of this Agreement. Plaintiffs also acknowledge that in the future they may discover claims or facts in addition to or different from those that they now know or believe to exist with respect to the subject matter of this Agreement, and that they intend to fully, finally and forever settle all of the released matters in exchange for the benefits set forth above.

10. No action taken by the parties hereto, or each of them, either previously or in connection with this Agreement will be deemed or construed to be (a) an admission of any misconduct heretofore, or (b) an acknowledgment or admission by a party of any fault or liability whatsoever to the other party or to any third party.

11. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior negotiations and agreements whether written or oral.
12. This Agreement may not be altered or amended except by a written document mutually executed by the parties.
13. This Agreement will in all respects be governed by the laws of the State of California as applied to agreements entered into and to be performed entirely within California between California residents.
14. Each party represents that it/he has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.
15. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.
16. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable in any respect under any statute, rule or law of any state or of the United States of America, such unenforceability will not affect any other provision of this Agreement, but, with respect only to the jurisdiction holding the provision to be unenforceable, this Agreement will then be construed as if such unenforceable provision or provisions had never been contained herein.

The parties have executed the foregoing on the dates shown below.

Robert S. Means

Date: _____

Don Bloomer

Date: _____

American Civil Liberties Union of
Northern California

By: _____
Alan L. Schlosser

Date: _____

The City of Milpitas, a municipal corporation

By: _____
Thomas C. Williams, its City Manager

Date: _____

Thomas C. Williams, City Manager

Date: _____

Felix J. Reliford, Acting Planning and
Neighborhood Services Director

Date: _____

APPROVED AS TO FORM:

ALAN L. SCHLOSSER
MICHAEL T. RISHER
American Civil Liberties Union
Foundation of Northern California, Inc.

MICHAEL OGAZ
BRYAN M. OTAKE
Office of the City Attorney
City of Milpitas

GARGI DAVÉ
Attorneys for Plaintiffs

Attorneys for Defendants

Alan Schlosser

Michael Ogaz

MEMORANDUM

Office of the City Manager & Office of the City Attorney



To: Code Enforcement Division, Planning and Neighborhood Services Department and All Concerned Citizens of Milpitas

From: Thomas C. Williams, City Manager _____
Michael J. Ogaz, City Attorney _____

Subject: **Suspend Enforcement of Sign Ordinance in Single Family Residence Areas**

Date: November 6, 2012

Currently the City of Milpitas is engaged in the process of amending its Sign Ordinance. The intention is to conduct a comprehensive review of the Sign Ordinance and consider input from all interested groups. This will likely be a time-consuming process. Recently claims have been made that the sign limitations in the Single Family Residential Zone do not meet Constitutional standards and therefore should not be enforced. As part of the process for review of the Sign Ordinance, Constitutional standards will be considered and revisions recommended as appropriate.

Pending revisions to the Sign Ordinance, the City will suspend enforcement of Milpitas Municipal Code Section XI-10-24.03 B 2 a, which limits the use of signs in Single Family Residential Zones. The Code Enforcement Division of the Planning and Neighborhood Services Division and all other City staff shall not take action to enforce that section of the Code until the Sign Code is amended.