

ORDINANCE NO. 2012- 3581

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF FREMONT A SETTLEMENT AGREEMENT BETWEEN THE CITY AND CRAIG MILLER AND STEVEN MILLER IN CONNECTION WITH COMMON PLEAS CASE NO. 10-CV-894 AND TO EXECUTE ALL DOCUMENTS AND TAKE ACTION AS REQUIRED UNDER THE AGREEMENT, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FREMONT, STATE OF OHIO:

SECTION 1. That the Mayor is hereby authorized to execute on behalf of the city a settlement agreement with Craig and Steven Miller, in a form approved by the law director, which shall be substantially in the form attached to this ordinance, and that the mayor and other city officials take such further action as is required to put into effect all the terms of said agreement, including executing and delivering the funds and the deed and easement described in the agreement and making the payment as provided therein, which will terminate by agreement the litigation in Sandusky County Common Pleas Case No. 10-CV-894.

SECTION 2. The immediate operation of the provisions of this ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Fremont. Said emergency being that unless the settlement is immediately approved, the city may be exposed to substantial risk of increased damages it may have to pay in the future.

This ordinance, provided it receives a two-thirds yea or nay vote of all the members elected to the Fremont City Council, is hereby declared to be an emergency measure and this ordinance shall be in full force and effect from and after its passage by the Council of the City of Fremont, approval by the Mayor, and publication and posting as required by law.



James G. Weaver
President of Council

PASSED: 4-5-12

Effective Date: 4-5-12

YEAS: 7 NAYS: 0



Elaine J. Huntley, Clerk of Council



James H. Ellis III, Mayor

ORDI726

Approved as to form:



James F. Melle, Director of Law
City of Fremont, Ohio

Agreement

This is an agreement between the City of Fremont, Ohio, Plaintiff in Sandusky County Common Pleas No. 10 CV 894, which is on appeal as case No. S-11-48, ("City"), and Craig A. Miller and Steven J. Miller, Defendants in said action ("Millers").

Whereas, the parties desire to avoid further litigation and the associated expenses and risks, and to resolve this matter by agreement; and

Whereas, this agreement has been authorized by Ordinance No. 2012-_____, the execution and delivery of an easement has been authorized by Ordinance No. 2012-_____, the execution and delivery of a quitclaim deed has been authorized by Ordinance No. 2012-_____, and the funds for this agreement have been appropriated by Ordinance No. 2012-_____ ; and

Whereas, the parties intend to incorporate this agreement into a joint motion to vacate the prior judgment in said case and make this agreement an order of court.

Now therefore, in consideration of the benefits to be derived, the parties agree:

1. The City will file a motion to dismiss its appeal and the Millers and City will file a joint motion to vacate the trial court's judgment of October 21, 2011, including the Miller's claim for Attorney fees and enter judgment approving this settlement and making it an order of court ("the order").

2. Upon entry of the order, City shall immediately deposit with William Wingard, Esq., as escrow agent, the sum of eighty thousand dollars. This sum of eighty thousand dollars shall be the entire amount due and owing by the City. In the unlikely event that the repairs exceed the eighty thousand dollars the Millers shall be responsible for any and all additional costs. The eighty thousand dollars shall be directed to be disbursed in partial and final payments according to a disbursement schedule attached hereto as Exhibit 1, and such disbursements will be made as such benchmarks are reached as determined in the sole and exclusive opinion of the escrow agent, whose decision shall be final.

3. Upon entry of said order, the city will execute and deliver to Millers a quitclaim deed to the north part of Inlot 2155, which deed shall contain a restriction that nothing shall be placed on the property being conveyed that constitutes advertising for hire, i.e., billboards, the form of which deed shall be substantially as attached Exhibit 2.

4. Upon entry of the Order, the City will execute and deliver to Millers an easement to enter the part of Inlot 2155 retained by the city as necessary to make the repairs contemplated by this agreement and to maintain the exterior wall of the building at 205 S. Front Street in the future, the form of which is attached as Exhibit 3.

5. Upon completion of items 1 through 4 of this agreement, Millers shall immediately using their own forces and contractors and at their sole expense make repairs to the south exterior of the wall lying along the boundary between Inlots 2154 and 2155, in accordance with the scope of work attached hereto as Exhibit 4.

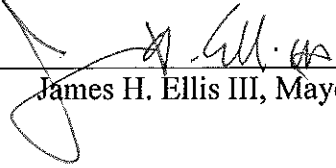
6. Upon Millers completing the repairs contemplated by this agreement, the City shall install at its expense on that portion of Inlot 2155 retained by it suitable barriers to effectively restrict the ability of vehicles parked in its lot on Inlot 2155 impacting the south exterior wall of the building at 205 South Front Street.

7. In consideration of the foregoing and upon payment of said funds to the escrow agent and delivery to the Millers of the deed and easement, the Millers for themselves and their successors, assigns and heirs release the City of Fremont from any and all claims they have or may have, known or unknown, now and in the future for all time arising out of or on account of any repair, maintenance, restructuring, etc., or any condition associated with the wall lying along the boundary between Inlots 2154, 2155, it being intended that the terms and conditions in this agreement constitute a final resolution of the matter.

8. In consideration of this agreement and the performance by Millers of the obligations it imposes on them, City releases the Millers and their assigns and heirs from any and all claims it has or may have, known or unknown, now and in the future for all time arising out of any repair, maintenance, restructuring, etc., or any condition associated with the wall lying along the boundary between Inlots 2154, 2155, it being intended by the city that the terms and conditions in this agreement constitute a final resolution of the matter.

Executed April _____, 2012.

City of Fremont, by:



James H. Ellis III, Mayor

Craig A. Miller

Steven J. Miller

Approved as to Form:

James F. Melle, Director of Law
City of Fremont, Ohio

Ronald J. Mayle
Attorney for Millers

Auditor's Certificate

Funds to satisfy the foregoing agreement have been appropriated and are available for payment as provided in the foregoing agreement.

John W. Lauer
Auditor, City of Fremont