

00-R-0678

(Do Not Write Above This Line)

A RESOLUTION BY

THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE CITY ATTORNEY OR HER DESIGNEE TO SETTLE THE CASE OF MONTICELLO, LTD. V. CITY OF ATLANTA, SUPERIOR COURT OF FULTON COUNTY, CIVIL ACTION FILE NUMBER E-47400 BY ADJUSTMENT OF THE AMOUNT OWED OF SANITARY SERVICE CHARGES OWED TO THE CITY OF ATLANTA.

ADOPTED BY

By Rosalind Rubens Newell Deputy City Attorney

COUNCIL

- CONSENT REFER
REGULAR REPORT REFER
ADVERTISE & REFER
1st ADOPT 2nd READ & REFER
PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee Date Chair Referred to

P.S. & L.A.

5/19/00

C.T. [Signature]

Action:

Fav, Adv, Hold (see rev. side) Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side) Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side) Other:

Members

Refer To

FINAL COUNCIL ACTION

- 2nd 1st & 2nd 3rd
Readings
Consent V Vote RC Vote

CERTIFIED

CERTIFIED MAY 15 2000

COUNCIL PRESIDENT PROTEM

CERTIFIED MAY 15 2000

[Signature] MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

MAY 24 2000

WITHOUT SIGNATURE BY OPERATION OF LAW



CITY COUNCIL
ATLANTA, GEORGIA

00-*R*-0678

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WHEREAS, Monticello, Ltd. owns an apartment complex located at 3670 Martin Luther King Jr. Drive, S.W. and bearing Fulton County Georgia Parcel Identification Number 14F-0015-LL-071-0 (the "Subject Property"); and

WHEREAS, for all years beginning in 1992, Monticello has failed and/or refused to pay some or all portions of the sanitary service taxes and/or fees which are assessed by the City of Atlanta, on the Subject Property and billed to Monticello on the Tax Statement sent by the Office of the Tax Commissioner of Fulton County (the "Tax Statements"); and

WHEREAS the City, through the Office of the Tax Commissioner of Fulton County, has imposed one or more fi fas on the subject property to secure the payment of the past due sanitary service assessments as well as any other unpaid taxes or assessments which are due and owing on the property; and

WHEREAS, Monticello claimed that a large portion of the units on the Subject Property were uninhabitable and could not have generated any solid waste such that no service was being provided for the fees imposed by the City; and

WHEREAS, Monticello filed suit against the City seeking to have that portion of the sanitary service fees attributable to the alleged uninhabitable units set aside on the basis that said fees are not authorized by the Charter of the City of Atlanta, and to set aside fi fas imposed on the Subject Property by the City; and

WHEREAS at all times relevant to this action, there existed a procedure whereby a property owner or operator could request from the City that an adjustment be made to the portion of the sanitary service charges which is based on the number of units in a complex, if those units were declared uninhabitable by the Department of Housing and Community Development or a predecessor agency but such procedure was not codified or implemented as a written procedure of the Bureau of Solid Waste Services; and

WHEREAS, Monticello appealed the grant of summary judgment in favor of the



City in the trial court to the Court of Appeals and, after consideration of the record, the briefs of the parties and oral argument, the Court of Appeals reversed the decision of the trial court finding that the City is not authorized under Section 601 (g) of its Charter to assess fees for the collection, removal, or disposal of solid wastes against a property owner for individual units which are neither occupied or habitable; and

WHEREAS, the Court of Appeals further found that because the City procedures were not codified or implemented as written procedures that a question of fact existed as to whether Monticello had exhausted its administrative remedies and that the case therefore could not be decided on summary judgment, and returned the case to the trial court; and

WHEREAS, the case is now before the Superior Court of Fulton County on remittitur and the holding of the Court of Appeals has resolved the main issue which could be decided by a trial of this case and in order to avoid the expense and uncertainty which could result from further proceedings:

THE CITY COUNCIL OF THE CITY OF ATLANTA RESOLVES AS FOLLOWS:

- SECTION 1. The City Attorney or her designee is authorized to execute an appropriate settlement document which will remove those charges which the Court of Appeals has ruled uncollectible by the City of Atlanta. The amount of those charges is agreed by the City and Monticello to be \$133,286.88. After this adjustment, the amount of the balance of \$251,367.53 which remains contested between the parties is \$118,080.65
- SECTION 2. The City Attorney or her designee is authorized to execute an appropriate settlement document which will settle said remaining charges on the account of the Subject Property for \$59,040.33.
- SECTION 3. The adjustment to the sanitary service balance of Monticello is conditioned on the execution of a full and complete release of all claims and on the payment of the agreed upon figure of \$59,040.33 within 15 days after the approval of this resolution.
- SECTION 4. The Department of Finance and the Department of Public Works are authorized to take such administrative actions as are necessary to implement the terms of this settlement.

A true copy,

Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
RETURNED WITHOUT SIGNATURE OF THE MAYOR
APPROVED as per City Charter Section 2-403

May 15, 2000

May 24, 2000

COUNCIL PRESIDENT PROTEM DEBI STARNES PRESIDED

RCS# 1952
5/15/00
4:01 PM

Atlanta City Council

Regular Session

CONSENT AGENDA PAGES (1 - 11)

ADOPT

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

NV McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	NV Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM
CONSENT AGENDA
00-O-0654
00-O-0396
00-R-0329

COUNCIL PRESIDENT PITTS
ABSTAINED ON 00-O-0523

COUNCILMEMBER MARTIN
ABSTAINED ON 00-R-0660

05/15/00 Council Meeting	
ITEMS ADOPTED ON CONSENT AGENDA	ITEMS ADVERSED ON CONSENT AGENDA
1. 00-O-0204	34. 00-R-0598
2. 00-O-0523	35. 00-R-0599
3. 00-O-0649	36. 00-R-0600
4. 00-O-0650	37. 00-R-0601
5. 00-O-0255	38. 00-R-0602
6. 00-O-0397	39. 00-R-0603
7. 00-O-0398	40. 00-R-0604
8. 00-O-0568	41. 00-R-0605
9. 00-O-0050	42. 00-R-0606
10. 00-O-0530	43. 00-R-0607
11. 00-O-0531	44. 00-R-0608
12. 00-O-0656	45. 00-R-0609
13. 00-O-0378	46. 00-R-0610
14. 00-O-0651	47. 00-R-0611
15. 00-O-0652	48. 00-R-0612
16. 00-O-0657	49. 00-R-0613
17. 00-O-0664	50. 00-R-0614
18. 00-O-0665	51. 00-R-0615
19. 00-R-0623	52. 00-R-0616
20. 00-R-0633	53. 00-R-0617
21. 00-R-0678	54. 00-R-0618
22. 00-R-0399	55. 00-R-0619
23. 00-R-0400	56. 00-R-0620
24. 00-R-0587	57. 00-R-0627
25. 00-R-0624	58. 00-R-0628
26. 00-R-0660	59. 00-R-0631
27. 00-R-0591	60. 00-R-0632
28. 00-R-0692	
29. 00-R-0597	
30. 00-R-0621	
31. 00-R-0622	
32. 00-R-0629	
33. 00-R-0630	