

00-R-1066

(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 AT&T WIRELESS PCS, INC. V. THE CITY OF ATLANTA UNITED STATES DISTRICT COURT, CIVIL ACTION NO. 1:98-CV-0962A JEC, FOR \$30,000 IN ATTORNEY'S FEES, COSTS AND DAMAGES.

Approved: Susan Pease Langford City Attorney

ADOPTED BY

JUL 17 2000

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

Date Referred

Referred To:

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First Reading

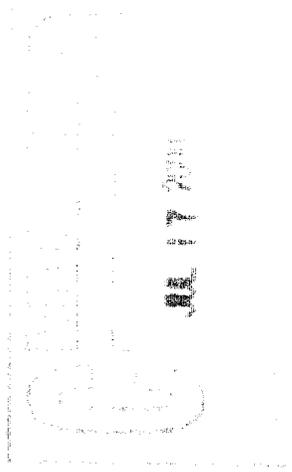
Committee Date Chair Referred to

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
Consent V Vote RC Vote

CERTIFIED



CERTIFIED JUL 17 2000

Ruth Douglas Johnson MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

JUL 26 2000

WITHOUT SIGNATURE BY OPERATION OF LAW

CITY COUNCIL  
ATLANTA, GEORGIA

00-~~2~~-1066

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BY PUBLIC SAFETY & LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE CITY ATTORNEY OR HER DESIGNEE TO SETTLE THE CASE OF AT&T WIRELESS PCS, INC. V. THE CITY OF ATLANTA, UNITED STATES DISTRICT COURT, CIVIL ACTION NO. 1:98-CV-0962A JEC, FOR \$30,000 IN ATTORNEY'S FEES, COSTS AND DAMAGES.

WHEREAS, AT&T was issued a Special Administrative Permit by the Bureau of Planning on July 17, 1997 to locate additional antennae 200 feet up an existing telecommunications tower at 2530 Benjamin E. Mays Drive and AT&T began its work in reliance upon its permit; and

WHEREAS, the Special Administrative Permit was revoked eleven days later by the Bureau of Planning on the grounds that this would enlarge a nonconforming use and that AT&T should apply for a Special Use Permit from the Atlanta City Council; and

WHEREAS, AT&T appealed the Bureau of Planning's decision to the Board of Zoning Adjustment which affirmed it; and

WHEREAS, AT&T then applied for a Special Use Permit on November 5, 1997 and, after several deferrals by the Zoning Review Board, the Atlanta City Council denied the application on March 2, 1998; and

WHEREAS, AT&T filed Civil Action No. 1:98-CV-0962A JEC in the United States District Court on April 1, 1998 claiming that the City Council's denial of its application for a Special Use Permit violated the Telecommunications Act of 1996, *inter alia*, in that its decision was not based upon substantial evidence but rather upon generalized and unsubstantiated fears of the surrounding community; and

WHEREAS, in an Order dated October 7, 1998, the Honorable Julie E. Carnes found that the record before the City Council did not contain substantial evidence to support denial of the Special Use Permit; and

WHEREAS, AT&T then moved for Summary Judgment on its Section 1983 claim for attorney's fees, costs and damages; and

WHEREAS, said motion was denied in an Order dated June 19, 1999 by the District Court finding that the Telecommunications Act of 1996 had implicitly foreclosed reliance on Section 1983 by providing wireless service providers a comprehensive means of enforcement and therefore did not allow for a claim for attorney's fees, costs and damages; and



WHEREAS, AT&T appealed that decision to the United States Eleventh Circuit Court of Appeals which in an Order dated April 26, 2000 reversed the District Court and found that Section 1983 remedies, including a claim for damages, attorney's fees and costs, were available to wireless service providers under the Telecommunications Act of 1996, and

WHEREAS, in an Order dated June 15, 2000, the Eleventh Circuit denied the city's Petition for a Rehearing and a Rehearing En Banc; and

WHEREAS, AT&T has stated its intention to seek attorney's fees and costs of approximately \$107,500 plus lost rents and lost profits for total damages in excess of \$123,000 but has agreed to settle its claim for damages for \$30,000:

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 settle the case of AT&T v. The City of Atlanta, United States District Court Civil Action No. 1:98-CV-0962A JEC, by paying the total amount of \$30,000.

SECTION 2. The Department of Finance is authorized to pay to AT&T the sum of \$30,000.

A true copy,

*Rhonda Daughkin Johnson*  
Municipal Clerk, CMC

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

JULY 17, 2000

JULY 26, 2000