

CITY COUNCIL  
ATLANTA, GEORGIA

A RESOLUTION BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION  
COMMITTEE:

02- R-1501

A RESOLUTION AUTHORIZING THE CITY  
ATTORNEY TO SETTLE THE CASE *JAMES C.  
KINCAID, D.D.S.P.A. v. THE CITY OF ATLANTA*, CIVIL  
ACTION NO. 2001-CV-37572, IN THE SUPERIOR  
COURT OF FULTON COUNTY, GEORGIA, AND FOR  
OTHER PURPOSES

WHEREAS, on three occasions over a period of four months in late 1999 and early 2000, the Tuxedo Center, a commercial office building housing the professional dentistry offices of Dr. James C. Kincaid, suffered damage as the result of sewage backups from the City-owned sewer line in Piedmont Road; and

WHEREAS, the Public Works Department cleaned out these grease blockages in the sewer line servicing Tuxedo Center on three occasions: October 12, 1999, December 29, 1999, and February 17, 2000.; and

WHEREAS, Dr. Kincaid has filed suit against the City of Atlanta, alleging the maintenance of a nuisance by the City due to the repeated invasions of his property by sewage from the City's line; and

WHEREAS, on the third occasion of a sewer backup the ground floor of Dr. Kincaid dental office was flooded with raw sewage which flowed into areas where patients were being treated, thereby shutting down the office and interrupting the use of the office; and

WHEREAS, the complaint filed by Dr. Kincaid alleges damages in excess of \$45,000, but he has offered through his counsel to accept the sum of \$30,000 in full settlement of his claim prior to the trouble and expense of a jury trial; and

WHEREAS, the Court has denied motions for summary judgment filed by both parties, and the case will shortly be set down for trial before a jury; and

WHEREAS, in the opinion of the City Attorney the proposed settlement, in the total sum of \$30,000.00, is in the best interests of the City:

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA:

Section 1: THAT the City Attorney is hereby authorized on behalf of the City of Atlanta to settle the case of *James C. Kincaid, D.D.S.P.A, v. the City of Atlanta*, Civil Action File No. 2001-CV-37572, in the Superior Court of Fulton County, Georgia, for the sum of Thirty Thousand (\$ 30,000.00) Dollars, in full settlement of all claims in said suit against the City of Atlanta;

Section 2: THAT in furtherance of said settlement the Chief Financial Officer is authorized upon the voucher of the City Attorney to issue the City's check in the sum of Thirty Thousand (\$ 30,000.00) Dollars, payable jointly to James C. Kincaid, D.D.S.P.A, and his attorneys, Fellows, Johnson & La Briola, LLP, and to charge such amount to Account No. 2J01-529017-T31001, "Settlement of Suits and Claims."

02-R-

A true copy,

*Rhonda Daughin Johnson*  
Municipal Clerk, CMC

ADOPTED by the Council  
APPROVED by the Mayor

SEP 03, 2002  
SEP 11, 2002

RCS# 3953  
9/03/02  
1:47 PM

Atlanta City Council

Regular Session

CONSENT I            Pgs. 1-14; Except 02-R-1137; 02-R-1458

ADOPT

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
B Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

CONSENT I

---

**09/03/02 Council Meeting**

---

**ITEMS ADOPTED ON CONSENT  
AGENDA****ITEMS ADVERSED  
ON CONSENT AGENDA**

- |               |               |               |
|---------------|---------------|---------------|
| 1. 02-O-1455  | 43. 02-R-1492 | 59. 02-R-1418 |
| 2. 02-O-1456  | 44. 02-R-1347 | 60. 02-R-1419 |
| 3. 02-O-1457  | 45. 02-R-1461 | 61. 02-R-1420 |
| 4. 02-O-1460  | 46. 02-R-1462 | 62. 02-R-1421 |
| 5. 02-O-1454  | 47. 02-R-1471 | 63. 02-R-1422 |
| 6. 02-O-1336  | 48. 02-R-1484 | 64. 02-R-1423 |
| 7. 02-O-1337  | 49. 02-R-1486 | 65. 02-R-1424 |
| 8. 02-O-1339  | 50. 02-R-1363 | 66. 02-R-1425 |
| 9. 02-O-1340  | 51. 02-R-1364 | 67. 02-R-1426 |
| 10. 02-O-1341 | 52. 02-R-1365 | 68. 02-R-1427 |
| 11. 02-O-1342 | 53. 02-R-1412 | 69. 02-R-1428 |
| 12. 02-O-1343 | 54. 02-R-1413 | 70. 02-R-1429 |
| 13. 02-O-1226 | 55. 02-R-1414 | 71. 02-R-1430 |
| 14. 02-O-1446 | 56. 02-R-1415 | 72. 02-R-1431 |
| 15. 02-O-1465 | 57. 02-R-1416 | 73. 02-R-1432 |
| 16. 02-R-1370 | 58. 02-R-1417 | 74. 02-R-1433 |
| 17. 02-R-1371 |               | 75. 02-R-1434 |
| 18. 02-R-1372 |               | 76. 02-R-1435 |
| 19. 02-R-1373 |               | 77. 02-R-1436 |
| 20. 02-R-1374 |               | 78. 02-R-1437 |
| 21. 02-R-1375 |               | 79. 02-R-1438 |
| 22. 02-R-1376 |               |               |
| 23. 02-R-1378 |               |               |
| 24. 02-R-1379 |               |               |
| 25. 02-R-1380 |               |               |
| 26. 02-R-1392 |               |               |
| 27. 02-R-1468 |               |               |
| 28. 02-R-1480 |               |               |
| 29. 02-R-1481 |               |               |
| 30. 02-R-1482 |               |               |
| 31. 02-R-1483 |               |               |
| 32. 02-R-1385 |               |               |
| 33. 02-R-1479 |               |               |
| 34. 02-R-1369 |               |               |
| 35. 02-R-1439 |               |               |
| 36. 02-R-1440 |               |               |
| 37. 02-R-1495 |               |               |
| 38. 02-R-1500 |               |               |
| 39. 02-R-1501 |               |               |
| 40. 02-R-1386 |               |               |
| 41. 02-R-1388 |               |               |
| 42. 02-R-1491 |               |               |

---

1<sup>st</sup> Consent I Vote: 14Yeas; 0 Nays (See RCS #3953)  
Items Removed from Consent: 02-R-1137; 02-R-1458

(Do not write below line)

A RESOLUTION BY THE PUBLIC SAFETY & LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SETTLE THE CASE OF JAMES C. KINCAID, D.D.S.P.A. v. THE CITY OF ATLANTA, CIVIL ACTION NO. 2001-CV-37572, IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA, AND FOR OTHER PURPOSES.

APPROVED BY:

*Rubens Newell*  
LINDA K. DISANTIS, / *per*  
CITY ATTORNEY

ADOPTED BY

SEP 03 2002

CONSENT REFER COUNCIL

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 \_\_\_\_\_

*PLS* Committee

Date: *9/3*  
Chair: *[Signature]*

Action: *[Signature]*  
Fav, Adv, Hold (see rev. side)  
Other

Members

*[Signature]*  
*[Signature]*  
*[Signature]*

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

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

SEP 03 2002

*[Signature]*  
MAYOR

SEP 03 2002

*[Signature]*  
MAYOR'S ACTION

APPROVED  
*[Signature]*  
MAYOR