

ORDINANCE 2010- 20 L+R

AN ORDINANCE AUTHORIZING THE EXECUTION OF A RELEASE AND SETTLEMENT AGREEMENT ENDING LITIGATION RELATED TO THE VILLAGE SIGN CODE AND DECLARING AN EMERGENCY

WHEREAS, the Village of Greenhills is currently involved in litigation related to the Village Sign Code; and

WHEREAS, the parties mutually desire to resolve the litigation through the terms of a Release and Settlement Agreement.

NOW, THEREFORE, be it ordained by the Council of the Village of Greenhills, Ohio, 5 members elected thereto concurring:

Section 1.

That the Municipal Manager, or Acting Municipal Manager as necessary, is hereby authorized to execute a Release and Settlement Agreement with said Agreement being substantially in the form of that attached hereto as Exhibit A, incorporated here in reference.

Section 2.

That all Village officials are further authorized to take any and all actions necessary to comply with the terms of said Agreement.

Section 3.


That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety of welfare, and shall be effective immediately. The reason for said declaration of emergency is the need to execute the settlement agreement at the earliest possible date in order to end the pending litigation.

Passed this 18TH day of JUNE, 2010.

APPROVED:


MAYOR

ATTEST:


CLERK OF COUNCIL

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made on this ____ day of June 2010, by and between TERRI L. TREINEN and PATRICIA A. ANDWAN (“Plaintiffs”) and the VILLAGE OF GREENHILLS, OHIO, JANE A. BERRY, and JOHN HESTER (collectively, “Village”). Plaintiffs and the Village (at times collectively referred to as the “Parties” or individually as a “Party”) state as follows:

RECITALS

- A. On March 17, 2010, Plaintiffs filed a Verified Complaint in the United States District Court Southern District of Ohio, Case No. 1:10-cv-00175-SJD (the “Action”), against the Village and its officials seeking declaratory and injunctive relief, as well as compensatory damages, relating to its regulation of political signs in the Codified Ordinances of the Village of Greenhills, Ohio (“Sign Ordinance”).
- B. On March 22, 2010, Plaintiffs filed a Motion for Temporary Restraining Order seeking, *inter alia*, to enjoin enforcement of Sections 1157.15(d)(1) and 1157.15(d)(2) of the Sign Ordinance.
- C. The Parties agreed, on April 2, 2010, to the entry of a Temporary Restraining Order enjoining enforcement of Sections 1157.15(d)(1) and 1157.15(d)(2) of the Sign Ordinance. This Order has been extended by the Court on three occasions, at the request of the Parties, to allow the Parties to continue to engage in good faith settlement discussions.
- D. The Parties subsequently agreed to settle this matter on the terms set forth below.

AGREEMENT

In consideration of the promises set forth in this agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Entry of Permanent Injunction.** The Village agrees to an Agreed Final Judgment Entry enjoining enforcement of Sections 1157.15(d)(1) and 1157.15(d)(2) of the Sign Ordinance in the form attached hereto as Exhibit A.
2. **Expungement of Plaintiffs’ Municipal Court Records.** The Village agrees not to object, and to generally facilitate, the process through which Plaintiffs’ municipal court records arising from the Village’s enforcement of its Sign Ordinance against them, will be expunged. The Village also agrees that no fee of any type will be associated with this expungement process or otherwise applied to the Plaintiffs during this process and, to the extent the clerk of court or other official assesses any fees for such process, the Village agrees to reimburse Plaintiffs for such fees.
3. **Payment of Plaintiffs’ attorneys’ fees, costs, and damages.** Within fifteen (15) days following the execution of this Agreement, the Village will pay to Finney, Stagnaro, Saba & Patterson Co., L.P.A. (TIN: 31-1446481) the full sum of TWENTY-ONE THOUSAND AND NO/100 DOLLARS (\$21,000.00) for Plaintiffs’ attorneys’ fees, costs, and damages in the Action.

4. **Release by Plaintiffs:** Plaintiffs and their agents, heirs, administrators, representatives, executors, successors, predecessors and/or assigns irrevocably and unconditionally release, acquit and forever discharges the Village, its respective members, officials, employees, administrators, agents, representatives, executors, successors, predecessors, heirs, trustees and/or assigns from all claims, pending or not pending, known or unknown between the Parties, and that arise from or relate to the Action. This is not a release of other claims unrelated to the Action that Plaintiffs have or may have against the Village or its officials, including (without limitation) those currently on appeal and pending in the Hamilton County Court of Appeals, Case Nos. C-10-00011 and 00051, and styled *State ex rel. Andwan v. Village of Greenhills*.

5. **Miscellaneous:**

5.1 **Choice of Law:** The law applicable to this Agreement is the law of the State of Ohio. This Agreement shall be deemed to have been executed in the State of Ohio, and shall be interpreted, construed, and enforced according to the laws of the State of Ohio, without giving any effect to any conflict of the law's provisions.

5.2 **Voluntary Agreement:** Each Party acknowledges and agrees that they have read all of the provisions of this Agreement in full, have reviewed those provisions with an attorney or had the opportunity to seek legal advice and understands the provisions of this Agreement and voluntarily agrees to be bound thereby. Each Party further acknowledges and agrees that they are entering into this Agreement based solely and exclusively upon his, her or its and/or their counsel's own analysis of the facts and/or information of which it and/or its counsel is independently aware and not based upon or in reliance upon any statements and/or representations of the other Party (except to the extent such statements and/or representations are fully and expressly set forth herein).

5.3 **Entire Agreement:** This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and any agreement hereafter made shall be ineffective to change, modify or discharge this Agreement unless such subsequent agreement is in writing and signed by the Parties. All previous communications or agreements, whether written or oral, between and among the Parties and/or their attorneys, are superseded unless expressly incorporated and made a part of this Agreement.

5.4 **Representations and Warranties of Non-Assignment:** The Parties represent and warrant to each other that they presently hold or possess the legal claims relative to the Action and that they have not assigned, transferred or purported to assign or transfer these claims or any part thereof, to any person or entity. Furthermore, the Parties warranty and represent to one another that they have the full and complete authority to execute this Agreement and release the other Party from their respective legal claims relative to the Action.

5.5 **No Admission of Liability:** Other than the claims brought by Plaintiffs to which the Village stipulates to the entry of a permanent injunction enjoining enforcement of Sections 1157.15(d)(1) and 1157.15(d)(2) of the Sign Ordinance, this settlement agreement does not constitute an admission of liability or criminal or civil culpability on the part of the Village.

5.6 **Multiple Counterparts:** This Agreement may be executed on separate signature pages by each of the Parties and will be deemed fully executed when each Party has signed and delivered a signature page to the other Party. Original signatures transmitted by facsimile are acceptable. All executed signature pages will be aggregated and attached to this Agreement and will constitute the entire Agreement of the Parties.

5.7 **Headings:** The headings of the Paragraphs of this Agreement are for convenience only and shall not affect the meaning or construction of the contents of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set out by each of their signatures.

TERRI L. TREINEN Date: _____

PATRICIA A. ANDWAN Date: _____

VILLAGE OF GREENHILLS, OHIO
By: _____
Its: _____
Date: _____

JANE A. BERRY Date: _____

JOHN HESTER Date: _____

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

TERRI L. TREINEN, <i>et al.</i>	:	Case No. 1:10-CV-00175-SJD
	:	
Plaintiffs,	:	Chief Judge Dlott
	:	
v.	:	
	:	
	:	
VILLAGE OF GREENHILLS, OHIO,	:	AGREED FINAL JUDGMENT ENTRY
<i>et al.</i>	:	
	:	
Defendants.	:	
	:	

WHEREAS, on March 17, 2010, Plaintiffs Terri L. Treinen and Patricia A. Andwan (“Plaintiffs”) filed a Verified Complaint in this case against the Village of Greenhills and its officials, Jane A. Berry and John Hester (collectively, “Village”), seeking declaratory and injunctive relief, as well as compensatory damages, relating to the Village’s regulation of political signs in the Codified Ordinances of the Village of Greenhills, Ohio (“Sign Ordinance”).

WHEREAS, on March 22, 2010, Plaintiffs filed a Motion for Temporary Restraining Order seeking, *inter alia*, to enjoin enforcement of Sections 1157.15(d)(1) and 1157.15(d)(2) of the Sign Ordinance.

WHEREAS, the Parties agreed, on April 2, 2010, to the entry of a Temporary Restraining Order enjoining enforcement of Sections 1157.15(d)(1) and 1157.15(d)(2) of the Sign Ordinance.

WHEREAS, the Temporary Restraining Order has been extended by the Court on three occasions, at the request of the Parties, to allow the Parties to continue to engage in good faith settlement discussions;

WHEREAS, the Parties have reached a settlement that disposes of Plaintiffs’ claims.

WHEREAS, the Parties have stipulated to the entry of an permanent injunction, as provided below, enjoining enforcement of Sections 1157.15(d)(1) and 1157.15(d)(2) of the Sign Ordinance by the Village and its officials.

WHEREAS, the Village has agreed not to object, and to generally facilitate, the process through which Plaintiffs' municipal court records arising from the Village's enforcement of its Sign Ordinance against them, will be expunged. The Village also agrees that no fee of any type will be associated with this expungement process or otherwise applied to the Plaintiffs during this process and, to the extent the clerk of court or other official assesses any fees for such process, the Village agrees to reimburse Plaintiffs for such fees.

WHEREAS, the Parties have negotiated and agreed upon reasonable costs and attorneys' fees to which Plaintiffs are entitled as prevailing parties, as well as Plaintiffs' compensatory damages.

WHEREAS, based on the above actions of the Village, the entry of the Stipulated Permanent Injunction as provided below, and the payment of Plaintiffs' attorneys' fees, costs, and compensatory damages, Plaintiffs agree to dismiss their remaining claims against the Village, with prejudice.

NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this case and has jurisdiction over all Parties to this Stipulated Permanent Injunction;
2. Venue properly lies with this Court;
3. The Parties agree that this Order is binding in form and scope pursuant to Rule 65(d) of the Federal Rules of Civil Procedure;

4. The Village, and its officers, agents, servants, and employees, and those persons in active concert or participation with it, are restrained and enjoined from enforcing Sections 1157.15(d)(1) and 1157.15(d)(2) of the Sign Ordinance.
5. The Village shall notify and/or promptly provide a copy of this Order to each of its officers, agents, servants, and employees, and those persons in active concert or participation with them.
6. The Court further finds that Plaintiffs were prevailing parties in the underlying action, and are entitled to an award of costs and attorneys' fees under 42 U.S.C. § 1988. The Village shall promptly make payment to Plaintiffs in the amount agreed upon by the Parties.
7. The Court further finds that Plaintiffs' remaining claims in this case are dismissed, with prejudice.

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED.

Chief Judge Susan J. Dlott
United States District Court

Have seen and agree:

/s/

Curt C. Hartman (OH Bar No. 0064242)
THE LAW FIRM OF CURT C. HARTMAN
3749 Fox Point Court
Amelia, Ohio 45102
Telephone: (513) 752-8800
Email: hartmanlawfirm@fuse.net

Christopher P. Finney (OH Bar No. 0038998)
Joshua B. Bolinger (OH Bar No. 0079594)
FINNEY, STAGNARO, SABA &
PATTERSON CO., L.P.A.
2623 Erie Avenue
Cincinnati, Ohio 45208
Telephone: (513) 533-2980
Email: cfinney@fssp-law.com
jbolinger@fssp-law.com
Attorneys for Plaintiffs

/s/

Robert H. Stoffers (OH Bar No. 0024419)
MAZANEC, RASKIN, RYDER & KELLER CO. LPA
250 Civic Center Drive, Suite 400
Columbus, Ohio 43215
Telephone: (614) 228-5931
Email: rstoffers@mrrklaw.com
Attorney for Defendants

/s/

Jeffrey D. Forbes (OH Bar No. 0073924)
WOOD & LAMPING LLP
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202
Telephone: (513) 852-6092
Email: jdforges@woodlamping.com
Attorney for Defendants