



**Request for City Council Committee Action
From the City Attorney's Office**

Date: February 11, 2005
To: Ways & Means/Budget Committee
Referral to:

Subject: Claim of Joseph Hoberg

Recommendation: That the City Council authorize settlement of the claim of Joseph Hoberg in the amount of \$7,500.00 payable to Joseph Hoberg and his attorneys, Flynn, Gaskins & Bennett, LLP in the amount of \$7,500.00 payable from Fund/Org. 6900 150 1500 4000.

Previous Directives:

Prepared by: James A. Moore, Assistant City Attorney Phone: 673-2072

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): \$7,500.00 from Fund/Org. 6900 150 1500 4000
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals: Build Community

Background/Supporting Information

On May 11, 2004, police officers were involved in executing a search warrant at 4000 25th Avenue South. One of the individuals involved in the search warrant was removed from the residence and detained in a squad car parked on the street near Plaintiff's home. Plaintiff was familiar with the individual and walked up to the squad car to determine what was going on. Officers warned Plaintiff to get away from the squad car. Plaintiff initially shouted insults at the police and did not move away. The officers warned him repeatedly to move away from the squad car. Plaintiff claims that he finally acceded to the officers commands, but admits that he directed profanity towards them as he did so. Plaintiff alleges that only then did the officers rush him

and grab him. The officers grabbed Plaintiff's arms and placed him in handcuffs. Plaintiff sustained a serious break to the upper portion of his left arm. Although he was charged by citation with disorderly conduct and obstructing legal process, all charges were later dismissed in their entirety without any conditions.

This claim presents the issue of whether the police officer use of force was justified given Plaintiff's alleged, though belated, cooperation with their orders. There is an issue of fact as to whether he complied prior to the use of force by the officers. However, given the seriousness of the injury and Plaintiff's version of the facts, the City Attorney recommends that this case be settled in the amount of \$7,500.00. The City Attorney believes that given the nature of the injuries, this settlement will clearly be viewed as a "nuisance value settlement" and that the settlement is substantially lower than the costs of defense and certainly significantly lower than the potential liability given the seriousness of the injury.

The City Attorney recommends that the City Council authorize settlement of the claim of Joseph Hoberg in the amount of \$7,500.00 payable to Joseph Hoberg and his attorneys Flynn, Gaskins & Bennett LLP payable from Fund/Org. 6900 150 1500 4000 and that the City Attorney be authorized to execute any documents necessary to effectuate this settlement.