



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

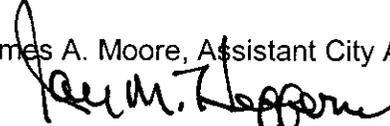
Date: June 27, 2005  
To: Ways & Means/Budget Committee  
Referral to:

**Subject:** Weiner v. City of Minneapolis, et al; United States District Court File No. 04-630 (RHK/JSM)

**Recommendation:** That the City Council authorize payment of \$7,500.00 for full and final settlement of the case of Weiner v. City of Minneapolis payable to Tamikah Lynn Weiner and her attorney, Barry Voss, payable from Fund/Org. 6900 150 1500 4000, and further that the City Council authorize the City Attorney to execute any documents necessary to effectuate the settlement.

**Previous Directives:** None

Prepared by: James A. Moore, Assistant City Attorney Phone: 673-2063

Approved by:   
Jay M. Heffern  
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

<p><b>Financial Impact</b> (Check those that apply)</p> <p><input type="checkbox"/> No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information)</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Capital Budget</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Operating Budget</p> <p><input type="checkbox"/> Action provides increased revenue for appropriation increase</p> <p><input type="checkbox"/> Action requires use of contingency or reserves</p> <p><input checked="" type="checkbox"/> Other financial impact (Explain): \$7,500.00 payable from Fund/Org. 6900 150 1500 4000</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>
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<p><b>Community Impact:</b> City Goals: Build Community</p>
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**Background/Supporting Information**

The following facts are taken from the Court's Memorandum Opinion and Order filed May 16, 2005:

On September 2, 2002, Ms. Weiner attended a Labor Day barbeque at Melanie Hervey's Minneapolis residence. Ms. Hervey, who is not a party to this action, is Ms. Weiner's mother. During the gathering, the guests were listening to music playing from a car stereo. At about 6 p.m., Officers Lappegard and Severson

responded to a loud music complaint. The officers drove by the Hervey residence and motioned to the guests to turn the music down.

A short time later, after receiving a second complaint, the officers returned to the residence and walked into the backyard. The officers told Ms. Harvey that the music would have to be turned down and advised her that arrests would be made if they had to return. The music was turned off and Ms. Harvey assured the officers that it would not be turned on again. As the officers were walking back to their squad cars, a male guest at the gathering (Ms. Weiner's boyfriend) said to another guest, "maybe we should grab the camcorder." Upon hearing this, Officer Severson turned around and said, "That's it. You're under arrest." The male guest walked into the residence and shut the door.

Both officers ran to the door and began kicking it in. The door opened and struck Ms. Weiner's young daughter in the face. Once inside, the officers searched unsuccessfully for the male guest. As officers left, they sprayed mace into the house. The officers testified that a growing crowd of guests were yelling and swearing at them. Ms. Weiner conceded that people were angry and yelling. Upset at what was occurring, Ms. Weiner asked the officers what they were doing and why they were using mace. Officer Severson responded by telling Ms. Weiner that she was under arrest and he grabbed her arm. At nearly the same time, Ms. Weiner's father, who is not a party to this action, grabbed Ms. Weiner's other arm and said, "You're not arresting my daughter. For what?" Officer Lappégard, who had come to assist Officer Severson, maced Ms. Weiner and her father. The officers pulled Ms. Weiner's father away and handcuffed him.

Officer Severson and Officer Mark Durand, who had arrived at the scene, proceeded to arrest Ms. Weiner. They twisted her arms behind her back, kicked her legs out from under her, pushed her onto the ground, and put her face in the gravel. During this time, Ms. Weiner testified that "[e]veryone was still outside in the backyard" about fifteen feet away from the officers, and that "everyone was yelling" at the officers, saying things like, "What the F [are you] doing." Eventually, Ms. Weiner was handcuffed by Sergeant Wesley Ostlund, who had also arrived at the scene. Ms. Weiner denies resisting arrest. In the process of being arrested, Ms. Weiner reopened a cut on her chin (the original wound was caused by a pimple). She was allowed to wash her face and she needed no medical attention. Ultimately, she was arrested and charged with assault and obstructing legal process, but was later acquitted on both charges in state court.

Ms. Weiner and her grandmother, who was allegedly injured during the melee, sued the officers and the City alleging excessive force and false arrest. The Defendants moved for summary judgment and the United States District Court, Judge Richard Kyle, dismissed all claims except Ms. Weiner's false arrest claim.

A Settlement Conference was held on June 23, 2005. A tentative settlement was reached calling for the dismissal of the individual Defendants and the payment of \$7,500.00 by the City for a full and final release of all claims by Ms. Weiner, including any claim for attorneys' fees. The individual Defendants were present and participated in the Settlement Conference. The City was represented by Council Member Scott Benson, Deputy Chief Don Harris and Assistant City Attorney Jim Moore. The participants at the Settlement Conference all recommend approval of the proposed settlement.

For the foregoing reasons, the City Attorney recommends settlement in the amount of \$7,500.00 payable from Fund/Org. 6900 150 1500 4000.