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

Date: February 22, 2005
To: Ways & Means/Budget Committee
Referral to:

Subject: Edith Madora Hudson v. City of Minneapolis
United States District Court File No.: 04-3313 JEL/JGL
OAH Docket No.: 6-6010-16110-3

Recommendation: That the City Council adopt the FINDINGS OF FACT, CONCLUSION, AND RECCOMMENDED DECISION of the administrative law judge and deny defense and indemnification to former Police Officer John Mills in the above lawsuit on the grounds that Mills was acting outside the scope of his duties, was guilty of malfeasance, committed willful neglect of duty, and was acting in bad faith under Minn. Stat. § 466.07 and Article 25 of the Labor Agreement.

Previous Directives: N/A

Prepared by: Mike Bloom, Assistant City Attorney Phone: (612) 673-2038

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)
_X_ 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):
___Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:
City Goals: Build Community

Background/Supporting Information

On July 24, 2003, Police Officer Mills was working his shift for the Minneapolis Police Department. Officer Mills was in uniform and operating a marked MPD squad car while patrolling in the Phillips-Lake Street area. At approximately 12:30 a.m., Officer Mills was approached while on patrol by Edith Hudson, a known

prostitute and addict. Hudson told Officer Mills that she had information for him but did not want to be seen talking to a police officer. Hudson was allowed into the back seat of the squad car and Officer Mills drove Hudson into the neighboring Seward area.

While in the back seat, Hudson exposed her breasts, vaginal and anal areas. Hudson simulated masturbation and digitally penetrated her vagina and anus.

Officer Mills began photographing the petitioner while she engaged in this conduct. Most of the photographs were taken while Hudson was in the back seat of the squad car. Additional photographs were taken with Hudson standing outside the vehicle. During this time frame, Mills failed to report his location to dispatch and did not advise dispatch of his activities.

Officer Mills took at least eight lewd and extremely pornographic photographs of Hudson. Mills photographed Hudson using a personal digital camera. Mills downloaded the photographs onto his personal notebook computer. At no time did Mills turn the pictures over to the Police Department. The pictures were not considered evidence in any MPD investigation, nor were they inventoried with any case or used for any official purposes.

Hudson filed suit in federal district court alleging, among other things, that Officer Mills and the City of Minneapolis violated a number of her civil rights and requested damages. On August 2, 2004, Mills asked the City to defend and indemnify him in the federal lawsuit.

On August 4, 2004, the City informed Officer Mills that given the facts of this case that Mills was not entitled to defense and indemnification.

Mills requested an administrative hearing on the denial of defense and indemnification. The hearing was held on January 11, 2005. On February 8, 2005, Administrative Law Judge Allen W. Kline issued his **FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDED DECISION**. The ALJ recommended that the City's decision not to afford defense and indemnification to Officer Mills be affirmed on the grounds that Mills was acting outside the scope of his duties, was guilty of malfeasance, committed willful neglect of duty, and acted in bad faith under Minn. Stat. § 406.07 and Article 25 of the Labor Agreement.

Pursuant to the City's Policy and Procedure for Defense and Indemnification of Employees, the recommendation of the Administrative Law Judge is hereby submitted to the City Council for a final decision.