



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

Date: June 6, 2005
To: Ways & Means/Budget Committee
Referral to:

Subject: Ete'u Eli-jah Spencer v. City of Minneapolis, et al.
United States District Court File No.: 03-6186 (DWF/JSM)

Recommendation: That the City Council approve the settlement of this case by payment of \$80,000.00 payable to Ete'u Eli'jah Spencer and his attorney, Daniel C. Guerrero, from Fund/Org. 6900 150 1500 4000 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

Prepared by: C. Lynne Fundingsland, Assistant City Attorney Phone: 673-3339

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): 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 March 12, 2003, Plaintiff states that he was asleep in his apartment when he heard a loud crash near the front of his apartment. Because his apartment had been broken into a couple of weeks earlier, he thought he was being burgled again. Rather than confront the perceived intruder, Plaintiff jumped out his bedroom window and ran toward the back of his apartment building, with his intention being to summon the police for help. As he rounded the corner, he heard someone yell, glanced over his shoulder and saw a uniformed officer (Officer Carl Blad) and his police dog (Max) coming toward him. At that point, Plaintiff

stopped, turned around and immediately put his hands in the air. Blad yelled at him to get to the ground. As Plaintiff attempted to comply, Blad released Max on the Plaintiff. Max attacked Plaintiff and bit down on his right arm. Plaintiff was screaming in pain and Blad eventually grabbed his right arm as if to handcuff him when the dog bit him again while Plaintiff fell to the ground. At some point during the attack, Plaintiff believes he lost consciousness and has no recollection how he sustained the injuries to his left leg.

Defendant Blad's version of the facts is as follows: On March 12, 2003, Officers Leum and Kimmerle were dispatched to Plaintiff's apartment residence at 1818 Park Avenue South. Plaintiff was wanted on an outstanding warrant. When the officers arrived at Plaintiff's apartment, Officers Kimmerle and Leum went to the front door while Officers Blad and Max went to the back of Plaintiff's apartment. Officers Kimmerle and Leum knocked on the front door and announced themselves as police. Blad observed Plaintiff jump out of his bedroom window and start running. Blad yelled at the Plaintiff to stop, at which point, Plaintiff turned toward Blad, assuming a posture which Blad recollects as being a "defensive stance" with his arms out in front of him. As Blad approached Plaintiff, Blad pushed Plaintiff in the chest. This spun Plaintiff around. Blad then applied a lateral vascular neck restraint and Max grabbed Plaintiff by the arm. As Blad attempted to handcuff the Plaintiff, Max continued to hold Plaintiff's right arm. Blad continued to tell Plaintiff to get to the ground, but Plaintiff did not do so. Blad contends that Plaintiff was uncooperative while Plaintiff states that he could not get to the ground because the dog was holding him. Finally, Blad was able to get the Plaintiff on the ground and handcuff him. Once he had control of the Plaintiff, he ordered Max out and Max laid down by the feet of the Plaintiff. While putting the cuffs on the Plaintiff, Plaintiff kicked his leg, kicking Max in the head. At that point, Max immediately grabbed Plaintiff's leg and held him until Blad ordered him out.

As a result of Plaintiff's incident with Max, he sustained fairly severe and permanent injuries. His right arm was badly mauled, and his left leg was ripped open. As a result, Plaintiff underwent several surgical procedures on both his right arm and his leg. As an end result, Plaintiff has difficulty using his right hand, and has a lifting limitation of 20 pounds. His grip strength is well diminished and he has a large scar on his right arm and another on his left leg. To date, Plaintiff has incurred \$36,748.21 in medical expenses. Health Partners asserted a right of subrogation. Plaintiff further claims, in addition to the permanent lifting restriction and permanent scarring, he has mental suffering including "haunting nightmares" which he attributes directly to Max's attack on him.

Plaintiff brought suit against the City and Officer Blad claiming excessive force. The City and Blad brought a motion for summary judgment on the issue of the reasonableness of the force used under the circumstances of the Plaintiff's arrest. Judge Donovan Frank denied this motion, finding that it is possible a jury could agree with the Plaintiff and find that the force used was excessive. The case is now set for trial in United States District Court on July 17, 2005.

A final settlement conference was held on June 2, 2005. In attendance at that settlement conference from the City were: Council Member Natalie Johnson Lee; Lieutenant Michael Davis from I.A.D.; Officer Blad, and Assistant City Attorney C. Lynne Fundingsland. At that conference, the parties reached a proposed settlement of payment of \$80,000.00 to the Plaintiff and his attorney for full and complete settlement of this matter. While the City and Officer Blad have certain defenses to this matter, because of the severity of Plaintiff's injuries, the jury could find that excessive force was used. Should the jury find for the Plaintiff, the City would be liable for Plaintiff's attorneys fees. All persons present from the City at the conference are in agreement with this proposed settlement. Therefore, we recommend payment of \$80,000.00 to Plaintiff and his attorney for full and complete settlement of this matter.