



## Legislation Details (With Text)

**File #:** 1570-2013      **Version:** 1  
**Type:** Ordinance      **Status:** Passed  
**File created:** 6/18/2013      **In control:** Public Safety & Judiciary Committee  
**On agenda:** 7/15/2013      **Final action:** 7/18/2013  
**Title:** To authorize and direct the City Attorney to settle the case of Gene Henkel, Jr. v. Mark DiPiero, et al., pending before the Franklin County Court of Common Pleas, to authorize the expenditure of Thirty Thousand Dollars (\$30,000.00), and to declare an emergency. (\$30,000.00)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
7/18/2013	1	CITY CLERK	Attest	
7/16/2013	1	MAYOR	Signed	
7/15/2013	1	COUNCIL PRESIDENT	Signed	
7/15/2013	1	Columbus City Council	Approved	Pass

**Background:** This ordinance is submitted to settle the lawsuit known as *Gene Henkel, Jr. v. Mark DiPiero, et al.*, Case No. 12CV-07-8566 in the Franklin County Court of Common Pleas, for the total amount of Thirty Thousand Dollars (\$30,000.00).

On October 25, 2010, Gene Henkel, Jr. suffered permanent physical injury as a result of a collision between the bicycle he was riding and a vehicle driven by an employee of the Columbus Department of Public Service. The collision occurred at the intersection of West Broad Street and Marconi Boulevard in Columbus, Ohio. The plaintiff alleges that the City's employee was negligent in failing to exercise ordinary care in the operation of the City-owned truck he was driving when he failed to yield to plaintiff as the City's employee was making a right turn on red. The plaintiff further alleges that the City was negligent in entrusting the possession and operation of the vehicle to its employee.

**Fiscal Impact:** Funds were not specifically budgeted for this settlement, however, sufficient monies are available in the appropriate account to pay the amount for this purpose.

To authorize and direct the City Attorney to settle the case of *Gene Henkel, Jr. v. Mark DiPiero, et al.*, pending before the Franklin County Court of Common Pleas, to authorize the expenditure of Thirty Thousand Dollars (\$30,000.00), and to declare an emergency. (\$30,000.00)

**WHEREAS:** On July 5, 2012, the plaintiff filed a lawsuit in the Franklin County Court of Common Pleas, Case No. 12CV-07-8566, against Mark DiPiero and the City of Columbus. The plaintiff alleged that the City's employee was negligent in failing to exercise ordinary care in the operation of the City-owned truck he was driving when he failed to yield to plaintiff, and that the City was negligent in entrusting the possession and operation of the vehicle to its employee, thereby causing the collision resulting in permanent physical injury to plaintiff Gene Henkel, Jr.; and,

**WHEREAS:** Following the evaluation of plaintiff's claims in the course of litigation, the parties reached an agreement to settle this matter. Due to the dispute of this claim and the risks and uncertainties associated with continued litigation and trial, the settlement amount was deemed acceptable by the City of Columbus and its employee, along with dismissal of the lawsuit with prejudice and a release of the City of Columbus and its employee from all further liability; and,

**WHEREAS:** By reason of the foregoing, and in order to meet the timeframe of the agreement and avoid the possible payment of interest, an emergency exists in the usual daily operation of the City and for further preservation of the public health, peace, property, safety and welfare, now, therefore:

Be it ordained by the Council of the City of Columbus:

**Section 1:** That the City Attorney be and hereby is authorized and directed to settle all claims against the City of Columbus, its officers, agents and employees in the lawsuit of *Gene Henkel, Jr. v. Mark DiPiero, et al.*, Case No. 12CV-07-8566 in the Franklin County Court of Common Pleas, by payment of Thirty Thousand Dollars (\$30,000.00), as a reasonable and fair amount, and in the best interests of the City of Columbus.

**Section 2:** That the City Auditor be and is hereby authorized to transfer cash and appropriation within the Street Construction Maintenance and Repair Fund, No. 265 as follows:

**Transfer from:**

Fund / O.L. 01-03 Codes / OCA / Amount  
265 / 01-1101 / 591117 / \$30,000

**Transfer to:**

Fund / O.L. 01-03 Codes / OCA / Amount  
265 / 05-5571 / 591202 / \$30,000

**Section 3:** For the purpose of paying the settlement, there be and hereby is authorized to be expended by the City of Columbus, Department of Public Service, Department/Division 59-12, fund no. 265, Object level one - 05, Object level three - 5571, OCA 591202, the sum of Thirty Thousand Dollars (\$30,000.00).

**Section 4:** That the City Auditor be and hereby is authorized to draw a warrant upon the City Treasury in the sum of Thirty Thousand Dollars (\$30,000.00) payable to Gene Henkel, Jr. and his attorneys, Colley Shroyer & Abraham Co., LPA, upon receipt of a voucher and release approved by the City Attorney.

**Section 5:** That for the reasons stated in the preamble hereto, which is made a part hereof, this ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.