



## Legislation Details (With Text)

**File #:** 3249-2021      **Version:** 1

**Type:** Ordinance      **Status:** Passed

**File created:** 11/29/2021      **In control:** Criminal Justice & Judiciary Committee

**On agenda:** 12/13/2021      **Final action:** 12/16/2021

**Title:** To authorize and direct the City Attorney to settle any and all claims arising out of the Events described in the case captioned Tamara K. Alsaada et al., v. City of Columbus et al., United States District Court Case No. 2:20-cv-3431; to authorize a transfer of \$5,750,000.00 within the general fund; to authorize the expenditure of the sum of \$5,750,000.00 in settlement of any and all present and future claims arising out of the Events; and to declare an emergency.

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. 3239-2021 Settlement Agreement and Agreed Injunction

Date	Ver.	Action By	Action	Result
12/16/2021	1	CITY CLERK	Attest	
12/14/2021	1	MAYOR	Signed	
12/13/2021	1	COUNCIL PRESIDENT	Signed	
12/13/2021	1	Columbus City Council	Approved	Pass

### Background:

Plaintiffs Tamara K. Alsaada, Mahir Ali, Mary Barczak, Demetrius Burke, Bernadette Calvey, Stephanie Carlock, S.L.C., a minor, Keith Duerk, Jennifer Eidemiller, Andrew Fahmy, Talon Garth, Holly Hahn, Bryan Hazlett, Justin Horn, Kurghan Horn, Terry D. Hubby, Jr., Randy Kaigler, Elizabeth Koehler, Rebecca Lamey, Ricky Lee Lane, Nadia Lynch, Mia Mogavero, Michael Moses, Aleta Mixon, Darrell Mullen, Leeanne Pagliaro, Torrie Ruffin, Summer Schultz, Claressa Thompson, Amanda Weldon, Amanda Williams, and Heather Wise (together “**Plaintiffs**”) brought suit against the City of Columbus, Thomas Quinlan, David B. Griffith, Duane Mabry, Lowell Rector, Lawrence Yates, Scott Bray, Brian Bruce, Christopher Capretta, Caroline Castro, David Gitlitz, Brian Steele, Paul Szabo, Paul Badois, Michael Dunlevy, Shawn Dye, Michael Eschenburg, Thomas Hammel, Holly Kanode, Kenneth Kirby, Benjamin Mackley, Benjamin Messerly, Gary Patterson, Robert Reffitt, Amber Rich, Shannon Schmid, and Phillip Walls (together “**Defendants**,” collectively Plaintiffs and Defendants are referred to as “**the Parties**”) in the United States District Court for the Southern District of Ohio, Eastern Division, in the case captioned *Tamara K. Alsaada et al., v. City of Columbus et al.*, United States District Court Case No. 2:20-cv-3431 (“**the Lawsuit**”).

Plaintiffs’ factual allegations (referred to in this Ordinance as “**the Events**”) are fully described in their Second Amended Complaint filed on May 27, 2021 and can be summarized as follows:

On May 25, 2020, the killing of George Floyd, who was being arrested by then Minneapolis Police Department Officer Derek Chauvin for allegedly passing a counterfeit \$20 bill to buy cigarettes, was live-streamed over the Internet for eight minutes and 46 seconds and later televised around the world. Starting on May 28, 2020, in Columbus, Ohio, Plaintiffs allege that, along with hundreds of thousands in cities, states, and countries, they took to the streets to demonstrate against excessive use of force by police and to express their outrage at the militarization of police forces, the disparate impact on minority communities of law enforcement priorities, and a

pattern or practice of governments at all levels tolerating systemic racism and failing to adopt effective policies or implement adequate training, supervision, and discipline of law enforcement officers.

Plaintiffs allege that Defendants responded to the protests with excessive use of force, and that said excessive force was purposely used to punish one or more Plaintiffs and other demonstrators, to deter them from continuing to protest and others from joining the protests with which they disagreed, and in order to reclaim the streets. Plaintiffs further allege that Defendants maliciously prosecuted one or more Plaintiffs to punish them and deter other demonstrators from continuing to protest. Plaintiffs contend that on May 29 and 30, 2020, a similar dynamic occurred and a curfew from 10:00 p.m. to 6:00 a.m. was imposed on May 30, 2020.

As a result of the Events, Plaintiffs brought six causes of action, alleging that the officer Defendants used excessive force caused by the deliberate indifference of the City and the Chief in violation of the Fourth and Fourteenth Amendments to the US Constitution; violated the Plaintiffs' freedom of assembly and expression in contravention of the First and Fourteenth Amendments; committed the torts of gross negligence, battery, and malicious prosecution; and raised a civil action to seek damages due to an alleged violation of the criminal laws.

The Parties wish to enter into a Settlement Agreement to resolve all claims. Plaintiffs understand and agree that this Settlement is a compromise of disputed claims, and that the City's participation in this Settlement Agreement is not to be construed as an admission of liability on the part of the Defendants.

**Fiscal Impact:**

Funds were not specifically budgeted for this settlement; however, sufficient monies are in the Department of Finance's Citywide account for this purpose.

To authorize and direct the City Attorney to settle any and all claims arising out of the Events described in the case captioned *Tamara K. Alsaada et al., v. City of Columbus et al.*, United States District Court Case No. 2:20-cv-3431; to authorize a transfer of \$5,750,000.00 within the general fund; to authorize the expenditure of the sum of \$5,750,000.00 in settlement of any and all present and future claims arising out of the Events; and to declare an emergency.

**WHEREAS**, Plaintiffs allege that Defendants violated Plaintiffs' rights under the First, Fourth, and Fourteenth Amendments to the US Constitution and engaged in related tortious conduct in responding to the Events beginning May 28, 2020 all as fully described in their Second Amended Complaint filed on May 27, 2021 and as summarized in the Background to this Ordinance as fully incorporated herein (the "Events"); and

**WHEREAS**, following an evaluation of the Events, a Settlement Agreement to include the amount of Five Million, Seven Hundred Fifty Thousand Dollars (\$5,750,000.00), to be paid by the City of Columbus, was deemed to be acceptable in exchange for the release of any and all claims, and an agreement to defend and indemnify the City of Columbus and any of its current or former employees, agents, and officials; and

**WHEREAS**, the amount of Five Million, Seven Hundred Fifty Thousand Dollars (\$5,750,000.00), will be paid to "Marshall and Forman, LLC, Trust Account," and the City shall issue an appropriate IRS Form 1099 corresponding to this payment; and

**WHEREAS**, the Parties have agreed that entry by Chief Judge Algenon L. Marbley of the United States District Court for the Southern District of Ohio of a proposed permanent injunction as described in Exhibit A to the Settlement Agreement is an essential term of the Settlement, and without such entry, the Settlement Agreement shall be null and void; and

**WHEREAS**, an emergency exists in the usual daily operations of the Department of Public Safety, Division of Police, in that it is necessary for this ordinance to be effective immediately in order for the parties to effectuate the terms of the Settlement, which is in the best interest of the City of Columbus, and to pay the agreed to sum without delay; **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 any and all present and future claims arising from the Events against the City of Columbus, and its current and former officers, agents, and employees, in accordance with the terms of the attached Settlement Agreement by payment of the sum of Five Million, Seven Hundred Fifty Thousand Dollars (\$5,750,000.00)-to be paid to “Marshall and Forman, LLC, Trust Account,” as a reasonable and fair amount and in the best interest of the City of Columbus.

**SECTION 2.** That the City Auditor shall hereby be authorized to transfer within the General Fund from the Department of Finance and Management’s Citywide account to the Division of Police’s 2021 general fund budget, the amount of \$5,750,000.00 as reflected in the attachment to this ordinance.

**SECTION 3.** That for purposes of paying this settlement there be, and hereby is authorized to be, payment by the City of Columbus, from the Division of Police’s general fund budget, the sum of \$5,750,000.00, or so much thereof as may be needed, per the accounting codes in the attachment to this ordinance.

**SECTION 4.** That, upon confirmation by the City Attorney of the issuance of an agreed entry by Chief Judge Algenon L. Marbley of the United States District Court for the Southern District of Ohio adopting the proposed permanent injunction as described in Exhibit A to the Settlement Agreement, the City Auditor be and is hereby authorized to draw a warrant upon the City Treasurer for the sum of Five Million, Seven Hundred Fifty Thousand Dollars (\$5,750,000.00) - to be paid pursuant to the terms of the Settlement Agreement-with the check made payable to “Marshall and Forman, LLC, Trust Account” and the City shall issue an appropriate IRS Form 1099 corresponding to this payment.

**SECTION 5.** That the City agrees that in addition to the Permanent Injunction contemplated by this Agreement, the United States District Court for the Southern District of Ohio shall retain jurisdiction over this matter for the purpose of enforcing the terms of this Settlement Agreement.

**SECTION 6.** 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 after passage and approval by the Mayor, or 10 days after passage if the Mayor neither vetoes nor approves the same.