



## Legislation Details (With Text)

**File #:** 0788-2012      **Version:** 1

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

**File created:** 4/2/2012      **In control:** Public Safety & Judiciary Committee

**On agenda:** 4/16/2012      **Final action:** 4/19/2012

**Title:** To authorize and direct the City Attorney to settle the case of Robert L. McClendon v. City of Columbus, et al., pending in the United States District Court for the Southern District of Ohio; to authorize the expenditure of \$200,000.00 from the General Fund; and to declare an emergency. (\$200,000.00)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
4/19/2012	1	CITY CLERK	Attest	
4/18/2012	1	MAYOR	Signed	
4/16/2012	1	COUNCIL PRESIDENT	Signed	
4/16/2012	1	Columbus City Council	Approved	Pass

This ordinance is submitted to settle the claims of Robert L. McClendon, for the total amount of Two Hundred Thousand Dollars (\$200,000.00).

Plaintiff's claims arose out of his conviction in 1991 for rape and kidnapping in April 1990. His conviction was upheld in 1992. In 2008, McClendon moved for a new trial in connection with DNA testing conducted more than eighteen years after the Columbus Division of Police investigation. Based on the DNA analysis, the Court granted the motion for a new trial and then entered a *nolle prosequi* as to the original indictment.

Plaintiff filed his complaint pursuant to 42 U.S.C § 1983 alleging violation of his rights under the Fourth, Fifth, Sixth and Fourteenth Amendments and alleging state law claims of malicious prosecution and intentional infliction of emotional distress with respect to the 1990 investigation by the Columbus Division of Police and its employees.

Funds were not specifically budgeted for this settlement; however, sufficient monies are available within Finance's Citywide Account for this purpose.

To authorize and direct the City Attorney to settle the case of Robert L. McClendon v. City of Columbus, et al., pending in the United States District Court for the Southern District of Ohio; to authorize the expenditure of \$200,000.00 from the General Fund; and to declare an emergency. (\$200,000.00)

**WHEREAS**, in April 1991 Robert L. McClendon was convicted for rape and kidnapping in April 1990, and in 1992 his conviction was upheld; he spent eighteen years in prison for the crimes; and

**WHEREAS**, in 2008, Mr. McClendon moved for a new trial in connection with DNA testing conducted more than

eighteen years after the CPD investigation. The court granted the motion for a new trial and then entered a *nolle prosequi* as to the original indictment. Mr. McClendon filed a complaint in the United States District Court, Case No. 2:10 cv 711, alleging the City interfered with his rights under the Fourth, Fifth, Sixth and Fourteenth Amendments and alleging state law claims of malicious prosecution and intentional infliction of emotional distress; and

**WHEREAS**, following the evaluation of Mr. McClendon's claims in the course of mediation, the parties reached an agreement to settle this matter. Due to dispute of this claim and the risks and uncertainties associated with litigation and trial, the settlement amount was deemed acceptable by the City of Columbus, along with dismissal of the lawsuit, with prejudice, and a release of the City of Columbus, the Columbus Division of Police, Gerald Roadcap, Edward Daniher, Charles Williams, and Sylvia Acton from further liability. It is in the best interest of the City to settle this case for a total of \$200,000.00; and

**WHEREAS**, funds were not specifically budgeted for this settlement; however, sufficient monies are available within Finance's Citywide Account for this purpose; and

**WHEREAS**, by reason of the foregoing an emergency exists in the usual daily operation of the City and it would be in the City's best interest to immediately compromise and settle this matter and for further preservation of the public health, peace, property, safety, and welfare, now, therefore

**BE IT ORDERED BY THE COUNCIL OF THE CITY OF COLUMBUS:**

**Section 1.** That the City Attorney be and hereby is authorized and directed to settle the case of *Robert L. McClendon v. City of Columbus, et al.*, Case No. 2:10 cv 711, in the total amount of Two Hundred Thousand Dollars (\$200,000.00) as a reasonable and fair amount, and in the best interest of the City of Columbus.

**Section 2.** That the City Auditor be and is hereby authorized and directed to transfer the sum of \$200,000.00 within the general fund, fund no. 010 from the Department of Finance & Management, department/division 45-01, object level 1-10, object level 3 - 5501, OCA 904508 to the Department of Public Safety, Division of Police, department/division 30-03, object level 1 - 05, object level 3 - 5573, OCA 301382.

**Section 3.** That for the purpose of paying the settlement, there be and hereby is authorized to be expended by the City of Columbus, Department of Public Safety, Division of Police, Department/Division 30-03, fund no. 010, Object level one - 05, Object level three - 5573, OCA 301382, the sum of Two Hundred Thousand Dollars (\$200,000.00).

**Section 4.** That the City Auditor be and hereby is authorized to draw a warrant upon the City Treasury upon receipt of a voucher and release approved by the City Attorney in the amount of Two Hundred Thousand Dollars (\$200,000.00) and made payable in the following manner:

Two Hundred Thousand Dollars (\$200,000.00) to:

Robert L. McClendon and  
LOEVY & LOEVY  
312 N. May St., Ste. 100  
Chicago, IL 60607

**Section 5.** That for the reasons stated in the preamble hereto, which is hereby 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.