

**CITY OF GRAND JUNCTION, COLORADO**

**RESOLUTION NO. 100-23**

**ACKNOWLEDGING DEFENSE OF OFFICER BRIAN DEGRANGE IN CIVIL ACTION  
NO. 23-cv-01397 CSN-NRN**

RECITALS:

A Federal District Court action ("Complaint") has been filed alleging violation of a citizen's rights by an employee of the Grand Junction Police Department, Brian DeGrange ("Officer" or "Officer DeGrange"). The Complaint alleges misconduct by Officer DeGrange in the conduct of an investigation and issuance of a citation to the Plaintiff Mr. Kyle Lewis. Mr. Lewis' Complaint names Officer DeGrange individually as well as Mesa County School District 51 and two employees thereof.

Under the provisions of the Colorado Governmental Immunity Act, specifically sections 24-10-110 and 24-10-118 C.R.S., and 13-21-131(4)(a) C.R.S. the City has certain indemnification obligations, and it may, if it determines by resolution adopted at an open public meeting that it is in the public interest to do so, defend a public employee against punitive damages claim or pay or settle any punitive damage claim against a public employee. The Plaintiff has asserted claims that Officer DeGrange violated the Plaintiff's civil rights and maliciously prosecuted the Plaintiff. The Officer denies the allegations.

The Colorado Governmental Immunity Act ("Act") 24-10-101 *et. seq.* C.R.S. primarily covers public entities for actions in tort or that could lie in tort and its provisions also extend to public employees. The Act extends to public employees so long as the conduct that is the subject of the lawsuit was (i) within the performance of his duties, (ii) within the scope of his employment and (iii) not done willfully or wantonly.

Because Officer DeGrange is named individually, the City presumes that the Plaintiff is intending to state punitive damage claims against him and accordingly with this Resolution the City Council acknowledges and provides the defense and indemnification as provided herein.

The lawsuit alleges the Officer generally violated the Plaintiffs 1<sup>st</sup> Amendment rights to speak out against Mesa County School District 51 ("D51") regarding the Plaintiff's child's education, and that the Plaintiff was subjected to malicious prosecution when he was cited for conduct in violation of 18-9-111 C.R.S. and when he was asked to limit his contact with D51 officials and conduct his protest activities at/from designated locations.

Over the course of his interaction with the Plaintiff Officer DeGrange was a Colorado certified peace officer duly employed by the Grand Junction Police Department and the Plaintiff has named Officer DeGrange individually in the complaint based on and because of his employment by the City. Without question the claims made against the Officer arise out of and in the scope of his employment.

The Professional Standards Section of the GJPD conducted an investigation of the allegations set forth in the complaint and the Chief of Police has initially determined that the Officer had a good faith and reasonable belief that his actions were lawful. That determination, based upon a preponderance of the evidence, considered the following standard: the Officer acted in good faith and upon a reasonable belief that his actions were lawful as the Officer's actions were objectively reasonable based on the totality of the circumstances and consistent with the Department's policy and training. The Chief of Police has presumed that the Officer's actions were objectively reasonable as there is no evidence of intent to violate constitutional rights, or a reckless disregard to violate constitutional rights. The Chief of Police's determination, based on the Professional Standards investigation, is that Officer DeGrange not only had a good faith and reasonable belief his actions were lawful, but that his actions were lawful.

13-21-131(4)(a) C.R.S. requires a peace officer's employer to indemnify its peace officers for any liability incurred by the peace officer for any judgment or settlement arising out of state law claims made in this lawsuit against Officer DeGrange. This indemnification requirement is contingent upon a finding by the employer that the peace officer acted with a good faith and reasonable belief that his actions were lawful, and that the officer was not convicted of a crime for the same matter which brings the civil claims. If Officer DeGrange is found to have not acted with a good faith and reasonable belief his actions were lawful, he is subject to personal liability of up to 5% or twenty-five thousand dollars; however, the Chief of Police has initially determined that Officer DeGrange acted lawfully based on the Professional Standards investigation. Furthermore, Officer DeGrange was never charged with or convicted of a crime arising out of this incident.

In the event the lawsuit is settled, or civil judgment is entered against the Officer, the Chief of Police will review the investigation and any additional information obtained from the lawsuit that he believes may be relevant to the determination of good faith, including judicial determinations, evidence from trial or hearing, and discovery exchanges between the parties to the lawsuit.

Officer DeGrange denies the allegations made against him in the complaint and reasonably believes that his conduct was reasonable, lawful and in good faith.

The City has no basis to conclude that Officer DeGrange acted willfully and wantonly. He should not have to withstand the claims made against him without protection of the City.

Although it is unlikely that punitive damage claims will be sustained, it is right and proper to adopt this Resolution defending Officer DeGrange from the personal claims and liability that may arise out of or under any claim except any that is found to be willful, wanton, or criminal as defined by Colorado law or any violation that was not within the scope of his employment.

Because the City Council has reason to find that Officer DeGrange acted within the scope of his employment and because to do otherwise would send a wrong message to the employees of the City, *i.e.*, that the City may be unwilling to stand behind them

when an employee is sued for the lawful performance of his/her duties, the City Council adopts this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:**

The City shall pay no judgment or settlement of claim(s) by Officer DeGrange where the claim has been compromised or settled without the City's consent.

The City's legal counsel and insurance defense counsel shall serve as counsel to Officer DeGrange unless it is credibly determined by such counsel that the interests of the City and the Officer may be adverse. In that event the Officer may select separate counsel to be approved in writing by the City Council. The Officer shall reasonably cooperate with the City in its defense of the claims.

By the adoption of this Resolution the City does not waive any defense of sovereign immunity as to any claim(s) or action(s).

The adoption of this Resolution shall not constitute a waiver by the City of insurance coverage with respect to any claim or liability arising out of or under 23-cv-01397 CSN-NRN or any matter covered by the Resolution.

The purpose of this Resolution is to protect Officer DeGrange against personal liability for his lawful actions taken on behalf of and in the best interest of the City.

The Officer has read and does affirm the foregoing averments. Consequently, the City Council hereby finds and determines at an open public meeting that it is the intention of the City Council that this Resolution be substantially construed in favor of protection of Officer DeGrange, and together with legal counsel, that the City defend against the claims against Officer DeGrange in accordance with 24-10-110 C.R.S. and 13-21-131(4)(a) C.R.S and/or to pay or to settle any punitive damage claims in accordance with law arising out of case 23-cv-01397 CSN-NRN.

**PASSED and ADOPTED** this 15<sup>th</sup> day of November 2023.



Anna M. Stout  
President of the City Council



ATTEST:



Amy Phillips  
City Clerk