

**CITY OF GRAND JUNCTION, COLORADO**

**RESOLUTION NO. 28-24**

**ACKNOWLEDGING DEFENSE OF OFFICERS MATT PARKS, CHRIS WILSON, TIM JANDA, AND ARNOLD NAIK, IN CIVIL ACTION NO. 23-cv-01459-GPG-SBP**

RECITALS:

A Federal District Court action ("Complaint") has been filed alleging violation of a citizen's rights by employees of the Grand Junction Police Department ("GJPD"), Matt Parks, Chris Wilson, Tim Janda, and Arnold Naik (collectively "the Officers"). The Complaint alleges misconduct by the Officers in the use-of-force against the Plaintiff, Mr. Marc Matteson. Mr. Matteson's Complaint names the Officers individually and in their official capacities, as well as "Unknown Supervisor 1", "Unknown Supervisor 2", the City of Grand Junction, and the Board of County Commissioners for Mesa County.

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(s) or pay or settle any punitive damage claim(s) against a public employee. The Plaintiff has asserted claims that the Officers violated the Plaintiff's civil rights by using excessive force and conspiring to use excessive force, including failing to intervene, against the Plaintiff. The Officers deny 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 the employee's duties, (ii) within the scope of employment and (iii) not done willfully or wantonly.

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

The lawsuit alleges the Officers violated the Plaintiff's 4th Amendment rights to be free from the use of excessive force and conspired to use excessive force. On June 10, 2021, Mr. Matteson was reported to the GJPD as having several domestic violence warrants and was in Rocket Park in the City. Upon contact with Mr. Matteson, he assaulted two GJPD officers and escaped in a vehicle. Mr. Matteson was later found in his vehicle in the parking lot of the Sportsman's Warehouse at 2464 Hwy 6&50. Officers ordered Mr. Matteson to exit the vehicle, but Mr. Matteson moved to the rear of his vehicle produced a handgun (later determined to be a pellet gun). Officers Parks,

Wilson, and Janda discharged their firearms, striking Mr. Matteson. Mr. Matteson received medical treatment and was charged with numerous crimes. Mr. Matteson subsequently pleaded guilty to 2<sup>nd</sup> Degree Assault on a Peace Officer and Felony Menacing. Mr. Matteson, currently an inmate with the Colorado Department of Corrections, filed this suit against the Officers, the City, and Mesa County, alleging the aforementioned force used against him was excessive.

Over the course of his interaction with the Plaintiff, the Officers were Colorado certified peace officers duly employed by the Grand Junction Police Department and the Plaintiff has named the Officers individually in the complaint based on and because of their employment by the City. Without question the claims made against the Officers arise out of and in the scope of their employment.

The Professional Standards Section of the GJPD and the 21<sup>st</sup> Judicial District Critical Incident Response Team ("CIRT") conducted concurrent investigations of the allegations set forth in the Complaint. The Chief of Police has determined that the Officers acted lawfully and within policy. That determination, based upon a preponderance of the evidence, considered the following standard: the Officers acted in good faith and upon a reasonable belief that their actions were lawful as the Officers' 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. Additionally, the District Attorney has cleared the Officers of any criminal liability.

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 the Officers. This indemnification requirement is contingent upon a finding by the employer that the peace officer acted with a good faith and reasonable belief that the actions were lawful, and that the officer was not convicted of a crime for the same matter which brings the civil claims. If the Officers are found to have not acted with a good faith and reasonable belief the actions were lawful, they are subject to personal liability of up to 5% or twenty-five thousand dollars; however, the Chief of Police has determined that the Officers acted lawfully based on the Professional Standards and CIRT investigation. Furthermore, the Officers were 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 Officers, 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.

The Officers deny the allegations made against them in the complaint and reasonably believe that their conduct was reasonable, lawful and in good faith.

The City has no basis to conclude that the Officers acted willfully and wantonly. They 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 the Officers 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 employment.

Because the City Council has reason to find that the Officers acted within the scope of their 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 the Officers 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 the Officers unless it is credibly determined by such counsel that the interests of the City and the Officers may be adverse. In that event the Officers may select separate counsel to be approved in writing by the City Council. The Officers 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-01459-GPG-SBP or any matter covered by the Resolution.

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

The Officers have read and do 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 Officers Parks, Wilson, Janda and Naik, and together with legal counsel, that the City defend against the claims against the Officers 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-01459-GPG-SBP.

**PASSED** and **ADOPTED** this 17th day of April 2024.



Anna M. Stout  
President of the City Council



ATTEST:



Amy Phillips  
City Clerk