



# Metropolitan Nashville and Davidson County, TN

## Legislation Details (With Text)

<b>File #:</b>	RS2021-821	<b>Name:</b>	
<b>Type:</b>	Resolution	<b>Status:</b>	Passed
<b>File created:</b>	3/5/2021	<b>In control:</b>	Metropolitan Council
<b>On agenda:</b>	3/16/2021	<b>Final action:</b>	3/16/2021
<b>Title:</b>	A resolution authorizing the Metropolitan Department of Law to compromise and settle the civil rights claim of Daniel Hambrick against the Metropolitan Government of Nashville and Davidson County in the amount of \$2,250,000.00, with said amount to be paid out of the Judgments and Losses Fund.		
<b>Sponsors:</b>	Kyonzte Toombs, Ginny Welsch		
<b>Indexes:</b>			
<b>Code sections:</b>			
<b>Attachments:</b>	1. RS2021-821 Letter to Clerk		

Date	Ver.	Action By	Action	Result
3/22/2021	1	Mayor	approved	
3/16/2021	1	Metropolitan Council	adopted	
3/15/2021	1	Budget and Finance Committee	approved	

A resolution authorizing the Metropolitan Department of Law to compromise and settle the civil rights claim of Daniel Hambrick against the Metropolitan Government of Nashville and Davidson County in the amount of \$2,250,000.00, with said amount to be paid out of the Judgments and Losses Fund.

WHEREAS, on July 26, 2018, Daniel Hambrick was shot and killed during a foot pursuit with Metropolitan Nashville Police Department Officer Andrew Delke; and,

WHEREAS, after investigation, the Metropolitan Department of Law believes that the settlement listed in Section 1 is fair and reasonable and in the best interest of the Metropolitan Government and recommends that any and all claims or causes of action brought or that could have been brought by the Estate of Daniel Hambrick related to the events detailed above be compromised and settled for \$2,250,000.00, and that this amount be paid from the Judgments and Losses Fund.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: The Metropolitan Department of Law is authorized to compromise and settle the civil rights claim of the Estate of Daniel Hambrick for the sum of \$2,250,000.00 with said amount to be paid from the Judgments and Losses Fund.

Section 2: This resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

### Analysis

On July 26, 2018, Metro Nashville Police Department (MNPd) officer Andrew Delke was patrolling the area near the John Henry Hale apartments when he saw a vehicle matching the description of a vehicle that had been reported as driving erratically. Officer Delke pulled into the parking lot behind the vehicle and several

male individuals exited the vehicle. Officer Delke has stated that when he told them to stop, Daniel Hambrick ran away. While being pursued by Officer Delke, Mr. Hambrick dropped a gun he had been carrying in his waistband, picked it up, and continued to run away from Delke. The chase ended when Officer Delke shot and killed Mr. Hambrick.

Officer Delke has asserted that Mr. Hambrick pointed a gun at him during the pursuit. The surveillance video released by the District Attorney's Office to the media in August 2018 shows some of the pursuit, but does not clearly capture everything that happened. The video does clearly show Mr. Hambrick being shot as he was running away from Officer Delke. Delke is currently under criminal indictment for killing Mr. Hambrick, and that trial is scheduled for July 2021.

On March 11, 2019, Vicki Hambrick, Daniel's mother, filed a civil rights lawsuit in federal court on behalf of Mr. Hambrick's estate against Metro and Officer Delke. Metro is being represented by the Department of Law, and Officer Delke is being represented by private counsel paid for by Metro. Section 2.40.130 of the Metro Code provides that the Department of Law is to pay for outside defense counsel for employees sued as a result of an act or omission arising out of the performance of their official duties in the course of their employment when Metro is also sued and there is a potential conflict in the Department of Law representing both Metro and the employee under the Rules of Professional Conduct governing attorneys.

The lawsuit against Metro includes an excessive force and equal protection claim alleging that the MNPD practices and policies treat African-Americans differently. The lawsuit seeks monetary damages from Metro, and both monetary and punitive damages from Officer Delke. At this point in the lawsuit, the parties have only engaged in written discovery. No depositions or further investigation has been done while the criminal case against Officer Delke is pending.

In order to recover damages under federal law in excessive force cases, the plaintiff must prove that Mr. Hambrick's civil rights were violated as a direct result of Metro's unconstitutional policy or custom. This requires a showing that the force was not reasonable under the circumstances, that the government's inadequate training amounts to "deliberate indifference" to a person's rights, and that the deliberate indifference directly caused the constitutional violation. As noted above, discovery regarding the excessive force claim has been limited due to the pending criminal case. While Metro's position at trial would be that the facts don't establish deliberate indifference, that would be up to the jury to decide and juries are hard to predict in excessive force cases. According to the Department of Law, a survey of jury awards in similar cases range from \$500,000 to \$15,000,000.

Since Metro is paying for outside counsel, the costs to Metro through trial and appeals could approach \$1,000,000. Metro has already spent \$142,000 through the written discovery phase. Further, any jury award in favor of the plaintiff, regardless of the amount of the award, would require Metro to pay the plaintiff's counsel's attorney fees, as well.

Given the uncertainty of going to trial, the potentially large jury award, and the costs Metro will incur, the Department of Law recommends settling this lawsuit for a total of \$2,250,000, which would settle all claims against both Metro and Officer Delke. There is no admission of fault or liability in the settlement, and the settlement will have no impact on the pending criminal case.

*Fiscal Note: This \$2,250,000 settlement would be the 3<sup>rd</sup> payment from the Judgment and Losses Fund in*

*FY21 for a cumulative total of \$2,475,000. The fund balance would be \$601,687 after this payment.*