04- O -0392

AN ORDINANCE 04-O-_____

BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE AUTHORIZING THE SETTLEMENT OF ALL CLAIMS IN THE CASE OF BERNARD BANKS V. STEGNER, ET AL., UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION, CIVIL ACTION FILE NO. 1:01-CV-2701-RLV, IN THE AMOUNT OF $150,000.00; AUTHORIZING THE CHIEF FINANCIAL OFFICER TO DISTRIBUTE THE SETLLEMENT AMOUNT; WAIVING CITY OF ATLANTA CODE OF ORDINANCES SECTION 2-783(h) FOR THIS INSTANCE ONLY; AND FOR OTHER PURPOSES.

WHEREAS, *Bernard Banks v. Stegner, et al.* is a case in which the Plaintiff, Bernard Banks, is suing for personal injuries received when he was apprehended and arrested by City of Atlanta Police Officers Matthew Stegner, Craig Faircloth, Michael Payne, William Murdock, Robert Moody and Charles Molnar on December 19, 1999, and for deprivation of his constitutionally and federally protected rights under 42.U.S.C. § 1983 and various claims under Georgia law; and

WHEREAS, Plaintiff alleges that he was subjected to unnecessary, unreasonable and excessive force and arrested without probable cause, and that he was deprived of rights secured by the Fourth Amendment to the United States Constitution and various claims under Georgia law; and

WHEREAS, Officer Stegner maintains that Plaintiff's apprehension and arrest occurred after Plaintiff refused to stop for traffic violations and that Plaintiff was resistant to Officer Stegner's and the other officers attempt to effect a lawful arrest; and

WHEREAS, Plaintiff Bernard Banks alleges that, as a result of the physical struggle during the course of his arrest, he was severely beaten, kicked and hit about the body and the face and;

WHEREAS, Plaintiff Bernard Banks was tried by a jury in Dekalb County

Superior Court on the 12 (twelve) citations issued to him on the night of December 19, 1999 and was acquitted on all charges; said trial lasting seven days; and

WHEREAS, the parties have engaged in extensive discovery, as a result of which it was determined that Plaintiff has endured considerable pain and suffering; and financial loss; and

WHEREAS, a Motion for Summary Judgment was filed on behalf of all the named Defendants, requesting that the Court dismiss all Defendants as a matter of law; and

WHEREAS, Officers Faircloth, Murdock, Moody and Molnar were dismissed by order of the District Court dated November 25, 2003, partially granting the Motion for Summary Judgment filed on behalf of the named Defendants; and

WHEREAS, the Court in denying partial summary judgment determined that there were issues of disputed material facts which required resolution by a jury; and

WHEREAS, Officers Stegner and Payne Porter remain Defendants in this action; and

WHEREAS, the court in denying Officer Stegner and Officer Payne summary judgment concluded that there was a question of fact that should be submitted to the jury as to whether Officer Stegner had arguable probable cause to stop Mr. Banks; and

WHEREAS, the court in denying summary judgment to Officer Stegner and Officer Payne concluded that there was a question of fact as to whether the officers used unreasonable force to effect the arrest; and

WHEREAS, pursuant to 42 U.S.C. §§ 1983 and 1988, if Plaintiff should be awarded compensatory damages, Officer Stegner and Officer Payne would be required to pay reasonable costs and attorney's fees of the Plaintiff which would likely total more than tens of thousands of dollars; and

WHEREAS, the Plaintiff has agreed to $150,000.00 as full settlement of all claims against Officer Stegner and Payne, including attorney's fees; and

WHEREAS, the parties participated in a mediation conference before a U. S. Magistrate judge to assess the potential exposure and risk of going to trial; and

WHEREAS, the City Attorney has done extensive review of the facts and the law and has determined that the City's potential financial exposure in defending Plaintiff's claim is in excess of the settlement amount; and

WHEREAS, the settlement of the case of *Banks v. Stegner et al.* shall not be deemed to be an admission of liability or wrongdoing on the part of Officer Stegner and Officer Payne, the City of Atlanta, or any current or former employee or agent of the City of Atlanta; and

WHEREAS, the City Attorney considers it to be in the best interest of the City to pay the amount of $150,000.00 to settle all claims.

THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA hereby ordains as follows:

SECTION 1. The City Attorney is hereby authorized to settle the case of *Bernard Banks v .Stegner et al.* in the amount of One Hundred and Fifty Thousand Dollars ($150,000.00).

SECTION 2. That the Chief Financial Officer is authorized to pay to Attorney John Morrison, on behalf of Bernard Banks, the sum of $150,000.00, and to charge such sum to Account No. 1A01-529017-T31001.

SECTION 3. To the extent that Section 2-783(h) of the Code of Ordinances of the City of Atlanta is in conflict herewith, that subsection is waived for this instance only to permit the payment of $150,000.00 on behalf of Matthew Stegner and Michael Payne.

SECTION 4. The Chief Financial Officer is authorized to pay the total sum of $150,000.00 to Attorney John Morrison, on behalf of Bernard Banks, from Account No. 1A01-529017-T31001, in exchange for the Plaintiff's execution and delivery to the City of a Final Payment and General Release and a filed Notice of Voluntary Dismissal With Prejudice.