



**Request for City Council Committee Action  
From the City Attorney's Office**

Date: June 5, 2008  
To: Ways & Means/Budget Committee  
Referral to:

**Subject:** Jacob Malinka v. City of Minneapolis

**Recommendation:** That the City Council approve the settlement of this case by payment of \$3,500.00 payable to Jacob Malinka and his attorney, James Young, from Fund/Org. 6900 150 1500 6070 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

**Previous Directives:**

Prepared by: Tracey Fussy Phone: (612) 673-2254

Approved by: \_\_\_\_\_  
*fs* Susan Segal  
City Attorney

Presenter in Committee: Susan Segal, City Attorney

**Financial Impact:**(Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).  
 Action requires an appropriation increase to the \_\_\_\_\_ Capital Budget or \_\_\_\_\_ Operating Budget.  
 Action provides increased revenue for appropriation increase.  
 Action requires use of contingency or reserves.  
 Business Plan: \_\_\_\_\_ Action is within the plan. \_\_\_\_\_ Action requires a change to plan.  
 Other financial impact (Explain): \$3,500 from Fund/Org. 6900 150 1500 6070  
 Request provided to department's finance contact when provided to the Committee Coordinator.

**Community Impact:** Other

**Background/Supporting Information:**

Claimant Jacob Malinka was driving between 9 and 10 p.m. on May 26, 2005, when he drove over a median on Norm McGrew Place just north of 4<sup>th</sup> Street South. The median has a "keep right" warning sign located at the nose of the median. Evidence suggests it was not present at the time Mr. Malinka ran over the curb. Work orders from the Traffic & Parking Services Division of the Public Works Department indicate that this particular sign is knocked down 1-2 times a month. Mr. Malinka's Volkswagon Jetta sustained \$7500 in damages as a result of running over the unmarked median.

It is well-settled law that the City is responsible for maintaining permanent traffic-control devices. Although the City has discretion with respect to determining whether a given location needs a traffic-control device, once the City allows the placement of a traffic-control device, and void of any engineering decision to remove such device, the City must maintain the device. The City has no immunity from liability because maintaining the device is not a discretionary policy decision. Here, the facts demonstrate that the City determined the median needed a "keep-right" sign at that intersection.

The City is aware of the liability the particular intersection potentially creates. The costs to modify the intersection to reduce the liability are prohibitive. Considering the city resources that would be required to defend the case in court and that a jury could decide in favor of Mr. Malinka, settlement is advisable in this matter.

Mr. Malinka demanded \$7,500 to settle the claim. After negotiations, a proposed settlement was reached in the amount of \$3,500.00. The settlement amount has been reviewed and approved by the City Attorney Litigation Committee. Public Works has also had a chance to review the file and agrees to the settlement. Therefore, staff recommends approval of the settlement.