



TOWN OF ERIE

645 Holbrook Street
Erie, CO 80516

Town Council

Board Meeting Date: 7/28/2020

File #: 20-396, Version: 1

SUBJECT:

A Resolution of the Board of Trustees of the Town of Erie Delegating Certain Decisions Related to Police Officer Indemnification to the Police Chief

DEPARTMENT: Police

PRESENTER: Kim Stewart, Chief of Police & Kendra Carberry, Town Attorney

TIME ESTIMATE: 15 minutes

FISCAL SUMMARY: N/A

Cost as Recommended:

Balance Available:

Budget Line Item Number:

New Appropriation Required:

STAFF RECOMMENDATION:

Staff recommends approving this resolution.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Law Enforcement Integrity Bill, Senate Bill 20-217 (the "Bill"), was enacted by the Colorado Legislature on June 13, 2020 and signed by the Governor on June 19, 2020. The Bill makes substantial changes to civil liability exposure to both officers and their employers. In general, officers are protected from civil liability by the Colorado Governmental Immunity Act (CGIA). However, the Bill creates a new cause of action for circumstances when an individual's rights protected under Article II of the Colorado Constitution (Colorado's Bill of Rights) have been deprived by the actions of an officer, including when an officer fails to intervene. Under the Bill, a court may not only award damages, but may also institute injunctive relief. Any action under this new statute must be commenced within two years after the cause of action accrues.

The Bill expressly excludes the application of statutory immunities and limitations on liability, damages and attorney fees to this new cause of action, and qualified immunity is not a defense to liability. While qualified immunity is not statutorily recognized in Colorado, it is a doctrine that was developed through federal case law for actions brought under certain federal statutes.

The Bill also addresses indemnification of officers by their employer, and deviates from the willful and wanton standard traditionally applied under the CGIA. The employer is required to indemnify the officer for any liability, judgment or settlement, unless the officer has been convicted of a criminal violation for the conduct from which the civil claim arises. In addition, if the employer determines that the officer did not act "upon a good faith and reasonable belief that the action was lawful", the employer shall not indemnify the officer for 5% or \$25,000 of the judgment or settlement, whichever is less. (emphasis added) However, if the officer's portion of the judgment or settlement is not collectable from the officer, the employer or insurer must satisfy the full amount of the judgment or settlement.

The obligation on the officer to pay 5% or \$25,000 and the requirement that the employer or insurer pay a judgment or settlement when not collectable do not apply when an officer has been convicted for the conduct associated with the claim. Lastly, the Bill also provides that courts shall award attorney fees and costs to the prevailing plaintiff, but is not required to award attorney fees and costs to a prevailing defendant if the court finds that the claim was frivolous. It should be noted this is broader than the attorney fees provision for a federal § 1983 claim which allows, but does not require, the award of attorney fees for a prevailing plaintiff.

The Bill raises some practical matters which should be addressed, including:

- The Bill is unclear as to who, other than "the employer", is to make determinations on officer conduct.
- The Police Chief is the person with the most experience in police matters, and is responsible for managing the Police Department and its staff, and therefore makes, except in certain instances, determinations on officer conduct.
- Town Code Section 1-6A-2 and Subsections (C), (D), and (E)) specify the Town Administrator shall, "be responsible to the board of trustees for the proper administration of all affairs of the town placed in his charge", "provide for the hiring, suspension, discipline, transfer, and removal of town employees", "enforce personnel rules and regulations governing employees of the town", and "be responsible for the supervision and direction of the activities of all employees of the town", and is therefore responsible for determinations not delegated to the Police Chief.
- Town Code Section 1-6-1 (B) provides for the Board of Trustees to appoint and remove the Board's direct reports (Town Administrator, Town Attorney, Town Clerk, and Municipal Judge), and specifies "all remaining town employees shall be employed and may be terminated by the town administrator". Accordingly, the Board of Trustees should not be involved in determinations of officer conduct, because an officer is not a direct report of the Board, and because the Town Administrator is responsible for the property administration of all affairs of the Town placed in his charge.
- Certain determinations regarding conduct and liability involve complex legal and insurance provisions on which the Town Attorney and the Town's insurer should be consulted.

The proposed Resolution addresses these matters by delegating to the Police Chief the authority to determine whether a police officer should be indemnified by the Town unless (A) the officer's actions

are related to a pending complaint, or (B) the Police Chief is directly involved in the actions being evaluated. In these exceptions, the determination will be made (A) jointly by the Town Administrator and the Police Chief in consultation with the Town's insurer and the Town Attorney, or (B) by the Town Administrator in consultation with the Town's insurer and the Town Attorney.

This resolution does not go as far as some municipalities and counties have. For example, the City of Greenwood Village and Weld County have both declared that its officers would be indemnified in ALL circumstances. This action seems to contradict the intent of the Bill, and may be subject to legal challenge. As such, we recommend the Board of Trustees adopt the Resolution as drafted.

Fiscal Impact: TBD

Board Priority(s) Addressed:

- ✓ Effective Governance

ATTACHMENTS:

1. Resolution