

ORDINANCE NO. C - _____

An ordinance creating the Office of Police Ombudsman, adding a new chapter 4.32 to title 4 of the Spokane Municipal Code; and repealing chapter 4.26 SMC regarding the Citizens' Review Commission.

The City of Spokane does ordain:

Section 1. That there is added a new chapter 4.32 to title 04 of the Spokane Municipal Code to read as follows:

Section 04.32.010 Office of Police Ombudsman.

- A. The Office of Police Ombudsman (OPO) is established in order to help ensure that investigation of complaints against police officers are accomplished in a timely, fair and thorough manner; to provide visible, independent oversight of police officers; and to reassure the public that investigations into complaints and allegations of police misconduct are conducted in a timely, thorough and objective manner.
- B. The Police Ombudsman and any employee of the OPO must, at all times, be totally independent. Any findings, recommendations and requests made by the OPO must reflect the independent views of the OPO.
- C. No person shall attempt to unduly influence or undermine the independence of the Police Ombudsman, or any employee of the OPO, in the performance of the duties and responsibilities set forth in this chapter.

Section 04.32.020 Definitions.

- A. "Chief" means the Chief of the Spokane Police Department.
- B. "Complaint" means a complaint by any person of alleged police misconduct.
- C. "Complainant" means any person who files a complaint against any commissioned member of the Spokane Police Department.
- D. "Finding" means a conclusion reached after investigation.
- E. "IA" or "Internal Affairs" means the Spokane Police Department's investigative unit, whose responsibilities and procedures are described in the Spokane Police Department's Policy and Procedure manual, as amended from time to time, to

receive and investigate allegations of misconduct by Spokane Police Department employees.

- F. "Material to the outcome," "material statement," and "material fact" are those facts, evidence, or statements which tend to influence the trier of fact because of its logical connection with the issue. It is a fact which tends to establish any of the issues raised by the complaint or the defenses to the complaint.
- G. "Mediation" means a private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. The mediator has no power to impose a decision on the parties.
- H. "Member" means a sworn employee of the Spokane Police Department about whom a complaint has been submitted to the Spokane Police Department or the OPO.
- I. "Misconduct" means conduct by a member during an encounter with a citizen, which conduct violates Spokane Police Department regulations or orders, or other standards of conduct required of City employees.
- J. "Policy-related issue" means a topic pertaining to the Spokane Police Department's hiring and training practices, the Spokane Police Department's policies and procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of any recommended or actual disciplinary action related to a particular officer's conduct.
- K. "Personally identifying information" means the name, address and/or contact information of an individual. Description by the OPO of a specific incident without including names and/or contact information does not constitute the release of personal identifying information.

Section 04.32.030 Functions and Duties.

- A. The functions and duties of the OPO are as follows:
 - 1. The OPO will actively monitor all police department internal investigations.
 - 2. The OPO may receive complaints from any complaining party, including, without limitation, citizens or employees of the police department. The OPO will forward all complaints to the police department's Internal Affairs (IA) unit within three business days for processing and, when appropriate, investigation. The OPO will not conduct independent disciplinary investigations, but may participate in interviews as provided herein.

3. In addition to complaints received by the OPO, IA will provide copies of all other complaints received by the Spokane Police Department to the OPO within three business days. Once the case is closed, the OPO will return all case file materials to IA for retention, but will have subsequent access to closed cases.
4. The OPO will have the opportunity to make a recommendation for mediation to the Chief of Police, prior to investigation. In the event the Department, the complainant and the officer all agree to mediation, that process will be utilized rather than sending the matter on for investigation. Assuming the officer participates in good faith during the mediation process, the officer will not be subject to discipline, and no disciplinary finding will be entered against the officer. Good faith means that the officer listens to all information presented and considers the issues raised by the complainant, and acts and responds appropriately. Agreement with either the complainant or the mediator is not a requirement of good faith. In the event an agreement to mediate is reached and the complainant thereafter refuses to participate, the officer will be considered to have participated in good faith.
5. Once any complaint is received by the Internal Affairs unit, it shall be submitted to the chain of command for review per existing police department policy. When either the Chief or the Chief's designee determines that the allegations warrant investigation, such investigation shall be approved, and IA will initiate the investigative process.
6. Internal Affairs will notify the OPO of all administrative interviews on all complaints of a serious matter (complaints that could lead to suspension, demotion or discharge) and all complaints originating at the OPO. The OPO may attend and observe interviews, and will be given the opportunity to ask questions after the completion of questioning by the Department.
7. The OPO will not participate in criminal investigations of Department employees, but will be notified when the criminal investigation is concluded.
8. Upon completion of each administrative investigation, IA will forward a complete copy of the case file to the OPO for review. The OPO will determine whether the investigation was thorough and objective.
9. As a part of the review process, the OPO may conclude that additional investigation is needed on issues deemed material to the outcome. If there is any dispute between the assigned investigator(s) and the OPO regarding the necessity, practicality or materiality of the requested additional investigation, the Chief (or designee) will determine whether additional investigation will be undertaken. If the OPO is not satisfied with

the determination of the Chief, the matter will be resolved by the Mayor, whose decision will be final. Once the matter has been referred to and resolved by the Mayor, the investigation will be completed consistent with the determination by the Mayor. After completion of the additional investigation, or the conclusion that no further investigation will be undertaken, the OPO will then certify whether or not, in the opinion of the OPO, the internal investigation was thorough and objective. This determination will be made within five business days. Once the above finding is entered in the investigation, the OPO will not be involved further in the disciplinary process in that case.

10. The OPO shall not have a role in any disciplinary matter. All disciplinary decisions will be made by the Chief (or designee).
11. The OPO will be provided a copy of any letter or other notification to an officer informing the officer of actual discipline imposed as a result of an internal affairs investigation, or any Notice of Finding in the event that the complaint is not sustained.
12. The OPO will be notified by IA within five business days of case closure of all complaints of a Serious Matter and all complaints originated by the OPO. The OPO may send a closing letter to the complainant to summarize the case findings.
13. Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the Office of Police Ombudsman to discuss the matter further. However, unless persuasive and probative new information is provided, the investigation will remain closed. In accordance with established arbitral case law, employees may not be disciplined twice for the same incident. In the event the investigation is re-opened and discipline imposed, the appropriate burden of establishing compliance with this section rests with the City in any subsequent challenge to the discipline.
14. In addition to the investigative process, the OPO will have unimpeded access to all IA complaint and investigative files for auditing and reporting purposes. The OPO shall not retain investigative files beyond one year and will return the same to Internal Affairs for safekeeping. At all times and including, without limitation, issuing written reports, the OPO will not release the name(s) of employees or other individuals involved in incidents or investigations nor any other personally identifying information. The OPO may make statistical observations regarding the disciplinary results of sustained internal investigations, but shall not take issue with discipline imposed by the Chief of Police in specific cases.

15. The OPO may recommend policies and procedures for the review and/or audit of the complaint resolution process, and review and recommend changes in departmental policies to improve the quality of police investigations and practices. Nothing in this ordinance shall be construed as a waiver of the officers' collective bargaining right to require the City to engage in collective bargaining as authorized by law.
16. The OPO shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney's clients. The OPO shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.
17. The Police Ombudsman may adopt, promulgate, amend and rescind rules and procedures required for the discharge of the Police Ombudsman's duties, including policies and procedures for receiving and processing complaints, monitoring investigations, and reporting findings, conclusions and recommendations. The OPO may not levy any fees for the handling of complaints or any other duties identified in this chapter.
18. The OPO may independently investigate any incident, complaint, policy or trend, solely to achieve the purposes of this chapter, and not for any disciplinary purpose. No portion of any OPO investigation or report may be used by any party to advocate for or against any proposed discipline of an officer. The OPO may not compel an independent interview of an officer that is subject to possible discipline for the event that the OPO is investigating. Nor can the OPO, without adequate legal authority, release to the public any information that is deemed privileged under Washington law.

Section 04.32.040 Critical Incidents.

In the event an employee of the Police Department is involved as a principal, victim, witness or custodial officer, where death or serious bodily injury results, or where deadly force was used regardless of whether any injury or death resulted, the Police Ombudsman shall be notified immediately and shall act as an observer to any criminal, administrative or civil investigation conducted by or on behalf of the Department. The Police Ombudsman and the Chief shall develop necessary protocols for summoning the ombudsman to the incident for purposes of first-hand observation and subsequent monitoring of the investigation.

Section 04.32.050 Community Outreach.

The OPO shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with the citizens of Spokane on matters subject to the OPO's jurisdiction.

Section 04.32.060 Qualifications.

- A. The qualifications for the position of Police Ombudsman are:
 - 1. legal, investigative, or prosecutorial experience,
 - 2. familiarity with police procedures,
 - 3. ability to review investigations to ensure they are thorough and unbiased,
 - 4. successful completion of a criminal background investigation consistent with the requirements to become employed as a Spokane Police Officer,
 - 5. demonstrated ability to work with confidential information,
 - 6. a record of community involvement,
 - 7. an ability to build working relationships with and communicate effectively with diverse groups,
 - 8. a resident of the City, and
 - 9. a reputation for even-handedness in dealing with both complainants and the regulated parties.

Section 04.32.070 Training.

- A. The Police Ombudsman shall continue his/her professional education throughout the period of employment as the ombudsman in subjects consistent with the responsibilities of employment. At a minimum, such training shall include:
 - 1. a training program in police procedures and orientation to the Spokane Police Department, including at least one ride-along with police within six months of appointment, and
 - 2. completion of the Police Department's Citizens Academy within one year of appointment.

Section 04.32.080 Appointment.

- A. A committee of five members (Committee) will be formed that will recommend three candidates for the OPO position to the Mayor. The Committee shall be

composed of one member appointed by the Spokane Police Officers Guild; one member appointed by the Lieutenants and Captains Association; one member appointed by the City Council upon recommendation from the Mayor, one member appointed by the Mayor, and a fifth member selected by the other four members.

- B. The Mayor shall appoint one of the three individuals recommended by the Committee to the OPO position. The individual appointed by the Mayor and confirmed by the City Council must be one of the individuals recommended by the Committee. Confirmation by the City Council shall be by resolution. If the City Council does not approve the Mayor's appointee, the Mayor may either appoint another individual from the recommendations from the Committee or request the Committee to review applicants and forward additional recommendations.

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Section 04.32.090. Term.

- A. The appointment of the Police Ombudsman shall be for a six year term with the possibility of being reappointed for additional terms.
- B. A current Police Ombudsman may be reappointed for a second three year term upon recommendation of the Mayor and confirmation by the City Council. If the Mayor does not recommend reappointment or the City Council does not approve the reappointment prior to the expiration of the three year appointment term, the appointment term shall expire at the end of the three year term.

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Section 04.32.100 Removal.

The Police Ombudsman may not be removed from office during the six year term except for misconduct, inefficiency, incompetence, inability or failure to perform the duties of the office or negligence in the performance of the duties. In such cases that warrant removal from office, removal shall be by a resolution adopted by the City Council subsequent to a public hearing by either the majority of the full City Council upon recommendation of the mayor, or by a vote of no less than five members of the full City Council. Nothing contained herein shall prevent the City Council from either declining to approve an appointment or reappointment, or eliminating the Office of Police Ombudsman by legislative action, both of which do not require the City Council to consider removal for cause as set forth above. Except that elimination of the Office of Police Ombudsman shall only become effective upon the expiration of the sitting Ombudsman's term or a vacancy in the office, whichever occurs first.

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Section 04.32.110 Reporting Requirements.

- A. The Police Ombudsman reports, for administrative and executive functions, directly to the Mayor or the Mayor's designee.

- B. The Police Ombudsman is not an employee of the Spokane Police Department, and shall work independently from the Spokane Police Department.
- C. The Police Ombudsman shall make quarterly reports jointly to the Mayor, the Police Chief and the Public Safety Committee regarding the activities of the OPO. In addition, the Police Ombudsman shall make an annual report to the City Council during a Council meeting. The report shall contain:
 1. statistical analysis documenting the number of complaints by category, disposition and action taken,
 2. analysis of trends and patterns,
 3. recommendations.

Section 04.32.120 Police Advisory Board.

Nothing in this chapter shall prevent the Mayor and/or the Police Chief from maintaining a separate police advisory board, or other similar committee, to assist the Police Department and the City Administration in reviewing and developing police policies and procedures.

Section 04.32.130 Annual Review of Office of Police Ombudsman.

Subsequent to the annual report to the City Council from the Police Ombudsman, the City shall review the OPO program to determine if amendments to this chapter or changes to the program are required.

Section 04.32.140 False Reporting.

- A. The OPO shall have the discretion to decline further action on a complaint filed with the OPO if it is found that there is a reasonable belief that the alleged acts of misconduct in the complaint are false and that the person(s) filing the complaint knew them to be false at the time the complaint was filed.
- B. The employees of the OPO are considered public servants for purposes of SMC 10.07.020. Any person who knowingly makes a false or misleading material statement to the OPO is subject to criminal sanctions in SMC 10.07.020.

Section 2. That chapter 4.26 SMC regarding the Citizens' Review Commission shall be repealed upon the effective date of this ordinance.

PASSED BY THE CITY COUNCIL ON _____, 2008.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor
Bab090808

Date

Effective Date