

ORDINANCE NO. C 34593

An ordinance relating to the police oversight ordinance clarifying duty of independent reporting that does not infringe on collective bargaining rights, adopting a new section 4.32.035 to chapter 4.32 of the Spokane Municipal Code.

WHEREAS, the City of Spokane Chief of Police commissioned an expert report on police oversight to prepare written recommendations for a new model of Police Oversight in Spokane Washington. This model, developed by Sam Pailca, was released in April 2007 and recommended that the City create an Office of Police Ombudsman that had non-disciplinary independent reporting and investigatory authority;

WHEREAS, the City of Spokane's Chief of Police and Mayor endorsed the new model for police oversight in a written press release on April 23, 2007;

WHEREAS, the Washington Supreme Court in *IAFF Local 1052 V. PERC*, 113 Wn.2d 197, 200 (1989), clearly recognized that the scope of mandatory bargaining under Washington law is "limited to matters of direct concern to employees" such as wages, hours, and working conditions, and does not include managerial activities or decisions "that only remotely affect 'personnel matters.'"

WHEREAS, no Washington Court has held that non-disciplinary independent reporting or investigatory police oversight is subject to collective bargaining;

WHEREAS, the Washington's Public Employee Relations Commission has never ruled that non-disciplinary independent reporting or investigatory police oversight is subject to collective bargaining;

WHEREAS, the Washington Public Employment Relations Commission ruled in 2009 that because Seattle's Office of Professional Accountability Review Board (OPARB) lacks disciplinary authority, OPARB's review powers do not impact any term or condition of law enforcement officers' employment that would require collective bargaining;

WHEREAS, the Spokane Office of Police Ombudsman lacks the authority to discipline or recommend that any officer be disciplined;

WHEREAS, City of Spokane's current ordinance authorizing police oversight does not preclude independent reporting or investigations;

WHEREAS, the power of independent reporting and investigation has been shown to increase the effectiveness of police oversight, including fewer and lower claims paid and improved relations between the police and the citizens that employ them in other cities, including Boise, Idaho;

**REVISED**  
5-17-2010

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WHEREAS, the Spokane City Council unanimously approved a resolution requesting that the Mayor seek inclusion of independent investigation for the Office of Police Ombudsman in negotiations for an upcoming labor agreement;

WHEREAS, clarification of independent reporting and investigation was not included in the most recent labor agreement between the Police Guild and the Mayor's Office;

WHEREAS, the citizens of Spokane have clearly expressed their desires to their elected officials to include independent reporting and investigatory authority in the Office of Police Ombudsman;

WHEREAS, the foregoing ordinance is not intended to change substantive state law regarding the exemptions to public records laws or the admissibility of evidence as it relates to investigations of alleged police misconduct;

WHEREAS, independent reporting and non-compulsory investigations by the Office of Police Ombudsman may be conducted without labor negotiations as long as the investigations do not compel changes to the daily working conditions of the Police Guild Members or impact the disciplinary process; and

WHEREAS, the City of Spokane desires to clarify that the Office of Police Ombudsman shall engage in independent reporting and investigations that do not change the daily working conditions of its police officers or impact the disciplinary process, - - NOW THEREFORE,

The City of Spokane does ordain:

Section 1. That there is adopted a new section 4.32.035 to chapter 4.32 of the Spokane Municipal Code to read as follows:

**4.32.035 Independent Investigation**

- A. In addition to the functions and duties set forth in SMC 4.32.030, the Office of Police Ombudsman shall have the authority of independent investigation set forth in this section.
- B. The Office of Police Ombudsman is authorized and directed to provide independent reporting to the City of Spokane and the general public regarding the Office's findings in response to investigations of alleged police misconduct complaints and critical incidents.
- C. The Office of Police Ombudsman shall prepare a final report for each critical incident as defined by SMC 4.32.040 and/or each complaint as

defined by SMC 4.32.020 after any internal affairs investigation of the complaint and/or critical incidents has been completed. Except as specifically directed in this chapter, the content and length of the report shall be determined solely by the Office of Police Ombudsman subject to the Office's prioritization of its resources. If the Police Department chooses not to conduct an internal affairs investigation of a critical incident and/or complaint, the Office of Police Ombudsman shall still prepare a final report after the decision not to investigate has been made.

- D. At a minimum, each final report shall include a summary of the allegations of misconduct included in the complaint, the opinion of the Office of Police Ombudsman as to whether the complaint was founded or unfounded, the evidentiary basis of the Office of Police Ombudsman's opinion, and the Office of Police Ombudsman's recommendations on how to prevent or reduce similar complaints in the future.
- E. A "Founded" finding means that in the opinion of the Office of Police Ombudsman, some or all of the law enforcement conduct alleged in the complaint and/or evident in the record is more likely than not to have occurred (a preponderance of the evidence), and that the conduct violates applicable legal standards, City of Spokane policies and/or best law enforcement practices as determined by the Office of Police Ombudsman. A finding of "Founded" does not require the establishment of legal fault by an individual law enforcement employee.
- F. A finding of "Unfounded" means that in the opinion of the Office of Police Ombudsman, sufficient facts have not been proven more likely than not that would be a violation of applicable legal standards, City of Spokane policies and/or best law enforcement practices as determined by the Office of Police Ombudsman.
- G. The Office of Police Ombudsman's recommendations in each final report shall include specific recommendations for changes, if applicable, in employee conduct, city ordinances, law enforcement policies, procedures and/or training. Recommendations that are likely to prevent or minimize future complaints shall be included in every Final Report even when the facts alleged in a complaint have not been sufficiently proven to establish a departure from applicable legal standards, City of Spokane policies or best law enforcement practices.
- H. Each Final Report from the Office of Police Ombudsman shall be considered a public record except that in regards to all persons referenced in the Final Report, their names, contact information, addresses, telephone numbers, employee identification numbers and similar



identifying information shall be redacted unless the individual has provided written permission or the redacted information is considered a public record under otherwise applicable federal or state law. The inclusion of dates, locations other than street or mailing addresses, and/or description of the events shall not be considered identifying information subject to redaction.

- I. The sole purpose of the final reports issued by the Office of Police Ombudsman is to provide information to the City of Spokane and its citizens that can be used to improve the delivery of law enforcement services in Spokane. Any final report or portion of a final report issued by the Office of Police Ombudsman shall not be used by any employee or agent of the City of Spokane in any disciplinary, criminal, or civil legal proceeding either to prove or defend against any allegation made in that proceeding. Nothing in this provision shall be used to prohibit the use of evidence or testimony in any other proceeding that was obtained independently of the Office of Police Ombudsman.
- J. The Office of Police Ombudsman shall engage in any investigatory activities necessary to prepare a final report that is not precluded by city, state or federal law. However, the Office of Police Ombudsman may not compel testimony of City of Spokane employees who are subject to a collective bargaining agreement without a provision in the applicable collective bargaining agreement authorizing such compulsion.

PASSED BY THE CITY COUNCIL ON \_\_\_\_\_, 2010.

\_\_\_\_\_  
Council President

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date