

ORDINANCE NO. C- _____

An ordinance relating to the Office of Police Ombudsman, amending sections 4.32.020, 4.32.030 and 4.32.040 of Spokane Municipal Code.

WHEREAS, the City of Spokane has enacted chapter 4.32 of the Spokane Municipal Code establishing an independent Office of Police Ombudsman (hereinafter "OPO"); and

WHEREAS, the OPO has been in existence for approximately one year and has filed quarterly reports with the City as called for in the ordinance; and

WHEREAS, after implementation of the ordinance for the past several months, it has become apparent that the Municipal Code needs to be amended to provide additional provisions necessary to carry out the intent of the ordinance;

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That SMC section 4.32.020 is amended to read as follows:

4.32.020 Definitions

- A. "Chief" means the chief of the Spokane police department.
- B. "Complainant" means any person who files a complaint against any commissioned member of the Spokane police department.
- C. "Complaint" means a complaint filed with IA or with the OPO by any person of alleged police misconduct
- 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 a particular officer's conduct.
- K. "Serious matter" means any complaint that could lead to suspension, demotion, or discharge.

Section 2. That SMC section 4.32.030 is amended to read as follows:

4.32.030 Functions and Duties

The functions and duties of the OPO are as follows:

- A. The OPO will actively monitor all police department internal investigations.
- B. The OPO may receive complaints from any complaining party, including, without limitation, citizens or employees of the police department. Upon receipt of a complaint, the OPO may interview the complainant and any non-member witnesses and determine facts and circumstances as necessary to create a closing report, subject to section N of this ordinance. 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 or criminal investigations, but may participate in interviews as provided herein. The OPO will not receive or act upon complaints concerning events that occurred more than one year prior to the filing of a complaint.
- C. 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 of receipt. 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.

- D. 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.
- E. Once any complaint is received by the internal affairs unit either directly from a citizen or forwarded by the OPO to IA, 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 or the OPO determines that the allegations warrant investigation, such investigation shall be approved, and IA will initiate the investigative process.
- F. Internal affairs ((will)) shall notify the OPO in a timely manner 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, at the OPO's sole discretion, attend and observe interviews and ((will)) shall be given the opportunity to ask questions after the completion of questioning by the department.
- G. The OPO will not participate in criminal investigations of ((department employees)) a member, but ((will)) shall be notified when the criminal investigation is concluded. Other than actions necessary to receive a complaint, the OPO will not undertake any action or investigation during the pendency of a criminal investigation and /or prosecution of a member. At such time as the criminal investigation and / or prosecution of a member is complete, the OPO may take any action on such complaint as is authorized under any provision of this ordinance.
- H. 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.
- I. 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 IA 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

regarding the recommendation for additional IA investigation, 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 IA investigation will be completed consistent with the determination by the mayor. If the OPO is not satisfied with the decision of the mayor, the OPO may interview the complainant and any non-member witnesses and conduct any other investigation the OPO deems necessary, subject to section N of this ordinance. Any additional information obtained by the OPO pursuant to his or her own interviews or investigation shall not be delivered to IA and shall not be made a part of the IA investigative record. 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 fifteen business days. Once the above finding is entered in the investigative on record, the OPO will not be involved further in the disciplinary process in that case.

- J. The OPO shall not have a role in any disciplinary matter. All disciplinary decisions will be made by the chief (or designee).
- K. 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.
- L. 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 shall send a closing letter to and/or conduct a closing interview with the complainant to summarize the case findings.
- M. 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 members 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.
- N. 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 members 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.
- O. 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, training and practices. Nothing in this chapter 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.
- P. The OPO shall produce a closing report, in accordance with the provisions of sub-paragraph N above, upon completion of the IA investigation and the resolution of the complaint by the police department and the chief of police. The final closing report shall include a summary of the OPO's conclusions regarding the substance of the complaint and any recommendations regarding revision of any applicable law enforcement policy, training protocol and/or law enforcement procedure materially associated with the basis for the complaint. A copy of the closing report shall be sent to IA and the complainant and shall be posted on the OPO's website. 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.
- Q. 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.
- R. ((Q.)) 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.

Section 3. That SMC section 4.32.040 is amended to read as follows:

4.32.040 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, where an officer has used an electronic control device in response to an encounter with a citizen, or where the SWAT team has been deployed, the police ombudsman shall be notified immediately and shall act as an observer to any 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 4. Severability

Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

PASSED BY THE CITY COUNCIL ON _____, 2010.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date