

REGULAR MEETING NOTICE/AGENDA OF THE SPOKANE CITY COUNCIL

MEETING OF THURSDAY, JULY 13, 2023, 11:00 A.M. – CITY COUNCIL CHAMBERS

A regular meeting of the Spokane City Council will be held at **11:00 A.M. on Thursday, July 13 2023**, in City Council Chambers - City Hall 808 W. Spokane Falls Blvd. The meeting can also be accessed live on CityCable5 and streamed online at <https://my.spokanecity.org/citycable5/live/> and <https://www.facebook.com/spokanecitycouncil> or by calling 408-418-9388 and by using access code 2490 239 4174.

The meeting will be conducted in a study session format and will be open to the public both virtually and in person. No legislative action will be taken. No public testimony will be taken, and discussion will be limited to appropriate officials and staff.

Executive Session

At any time during or after the regular Study Session Agenda, the City Council may choose to adjourn into Executive Session for the purpose of discussing privileged legal matters. This portion of the meeting would be closed to the public pursuant to RCW 42.30.110.

Agenda:

[Discussion on draft ordinance to create a remedy for wrongful actions by city officials - CP Beggs & Chris Wright \(5 min\)](#)

Drug Recovery & Prevention Programs for Youth - West Spokane Wellness Coalition (20 min)

End of Year Financial Report - Tonya Wallace (5 min)

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION: The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Risk Management at 509.625.6221, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or mLOWmaster@spokanecity.org. Persons who are deaf or hard of hearing may contact Risk Management through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

Committee Agenda Sheet

STUDY SESSION – JULY 13

Select Committee Name

Submitting Department	City Council
Contact Name	Chris Wright, Virginia Ramos
Contact Email & Phone	epoulsen@spokanecity.org
Council Sponsor(s)	BP Beggs
Select Agenda Item Type	<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Discussion Time Requested: 10 minutes
Agenda Item Name	Draft ordinance to create a remedy for wrongful actions by city officials
Summary (Background) *use the Fiscal Impact box below for relevant financial information	<p>This is a draft ordinance presented for discussion only to explore a possible new form of immunity for city officials whose conduct complied with their training or city policy, but still allowing for a cause of action against the city itself for such conduct. The draft is modeled after a similar state-wide proposal introduced at the 2023 state legislative session (SHB 1025) and an existing law in Colorado.</p> <p>Currently, the qualified immunity that protects police officers from liability under Section 1983 federal claims inures to the benefit of the City, since the City is not itself directly liable under 1983 claims, but as a party that indemnifies officers, it benefits from a successful defense by an officer sued for 1983 claims. The practical effect is that the city suffers no liability, even when the wrongful conduct of an officer was consistent with that officer’s training or city policy. In other words, even though the conduct arose from defective city policy or training, the city itself currently is not exposed to liability under 1983 claims.</p> <p>The ordinance essentially provides individuals injured by conduct of an officer with a direct claim against the city, so long as the officer’s conduct fell within a narrow range of actions and the conduct was consistent with that officer’s training or city policy. The key provision reads as follows:</p> <p style="padding-left: 40px;">“Any person injured in person or property by a city officer acting under color of authority has a cause of action against the city if the city officer engaged in conduct resulting in civil liability that is</p> <p style="padding-left: 40px;">A. Unlawful under:</p> <p style="padding-left: 80px;">i. The state Constitution</p> <p style="padding-left: 80px;">ii. RCW 10.93.160; or</p> <p style="padding-left: 80px;">iii. RCW 10.120.020, and</p> <p style="padding-left: 40px;">B. The conduct resulting in civil liability was within the scope of the city officer’s employment; and</p>

C. If, when the injury occurred, the city officer substantially complied with a regulation, practice, procedure, policy, or training that was established by the city or approved or condoned by city officer’s superiors.”

The ordinance further provides that the City will indemnify an officer in such circumstances so long as the officer cooperates in the City’s defense of any claim and the officer does not initiate any claims against the city.

As drafted, the ordinance would go into effect January 1, 2024 so as to allow the SPD and the City to properly educate and prepare officers and officials regarding the new provisions. The proposal is being introduced at study session to allow for ample internal and community discussion.

Proposed Council Action Discussion only / Council Study Session July 13

Fiscal Impact
 Total Cost: Unknown
 Approved in current year budget? Yes No N/A
 Funding Source One-time Recurring
 Specify funding source: Opioid settlement funds
 Expense Occurrence One-time Recurring
 Other budget impacts: (revenue generating, match requirements, etc.)

Operations Impacts (If N/A, please give a brief description as to why)

What impacts would the proposal have on historically excluded communities?
 N/A

How will data be collected, analyzed, and reported concerning the effect of the program/policy by racial, ethnic, gender identity, national origin, income level, disability, sexual orientation, or other existing disparities?
 N/A

How will data be collected regarding the effectiveness of this program, policy, or product to ensure it is the right solution?
 N/A

Describe how this proposal aligns with current City Policies, including the Comprehensive Plan, Sustainability Action Plan, Capital Improvement Program, Neighborhood Master Plans, Council Resolutions, and others?
 N/A

ORDINANCE NO. C-_____

An ordinance creating a private right of action for harm from violations of the state Constitution or state law by city officials and adding immunity protection to officers who follow city training and policy; adopting a new chapter 01.09 to Title 1 of the Spokane Municipal Code.

WHEREAS, qualified immunity is a long-standing judicially-created doctrine that shields public officials' misconduct from liability, even when the misconduct is unlawful, and operates as a defense in cases alleging the deprivation of statutory or constitutional rights under 42 U.S. Code § 1983 (Section 1983); and,

WHEREAS, Section 1983 was enacted by Congress in 1871, and scholars recently discovered that in 1874, while preparing the first official compilation of federal laws, sixteen critical words were omitted from Section 1983; specifically, "any such law, statute, ordinance, regulation, custom or usage of the state to the contrary notwithstanding;" and

WHEREAS, the words omitted from Section 1983 in the original compilation of federal laws demonstrated Congress' clear intent to override traditional common law immunities that protected government officials, and further demonstrated Congress' intent to provide a broad and effective remedy for civil rights violations by officials acting under color of state law; and,

WHEREAS, the doctrine of qualified immunity was based on the erroneous compilation of federal law in 1874; and

WHEREAS, the doctrine of qualified immunity has since created a culture of limited accountability within police departments, as under the doctrine officers cannot be held liable unless they violate "clearly established law", a high burden of proof that is almost impossible for plaintiffs to achieve, and at the same time does not adequately protect employees who followed city policy and training; and

WHEREAS, the City of Spokane, as a municipal corporation, cannot be held directly or vicariously liable for Section 1983 claims against a city officer, but ultimately is liable for such claims to the extent it is contractually obligated to indemnify a city officer, and therefore benefits from the successful assertion of the qualified immunity defense by a city officer to the detriment of community members who are damaged by illegal government conduct; and

WHEREAS, it is the policy of the City of Spokane to protect law enforcement officers who follow police policy and training by ensuring they are not held financially accountable or liable for good faith violations of federal or state law, while at the same time preserving

existing individual liability for city officials and law enforcement personnel who violate Section 1983 and other applicable laws; and

WHEREAS, consistent with the City Charter, “to the extent permitted by law, the council shall have the power to prescribe the manner, form, and time by which the various types of claims for damages against the City, if any, shall be made, settled, and paid.”

WHEREAS, the City of Spokane desires to provide a meaningful legal remedy against the city for persons who are injured and suffer damages through wrongful actions of police officers and city officials acting in conformity with local police procedures and policies; and

WHEREAS, the City of Spokane wishes to formally recognize a “Policy and Training Immunity” for causes of action brought against city employees or other individuals acting under color of law, whereby the individual is not liable when adhering to policy and training but the city is held civilly liable if the training or policy leading to the wrongful conduct was not consistent with the established Washington Code of reasonable care (RCW 10.120.020) or other applicable local and state laws.

NOW THEREFORE, the City of Spokane does ordain:

Section 1. That there are adopted new sections to chapter 1.09 of the Spokane Municipal Code to read as follows:

SMC 01.09.010	Scope and Purpose
SMC 01.09.020	Definitions
SMC 01.09.030	Creation of a Cause of Action
SMC 01.09.040	Indemnification of City Officers
SMC 01.09.050	Officer Immunity for Complying with City Training and Policy
SMC 01.09.060	Effect on Collective Bargaining Agreement Rights
SMC 01.09.070	Effect on Statutory or Common Law Immunities

Section 1.09.010 **Scope and Purpose**

- A. The City of Spokane undertakes to protect the safety of individuals and to preserve public peace by employing peace officers entrusted with the power to arrest, detain and use force against individuals suspected of violating the law. It is the intent of the City of Spokane to provide a legal remedy in SMC for persons who are injured or killed when a peace officer or city Officer violates the state Constitution or certain local and state laws, while financially protecting city employees who are alleged to have violated laws with policy and practice

immunity when the alleged wrongful actions were taken in accordance with the employee's training and city policies.

- B. The City of Spokane finds that the lack of such a remedy jeopardizes justice for the victims and implies impunity for the violators and fails to protect city employees who were following city training and policies. In order to foster the important public policy of accountability for unlawful policing and promote trust between communities and law enforcement, this code establishes a more meaningful remedy through a civil cause of action by which victims of such misconduct by city officials may obtain compensation from the city for their injuries and an award of costs and attorney fees incurred in seeking the remedy.
- C. Under this chapter code, the City of Spokane intends to preclude the application of the doctrine of qualified immunity to any defense by the City of Spokane in litigation of suits based on unreasonable force or detention and instead permit the application of a "Policy and Training Immunity" defense for city officers and law enforcement personnel.

Section 1.09.020 Definitions

- A. "City officer" has the meaning in SMC 01.04A.020.G., including all city law enforcement personnel.
- B. "Conduct resulting in civil liability" refers to assault, unlawful imprisonment and/or wrongful death.

Section 1.09.030 Creation of a Cause of Action

Any person injured in person or property by a city officer acting under color of authority has a cause of action against the city if the city officer engaged in conduct resulting in civil liability that is

- A. Unlawful under:
 - i. The state Constitution
 - ii. RCW 10.93.160; or
 - iii. RCW 10.120.020, and
- B. The conduct resulting in civil liability was within the scope of the city officer's employment; and

- C. If, when the injury occurred, the city officer substantially complied with a regulation, practice, procedure, policy, or training that was established by the city or approved or condoned by city officer's superiors.

Section 01.09.040 Indemnification of City Officers

The City of Spokane shall indemnify, defend and hold harmless city officers, including law enforcement personnel, for any conduct resulting in civil liability under 42 U.S.C. Sec 1983, so long as:

- A. the conduct resulting in civil liability substantially complied with a regulation, practice, procedure, policy, or training that was established by the city or approved or condoned by city officer's superiors, and
- B. the city officer cooperates in any judicial proceeding adjudicating a claim against the city under this chapter. A city officer shall be deemed to cooperate in such judicial proceeding when he or she, with respect to conduct resulting in civil liability under this chapter, (i) testifies fully and voluntarily during discovery and trial of any claim under this chapter, (ii) asserts no direct claim, counterclaim, or cross claim against the city in connection with any Section 1983 claim against the officer except to enforce said officer's right to indemnity and a defense under this section.

Section 01.09.050 Officer Immunity for Complying with City Training and Policy

The provisions of SMC 01.09.040 shall apply to city officers who establish, on a more probable than not basis, that any alleged misconduct complied with city training and policy applicable to the alleged conduct.

Section 01.09.060 No Effect on Collective Bargaining Agreement Rights

Nothing herein shall be deemed to abrogate, modify or extinguish any right of a city officer, or any obligation of the city to said officer, set forth in any existing collective bargaining agreement.

Section 01.09.070 No Effect on Other Immunities.

Section 1. Except to the extent the city establishes a private cause of action under SMC 01.09.030, nothing in this Chapter shall be deemed to modify, abridge, or waive any statutory or common law rights, defenses or immunities available to any city officer or the city in any proceeding under 42 U.S.C. Sec 1983.

Section 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the

validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 3. Upon approval by the city attorney, the city clerk is authorized to make necessary corrections to this ordinance, including scrivener’s errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

Section 4. This ordinance shall be effective on January 1, 2024.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date