

Resolution No. 2013-0033

A resolution regarding the Office of Police Ombudsman, the Police Ombudsman Commission and the implementation of amendments to the City Charter related to both the Ombudsman and the Commission.

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 over three years; and

WHEREAS, Spokane's electorate voted in February 2013 to amend the City Charter to add sections creating a Police Ombudsman Commission and an Office of Police Ombudsman that has independent investigatory authority necessary to fulfill the duties established under the City Charter. The City Charter amendment provides that the duties and functions of the Office of Police Ombudsman be established by ordinance consistent with the City Charter; and

WHEREAS, the City and the Spokane Police Guild have previously and are currently engaged in collective bargaining; and

WHEREAS, the attached proposed ordinance has been prepared with the intention of implementing the provisions of the recent City Charter amendment, including establishing the duties and functions of the OPO consistent with the City Charter amendments; and

WHEREAS, the City Council desires to adopt an ordinance implementing the provisions of the recent City Charter amendments, including establishing the duties and functions of the OPO, while encouraging the City and the Police Guild to complete their current collective bargaining efforts, which will result in a collective bargaining agreement that supports and implements the City Charter amendments.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Spokane that the City Council supports the collective bargaining efforts of the City and the Spokane Police Guild and encourages the parties to negotiate a collective bargaining agreement that either includes terms and conditions that substantially accomplish the objectives of the attached proposed ordinance, or that does not preclude the City from adopting such terms and conditions by ordinance.

ADOPTED by the City Council _____, 2013.

City Clerk

Approved as to form:

Assistant City Attorney

Ordinance No. C - _____

An ordinance relating to the Office of Police Ombudsman, amending SMC sections 4.32.010, 4.32.020, 4.32.040, 4.32.090, 4.32.100 and 4.32.110, repealing SMC sections 4.32.030 and 4.32.080, and adopting new sections 4.32.035, 4.32.085, 4.32.150 and 4.32.160 to chapter 4.32 of the 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 three years and has made valuable contributions to police oversight, enhanced public confidence in the City's management of the police department, and provided the mayor and council with valuable analysis and recommendations for police reforms and improvements; and

WHEREAS, Spokane's elected leaders have long shared citizen concerns and aspirations that the OPO become a credible office of police oversight that is structurally independent of the Spokane Police Department; and

WHEREAS, enhancing the credibility and effectiveness of the OPO requires that it be a true ombudsman office with the authority and capacity to conduct independent investigations into citizen complaints and concerns; and

WHEREAS, Spokane's electorate voted in February 2013 to amend the City Charter to add a section creating a Police Ombudsman Commission and an Office of Police Ombudsman that has independent investigatory authority. The Charter amendment mandates that the duties and functions of the Office of Police Ombudsman be established by ordinance. This ordinance is intended to fulfill that mandate.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That SMC section 4.32.010 is amended to read as follows:

4.32.010 Office of Police Ombudsman

A. The Office of Police Ombudsman (OPO) is established in order to:

1. ~~((Help ensure))~~ Ensure that investigations of complaints against police officers are accomplished in a timely, fair, and thorough manner;
2. Provide visible, professional, independent oversight of police officers;
3. Reassure the public that SPD Internal Affairs investigations into complaints and allegations of police misconduct are conducted in a timely, thorough, and objective manner; and,

4. Provide independent oversight and policy recommendations to improve the Spokane police department.
- B. The police ombudsman and employees of the OPO must, at all times, be ~~((totally))~~ completely 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.))~~ If any section, paragraph, sentence, clause or phrase of this chapter is found to be pre-empted by any existing collective bargaining agreement, it shall be deemed severed from this chapter and unenforceable until such time as the applicable collective bargaining agreement has been replaced by a successor agreement. The City shall not enter into any collective bargaining agreement that limits the duties or powers of the police ombudsman commission or the office of police ombudsman as set forth in this chapter unless such limitation is required to comply with existing federal or state law.
- D. The OPO shall not investigate complaints which pertain to internal personnel matters.

Section 2. That SMC section 4.32.020 is amended to read as follows:

4.32.020 Definitions

- A. "Certify" or "certification process" refers to the determination by the OPO that an IA complaint investigation was timely thorough and objective, including whether IA properly advised the complainant of the availability of the OPO complaint process.
- B. ~~((A-))~~ "Chief" means the chief of the Spokane police department.
- C. "Community Impact Case" (CIC) means an incident and/or citizen complaint that because of public visibility, media exposure and/or allegations of serious or willful misconduct on the part of one or more Spokane police officers, warrants immediate independent investigation by the OPO. The OPO will decide if and when a CIC exists, subject to confirmation by the Police Ombudsman Commission.
- D. ~~((B-))~~ "Complainant" means any person who files a complaint against ~~((any commissioned member of the Spokane police department))~~ a police officer(s).

- E. ~~((G-))~~ “Complaint” means a complaint filed with IA or with the OPO by any person of alleged police misconduct regardless of whether the complaint has been classified as a citizen inquiry of an investigation.
- F. “Continuing pattern of unprofessional conduct” exists when there is a founded complaint of unprofessional conduct on the officer’s record, or two or more recorded allegations of unprofessional conduct against the officer within the previous five years.
- G. ~~((D-))~~ “Finding” means a conclusion reached after investigation.
- H. ~~((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.
- I. ~~((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.
- J. ~~((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.)~~
- K. ~~((I-))~~ “Misconduct” means conduct by a ~~((member))~~ Spokane police officer during an encounter with a citizen, which conduct violates Spokane police department regulations or orders, or other standards of conduct required of City employees.
- L. “Police Officer” means a commissioned member of the Spokane Police Department.
- M. ~~((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.

- N. ~~((K.))~~ “Serious matter” means any complaint that could lead to suspension, demotion, or discharge.

Section 3. That SMC section 4.32.030 entitled “Functions and Duties” is repealed.

Section 4. That there is adopted a new section 4.32.035 to chapter 4.32 SMC to read as follows:

4.32.035 Functions and Duties

A. The two primary roles of the OPO are:

1. To actively monitor Spokane police department IA investigations of complaints and to make recommendations for improving policies and procedures based upon observations; and
2. To conduct independent investigations of complaints and issue and publish closing reports in response to complaints filed with the OPO.

B. General Provisions.

1. Receipt of complaints.
Any person may file a complaint against a police officer(s) with either IA or the OPO, or both.
2. Investigations.
 - a. If a complaint is filed solely with IA: The OPO may actively monitor the IA investigation and, consistent with the provisions of 4.32.035 (C)(2) may investigate to the extent necessary to independently certify the timeliness, objectivity and thoroughness of the IA investigation.
 - b. If a complaint is filed solely with the OPO, or with both the OPO and IA: The OPO may conduct an independent investigation at any time, regardless of IA action, as provided in this chapter.
 - c. Within the framework above, the OPO has the authority to determine what complaints to investigate, and to what extent.
3. Criminal investigations against police officers.
Other than actions necessary to receive and catalog a complaint, the OPO shall not participate in criminal investigations against police officers.

However, SPD shall promptly notify the OPO when a criminal investigation and/or prosecution against a police officer is closed. At the time of closing, the OPO may take any action on the original complaint as is authorized by this chapter.

4. Discipline against police officers.
The OPO shall not have a role in the discipline of police officers. However, IA shall keep the OPO informed of disciplinary decisions as follows: Within three business days of issuance, IA shall provide the OPO with copies of all letters, notifications, and decisions regarding discipline against officers, which stem from a complaint.
5. Records disclosure.
 - a. The OPO shall not release the names of police officers or other individuals involved in incidents or investigations, nor any other personally identifying information.
 - b. 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.
 - c. 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.
 - d. Records generated and maintained by the OPO shall be considered public records subject to any applicable exemptions in the Washington Public Records Act, RCW 42.56.
 - e. Records generated in the IA complaint investigation process shall be considered public records once the investigation is closed, subject to any applicable exemptions in the Washington Public Records Act, RCW 42.56.
6. OPO rules and procedures.
The OPO Commission, on its own or upon request by the OPO may adopt, promulgate, amend, and rescind rules and procedures required for the discharge of OPO duties, including policies and procedures for receiving and processing complaints, monitoring investigations, and reporting findings, conclusions and recommendations.
7. The OPO may not levy any fees for the handling of complaints or any other duties identified in this chapter.

8. Complaints against the Chief of Police or the Assistant Police Chief shall be forwarded by the OPO to the Mayor to determine the subsequent investigation procedure. Any complaint against the police ombudsman may be submitted directly to the OPO commission.

C. OPO monitoring of IA complaint investigations.

1. Duties of the IA to facilitate active monitoring by the OPO. Pursuant to specific provisions in this chapter, IA shall:
 - a. Provide the OPO with copies of all complaints received by the IA within three business days of receipt;
 - b. Notify all complainants, at the time a complaint is filed, of the existence of the OPO and of the complainant's opportunity to request an independent investigation and closing report from the OPO. This includes complaints classified by the Police Department as Citizen Inquiries;
 - c. Send the OPO signed acknowledgement from the complainant of having received the notice in subsection (b), above;
 - d. Notify the OPO immediately of critical incidents;
 - e. Notify the OPO prior to all IA interviews involving complaints and allow the OPO to attend and observe such interviews and to ask questions after the completion of IA questioning;
 - f. Within two business days of closing an investigation or determining not to initiate an investigation, provide the OPO with a complete copy of the IA complaint file, including all findings; and
 - g. Provide the OPO with unimpeded access to closed IA complaint investigation files, upon request.
2. Duties and authority of the OPO in actively monitoring IA complaint investigations.
 - a. The OPO may, at the OPO's sole discretion, attend and observe all IA complaint investigation interviews, including interviews with police officers, and shall be given the opportunity to ask questions after the completion of questioning by IA.
 - b. The OPO is authorized to conduct interviews and gather such information as is necessary to certify the adequacy of IA complaint investigations, after the completion of the IA investigation.

- c. Within fifteen business days of receiving a closed IA complaint file from IA, the OPO shall certify whether the IA complaint investigation was timely, thorough and objective.
- d. As part of the IA complaint certification process, the OPO shall determine whether IA properly advised the complainant of his/her opportunity to seek an independent investigation and closing report from the OPO.
- e. If the OPO certifies the IA complaint investigation as timely, thorough and objective, the OPO shall promptly return the IA complaint file to IA for retention and send a certification notice to the SPD. In instances where the complainant filed the complaint with OPO, or filed complaints with IA and OPO jointly, the OPO will send a closing letter to and/or conduct a closing interview with the complainant to summarize the case findings (this is different than the closing report in SMC 4.32.035(D)(4)).
- f. If the OPO determines that the IA complaint investigation was not timely, thorough and/or objective, the OPO shall appeal pursuant to SMC 4.32.035(C)(4).

3. Mediation.

- a. Prior to the initiation of an IA complaint investigation, the OPO may recommend to the chief that the complaint be resolved through mediation.
- b. Mediation shall not be utilized if the complaint involves a serious matter as defined in SMC 4.32.020(L) or implicates the police officer(s) in a continuing pattern of unprofessional conduct as defined in SMC 4.32.020(E).
- c. Notwithstanding the restrictions in subsection (b) above, mediation shall be utilized according to rules and procedures promulgated by the OPO, pursuant to SMC 4.32.035(B)(6).

4. Appeals of IA complaint investigations.

- a. In the event the chief (or chief's designee) declines to initiate an IA investigation of a complaint, the OPO may appeal that decision to the OPO Commission, whose decision shall be final.
- b. In the event the OPO determines that an IA complaint investigation was not timely, thorough and/or objective pursuant to SMC

4.32.035(C)(2), the OPO may make a request with the chief that an additional IA investigation be performed. If the OPO disagrees with the chief's determination, the OPO may appeal to the OPO Commission, whose decision shall be final; the IA complaint investigation shall be completed consistent with the determination of the OPO Commission.

- c. If an additional IA investigation is undertaken, the procedures governing initial investigations in SMC 4.32.035(B) and (C) shall be applied.
- d. If an additional IA investigation is undertaken and the OPO subsequently determines that it was not timely, thorough and objective, the OPO may again request additional investigation according to this section. This process may be repeated until the OPO Commission makes a determination that no further investigation is needed.
- e. If, after the appeal process is exhausted, the OPO still finds that the IA complaint investigation was not timely, thorough and objective, the OPO shall notify the chief. A brief statement of the decision not to certify the IA investigation shall be published on the OPO website within forty-eight hours of the Chief being notified.

- 5. OPO oversight of police department policies and procedures.
The OPO may recommend changes in police department policies and may issue reports identifying trends in IA complaint investigations. To facilitate this role, IA shall promptly provide the OPO with unimpeded access to closed IA complaint investigation files, upon request. The OPO shall return closed IA complaint investigation files to IA within one year.

E. Independent OPO complaint investigations.

- 1. General authority.
The OPO may conduct an independent investigation of any complaint filed with the OPO, at any time, regardless of IA action on the complaint.
- 2. Receipt of complaints.
 - a. The OPO may receive complaints from IA pursuant to SMC 4.32.035(C)(1) or directly from a complainant. If a complainant files a complaint directly with the OPO, the OPO shall provide IA with a copy of the complaint within three business days.
 - b. The OPO may receive and catalogue complaints concerning events that occurred more than one year prior to the filing of a complaint,

but may not act upon them unless directed to do so by the OPO commission.

3. Investigation of complaints filed directly with OPO.
The OPO may interview the complainant and any witnesses. In addition to the access to SPD officers granted under SMC 4.32.035 (C) (1) (e) and (2) (a), the OPO may request voluntary interviews with SPD officers at any time and disclose both the request and the response to the request by the SPD and/or the officers to whom the request is made. The OPO may only participate in interviews with police officers pursuant to SMC 4.32.035(C)(1)(e) and (2)(a).
4. Closing Report.
 - a. ~~((Whenever a complaint is filed with the OPO, t))~~ The OPO shall produce a closing report on all uncertified investigations. The OPO shall post a list of all complaints filed on the OPO's website regardless of the status or outcome of the complaint.
 - b. The purpose of the closing report is to summarize the OPO's conclusions regarding the substance of the complaint and any OPO recommendations regarding revision to any applicable law enforcement policy, training protocol and/or law enforcement procedure materially associated with the basis for the complaint. Except as specifically directed in this chapter, the content and length of the closing report shall be determined solely by the OPO. The OPO may include information obtained during participation in IA complaint investigation interviews in a closing report, subject to disclosure limitations in SMC 4.32.035(B)(5).
 - c. Within thirty calendar days of the closure of the IA complaint investigation or the OPO complaint investigation, whichever is later, the OPO shall send a copy of the closing report to IA, the complainant, and publish the closing report on the OPO's website.

E. Community Impact Cases

- A. The OPO may, at any time, identify an incident as a "Community impact Case" (CIC) and request confirmation by the Commission. Members of the Commission shall be provided all materials concerning the case for confidential review. The Commission will have up to seven days to confirm the OPO's determination that the incident is a Community Impact Case.
- B. Prior to the Commission's confirmation decision, the OPO shall have authority to exercise an investigation pursuant to procedures provided in SMC 4.32.035(D). In the event the Commission elects not to verify the incident as a CIC, the OPO

investigation shall cease, unless the incident has subsequently resulted in a complaint filed with IA or OPO, at which point provisions governing complaint investigations govern.

- C. When the commission verifies an incident as a CIC, the OPO shall conduct an independent investigation pursuant to provisions in this chapter governing OPO investigations when a complaint is filed directly with the OPO.
- D. Whenever the Commission verifies an incident as a CIC, the OPO shall produce a closing report as described in SM 4.32.035(D)(4).

Section 5. That SMC section 4.32.040 is amended to read 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))~~ results, 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, or criminal investigation conducted by or on behalf of the department (including any investigation of Spokane police department officers by other law enforcement agencies). 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 6. That SMC section 4.32.080 entitled "Appointment" is repealed.

Section 7. That there is adopted a new section 4.32.085 to chapter 4.32 SMC to read as follows:

4.32.080 Qualifications and Appointment

- A. The qualifications for the police ombudsman position will minimally include the requirement of a bachelor's degree and five years of experience in criminal law and/or investigations. The position of police ombudsman will be a full-time appointed city employee as defined by ordinance.
- B. When the police ombudsman position becomes vacant or will become vacant in the near future, the office of police ombudsman commission ("commission") will undertake a candidate search. A screening committee will be established to screen, interview and select three candidates to be considered by the mayor.

The interviews and selection of the three candidates will occur during regularly scheduled meetings and be open to the public.

- C. The screening committee shall consist of the following five persons:
1. the chairperson of the commission (who shall be the chairperson of the screening committee);
 2. a member of city council;
 3. a member selected by the mayor;
 4. a member selected by the Police Guild and;
 5. a member selected by the Lieutenants & Captains Assoc.
- D. The HR staff will assist the commission in the placement of the advertisements and work with the OPO staff as required.
- E. The mayor will select one of the three candidates and forward the nomination to the city council for confirmation.
- F. In the event the city council rejects the nominee, the mayor shall submit his/her second recommendation from the remaining two names submitted by the commission. If the city council rejects the second nominee, the process shall begin with a second candidate search by the ~~commission~~ committee.

Section 8. That SMC section 4.32.090 is amended to read as follows:

4.32.090 Term

- A. The appointment of the police ombudsman shall be for an initial three-year term.
- B. A current police ombudsman may be reappointed for additional ~~((terms not to exceed three years))~~ three-year terms upon recommendation of the mayor in consultation with the office of police ombudsman commission 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. If the police ombudsman is not re-appointed, he or she may continue serving on an interim until a new police ombudsman is confirmed by the city council, unless the police ombudsman has been removed per SMC 4.32.100.
- C. ~~((Should a vacancy in the position occur, due to expiration of term, resignation, sickness, death, retirement, conflict of interest, or any other reason, the mayor~~

~~may recommend an appointment for city council confirmation of an interim police ombudsman for a term not to exceed four months, in compliance with the appointment process stipulated in SMC 4.32.080. The selection committee referenced in SMC 4.32.080 must meet within thirty days of notification by the mayor of the need to appoint an interim police ombudsman.))~~ If an appointed police ombudsman is unable to perform his or her duties for a reason not subjecting him or her to removal pursuant to SMC 4.32.100, and this inability to serve is expected to last for six months, an interim police ombudsman shall be appointed by the mayor and confirmed by the city council and shall serve until such time as the police ombudsman can resume his or her duties or the police ombudsman's term expires and a new police ombudsman is appointed, whichever is sooner.

Section 9. That SMC section 4.32.100 is amended to read as follows:

4.32.100 Removal

- A. The police ombudsman may not be removed from office during ~~((his))~~ the three 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. Compliance with the confidentiality provisions of this chapter is a condition of employment for all employees of the OPO. Inadvertent, de minimus disclosures shall not be considered a violation of this section.
- B. 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))~~ before the council. A hearing to consider the removal of the police ombudsman shall be initiated by either the majority vote of the full city council, or upon recommendation of the mayor, or a majority of the office of police ombudsman commission. Removal of the police ombudsman shall require a vote of no less than five members of the full city council.
- C. 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))~~ which does not require the city council to consider removal for cause as set forth above.

Section 10. That SMC section 4.32.110 is amended to read as follows:

4.32.110 Reporting Requirements

- A. The police ombudsman reports, for administrative and executive purposes ~~((functions))~~, directly to the OPO Commission ~~((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 monthly reports (~~jointly~~) to the office of police ombudsman commission, the mayor, the police chief, and the public safety committee regarding the activities of the OPO. In addition, the police ombudsman shall make a quarterly (~~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; and
 - 3. recommendations.

Section 11. That there is adopted a new section 4.32.150 to chapter 4.32 SMC to read as follows:

4.32.150 Office of Police Ombudsman Commission

- A. That an office of police ombudsman commission ("commission") be created consisting initially of five members.
- B. General Duties.
In addition to other duties enumerated in this chapter, the commission shall:
 - 1. Participate in the selection of the OPO, as provided in this chapter;
 - 2. Approve annual and long term goals of the OPO;
 - 3. Approve OPO procedures and best practices;
 - 4. Approve the OPO annual report;
 - 5. Approve OPO recommendations to implement changes in police department policies and training;
 - 6. OPO rules and procedures.
The OPO Commission, on its own or upon request by the OPO may adopt, promulgate, amend, and rescind rules and procedures required for the discharge of OPO duties, including policies and procedures for receiving and processing complaints, monitoring investigations, and reporting findings, conclusions and recommendations.

7. Conduct and approve evaluations of the OPO and OPO personnel;
 8. Request that the OPO examine or re-examine specific incidents or issues and confirm or reject OPO requests for additional investigation by IA;
 9. Assist OPO personnel in communicating with Spokane's diverse communities and the general public about the complaint filing and investigation process;
 10. Make readily available to the public all commission reports, recommendations, and evaluations, subject to disclosure limitations in SMC 4.32.035(B)(5); and
 11. Prepare and present an annual report to the city council.
- C. The Commission shall not have any authority to:
1. Participate in the police department's disciplinary process;
 2. Hear appeals of any complaints made to or investigated by the OPO; or
 3. Release or disclose any information also prohibited from disclosure by the OPO pursuant to SMC 4.32.035(B)(5).
- D. Selection of Members.
1. Two members shall be nominated by the mayor and appointed by city council; and,
 2. One member from each of the three city council districts nominated and appointed by city council.
 3. The commission may, at any time, determine that more members are necessary to carry out the duties of the commission. Upon unanimous vote of all commission members and majority approval by the city council pursuant to an amendment to this section, additional members may be added to the commission two members at a time:
 - a. One additional member nominated by the mayor and appointed by city council; and,
 - b. One additional member nominated appointed by city council.
- E. Officers.

The commission members shall annually choose their own chair and vice-chair, who will serve from January 1st through December 31st, and shall serve in that position for no more than three consecutive one-year terms. The chair (and vice-chair in the absence of the chair) will set the agenda for meetings, facilitate the meetings, speak on behalf of the commission and call any special meetings.

F. Qualifications.

1. Members of the commission shall be volunteers who immediately, prior to appointment, shall be:
 - a. A current resident of the city of Spokane;
 - b. Of the age of twenty-one years or older;
 - c. Able to pass an in-depth background investigation and have no ~~felony~~ convictions for crimes involving dishonesty or other integrity issues within the past 10 years; and
 - d. Neither a current or former employee of the City of Spokane or Spokane police department, nor an immediate family member of a current City of Spokane or Spokane police department employee.
2. The following characteristics shall be considered during the appointment process:
 - a. An absence of any real or perceived bias, prejudice, or conflict of interest;
 - b. A record of community involvement;
 - c. A demonstrated ability to be fair, impartial and unbiased;
 - d. An ability to build working relationships and communicate effectively with diverse groups;
 - e. Education, professional and/or personal experience including but not limited to judicial, legal, investigative, mental health and law enforcement experiences with the exception that a commission member shall not have been a law enforcement officer for two years prior to his or her appointment;
 - f. Contribute to the diversity of the commission so that the makeup of the commission reflects the diversity of the people most likely to have contact with members of the police department, including geographic, racial and disability diversity.

G. Terms of Office.

1. Each commission member shall serve a three-year term and is eligible for re-appointment, except that no member shall be re-appointed after serving three consecutive full three-year terms.
2. The initial commission members will have staggered terms, with three members serving three years and two members serving two years.
3. A vacancy that occurs during the term of a member shall be filled in the same manner as the original appointment, and the appointee shall serve for the remainder of the expired term.
4. Each member shall continue to serve in such capacity until the member's successor has been duly appointed and is acting, provided, however, that the period shall not exceed ninety days past the expiration of the member's term.

H. Expectations.

1. Commission members shall participate in an appropriate training program to be established by the commission, the Chief of Police and/or the OPO so that they shall possess the knowledge to perform their duties.
2. Members of the commission shall agree in writing that they are subject to the City of Spokane Code of Ethics contained in chapter 1.04 SMC and an appropriate confidentiality agreement to be developed by the OPO and reviewed and maintained in collaboration with the commission.

I. Liability.

It is the intent of the City that the commission members be free from personal liability for acts taken within the course and scope of carrying out their official duties and functions. The city will therefore defend and indemnify members to the maximum extent permitted under the city's insurance program and indemnification policy.

J. Removal.

A member of the commission may be removed from office by the city council prior to the normal expiration of his/her term for consistent failure to perform commission member duties, for having a real or perceived bias, prejudice or conflict of interest, or for violating the Statement of Principles, Code of Conduct, or confidentiality agreement.

K. Meetings and Procedures.

1. The commission may appoint from its membership committees as necessary to perform its duties.
2. Commission members are expected to maintain a minimum of 75% meeting attendance on an annual basis.
3. The commission shall hold regular meetings with an opportunity for public comment at least quarterly, and the commission and its committees may hold additional meetings as necessary.
4. No business of the commission shall be conducted at a meeting without at least a quorum of three members.
5. All actions of the commission shall be made upon a simple majority vote of the members present.
6. Meetings of the commission shall be open to the public except when the commission has determined a closed executive session, in accordance with RCW 42.30.110, is necessary in order to carry out its business.
7. The commission shall prepare and present an annual report to the city council that:
 - a. Summarizes the commission's activities, findings, and recommendations during the preceding year;
 - b. Gives recommendations for changes to the police department's processes and policies;
 - c. Evaluates the work of the OPO, including whether the OPO is functioning as intended and performing required duties.
8. The commission may develop additional reports as deemed necessary by it, or as requested by the city council. All reports generated by the commission shall not release nor disclose any records exempt from disclosure under the Washington Public Records Act or any confidential information that city officials or employees would be legally prohibited from disclosing.
9. The commission shall evaluate the performance of the OPO. In doing so, the commission:
 - a. Shall establish criteria by which to evaluate the work of the OPO;
 - b. Shall review, comment on and assist in maintaining policies, procedures and operating principles for the OPO;
 - c. Shall monitor status reports from the OPO; and

- d. May conduct periodic evaluations of the complaint intake and handling system to identify process improvements and/or ensure complaints are being treated fairly with due diligence.

Section 12. That there is adopted a new section 4.32.160 to chapter 4.32 of the Spokane Municipal Code to read as follows:

4.31.160 Funding

The City Council shall maintain funding necessary to appropriately staff the Office of Police Ombudsman, including adequate staff to enable to ombudsman to perform the required duties and responsibilities of the office as well as providing staff assistance to the Police Ombudsman Commission.

Section 13. Severability Clause. 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 _____, 2013.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date