



**TO: ALL PBA, SBA AND CEA MEMBERS**  
**SUBJECT: Legal Guidance on City Council Int. No. 2220-A and the Elimination of Qualified Immunity**  
**DATE: April 16, 2021**

Please find attached a letter from attorneys who represent members of the service in civil suits. This letter contains legal guidance on our new policing environment in light of the passage of City Council Int. No. 2220-A.

We strongly encourage all members to review and understand this information.

Faternally,

Police Benevolent Association of the City of  
New York, Inc.

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By: Patrick J. Lynch, President

Sergeants Benevolent Association

A handwritten signature in black ink, appearing to read "Ed. Mullins".

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By: Edwards D. Mullins, President

Captains Endowment Association

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By: Chris Monahan, President



Re: City Council Bill Int. No. 2220-a-21 and the  
Elimination of Qualified Immunity

Dear Captain, Sergeant and Officer:

As you may be aware, the City Council has passed a local law applicable to New York City Police Officers that creates another method by which you can be sued for damages. In a troubling aspect of the law, the City Council has eliminated your ability to defend your actions by asserting a “qualified immunity” defense. As counsel to the members of the PBA, SBA, and CEA who are sued civilly and not represented by the City, we write to share with you our joint legal assessment of this proposed legislation to ensure that you understand what it means for you, your families, and your professional responsibilities. Our hope is that the below guidance will educate you so that you may take the necessary steps to fulfill your sworn oath and legal obligations to ensure the safety of the citizens of the City, while simultaneously protecting yourself and your fellow officers from the consequences of this newly enacted legislation.

Introduction No. 2220-a-21, passed by the City Council on March 25, 2021 and awaiting the Mayor’s signature, creates a local cause of action against NYPD members under the New York City Administrative Code. The law, which applies to NYPD members and the NYPD itself, allows an individual to sue a police officer for (1) excessive force and/or (2) unreasonable search and seizure. This cause of action provides for monetary damages and may be filed in addition to any other claims available under federal and state law. No physical injury is required: the proof of a violation is sufficient to sustain a lawsuit against you. Of course, the determination whether you actually used excessive force or engaged in an unlawful search and seizure may be made by the City, a judge or a jury. If the plaintiff prevails, the city - and potentially the officer – is required to pay damages and the legal fees to the plaintiff’s attorney.

Significantly, the legislation specifically eliminates qualified immunity as a defense, but only as to the new City law. Qualified immunity is a judicially created defense that protects all government employees, not just police officers, from liability. Qualified immunity means that government employees are immune from lawsuits if they acted reasonably and not in violation of a “clearly established statutory or constitutional right.” It is designed to protect all government employees and officials from lawsuits and liability when they perform their duties in good faith and within what one reasonably believes to be the scope of existing law. Unless there is clearly

established law to the contrary, qualified immunity protects your good-faith actions and allows you the freedom to make decisions and take action without fear of being sued.

Although these terms are often confused, qualified immunity is not indemnification. Indemnification is the legal obligation of the City to pay all damages suffered by a plaintiff as a result of actions taken by its employees – including police officers – when acting within the scope of their employment. Indemnification protects individual police officers from personal liability for any monetary damages, except punitive damages. This new law does not by its terms affect your right to indemnification.

The New York City Police Department should ensure that all members, regardless of rank, are protected from civil liability. During the current administration, however, the City has increasingly declined indemnification and has required police officers to make personal financial contributions in civil settlements even for good-faith mistakes of law or fact. We have no expectation that the City's practice of requiring police officers to pay damages from their own pocket will be discontinued. Thus, the repeal of qualified immunity and the enactment of this new legislation significantly increases the possibility that you will be required to write a check and pay damages from your own pocket if you are sued for an event which occurs while you are on duty.

Further, since this new legislation allows suit in Supreme Court in the counties in New York City, rather than federal court, and permits the court to award plaintiff's attorney fees, we anticipate a flood of lawsuits against members of the NYPD.

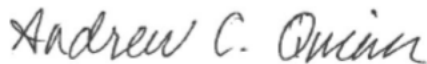
As a direct result of the passage of this law, and the unavailability of the defense of qualified immunity under its provisions, we advise that you proceed with caution when taking any police action which could lead to physical engagement with any person, and avoid physical engagement to the greatest extent possible while also assuring your own safety and the safety of others. Also, you are strongly cautioned against engaging in any stop & frisk (unless doing so for your own or others' safety), search of a car, residence, or person **unless you are certain that you are clearly and unequivocally within the bounds of the law**, notwithstanding that your actions may be taken in good faith. It is a very real risk, particularly in the current environment, that each time you conduct a search or use force during the course of your tour of duty, your actions may subject you and your family to civil liability and monetary damages based on a suit brought by the person with whom you are interacting, a reality of our job that is made worse by this law and the City's increasing propensity to decline indemnification to our officers.

Should you have any questions, please feel free to contact your respective union civil attorneys: Mitchell Garber, Esq., Gregory M. Longworth, Esq., Andrew C. Quinn, Esq. or Louis La Pietra, Esq. whose information is included below.



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