

*Police
Benevolent
Association*

Of The City Of New York, Inc.



MEMORANDUM IN OPPOSITION TO INTRODUCTION NO. 2220

The Police Benevolent Association of the City of New York, Inc. (“NYCPBA”) and its over 23,000 members, who patrol New York City’s streets and do the difficult and dangerous work of protecting every resident, visitor and business operating within the five boroughs, opposes Introduction No. 2220 (“Intro 2220”), a local law to amend the Administrative Code of the City of New York, in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and removing longstanding safeguards protecting police officers acting in good faith and within the scope of their employment from unreasonable civil liability. Intro 2220 would not only unnecessarily expose police officers to an unprecedented financial burden for doing their jobs, but it would chill the operations of law enforcement to such an extent that it would contribute to and accelerate the already unacceptable level of violence in New York City.

At the outset, Intro 2220 is unenforceable as it is preempted by state law. General Municipal Law 50-k (3) (“GML 50-k”) provides in relevant part that

The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

The analog provision to GML 50-k for state employees, at Public Officers Law § 17, provides the identical indemnification benefit. Notwithstanding the clear language and intent of the state legislature to provide all public employees with full indemnification for “any judgment” or “in the amount of any settlement of a claim,” Intro 2220 attempts to effectively amend GML 50-k and subvert the will of the legislature by making certain categories of City employees, namely police officers and related titles, personally liable for any judgment or settlement in an amount equal to the lesser of \$25,000 or 5% of the amount of such judgment or settlement. Intro 2220’s removal of full indemnification rights for police officers encroaches on the authority of the state legislature, which has evinced a clear intent to occupy the field of law relating to the indemnification of public employees. *See Albany Area Bldrs. Assn. v Guilderland*, 74 N.Y.2d 372, 377 (1989). Intro 2220 would be preempted by state law, and effectively invalid.

Even if Intro 2220 were enforceable, it should nonetheless be rejected on policy grounds. The bill is punitive in nature and serves no legitimate purpose. Proposed section 8-803 of the New York City Administrative Code purports to create a right of action for unreasonable search and seizure. However, those rights are already provided in the 4th Amendment of the Constitution of the United States (which proposed § 8-802 simply repeats) and Article 1, Section 12 of the New York State Constitution, which are enforceable via actions brought pursuant to 43 USC § 1983, or a state Constitutional tort claim, respectively. Intro 2220 thus creates no new substantive rights for the citizens of New York City.

The only meaningful provisions of Intro 2220 operate to gratuitously punish police officers and prevent them from performing their crucial mission of maintaining the peace in New York City and protecting its citizens. First, proposed § 8-804 effectively eliminates qualified immunity as a defense to liability to any claim brought pursuant to proposed § 8-803. The qualified immunity doctrine, a right created and long applied by the U.S. Supreme Court, protects police officers from liability under certain circumstances, namely where “their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Eliminating this important safeguard would unfairly hold police officers liable for damages where they had no way of knowing that their conduct was a constitutional or statutory violation, or if they were acting in good faith in the discharge of their duties.

Second, proposed § 8-805 authorizes courts that find in favor of plaintiffs bringing claims under proposed § 8-803 to award punitive damages and injunctive relief. Punitive damages awards are generally not available against municipalities, since as the Court of Appeals has recognized, “the twin justifications for punitive damages -- punishment and deterrence -- are hardly advanced when applied to a governmental unit.... [I]t would be anomalous to have ‘the persons who bear the burden of punishment, i.e., the taxpayers and citizens’, constitute ‘the self-same group who are expected to benefit from the public example which the granting of such damages supposedly makes of the wrongdoer’” *Sharapata v Islip*, 56 N.Y.2d 332 (1982) (*Quoting Sharapata v Islip*, [82 A.D.2d](#) 350 (1981)). To the extent that the intent of the drafters is to make police officers liable for punitive damages, that obligation is unreasonably burdensome for already underpaid public employees, and as discussed below, would have an unprecedented chilling effect on law enforcement in New York City.

Finally, proposed § 8-806 provides that notwithstanding anything to the contrary in GML 50-k or any other law, a police officer shall be personally liable for a portion of the judgment or settlement of a claim brought pursuant to proposed § 8-803 in an amount that is equal to the lesser of \$25,000 or 5% of the amount. This section is wholly unnecessary and unreasonably punitive. GML 50-k already provides that a police officer will only be indemnified provided that the officer “was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained.” Intro 2220 would annul these necessary protections for police officers and require them to contribute substantial amounts to any judgment or settlement resulting from a § 8-803 claim even where the officer was acting within the scope of his duties and in accord with NYPD procedure, as determined by the City, or in circumstances where cases are settled for reasons other than the validity of the underlying claims, which are often without merit.

Apart from the obvious harm that Intro 2220 would cause police officers, it should also be rejected for the inevitable and dangerous consequences that it would bring about for the City and its citizens. The NYPD suffered a record number of retirements and resignations from the service in 2020,¹ as the City continues to place enormous burdens on its officers for very little compensation. More police officers will undoubtedly follow if the additional employment and financial burdens of Intro 2220 are imposed upon them. The NYPD workforce is already stretched thin and will not be able to provide adequate police services if it loses more police officers to other jurisdictions with better pay and working conditions. This is

¹ More than 3,300 uniformed members retired or resigned from the NYPD in 2020.

especially true given the recent increase in gun violence and other violent crime in New York City, which are painfully obvious to anyone living and working in the City during these difficult times. Homicides in New York City were up over 40% percent in 2020, and already in 2021, shootings, murders and other violent crimes have reached troubling levels. According to the NYPD, more than 400 firearms were recovered from suspects in the month of January alone. For the City Council to now impose personal liability on police officers who make good faith search and seizures in the hope of removing firearms and other weapons from the streets would be incredibly misguided. Intro 2220 would undoubtedly deter law enforcement activities by police officers afraid of being financially ruined by lawsuits. The inevitable result will be fewer guns recovered, more shootings and more deaths in our communities that would be prevented by police officers, but for this legislation by the City Council.

For the reasons set forth above, we ask that Introduction 2220 be rejected.