



**CITY COUNCIL WORK SESSION AGENDA
MONDAY, MAY 10, 2021**

SPRING LAKE PARK CITY HALL, 1301 81ST AVE NE at 4:30 PM

- 1. CALL TO ORDER**
- 2. DISCUSSION ITEMS**
 - A. Police Chief Interview and Discussion
 - B. Insurance Limits Discussion (*Goodboe-Bisschoff*)
 - C. COVID-19 Memorial Discussion (*Goodboe-Bisschoff*)
- 3. REPORT**
 - A. Administrator Report
- 4. ADJOURN**



Memorandum

To: Mayor Nelson and Members of the City Council

From: Daniel R. Buchholtz, MMC, Administrator, Clerk/Treasurer

Date: May 6, 2021

Subject: Police Chief Interview and Discussion

The City Council will convene at 4:30pm to interview our finalist for the Police Chief position. Final interview questions will be sent out under separate cover.

The Management Team (minus Chief Ebeltoft) will be interviewing the Police Chief finalist at 3:00pm.

After the City Council's interview, I will share information from the Management Team's interview and discussion. I have a copy of the promotional psychological exam. If you wish to review it, please stop in at City Hall in advance of the meeting and I will allow you to read it. Due to it being non-public personnel data, I want to maintain chain of custody on the document.

If you have any questions, please don't hesitate to contact me at 763-784-6491.



March 25, 2021

RE: HF 1104 (prohibition of peace officer civil liability immunity)

Dear Members of the House Public Safety and Criminal Justice Reform Committee,

On behalf of our 835 members, many of which directly employ law enforcement officers, the League of Minnesota Cities respectfully opposes HF 1104. I am writing to share why legislatively created statutory and judicially created common law immunities, as well as statutory limitations on liability and damages, remain necessary and vital to local governments. As such, careful consideration is needed before this Committee decides to vacate well-established legal doctrines in civil actions against police officers as is being proposed in HF 1104.

As the House continues to engage in important conversations regarding police reform (as local governments across our state are also doing right now), we urge you to take the time to thoughtfully balance the need to have accountability for officer misconduct on the job with the consequences of creating a whole new set of civil claims against law enforcement officers. Completely eliminating qualified¹ and other state-created immunities as a legal defense in these cases will have significant adverse consequences for local governments and the police officers whom they employ; and who are called upon to perform some of the most dangerous and difficult duties in our society.

We recognize the call for abolishment of qualified immunity has gained national attention and appeal. However, while not often discussed by the critics of qualified immunity, it is important to note that the doctrine is not an absolute defense for public officials, but a very limited one. It was created to balance the competing public values: namely, the ability for citizens to seek damages for a violation of their individual rights with the need to protect government officials who must exercise discretion and act for the greater public good. **Importantly, qualified immunity does not protect a law enforcement officer who knowingly violates the law.** Every officer must still provide evidence to show their conduct did not violate a clearly established right in order to assert it as a defense in a civil action.

We urge you to recognize that there are many public policy reasons to continue to provide statutory limitations on liability and damages, and to maintain a “good faith” defense for police officers, including:

- A limited or “qualified” immunity allows public officials, like police officers, to safely and effectively carry out essential job duties that preserve public safety and protect both the general public and the officers themselves. These officials perform essential life-saving functions that often require split-second decisions in uncertain and extremely stressful circumstances. Eliminating all current immunity defenses will encourage litigants with the benefit of hindsight to second-guess actions that appeared reasonable in

¹ Qualified immunity is a limited protection for government officials for alleged violations of federal law. It does not apply to any claim brought under state law.

the moment. This will create doubt and hesitation in police officers when decisiveness and reliance on their training is what is most needed.

- Eliminating immunity as a defense would inevitably open up police officers to unwarranted lawsuits where all cases will potentially go to trial where judges and/or juries could then pick apart split-second decisions after lengthy and costly discovery, litigation, trials, and appeals. Even when the officers eventually prevail in court, this will result in significant financial costs for cities, police officers, and ultimately the local taxpayers who foot the bill. It will also impact the ability to recruit and train new officers who, if this bill is passed, would no longer be offered any legal protections against lawsuits.
- While there are legitimate concerns about the role of courts in creating a set of rules to guide law enforcement officers in making tactical decisions, elimination of qualified and other immunity defenses is not a solution to those concerns, and it will have unintended consequences. The current test for qualified immunity is whether an officer violated clearly established precedent. That test is still viable and appropriate because police officers should not be forced to analyze and apply unclear and uncertain constitutional rights while making decisions in an emergency. Officers cannot realistically be expected to be legal scholars, processing complex, legal arguments when attempting to make an arrest or take other official action for their safety or the safety of others
- HR 1104's proposed new and untested framework for constitutional claims against law enforcement officers would result in cases that are currently litigated in federal court to now be brought in state court. This would likely have a detrimental impact on our state court judges who do not routinely handle this subject matter and on a court system already limited in resources and the ability to have civil cases timely heard and decided.

For the reasons listed above we respectfully ask that you oppose HF 1104 and continue working with stakeholders on balanced police reform. Thank you for your consideration of this important and complicated issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Beety', written in a cursive style.

Patricia Beety
General Counsel
League of Minnesota Cities

For Brooklyn Center, a civil rights settlement could be crushing

Insurance limits and lack of funds are not a defense that will shelter Brooklyn Center — or any city — from multimillion-dollar judgments, legal scholars say.

By Shannon Prather (<https://www.startribune.com/shannon-prather/6370507/>) Star Tribune |

APRIL 24, 2021 — 6:08PM

It's the excruciating calculus that inevitably follows a fatal police shooting.

Families file federal civil rights lawsuits, and local governments must either negotiate with grieving loved ones to compensate them for a life lost or allow a jury to decide damages.

Minneapolis set records with the [\\$20 million settlement](https://www.startribune.com/minneapolis-agrees-to-pay-20-million-in-fatal-police-shooting-of-justine-ruszczyk-damond/509438812/)

(<https://www.startribune.com/minneapolis-agrees-to-pay-20-million-in-fatal-police-shooting-of-justine-ruszczyk-damond/509438812/>) paid to Justine Ruszczyk Damond's family in 2019 and the \$27 million settlement paid to George Floyd's next of kin in March, [hailed](https://www.startribune.com/minneapolis-to-pay-record-27-million-to-settle-lawsuit-with-george-floyd-s-family/600033541/#:~:text=Minneapolis%20to%20pay%20record%20%2427%20million%20to%20settle%20lawsuit%20with%20George%20Floyd's%20Live&text=Minneapolis%20leaders%20on%20Friday%20agreed,of%20killing%20him%20is%20beginning,) (<https://www.startribune.com/minneapolis-to-pay-record-27-million-to-settle-lawsuit-with-george-floyd-s-family/600033541/#:~:text=Minneapolis%20to%20pay%20record%20%2427%20million%20to%20settle%20lawsuit%20with%20George%20Floyd's%20Live&text=Minneapolis%20leaders%20on%20Friday%20agreed,of%20killing%20him%20is%20beginning,>) as the largest pretrial settlement in a civil rights wrongful-death lawsuit in U.S. history.

The big payouts made by Minneapolis and other large cities are raising the stakes for smaller cities like Brooklyn Center, where a police officer shot and killed a Black man, Daunte Wright, earlier this month. Smaller communities may struggle to pay settlements in the tens of millions, and have to resort to tax increases, borrowing, and in the most extreme circumstances, face financial insolvency.

"It leads to the really uncomfortable situation where it looks to an outsider as though your life is worth more or less depending on whether you were killed by the police in a big city versus a small town," said University of Chicago Law Prof. John Rappaport, who researches police misconduct and liability. "People think, 'Well if George Floyd's family got \$27 million, Daunte Wright's family should get \$27 million because he is just as worthy.'"

Minneapolis is self-insured, relying on its relatively deep coffers to cover settlement costs. The vast majority of Minnesota cities, including Brooklyn Center, rely on an insurance trust that limits basic coverage for most incidents at \$2 million.

But at a time when footage of police killings is commonplace and calls for accountability and reform are reaching a fever pitch, insurance limits and lack of funds are not a defense that will shelter Brooklyn Center — or any city — from multimillion-dollar judgments, legal scholars say.

Because payouts are typically both "compensation" for a life lost and "punishment" designed to motivate cities to reform policing, amounts could continue to rise, said University of Minnesota Law Prof. David Schultz.

"I am convinced [at some point] you are going to get a jury that comes back with \$100 million punitive," he said. "You are going to get some jury who will say, '\$27 million here, \$10 million there — it's not working,' and they are going to nail the city."

Former Brooklyn Center police officer Kimberly Potter shot and killed 20-year-old Wright during a traffic stop on April 11. Police said Potter, who is white, unintentionally fired her handgun after mistaking it for her Taser. She has resigned from the department and is charged with second-degree manslaughter.

Payouts are limited

A 1978 U.S. Supreme Court decision first opened the door for local governments to be sued for damages under federal civil rights claims, Schultz said. In 1980, Minnesota cities formed the League of Minnesota Cities Insurance Trust "in the face of a hard commercial insurance market that made it difficult and expensive for cities to find traditional insurance," trust administrator Dan Greensweig said in an e-mail.



DAVID JOLIS - STAR TRIBUNE

A protester shoots phone video of a law enforcement officer outside the Brooklyn Center Police Department.



RICHARD TSONG-TAATARII - STAR TRIBUNE

Lamar Pettis brought his children, from left to right, Lauren, 14, Lamar, 9, Lamiyah, 9, and Zaniya, 6, to pay their respects to Daunte Wright

The trust provides liability coverage for 827 of the 853 cities in Minnesota. Cities pay into the trust each year, and about one-third buy extra liability coverage capped at \$5 million annually. Brooklyn Center has only purchased additional coverage for its municipal liquor store operations, Greensweig said.

[The Brooklyn Center Police Department \(https://www.startribune.com/daunte-wright-killing-brings-fresh-scrutiny-to-brooklyn-center-police-department/600047240/?refresh=true\)](https://www.startribune.com/daunte-wright-killing-brings-fresh-scrutiny-to-brooklyn-center-police-department/600047240/?refresh=true) had eight police misconduct payouts from 2007 to 2018, two of which were among the most expensive police payouts in the state during that time, according to a Star Tribune analysis including data from the insurance trust.

Greensweig said the trust has never paid out on a claim above its limits, but some cities have settled cases for amounts higher than their coverage, pulling funds from their own reserves.

According to insurance trust payout data from 2007-17, the largest payouts during that time were around \$3 million.

In 2017, the insurance trust, on behalf of member city St. Anthony, paid [nearly \\$3 million \(https://www.startribune.com/philando-castile-family-reaches-3m-settlement-in-death/430840813/\)](https://www.startribune.com/philando-castile-family-reaches-3m-settlement-in-death/430840813/) to the family of Philando Castile, a Black man shot and killed by police during a traffic stop in nearby Falcon Heights. The officer who shot him [was charged with \(https://www.startribune.com/ramsey-county-attorney-choi-to-announce-update-in-castile-shooting/401484635/\)](https://www.startribune.com/ramsey-county-attorney-choi-to-announce-update-in-castile-shooting/401484635/) felony manslaughter and reckless discharge of a firearm and [acquitted on all counts \(https://www.startribune.com/yanez-verdict-only-widens-divide-between-police-community/429147783/\)](https://www.startribune.com/yanez-verdict-only-widens-divide-between-police-community/429147783/).

Despite recent high-profile settlements, the trust has not adjusted coverage limits since 2014.

"With the excess coverage we make available for cities that desire it, we are comfortable we're currently striking an appropriate balance between providing adequate coverage for claims at a cost that does not place an undue burden on local taxpayers," Greensweig said. "We will continue to monitor that, however."

Who pays?

For smaller cities, one huge payout for police conduct could equal a year of taxes.

Brooklyn Center's 2021 property tax levy — the amount of money the city collects in property taxes — is about \$20 million.

The suburb of 31,000 just north of Minneapolis is one of the poorest in Hennepin County with 15% of people living below the federal poverty level, according to census data. Most residents identify as people of color. Brooklyn Center is already spending about 40% — nearly \$9.8 million — of its \$23.8 million general fund this year on day-to-day police salaries and operations, according to its most recent truth-in-taxation hearing.

City leaders did not return a request for comment, but Mayor Mike Elliott attended Wright's funeral and has expressed strong support for the family and police reform.

Attorneys for the Wright family also did not respond to a request for comment.

A community's ability to pay and its insurance limits can be fodder in negotiations with a victim's family, but it doesn't preclude them from demanding more.

A huge settlement may be viewed as partial justice for the grieving Wright family. But it could also create an uncomfortable situation in which one of the state's most diverse communities, where some residents feel at odds with their own Police Department, is paying additional taxes to cover the cost of police misconduct.

"Given the demographics of the city, it's a lot of people who look like Daunte Wright who are going to wind up paying," Schultz said.

Rebuilding trust

Despite the financial pressure, large settlements can be a means for cities to publicly acknowledge the harm done and rebuild community trust, said attorney Rick Petry, program manager for diversity, equity and inclusion at Mitchell Hamline School of Law.

Cities "have to look at exposure, but we also need to look at this politically to try to figure out something we can do to restore some sort of faith in the community," he said.

In Minneapolis, the settlement in Damond's killing shattered the previous payout record — and then was surpassed by the Floyd settlement, which forced the city to dip into its reserves (<https://www.startribune.com/record-settlement-in-george-floyd-case-forces-minneapolis-to-dip-into-its-reserves/600034723/?refresh=true>). Officers were convicted in both (<https://www.startribune.com/five-takeaways-from-the-noor-verdict/509334751/>) cases (<https://www.startribune.com/derek-chauvin-convicted-of-murdering-george-floyd-in-minneapolis-is-led-away-in-handcuffs/600048324/>).

Going forward, Petry said, city leaders will face intense scrutiny if they try to pay out lower amounts. The trend has raised the suggestion that individual officers should indemnify themselves — though the costs could be prohibitive for officers, Schultz said.

"Also," he said, "I can't imagine any insurance company would touch it."

Staff writer Jeff Hargarten contributed to this report.

Shannon Prather • 651-925-5037

Shannon Prather covers Ramsey County for the Star Tribune. Previously, she covered philanthropy and nonprofits. Prather has two decades of experience reporting for newspapers in Minnesota, California, Idaho, Wisconsin and North Dakota. She has covered a variety of topics including the legal system, law enforcement, education, municipal government and slice-of-life community news.

✉ Shannon.Prather@startribune.com 📞 612-673-4804 🐦 [ShannonMPrather](https://twitter.com/ShannonMPrather)

Cities are safe from demise

As an attorney long-experienced in dealing with federal civil rights claims, I write to clarify assertions made by the April 25 front-page article "For Brooklyn Center, suit could be crushing."

Quite to the contrary of the theme of the piece, the likelihood that any Minnesota municipality could be "crushed" by a lawsuit is nearly zero. And, of course, no city would volunteer to settle a lawsuit that would put it in bankruptcy.

Instead, the real problem with police officer lawsuits and municipal liability in civil rights actions is quite different from the problem posed by the article.

As a result of a variety of arcane rulings by the U.S. Supreme Court, municipalities can now almost choose when to avoid liability — while exposing individual officers to liability that may send them to bankruptcy and that also strips plaintiffs of any real prospect of recovery.

This is especially true where officers have been fired or accused of crimes.

And while cities may be directly sued, they are actually unlikely to ever face a real risk of large judgments entered against them directly. Such direct civil rights actions only happen if the city itself has a policy or custom that caused the violation of constitutional rights.

Indeed, the Supreme Court has made it clear that cities (unlike other employers) are not automatically liable for the civil rights violations of their own officers. That liability only can occur under state law — and Minnesota "caps" or limits that liability by statute.

Therefore, the possibility of a smaller city like Brooklyn Center facing insolvency is just not a calculus worth considering.

ALBERT TURNER GOINS, White Bear Lake