

**PROPOSED POLICE ACCOUNTABILITY SYSTEM
HIGHLIGHTS OF LEGISLATIVE PACKAGE ADOPTED BY THE CPC ON 08-10-16
08-12-16**

Background

In June 2015, all City stakeholders, including the Community Police Commission (CPC), approved a package of legislative reforms to the police accountability system. This package was intended to update the existing ordinance to reflect current practices, particularly in the OPA Auditor functions. It also called for the 15-member CPC to replace OPARB, providing a more broadly representative body for community-based oversight of the system and giving it more extensive authority and responsibilities. The package also called for codifying other provisions to support police accountability involving not just OPA, the OPA Auditor, and the CPC, but also SPD and other City departments, all with important roles in police accountability.

The June 2015 package included compromises to original OPA Auditor and CPC accountability recommendations, and also set aside some recommendations because there was an expectation that these would be included in the City's upcoming collective bargaining with SPOG and SPMA. Also, because the Mayor committed in November 2014 to implementing a number of other OPA Auditor and CPC accountability recommendations for which an ordinance was not required, those were excluded in the June 2015 package. In addition, much has transpired in the last year, both locally and nationally, which make the need for more truly independent civilian oversight and for more definitive accountability measures imperative.

Revisions to June 2015 Legislation

The proposed revisions to the June 2015 legislative package remove previous compromises, re-insert critical recommendations that may have collective bargaining implications, include certain areas the Mayor committed to, but has not implemented, and address "lessons learned" in the last year.

A detailed 10-page summary is available that outlines all major provisions in the current proposed package, but here are some highlights of changes made to last year's package:

1. Strengthened Independence of Civilian Oversight Entities

- The 2015 package called for the Mayor to appoint the OPA Director, the OPA Auditor, and CPC members. In the current proposal, the Mayor appoints the OPA Director, the City Council appoints an Inspector General, 7 CPC members are appointed by the Mayor, and 12 are appointed by the CPC. The CPC serves as the search committee for the OPA Director and Inspector General, with appointments made from the finalists identified by the CPC following public meetings with finalists.
- The OPA Director and Inspector General have three, four-year fixed terms, starting on a specific date; the CPC have staggered three, three-year terms, starting on a specific date. The OPA Director's appointment commences in years separate from that of the Mayor.
- The CPC is to be consulted prior to the reappointment of OPA Directors, Inspectors General, and Mayoral appointments to the CPC.

- Removals from office may only be for cause, and in the case of the OPA Director and Inspector General, public hearings must be held at their request prior to the City Council voting to approve or disapprove a removal, following input from the CPC (and if the OPA Director is the individual being removed, input from the Inspector General).
- Appointment provisions reduce the possibility of gaps in oversight and undue vacancies, and allow for interim appointments of OPA Directors and Inspectors General.
- Commissioners at the time the new ordinance is effective may continue to serve on the permanent CPC, maintaining continuity and subject matter expertise on behalf of the community under a system that provides for staggered terms going forward.
- The CPC has authority for the merit-based appointment, subject to City Council confirmation, of its Executive Director. Removal of the Executive Director is at will, based on a majority vote of the CPC.
- Staff, program and workplan control by the civilian entities is retained in the current proposal, with an innovative suggestion that budgets for these offices be set at a percentage of SPD's budget.
- No OIG staff and no civilian OPA staff are required to have law enforcement experience.
- Provisions are added to protect against interference with or retaliation against OPA, OIG, Commissioners, and CPC personnel regarding their work, including measures for consequences should such interference or retaliation occur.

2. Transparency and Accessibility

- OPA and the OIG are to obtain information about community perspectives and concerns germane to access and their oversight responsibilities by coordinating with the CPC on community outreach and receiving feedback from the CPC on issues surfaced as a result of its community outreach activities.

3. OPA

- OPA continues to be led by a civilian director, now supported by a civilian deputy director and with either all civilian or a mix of civilian and sworn staff in each intake, investigation, and investigation supervisory role, and with the OPA Director having overall hiring authority and authority to approve sworn staff and schedule their rotation into and out of OPA. Provisions are made for civilian OPA precinct liaison staff to support front-line SPD supervisors and for civilian OPA complainant navigators to support community members in filing complaints.
- More specific language has been inserted about the focus of orientation and training of OPA investigators and investigative supervisors as they transition into OPA, with training to be provided both in-house and by outside professionals.
- OPA policies and practices are to apply equally to all SPD employees regardless of rank or position, including a requirement that all named and witness employees be interviewed in-person.
- OPA has jurisdiction over all types of police misconduct, including criminal misconduct. For criminal cases, the OPA Director coordinates with criminal investigators and the prosecutor to ensure the quality and effectiveness of both criminal and administrative investigations. To ensure timely review of criminal cases, the City Attorney will establish a protocol so

that, whenever possible, cases referred to prosecutors for possible filing of charges are reviewed concurrently by city, county, and federal prosecutors.

- The OPA Director or a designee is expected to respond to the scene of officer-involved shootings and other serious use of force incidents and have access to the scene as requested to assess whether policy violations have occurred. OPA representatives may attend and participate in subsequent SPD administrative investigation unit interviews and meetings about such incidents, as well as those held involving any other incident.
- Each investigation must have an investigation plan approved by the OPA Director prior to the initiation of an investigation.
- The OPA Director has authority to issue administrative subpoenas, in the same way the Office of Civil Rights and the Seattle Ethics and Elections Commission have such authority.
- The OPA Director is to collaborate with the OIG and CPC to implement a rapid adjudication process and to improve the mediation program.
- More specific requirements are added for annual reporting by OPA to provide information on patterns, statistics, and trends, particularly in areas of most concern to the public and stakeholders.
- The updated legislation does not otherwise make any substantive changes to the OPA Director's duties or authority to manage the complaint-handling system, conduct investigations, ensure timely and effective actions by front-line supervisors, and report and make recommendations for improvements, as outlined in last year's package.

4. Office of Inspector General

- An Office of Inspector General (OIG) replaces the OPA Auditor, with broadened authority and responsibilities to address weaknesses and gaps in the system that have been identified by the OPA Auditor.
- The OIG is to be wholly independent, either housed in the City Auditor's Office to allow the City to take advantage of infrastructure efficiencies, or established as an entirely stand-alone office. If the latter, the City must commit to full support the office with all resources necessary to fulfill its obligations.
- The OIG is responsible for ensuring ongoing fidelity to organizational reforms implemented pursuant to the Settlement Agreement.
- The OIG is responsible for conducting in-depth risk management and performance audits of any and all SPD and OPA operations, practices, policies and training, and the practices of other City departments and agencies in areas related to policing and criminal justice matters. Audits may also be conducted for any areas that may a) involve potential conflicts of interest; b) involve possible fraud, waste, abuse, inefficiency, or ineffectiveness; c) undermine accountability or ethical standards; d) or otherwise compromise the public's trust in the police or criminal justice system.
- The OIG has the authority to respond to the scene of any incident and to participate in any SPD administrative unit interview or meeting held to review incidents, identifying areas of concern related to issues of possible SPD policy violations, and the integrity, thoroughness, or objectivity of an investigation or its review.

- The OIG assumes the current Auditor's responsibilities for overseeing OPA and SPD misconduct complaint handling. This includes review of investigations, classifications and assessing the thoroughness and timeliness of cases referred to supervisors or resolved through alternative resolution processes, such as mediation, rapid adjudication, Management Actions, and Training Referrals.
- The OIG handles complaints involving OPA staff and protocols for referral of such cases to the OIG are established in the OPA Manual.
- The OIG takes on the police intelligence auditor functions and that position is eliminated.
- The OIG assists in making provisions for a neutral and qualified arbitrator or a hearing examiner to conduct disciplinary appeals.
- The OIG is to review evidence-based research and successful police practices in other jurisdictions, and based on such external reviews and internal performance reviews and reviews of specific incidents, recommend improvements to OPA, SPD, and other City department and agency policies and practices, and make recommendations concerning the City's budget, the City's state legislative agenda, and City collective bargaining agreements which pertain to policing and criminal justice issues.

5. Community Police Commission

- Much of the CPC's authority and duties remain the same as in last year's proposal, including monitoring the implementation of recommendations, annually reviewing the OPA Director and Inspector General, providing input on SPD recruitment, hiring, and promotional practices, providing input on policies, and otherwise making recommendations to policymakers. One key addition is that the CPC has authority to add items to the OIG workplan that the CPC believes are needed. As noted before, the CPC has responsibilities in the appointment process for the OPA Director, the Inspector General, and CPC members.

6. Measures Involving Time Limits, and Disciplinary and Appeals Processes

- The requirement that investigations be completed within 180 days is retained, but there are measures to address problems with this and other time limits:
 - SPD administrative investigation unit review of incidents should be no more than 90 days.
 - Employees must receive notice of allegations and an investigation within 30 days or OPA receiving the complaint. However, if additional allegations are identified that were not listed in the 30-day notice, these may also be addressed in the investigation.
 - When the timeline starts and finishes is better defined to reduce challenges to discipline based on whether the deadline was met.
 - If the deadline is missed because a case was not timely referred, that failure to timely refer by an SPD employee is itself misconduct subject to investigation.
 - The timeline will not run whenever a case is being investigated criminally until the administrative investigation begins.
 - When new information is brought forward or additional investigation is directed by the OIG, additional time is provided for.

- SPD is to use a discipline matrix, and track and report on patterns of discipline, to better ensure predictable, fair, and uniform application of discipline.
- There will be a single disciplinary appeals process with an impartial decision-maker, either an arbitrator or a hearing examiner.
- To help ensure timeliness, there are to be set timeframes for all steps following the issuance of OPA findings, including when employees request a due process hearing, when the Chief of Police makes final decisions, when appeals are filed, and when appeal hearings and rulings are to be done.

7. Mechanisms To Support Continuing Improvements

- SPD, OPA, the City Attorney's Office, the CPC, and all other City entities have an affirmative obligation to regularly report to the OIG problems or deficiencies.
- The proposed ordinance retains an earlier provision that SPD maintain systems of critical self-analysis, including audits and reviews of critical events, lawsuits, claims and complaints and adds a requirement that it maintain a database of stops, frisks, uses of force, and discipline so that patterns of these activities can be reviewed.
- Responsibilities and protocols for responding to, documenting, and tracking the status of recommendations made by the civilian oversight entities are strengthened, and requirements are added for the Mayor to document in writing how such recommendations are addressed in the Mayor's budget proposals, the City's state legislative agenda, and the City's collective bargaining agenda with police unions.
- The OPA Director and Inspector General must report quarterly to the Mayor, the City Council, the CPC, and each other on the implementation status of recommendations they have made, and the City Council must have a regular schedule to review the status of these recommendations.
- Regular review and input by civilian oversight entities of any revisions to the SPD Policy Manual is required with more specificity as to the establishment of an agreed upon schedule and protocol for this process.

8. Collective Bargaining

- The City's collective bargaining agenda with police unions must incorporate the recommendations of the civilian oversight entities. If the City does not bargain these items, there must be provision for automatic re-openers.
- The City's collective bargaining with police unions must be open and transparent, to the extent permitted by State law, and the terms of union agreements (and any separate agreements) must be posted online with clear explanations of key provisions relevant to the public. Separate agreements in place at the time collective bargaining occurs are to be incorporated into updated union contracts or eliminated.
- Representatives of the civilian oversight entities are to serve as technical advisors to the City in its collective bargaining with police unions.

9. Other Areas Addressed

- If determined to be feasible following a stakeholder assessment led by the CPC, the City is to establish mechanisms to use wholly external investigation and review processes for cases involving serious and deadly uses of force.

- Following the CPC’s convening of stakeholders to develop these proposals, the City is to establish a complainant appeal process and processes for the wholly external investigation and review of cases involving serious and deadly uses of force.
- The Mayor is to include in the City’s state legislative agenda a provision to allow the referral of criminal cases in which police conduct resulted in the death of a civilian to independent prosecutors. Until State law is changed, the City Attorney is to establish a protocol with the King County Prosecutor to refer, whenever possible, such cases to prosecutors not affiliated with the City of Seattle or King County.
- The Mayor is to include in the City’s state legislative agenda reform of state laws regarding officer de-certification, pension benefits for employees who do not separate from SPD in “good standing,” and standards for arbitrators to override termination decisions by the Chief of Police.
- SPD is to develop, implement, evaluate, and report on recruitment, hiring, testing, training, mentoring, assignment, and promotional practices that emphasize leadership and policing skills consistent with accountability and which support equity. Such practices include the adoption of preference points for certain needed skills and experience in the hiring of sworn employees and the application of appropriate standards to be met, including those related to OPA and EIS history, for employee assignment to specialty units.
- SPD is given the authority to hire civilians with specialized skills and expertise for positions that do not require commissioned law enforcement staff, allowing it flexibility and efficiency to better meet its both its management and law enforcement needs.
- SPD must include documentation in SPD personnel and case files mandated Chief of Police requests and responses to such requests, for de-certification, Chief of Police disallowance of Special Commissions, and Chief of Police denial of the right to carry a concealed firearm.
- SPD personnel and OPA case files must contain all appropriate OPA and related performance, disciplinary, and accountability records for as long as the employee is employed by the City, plus 10 years or as long as any action related to that employee is ongoing, whichever is longer. Employees may not request removal of files.
- SPD is to establish an internal office, directed and staff by civilians, to manage the secondary employment of its employees.
- SPD is to update its body-worn camera and in-car video policies to ensure they are consistent and that both reflect best practices in support of police accountability.