

Re: Secondary Employment for SPD Employees

November 27, 2017

Dear Mayor-Elect Durkan,

On behalf of the oversight entities asked to review the proposal developed in response to Executive Order 2017-09 (Office of City Auditor, Community Police Commission, Seattle Ethics and Elections Commission, and former independent OPA Auditor), we are writing to express our questions and concerns regarding the secondary employment report released on November 20<sup>th</sup> by the Seattle Police Department (SPD) and the SPD-led task force (composed of SPD, the Mayor's Office and other City departments) created in response to Executive Order 2017-09. That Executive Order directed SPD to create an office to provide greater oversight, regulation, and management of secondary employment of SPD employees. Although not mentioned in the task force report, but noted in our October 18, 2017 joint letter to Mayor Burgess, the police accountability ordinance (Ordinance 125315) passed by the City Council in May, 2017 required SPD to create this civilian-led office. Mayor Burgess's Executive Order, reinforcing the ordinance's mandate, represented another important step toward the implementation of long-recommended reforms to SPD's management of secondary employment.

The Executive Order directed the task force to consult with each of us as oversight entities that over the years identified a range of secondary employment problems and recommended reforms. To help the task force and to provide policymakers a way to assess any forthcoming proposals, we worked together to quickly provide Mayor Burgess and the task force with our recommended criteria (attached) to ensure important secondary employment problems would be addressed in the new secondary employment system. We wanted to ensure the task force was mindful of these critical considerations as it undertook its work.

While we understand that certain aspects of the secondary employment system will take time to be detailed, we anticipated that the task force's report—even if preliminary—would state whether, how, and when each of the critical reform criteria we identified would be addressed. However, the report explicitly addresses only a few of these criteria and is ambiguous or inconsistent in respect to some elements it addresses. This makes it difficult to assess SPD's intended actions, the program's dimensions, and whether what SPD envisions will comprehensively address the identified concerns.

A few examples:

- Scope and authority: The report's description of the scope of secondary employment and the corresponding responsibilities and authority of the new office and its leadership both appear to be narrower and less well defined than we recommended.
- Cost recovery: The report's discussion as to whether there will be full recovery of the City's costs is somewhat inconsistent and unclear. We recommended all associated costs be covered by a fee structure so that no costs would be borne by the public, and listed several attendant costs to be sure to address. In one place, the report states that the City's costs of administering the proposed system "may" be recovered by a fee charged to employers, while on another page it states that "all City costs" will be offset by fees charged to employers.
- Payment: The report states that employers will remit payment directly to SPD employees who perform work; it also states that these payments will "take place within the facilitated environment", which could be interpreted to mean that a third-party administrator/vendor would pay SPD employees. Our criteria recommended direct payments by employers to SPD employees be prohibited. Payment of employees by a third-party administrator/vendor is a prudent alternative to avoid having the City directly involved in payments, which for a number of reasons could result in additional costs to taxpayers.
- Assignment of work: One of the core principles cited in the report is that "supervisors will not have the authority to assign off-duty work"; however, it is unclear whether this applies to subordinates and peers assigning such work, as these positions are not addressed in the report. We recommended no sworn employee involvement in the assignment of work, whether supervisor, peer, or subordinate.
- Setting of rates and system controls: The report suggests that SPD intends the system to result in equity and consistency for businesses, which could infer standardized rates. However, the report contains no specifics regarding how and by whom the rates will be set or who will ensure accurate payment of all work hours and employment-related taxes. The report also does not state who will identify potential inaccuracies, and how they will be resolved.
- Obligations of employers: We recommended that employers be required to sign contracts that mandate compliance with SPD policy (e.g., use of force, making arrests, ethical standards, etc.); with non-discrimination laws; with insurance, payroll, records retention and safety requirements; and that violation of contractual terms should preclude the employer from future hiring. We also recommended compliance with state licensing and regulatory requirements, and inclusion of periodic inspections. The report does not address these elements.
- Secondary employment policy: The reference to revising SPD's secondary employment policy states it will be equitable and fair, and include off-duty sign-up procedures.

However, there is no reference to the full range of important ethical and accountability concerns specified in our criteria as critically important to address in SPD policy.

- Audit findings, existing memoranda of understanding, special events, and City law requiring use of sworn employees: We recommended the task force cover how and when each of these aspects of the system that need attention would be addressed by the City, but the report is silent in each of these areas.
- Training and communications with employers, employees and the public: We recommended attention to these elements, and how questions or conflicts with employers or the public will be resolved. The report is does not address these aspects of the new system.

Attached is a document that lays out the criteria we provided the task force in October and our assessment as to whether each criterion was sufficiently addressed in the report or needs further detail and clarity.

There are two other statements in the report that merit further attention as well:

First, while we are appreciative that the task force's report states that it "commits to ensuring continued dialogue with all stakeholders and full consideration of criteria and recommendations received", and we recognize that the task force moved quickly to produce its report, we hope as work proceeds that greater consultation with us will be the norm, rather than what has occurred thus far. As part of the task force's charge, the Executive Order directed the task force to work with and consult the City Attorney, the Office of City Auditor, the Community Police Commission (CPC); the Chair of the City Council's Gender Equity, Safe Communities, and New Americans Committee; former independent OPA Auditor Judge Anne Levinson (ret.), the Seattle Ethics and Elections Commission, and the three unions that represent SPD employees.

As noted above, to help streamline that, we collaboratively provided the task force with the criteria we would be looking for in any proposal. While preparing its report, task force representatives attended a CPC meeting and stated that they had just begun their work, had received the oversight entities' criteria, and "that there was nothing in the criteria to which they were not already attentive." There was not substantive discussion, but they also committed to continued consultation as set forth in the Executive Order, so we anticipated such consultation would occur at a later point before a report was published. However, we did not receive the report until *after* it was released. We believe that the task force's report and thus SPD's contemplated initial plan could have been strengthened if substantive consultation with us had occurred. We acknowledge that the task force stated in the report that it would revise SPD policy "with full input from the CPC and other stakeholders identified in the Executive Order". As you may know, greater consultation with oversight entities is also envisioned in the new police accountability ordinance as one way Seattle's accountability system will be strengthened. Thus, we hope that the task force will take steps to ensure that sufficient subject matter expertise and community perspective that we collectively offer

informs the new secondary employment policy and the other key aspects of the secondary employment system, prior to critical milestones such as issuance of a vendor RFQ.

Second, as we said in the letter transmitting our recommended criteria, the new system must have all critical elements in place to ensure ethical standards are met, public trust is restored, and the public does not subsidize a program providing employees an opportunity to earn extra money. The task force report identifies affected parties whose interests and unique needs, in the view of the task force, are “paramount”, listing businesses, officers, and SPD. However, the report does not mention taxpayers, community-based entities that need to hire police services, and the broader community which expects a secondary employment program that upholds values central to police accountability. To that end, we recommend that these entities also be identified in the report as paramount stakeholders, to ensure that any proposal will meet *their* needs for an ethical, fiscally sound, and transparent secondary employment system.

We applaud the City’s efforts to begin the process of establishing a new approach for secondary employment management and oversight as required by Ordinance 125315. We encourage you to direct SPD leadership and the task force to issue a revised, more detailed report by the end of the year that addresses the criteria in the attached document. We anticipate a report with a secondary employment system proposal that eliminates the long-standing problems in the existing system, and that includes an effective oversight and management structure, and with policies, laws, and systems that comprehensively reflect best practices.



Judge Anne Levinson (ret.)

Former OPA Auditor



David Jones

City Auditor



Rev. Harriett Walden

Co-Chair

Community Police Commission



Wayne Barnett

Executive Director

Seattle Ethics & Elections Commission



Enrique Gonzalez

Co-Chair

Community Police Commission



Isaac Ruiz

Co-Chair

Community Police Commission

Attachments:

1. Chart listing criteria from October 18, 2017 transmittal and whether each has been addressed
2. Executive Order 2017-09
3. October 18, 2017 Transmittal Letter and Criteria for Evaluating Secondary Employment Proposals

cc: Mayor Tim Burgess, Councilmembers, City Attorney Pete Holmes