

Seattle  
Community  
Police Commission

September 7<sup>th</sup>, 2023

VIA E-MAIL

Mayor Bruce Harrell  
Seattle City Hall  
600 Fourth Avenue, 7<sup>th</sup> Floor  
Seattle, Washington 98104

Council President Debora Juarez  
Councilmember Tammy J. Morales  
Councilmember Andrew J. Lewis  
Councilmember Sara Nelson  
Councilmember Lisa Herbold  
Councilmember Alex Pedersen  
Councilmember Teresa Mosqueda  
Councilmember Dan Strauss  
Councilmember Kshama Sawant  
Seattle City Hall  
600 Fourth Avenue, 2<sup>nd</sup> Floor  
Seattle, Washington 98104

RE: Community Police Commission Recommendations for City of Seattle's Collective Bargaining Agreement Negotiations with Seattle Police Management Association

Dear Mayor Harrell and City Councilmembers:

Pursuant to City ordinance<sup>1</sup>, please find below recommendations from the Seattle Community Police Commission (CPC) with respect to the City's upcoming contract negotiations with the Seattle Police Management Association (SPMA).

As the CPC has previously recommended with regard to contractual provisions addressing accountability amid collective bargaining with both SPMA and the Seattle Police Officers Guild (SPOG), the City must ensure that contracts no longer embed any barriers to full implementation of the reforms the City enacted into law in June 2017 in the Accountability Ordinance.<sup>2</sup> That law, which the Mayor signed

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<sup>1</sup> [Ordinance 125315 Sec. 3.29.460](#) Collective bargaining and labor agreements provides in part as follows: "Those who provide civilian oversight of the police accountability system shall be consulted in the formation of the City's collective bargaining agenda for the purpose of ensuring their recommendations with collective bargaining implications are thoughtfully considered and the ramifications of alternative proposals are understood...".

<sup>2</sup>See *United States v. City of Seattle*, 2:12-cv-01282-JLR, Dkt. 533 (Levinson Decl.), which we incorporate by reference.

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following the City Council's unanimous passage, was the result of years of work by accountability oversight officials and community advocacy to ensure fair, transparent, and equitable police accountability.

Those reforms were intended to be a floor, upon which additional reforms would be built. The City committed to ensuring that collective bargaining agreements adopted or modified after the ordinance was enacted would align with each of the intended reforms, so that those improvements in Seattle's accountability system could be fully realized on behalf of the public.

Although neither of the first contracts that the City entered into with SPMA or SPOG following enactments of the 2017 ordinance did that, the SPMA contract adopted in June 2022 did incorporate many of the recommendations from past and current oversight officials and the community, including many in the ordinance, making accountability provisions in the current SPMA contract much stronger. The City should build on that and focus on strengthening – not weakening – contractual accountability provisions over time. Moreover, the City needs to ensure that any contracts entered into or modified after state legislative efforts to strengthen police accountability took effect in July 2021 are consistent with the new requirements in state law.

Additionally, although SPOG and SPMA are different bargaining units, the City must ensure that contract terms related to accountability do not allow for different ranks to be treated differently. The City needs to require the same best practices for OPA investigations, discipline and disciplinary appeals, and other elements of accountability, for all ranks. Past accountability oversight officials recommended that the City ensure that such contract terms do not allow for different treatment by rank and that recommendation was incorporated in the 2017 accountability law, but it has not yet been fulfilled.

The following recommendations for the City's upcoming bargaining with SPMA focus on several accountability provisions that prior agreements have not yet fully addressed or that need further refinement to fully implement the intended reform. We have listed them in the order they occur in the previous contract. We understand that our accountability partners at the Office of the Inspector General for Public Safety and the Office of Police Accountability will submit respective recommendations on these and other accountability provisions that speak directly to the discrete work of those organizations.

**Purpose:** The previous contract at its outset includes a provision on the contract's purpose. When courts, arbitrators or others review challenges to discipline and determine that a contract provision is unclear or that the contract is silent on the issue, the reviewer often looks to the intent expressed in the purpose provision. If accountability provisions are part of the contract, the purpose provision should clearly indicate that the purpose of the contract is to support a strong police accountability system – a priority for the City and the public – in addition to setting forth standard employment conditions.

**Subordination clause (Article 12.2):** The previous contract expressly provides that if any provision conflicts with federal or state law or City Charter, state law and Charter prevail. But, contrary to past

recommendations, the contract allows contract terms to prevail over *City* ordinances. That should be changed, as it can lead to provisions that weaken, or even abrogate, City law, which happened following the adoption of the 2017 accountability ordinance. That ordinance has still not fully taken effect due to subsequently negotiated contracts, resulting in a loss of trust and confidence by the public and stakeholders who thought the reforms they worked to approve would be implemented.

**Use of American Arbitration Association rules (Article 15.5 D):** The previous contract includes a provision requiring an arbitrator to apply the voluntary labor arbitration regulations of the American Arbitration Association as a guideline for hearing procedures, unless the parties stipulated otherwise. This provision should be retained, but the contract should make clear that the AAA rules should only be applied to the extent that they do not hinder robust accountability or conflict with the disciplinary review process otherwise set forth in the contract.

**Indefinite suspensions (Article 16.3):** Under the previous contract, the Chief has the authority to immediately suspend an employee without pay where allegations in a complaint, if true, could lead to termination, or where the Chief determines that the suspension is necessary to ensure public safety or public trust, or is otherwise warranted. The Department is required to notify SPMA when it intends to indefinitely suspend an employee in the bargaining unit and SPMA has the right to request a meeting with the Chief to discuss the suspension, to occur within 15 days of the meeting request. The contract should make clear that the Chief may suspend an employee immediately and is not required to wait until that meeting has taken place.

**Statute of limitations (Article 16.4.I(2)):** The previous contract places no time limit on when misconduct may be addressed if the employee concealed the misconduct. But there is a time limit where the misconduct was concealed due to someone else's actions. Whenever misconduct is discovered to have been concealed, it harms community trust and confidence if that misconduct is not addressed, regardless of who concealed it. As past accountability oversight officials recommended, this provision should not limit concealment to "where the named employee concealed acts of misconduct," but should instead read: "where the acts of misconduct have been concealed," so that it includes concealment of misconduct by others, such as an officer's partner, other employees, or third parties.

**Records Retention (Article 16.4(N); (O); Appendix B):** These provisions should be updated to conform with state law effective July 2021 requiring that all personnel records for any peace officer or corrections officer be retained for the duration of the officer's employment and at least 10 years thereafter. They should have been updated in the contract adopted in June 2022.

The new state law made clear that an employing agency may not enter into any agreement or contract with an officer or union allowing the agency to destroy or remove any personnel record while the officer

is employed and for 10 years thereafter. The law also did not limit the retention requirement to files related to sustained findings. Instead, records to be retained include all misconduct and equal employment opportunity complaints, progressive discipline imposed, written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, other disciplinary appeals and litigation records, and any other records needed to comply with the requirements in the statute. See: RCW 43.101.135; RCW 40.14.070.

The records retention provisions in state law are not subject to bargaining. All contracts entered into or modified must be consistent with the law's requirements.

**Criminal investigations (Article 16.5):** As previously recommended, this provision should be amended to allow the investigating authority to investigate complaints of any alleged serious misconduct that is criminal in nature, other than complaints of misconduct within the jurisdiction of the Office of Independent Investigations (see chapter 43.102 RCW), without limiting the way the authority receives complaints or conducts its investigations. That includes decision-making as to which entity should conduct any necessary criminal investigation, coordination with the criminal investigators if external to the investigating authority, and whether criminal and administrative investigations should be done concurrently or sequentially, to ensure that both are rigorous, thorough, and timely.

**Bill of Rights (Article 16.6):** Similar to our concerns with the subordination clause, this contract provision states that "The 'Police Officers' Bill of Rights' spells out the minimum rights of an officer but where the language of the contract or the past practices of the Department grant the officer greater rights, those greater rights shall pertain."

The "Bill of Rights" provisions in the Seattle Municipal Code [SMC 3.28.320] that should have been stricken when the accountability ordinance was adopted in 2017 still needs to be removed so that the public, officers, and those who are responsible for implementation can rely on the accountability ordinance and the contracts as containing all relevant requirements and standards, without concern that they may be affected by other language elsewhere.

As we stated in 2019 when we last commented on the SPMA contract, the CPC continues to emphasize the importance of incorporating **all** accountability provisions from the 2017 ordinance into **all** police


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public employment contracts. This letter is not a comprehensive list of recommendations<sup>3</sup>, and we want to emphasize that the CPC supports the accountability work and recommendations of our partners in the Office of Inspector General for Public Safety and the Office of Police Accountability as we work in partnership towards shared goals of accountability and strengthening of public trust in constitutional policing in Seattle.

Sincerely,



Reverend Patricia Hunter, Co-Chair



Reverend Harriett Walden, Co-Chair



Joel Merkel, Co-Chair

cc: Ann Davison, Esq., Seattle City Attorney (via e-mail)  
Chief Adrian Diaz, Seattle Police Department (via e-mail)  
Dr. Antonio M. Oftelie, Federal Monitor, Seattle Police (via e-mail)  
Commissioners, Seattle Community Police Commission (via e-mail)

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<sup>3</sup> For example, the CPC still advocates for the [reforms called for in 2019](#) regarding allowing supplemental information from SPMA (Articles 16.4(C)(5) & 16.6.6), mediation (Article 16.7) and rapid adjudication (Article 16.8), which have not been fully implemented as recommended.