Lisa Herbold
LEGLRPCRES
May 1, 2014
Version #1a

CITY OF SEATTLE

RESOLUTION 31535

A RESOLUTION affirming the City's intent to consider, in good faith, ways to address public comments regarding how to strengthen the City's police accountability system.

WHEREAS, the mission of the Seattle Police Department is to prevent crime, enforce laws and support quality public safety by delivering respectful, professional and dependable police services; and

WHEREAS, effective policing depends on the public's confidence in the fairness and integrity of the Seattle Police Department and its policing practices, and

WHEREAS, the City Council established an Office of Police Accountability (OPA) and Office of Police Accountability Board (OPARB) through negotiations with the Seattle Police Officers Guild (SPOG) and enactment of SMC 3.28.800 et seq., and

WHEREAS, on July 27, 2012, the United States Department of Justice (DOJ) and the City of Seattle entered into a settlement agreement and memorandum of understanding (collectively Agreements) related to ensuring police services are delivered to the people of Seattle in a manner consistent with the Constitution and laws of the United States; and

WHEREAS, the Agreements outline a substantive and meaningful role for a Community Police Commission (CPC) to provide ongoing community input regarding the reform process, including changes necessary to the OPA system; and

WHEREAS, the Collective Bargaining Agreement (CBA) between the City of Seattle and the SPOG expired on December 31, 2013 and the parties will be negotiating a new contract; and

WHEREAS, the City respects the collective bargaining process and will negotiate and bargain a new CBA in good faith with the SPOG and respect the confidentiality of the process as required by SMC 4.04.120 (E); and

WHEREAS, Seattle Municipal Code (SMC) 4.04.120(F) requires the City Council and the OPARB to jointly host a public hearing on the effectiveness of the City's police accountability system at least ninety (90) days before the City begins collective bargaining agreement negotiations with the SPOG; and

WHEREAS, the City Council and OPARB jointly held a public hearing on April 22, 2014 where 22 people testified for how SPD's and OPA's practices can be strengthened to achieve the intended goal of increased police accountability. These interests include support for police body-cameras, support for police peer accountability measures, support for police training, support for a memorial for fallen police officers, support for revised standards for OPA cases eligible for mediation, support for reduction and streamlining of some police paperwork and policies, support for compliance with the DOJ decree and Police Monitor recommendations, opposition to racial disproportionality in the criminal justice system, support for transformation and restorative justice practices, support for steroid testing of police officers, support for new citizen review powers, support for new rights for complainants, support for making the role of the discipline appellate process consistent with the values of transparency and accountability, opposition to the use of training as a disciplinary outcome, support for City Attorney consultation in the appellate process, and opposition to retroactive pay raises in the case of contract negotiations that extend beyond a contract term.

WHEREAS, at the April 22 public hearing OPARB testified that meaningful citizen oversight must have sufficient funding and staffing and be authorized to act and they spoke to recommendations including: the need to retain the gains achieved through previous bargaining, the need to strive for maximum access to disciplinary records and data, the right of the citizen oversight body to comment on cases, a new right of police and complainants to review cases, and the need to begin tracking recommendations of future civilian oversight entities in a way that is publically accessible and holds the parties to those recommendations accountable for their timely implementation, or if not, records the reason for not implementing the recommendation; and

WHEREAS, on April 23, the CPC approved 55 policies and practices recommendations for the City's police accountability system (Appendix A) and on April 30, the CPC approved a set of structural recommendations (Appendix B) which the CPC believes, if taken together will correct past practices that have undermined trust and confidence in the system and significantly strengthen the checks and balances built into the police accountability system by aligning with key values the CPC has identified as necessary for an effective accountability system: independence, accessibility, legitimacy, transparency, consistency, efficiency, and continuous improvement; and

WHEREAS, consistent with SMC 4.04.120, the City of Seattle will consider in good faith whether and how to carry forward the interests expressed at the public hearing. Those suggested changes that are legally required to be bargained with the SPOG, SPMA or their successor labor organizations will be considered by the City, in good faith, for inclusion in negotiations but the views expressed in the public hearing will not dictate the city's position during bargaining;

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE THAT:

Section 1. The City of Seattle will consider in good faith whether and how to carry forward these interests through various means including, but not limited to enactment of appropriate legislation, negotiation of applicable collective bargaining agreement terms with SPOG, Seattle Police Management Association (SPMA) and any other affected unions where possible, and facilitating community police dialogue. Those suggested changes that are legally required to be bargained with the SPOG and other unions will be considered by the City, in good faith, for inclusion in negotiations.

Adopted by the City Council the ____ day of _____, 2014, and signed by me in open session in authentication of its adoption this_____ day of _____, 2014.

_____

President _____of the City Council

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment A: CPC-Accountability Policy and Practices Recommendations

Seattle
Community
Police Commission

Our City. Our Safety. Our Police. **Better Together.**

April 24, 2014

VIA EMAIL

Ed Murray
Mayor

Seattle City Council

Harry Bailey
Interim Chief of Police

Peter Holmes
Seattle City Attorney

Dear Mayor Murray, Councilmembers, Chief Bailey and Mr. Holmes:

At its April 23, 2014 meeting, the Community Police Commission (CPC) approved an extensive set of recommendations, attached as Exhibit A, to revise policies and practices of the City's police accountability system. The CPC will issue its recommendations on the structure of the police accountability system on April 30, 2014. All of the CPC's recommendations should be considered together, since they are an integrated set of reforms.

The Commission has confirmed that police accountability extends beyond the narrow confines of the current Office of Professional Accountability and its investigative processes. It has also established that the Department's professionalism standards (including expectations consistent with community care-taking), and ethics and values, should be made explicit and ultimately steer its policies and practices. Importantly, the Commission believes the City's collective bargaining and legislative priorities should support a robust and legitimate accountability system.

The CPC recommendations concern all aspects of the system from accessing the system to completing the appeal process. They also provide for certain systemic reforms and ways that ensure ongoing improvements to the accountability system will be undertaken. Some key recommendations include:

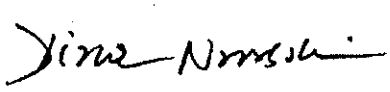
- Improving access to filing complaints
- Improving the Department's internal reporting and handling of complaints
- Ensuring Departmental neutrality in investigations
- Providing more frequent and timely information to complainants, named officers and the public
- Ensuring investigations are conducted on all allegations of policy violations and misconduct, and that the investigative unit has the necessary tools to complete thorough investigations
- Providing a range of mechanisms to address—in a more timely and effective manner—all types of policy violations and misconduct, from those that are relatively minor to those that may involve criminal behavior
- Ensuring training referrals are an education-based option when a policy violation or misconduct is found to have occurred, but a training referral should be neither a finding nor a discipline option

- Providing a mechanism for determining that Departmental policies or practices may have caused or contributed to inappropriate actions of officers, and for making corrections within the Department
- Providing some complainants an opportunity to provide information directly to the Chief of Police prior to the Chief making a disciplinary decision
- Revising practices associated with staffing the investigations unit, and providing for civilian staff at the precinct level, to support greater effectiveness of the unit and the accountability system
- Developing and implementing a discipline matrix that ensures more uniformity in disciplinary decisions, while allowing flexibility to account for aggravating and mitigating circumstances
- Establishing time limits on steps occurring after the completion of the investigation, specifically how soon the final decision of the Chief must be issued and for the appellate processes to be completed
- Establishing a single avenue for disciplinary appeals through the Public Safety Civil Service Commission (PSCSC), providing that members of the PSCSC be impartial third parties, and that the PSCSC chair be a hearing examiner
- Providing that no discipline imposed by the Chief of Police may be modified through a settlement process if the Chief opposes that resolution; that the appeal process should be handled outside the Department and any settlement proposals be initiated outside the Department; that the City Attorney's Office represent the City in any manner in which an appeal has been filed, and approve settlements only after taking into account the impact on public trust and potential ramifications for supporting the appropriate performance of other Department employees
- Providing a number of activities that will better identify patterns of problems and support the implementation of recommendations to improve Department practices
- Eliminating or revising arrangements that undermine accountability

The CPC, informed by community feedback, has spent countless hours working with technical advisors, consultants and stakeholders to create a comprehensive and reasoned set of recommendations to improve our police accountability system. The Commission understands the difficult work involved in creating meaningful reform to this vital system to ensure accessibility, transparency, fairness and legitimacy.

The CPC would welcome an opportunity to meet with you to discuss its recommendations. Again, the remaining recommendations regarding restructuring of the components of the accountability system will be released next week, and these procedural recommendations should be understood in the context of the forthcoming proposal for structural changes.

Sincerely,



Lisa Daugaard, Co-Chair
Community Police Commission

Diane Narasaki, Co-Chair
Community Police Commission

Cc:
Merrick Bobb
J. Michael Diaz
Community Police Commission

Exhibit A

COMMUNITY POLICE COMMISSION ACCOUNTABILITY SYSTEM RECOMMENDATIONS ADOPTED 04-23-14

VALUES AND STANDARDS

Recommendation 1

The Department's standards and values should support a robust and legitimate accountability system

The accountability system for SPD includes not just the complaint and investigative processes, but also the performance management, training, disciplinary, grievance and appeals processes. The public and employees must have trust that all aspects of the process will be handled fairly and with legitimacy. The Department's professionalism standards, and ethics and values should be documented, and these should drive its policies, procedures and accountability processes. Similarly, the City's collective bargaining and legislative priorities should support a robust and legitimate accountability system that reflects these principles.

Recommendation 2

The Department should adopt hiring preference points for skills needed in current policing

A diverse workforce with the skills most needed in policing today can be a valuable instrument in strengthening Department accountability. The Department should adopt preference points in hiring for candidates who are multi-lingual or have work experience or educational background providing important skills needed in policing today, such as experience working with diverse communities, and social work, mental health or domestic violence counseling, Peace Corps, AmeriCorps or other similar work or community service backgrounds.

Recommendation 3

The Department's professionalism policy should articulate expectations consistent with community care-taking

SPD's professionalism policy should be modified to more clearly articulate expectations consistent with enhanced community trust and legitimacy; to emphasize listening, explaining, being empathetic, treating people with dignity and respect; to stress that community care-taking is at times the focus, not command and control; and to be clear that the guiding principle is to treat the public with respect and courtesy, guarding against employing an officious or overbearing attitude and refraining from language, demeanor and actions that may result in the individual feeling belittled, ridiculed, or intimidated. The policy should also make clear that unnecessary escalation, as determined from the perspective of a reasonable officer, is considered unprofessional.

Recommendation 4

The Department's professionalism policy should include a conduct unbecoming policy

SPD's professionalism policy should be modified to include a Conduct Unbecoming policy, making it clear that officers shall not, whether on or off duty, exhibit any conduct which discredits the Department or otherwise diminishes the public trust or the ability of officers or the Department to provide law enforcement services to the community. Because an officer's ability to perform his or her duties is dependent upon the respect and confidence communities have for the officer and law enforcement officers in general, officers must conduct themselves in a manner consistent with the integrity and trustworthiness expected of them by the public. SPD should consult with the Law Department in the drafting of this policy so that it complies with relevant case law.

Recommendation 5

The Department's professionalism policy regarding derogatory language should cover all members of the public

SPD's professionalism policy with regard to derogatory language should be modified to cover all members of the public rather than only those in protected classes.

COMPLAINT HANDLING

Recommendation 6

There should be additional community-based channels for complaint filing

The CPC supports OPA's intent to partner with community organizations that volunteer to facilitate public access to SPD's complaint process. The City should provide sufficient funds to a civilian oversight entity to develop and distribute materials and training information to selected community organizations that ensures the information about the SPD complaint process is consistent and that allows these organizations to provide uniform assistance to the public.

Recommendation 7

The Department's Public and Internal Complaint Process policy (SPD Policy Manual 5.002) should be revised

The recommended revisions to this policy are documented on a copy of the policy (see SPD Policy Manual 5.002 CPC Recs 04.23.14).

COMMUNICATIONS

Recommendation 8

The Department should establish a public response protocol for major or high profile incidents

The Department and other City officials should adopt a swifter and clearer public response protocol for public communications about major or high profile incidents. This protocol must ensure SPD maintains neutrality at all stages of incident reviews so that there is no question for either the public or employees that there will be an objective investigation process. This response protocol should include immediate acknowledgement and concern about the incident, a neutral Departmental stance, a clear commitment to conducting a full and fair investigation, and information concerning the type of investigation to be conducted and its timeline. As part of the protocol, the Department should commit to correcting as soon as possible any inaccurate information it may have previously released.

Recommendation 9

The City Attorney's Office should ensure impartial practices in SPD's public disclosure processes

An Assistant City Attorney should be assigned to assist SPD with oversight and advice on SPD's public disclosure practices in order to better ensure impartiality and appropriate responsiveness as required by law.

Recommendation 10

Materials should describe appellate and grievance review

All materials describing the process of investigating and concluding cases of possible policy violations or misconduct should include a description of the appellate and grievance processes available to named employees.

Recommendation 11
OPA should increase the frequency of communications with complainants and named employees

OPA should communicate with the complainant in the language preferred by the complainant and with named employees as follows. Except for (3) below, these communications should always be documented and delivered by email or, if the complainant does not have email, by mail:

1. *"OPA has received complaint"*
2. *"Investigation has begun" and where the investigation is on the 180-day schedule since the date of the incident*
3. *Periodic communication – during the investigation, OPA staff should contact the complainant and named employee at least every 30 days to check-in and confirm that an investigation is continuing (this may be communicated either in email or by telephone)*
4. *"Significant changes or delays" –OPA staff should provide notice of any tolling, due to court proceedings or other factors that significantly affect or delay the investigation, and updated information on where the investigation is on the 180-day schedule since the date of the incident*
5. *"Resolved through mediation or alternative resolution process"*
6. *"Investigation complete"*
7. *"Notice of the recommended finding of the OPA Director"*
8. *"Chief of Police determination" which should also include information that the officer has a right to appeal or grieve*
9. *"Appeal or grievance filed" and information about these processes*
10. *"Appeal or grievance outcome"*

Recommendation 12
OPA should provide a mechanism for tracking status of complaints online

Complainants and named employees should be able to track the status of complaints and investigations with a secure online tool (as one can check the status of a vote-by-mail ballot or a shipped package). The OPA and City Attorney's Office should work with the CPC to determine whether this provision for affected parties could be achieved through a publicly available database, with appropriate limitations on posted information.

Recommendation 13
OPA should post results of investigations and alternative resolutions online

OPA should post online the results of its investigations as they are concluded and the results of any alternatives used (mediation or other alternative resolution processes). The OPA and City Attorney's Office should work with the CPC to develop standards for the information to be posted.

Recommendation 14
OPA should post results of appeals and grievances online

OPA should post online appeal and grievance results in a timely manner. OPA and City Attorney's Office should work with the Community Police Commission to develop standards for the information to be posted.

Recommendation 15

The Chief of Police should be required to notify the Mayor and Council when findings are modified due to the outcome or settlement of an appeal or grievance

Amend SMC 3.28.812 to cover cases where the Chief of Police initially agreed with the recommended finding of the OPA Director and imposed discipline accordingly, but later modifies that finding due to the outcome or settlement of an appeal or grievance. Also revise Section D of the ordinance to require copies of written statements by the Chief of Police to be provided not only to the Mayor and Council, but also to the OPA Director and OPA Auditor.

A recommendation that came from past reviews of the City's police accountability system was to require the Chief to provide a written explanation to the Mayor and City Council whenever the Chief decided not to follow the recommendation of the OPA Director with regard to a finding in an OPA case. That recommendation was implemented by ordinance (see SMC 3.28.812A). Cases where the Chief initially agreed with the findings and imposed discipline accordingly, but that finding was later modified due to the outcome or settlement of an appeal or grievance are not currently covered by the language of SMC 3.28.812A.

INVESTIGATIONS

Recommendation 16

OPA jurisdiction should be expanded

Because the public expects the accountability system to address all relevant incidents, OPA's jurisdiction should encompass any incident or performance-related action involving an SPD employee where a thorough and unbiased internal investigation is needed concerning possible policy violations or misconduct, situations representing risk exposure, potential training issues or policy problems.

Specifically, the SMC enabling ordinance for OPA should be amended to make this jurisdiction clear. The Department should establish a formal routing process from City Claims and the City Law Department to OPA, and referral protocols to OPA for cases originating from other SPD investigation units such as the Force Investigation, the Use of Force Review Board, the Traffic Collision Investigation Section and the Firearms Review Board or their successors.

Recommendation 17

OPA involvement should be strengthened in cases involving possible criminal misconduct and tolling of the contractually-required 180-day time limit in these cases should be allowed

The language in the collective bargaining agreement with the police union should be modified to maximize the quality of both the criminal and administrative investigations in cases where possible criminal misconduct has been alleged.

The collective bargaining agreement currently requires OPA to refer criminal cases to other SPD or outside investigative units (such as the Washington State Patrol) and bars OPA involvement until the case is returned without criminal charges or after criminal prosecution. The 180-day contractual time limit is not tolled unless the case is referred to a prosecutor for filing. If there is not an administrative investigation underway, these cases should be tolled while the criminal investigation is active.

If the criminal investigation is not thorough or timely, the later OPA administrative investigation may be at risk of being compromised (e.g., evidence is no longer available, witnesses' memories have faded after months have passed or there is limited time left in the 180-day investigation window). This change in the contract would allow

the OPA Director and the lead for the criminal investigation to consult at the start of the process, seek input from the prosecuting attorney, and determine what approach will be most effective in supporting thorough and rigorous criminal and administrative investigations. For example, in some cases the preferred approach might be parallel administrative and criminal investigations, in other cases OPA might provide questions to be asked as part of the criminal investigation, or in certain cases it might be best for OPA to wait until further criminal investigation is done. (In no case would criminal investigators question named employees concerning administrative allegations.) Managing the schedule of these cases is important to ensure timeliness. If the case file does not indicate that the criminal investigation was continuously active, any tolling may later be challenged as exceeding the permitted time period. (Both the criminal and the administrative investigative file should indicate when Garritized statements were taken, if they were, so if the issue is later raised the record is clear.) Finally, if OPA has had substantive involvement in the criminal investigation, the case would not be tolled.

**Note: Tolling means the clock on the time period allowed for the complaint investigation (180 days) is paused.*

Recommendation 18
OPA should be given administrative subpoena power

OPA should have administrative subpoena power to compel the production of evidence not within the City or Department's control (such as store videos, text messages or financial records) and non-employee interviews. (The Seattle Ethics and Elections Commission has similar administrative subpoena power.)

Recommendation 19
Establish rapid adjudication process for certain types of alleged misconduct

OPA should have a rapid adjudication process for certain types of alleged misconduct. This will help strengthen SPD's internal accountability culture by allowing policy violations to be quickly acknowledged, to focus investigative resources most efficiently, and to minimize the time for which an employee has a misconduct allegation pending. The employee, upon realizing he or she violated Department policy, could immediately admit to OPA the misconduct, using a standardized form that also details the discipline to be imposed. The employee would waive the right for an investigative process, Loudermill hearing and any appeal. The employee's file and OPA records would indicate the finding was "Sustained-Rapid Adjudication", so as to make clear the employee chose to quickly acknowledge the violation. The discipline for a case resolved through rapid adjudication would be the same as that imposed after a full investigation.

The types of violations for which rapid adjudication could be used include allegations such as failure to obtain a secondary work permit, failure to use In-Car Video, failure to complete required annual training, and failure to complete Use of Force supervisory review in 72 hours where the discipline to be imposed would not be greater than an oral or written reprimand or up to one-day without pay.

Recommendation 20
The Department should establish an informal problem-solving process for certain "customer-service" types of complaints

OPA should establish a more informal problem-solving process for certain types of complaints that can be more satisfactorily resolved with a more immediate and flexible approach rather than using an investigative process, mediation that can takes several weeks or months to schedule, or a supervisor referral that takes up to 30 days.

The complainant would still have the right to request the traditional OPA investigation process if dissatisfied with the problem-solving process.

This is a way to more effectively handle complaints where a swifter problem-solving response would better address the underlying concern. The types of violations for which the problem-solving option could be used include those of a "customer service" nature. The appropriateness of this approach would be made by the OPA Director and Auditor at the time of complaint classification (as is currently done with mediation referrals).

Recommendation 21
The Department should improve its mediation and other alternative resolution processes

1. *Complainants who make use of a mediation or other alternative resolution process should not be limited to the results of that process and be able to elect that the case proceed to an OPA investigation. In such cases, everything said or done in the course of the alternative processes should remain privileged and may not be used against any party in subsequent administrative or legal proceedings.*
2. *If the employee in a mediation or other alternative resolution process does not participate in good faith, as determined by the mediator, the OPA should conduct an investigation and possible discipline should remain as an option for the complainant. Similarly, in such cases, everything said or done in the course of the alternative processes should remain privileged and may not be used against any party in subsequent administrative or legal proceedings.*
3. *The mediation or other alternative resolution process should be administered by an entity with mediation expertise rather than by SPD.*
4. *Mediations or other alternative resolution processes should take place at locations and times of day that are more convenient and comfortable for the public.*
5. *Mediations or other alternative resolution processes should occur as soon as possible after complaint intake has been completed.*
6. *Supervisors should receive documentation about mediations or other alternative resolution processes and be involved in the process when the OPA Director thinks it would be helpful.*
7. *The use of mediation or other alternative resolution processes should be documented in employee files, including employee performance mentoring records.*
8. *The data management and case tracking system used for mediations or other alternative resolution processes should be improved.*
9. *Outreach and education about mediation and other alternative resolution processes for the public and within SPD should be expanded and enhanced to raise awareness of these options.*
10. *The OPA Director and/or Auditor should be allowed, if agreed to by both parties, to observe the mediation or other alternative resolution process as a means of assessing and ensuring quality.*

Recommendation 22
Certain SPD internal investigations should be streamlined

The Firearms Review Board process should be merged with the Use of Force review process. If, as a result of that internal review, an officer's actions appear to have been contrary to policy, the case should be referred to OPA.

Recommendation 23
The Department should establish a protocol for investigation of allegations against OPA staff

There should be an established protocol for handling investigations of cases involving allegations against OPA staff that provides for the assignment of non-OPA investigators and/or non-OPA reviewers.

Recommendation 24

OPA should make training referrals an option in Sustained cases rather than a separate finding

"Training Referral" should not be a finding but an education-based option once a finding has been Sustained. An allegation would be determined to be Unfounded, Lawful & Proper, Inconclusive or Sustained. If Sustained, then training could be directed in addition to an oral or written reprimand or other discipline.

Recommendation 25

OPA should add a provision for "Department Management, Policy or Training Correction Required"

For cases where misconduct or a policy violation was not the fault of the employee - or in addition to the employee's actions there were SPD policies or practices that caused or contributed to the employee's inappropriate action - a finding of "Department Management, Policy or Training Correction Required" should be made. Where the employee is not at fault and there is no Sustained finding, this should be done through the OPA Director's Certification Memo. Where the employee is partially at fault, and there is a Sustained finding, the case should be bifurcated and for this aspect of "Management Action" the OPA Director should recommend required follow-up by the Department, which could include a change to training, policy or practices, and/or coaching for the named employee. In either, the recommendation and case file would be routed to the Chief, and the Department would have 30 days to respond. The OPA Director and Auditor would review the Department's response for completeness and timeliness as occurs with Supervisor Action cases.

Recommendation 26

The OPA Director should have the option to provide complainants in certain types of sustained cases an opportunity to meet with the Chief prior to the Chief making a final disciplinary decision

For cases in which the OPA Director has recommended a Sustained finding and also believes it would provide an important balance of perspective and information, the Director should be able to arrange for the complainant to meet with the Chief of Police before the Chief makes a final disciplinary decision (corresponding to the timeframe when the employee has a Loudermill hearing).

This recommendation is limited to cases in which a Sustained finding is recommended by the OPA Director and the Director feels that an in-person meeting would assist in the Chief's decision-making. There are cases, especially where credibility determinations are material, for which it would be valuable for the Chief to hear directly from the complainant, so the Chief can weigh that perspective along with the perspectives offered by the employee, the union, the OPA Director and the employee's chain of command.

Recommendation 27

The Department should revise practices related to staffing to support OPA effectiveness

In order to help ensure OPA has staffing expertise, conducts timely investigations, and maintains appropriate independence:

1. *OPA sworn staff should be assigned to serve for a minimum of two years.*
2. *The OPA Lieutenant and Captain should never be transferred out of OPA at the same time.*
3. *New OPA Sergeants and Acting Sergeants should have at least 48 hours shadowing OPA staff they are replacing and a day of orientation.*
4. *New OPA Lieutenants and Captains should have a week of shadowing OPA staff they are replacing.*

5. *Prior to starting, new OPA staff should be required, to go through an orientation that includes reviewing the training manual with the Director and/or others, reviewing selected completed investigations, reviewing materials provided to the public, and observing each step of the complaint process.*
6. *OPA should have at least two civilians with authority to handle intake or investigations and for drafting materials on behalf of the Director.*
7. *The OPA Director should be able to specify a pool of Captains, Lieutenants and Sergeants from which the Department will select OPA staff.*

Recommendation 28
The Department should employ civilian staff in its OPA precinct liaison program

The Department's planned precinct liaison program should be done with one or more civilians in OPA, called "Precinct Liaison Officers", rather than a Lieutenant at each precinct. An OPA civilian staff member has specific skills in performance management and related areas that can best provide additional support to supervisors responsible for mentoring and disciplining officers.

POST-OPA INVESTIGATION: CHIEF DECISION, APPEALS, GRIEVANCES AND SETTLEMENTS

Recommendation 29
The Department should use a discipline matrix to better ensure uniformity

To help ensure a predictable, consistent and uniform approach to imposing discipline, and provides employees and the public with a sense of fairness in management's disciplinary decisions, the Department should use a discipline matrix for the imposition of discipline. Following national best practices, disciplinary standards and principles, a matrix representing Seattle's values and expectations, should be developed in partnership with the CPC and community members, and with sworn and civilian members of SPD from all ranks and positions, as well as other City officials. The matrix should account for the nature and seriousness of the misconduct, any harm arising from the misconduct, the prior disciplinary history of the employee involved, and any aggravating or mitigating circumstances. The matrix should provide sufficient latitude for the Chief of Police to determine discipline in a fair and impartial manner.

Recommendation 30
The Department should maintain a tracking tool to maintain records of disciplinary determinations

The Department should track disciplinary decisions in a format that it can submit for evidentiary purposes in cases where the disciplinary decisions have been challenged, to prove that discipline was consistent among employees in similar circumstances and that mitigating circumstances were appropriately considered.

Recommendation 31
Time limits should be established on certain steps following completion of OPA investigations

To help ensure timeliness, there should be enforceable time limits on those steps that follow the completion of an OPA investigation, such as the length of time allowed to hold the internal command staff discipline review meeting, to notify the employee of the proposed findings and discipline, for the employee and his or her union to request a Loudermill hearing, for the Chief to issue his or her final disciplinary decision, for the employee to file an appeal, and for the appellate hearing to occur.

Recommendation 32

The role of SPOG in investigations should be to ensure contractual and due process rights

The role of SPOG representatives in the investigative processes should be only to ensure that an officer's contractual and due process rights are not violated.

Recommendation 33

Discipline should be imposed and implemented upon the Chief's final decision, not delayed pending a grievance or appellate process.

Discipline should be imposed upon final decision by the Chief of Police. If the discipline is overturned on appeal, restitution can be made at that time.

Recommendation 34

The grievance process should be exclusively used to review challenges based on contract violations

The City grievance process should only address allegations of contract violations that are not challenges to disciplinary decisions. Therefore, the collective bargaining agreements with the police unions should be revised to explicitly provide that challenges to any level of discipline are to go through the appellate and not the grievance process.

Recommendation 35

There should be one avenue for disciplinary appeals through the Public Safety Civil Service Commission

There should only be a one appellate avenue for disciplinary appeals and it should be through the Public Safety Civil Service Commission.

The collective bargaining agreement currently provides officers two different avenues to appeal disciplinary decisions, along with the option to file "grievances" for contractual violations and for cases where the only discipline imposed is a written reprimand. Because the contract requires "just cause" for discipline, any challenges on this ground are considered violations of the contract.

One avenue is the Public Safety Civil Service Commission, which was created by City ordinance based on Chapter 41.12 RCW, which provides that each City and County must have "a civil service commission which shall be composed of three persons". This Commission also establishes rules for hiring and promotions. The other is the Disciplinary Review Board, which was created by the collective bargaining agreement and does not exist in statute or ordinance. Since the Public Safety Civil Service Commission is required by state law, it is appropriate that it be designated as the single avenue for appeals.

Recommendation 36

Public Safety Civil Service Commission members should be impartial parties with appropriate expertise

Because having active members of the Police Department sit on any board or commission reviewing disciplinary decisions and setting the rules for hiring and promotions creates both real and the perception of conflicts of interest, the Public Civil Service Commission should be comprised only of impartial third parties with appropriate expertise. The description for its composition should clearly articulate the importance of ensuring public confidence in its fairness and that none of its members have the appearance of or actual conflicts.

Currently, the Public Safety Civil Service Commission has one member appointed by the Mayor, one by the Council, and one elected by a majority vote of police and fire appointees (these provisions are per Seattle Municipal Code, but are not required by State statute).

Recommendation 37
The chair of the Public Safety Civil Service Commission should be a City hearing examiner

The chair of the Public Safety Civil Service Commission should be a City hearing examiner, with authority to conduct appeal hearings on behalf of the Commission.

The CPC has recommended that all parts of the disciplinary process be made more timely, and notes that requiring arbitrators to be selected by both parties has unintended consequences of delay and of arbitrators not getting selected unless both parties approve of their past decisions. A professional hearing examiner as part of the Public Safety Civil Service Commission with the authority to hear appeals on behalf of the Commission would help further ensure timeliness, expertise and fairness.

Recommendation 38
Appellate hearings after the Chief of Police disciplinary determination should be in public

Any appellate hearings occurring after the Chief of Police has made a disciplinary determination should be open to the public.

Recommendation 39
Notice of appeals should be provided to the City Attorney's Office

The City Attorney's Office should be copied on any required filing by the employee or the union of a notice of intent to appeal at the time of that filing, followed by the City Attorney's Office filing a notice of representation.

Recommendation 40
The OPA Auditor should be notified of appeal or grievance filings and hearings and should provide input to the Director and the City Attorney's Office

The OPA Auditor should be notified when any appeal or grievance has been filed, and when any hearing is scheduled, and have an opportunity to give input to the Director and City Attorney's Office.

Recommendation 41
The City Attorney's Office should provide timely notice of appeal results to OPA

The City Attorney's Office should provide timely notice of appeal results to the OPA Director.

Recommendation 42
Improved policies and practices should be instituted concerning how modifications, appellate strategies and settlement decisions of disciplinary cases are made

Settlement discussions should not be initiated by the Department. Discussions regarding the possible settlement of cases should be between the employee's bargaining unit and the Law Department, to which the Chief of Police should have an opportunity to provide input, and if the Chief feels strongly that a case should not be settled, it should not be. No case should be modified after the Chief of Police disciplinary decision and no appellate strategy, settlement agreement or other resolution should be made without consultation with the OPA Director and the City Attorney's Office. Discussions regarding the possible settlement of cases should take into account the importance

of public trust in, and employee respect for, the police accountability system, as well as any potential ramifications for progressive discipline for future misconduct by that employee, as well as for disciplinary decisions and appeals for other employees. Any settlement agreement, court order or other resolution must be finalized and approved by the City Attorney's Office.

SYSTEMIC IMPROVEMENTS

Recommendation 43

The City should work to broaden the grounds for revocation of officer certification and allow the Washington State Criminal Justice Commission to initiate revocation after a final finding

Officers who violate the law or engage in serious misconduct should not be able to be employed in a sworn capacity elsewhere. The City should work with the State Legislature, the Washington State Criminal Justice Commission (WSCJTC) and others to broaden the grounds for revocation of officer certification and to allow the WSCJTC to initiate the process to revoke certification once there is a final finding instead of having to wait until after a termination is final – meaning all administrative appeals are done, including civil service and arbitration. So, if the arbitrator affirms that an officer committed an act of misconduct (lying and committing crimes) but does not uphold the termination, the WSCJTC can still revoke certification.

Recommendation 44

Department data systems should document all relevant information related to cases

There should be protocols to ensure that complete and accurate documentation related to disciplinary and post-disciplinary actions is recorded and maintained by the Department. All relevant information concerning these cases should be entered into SPD's software database and other records; the required substantive content and documentation, including associated dates, should be accurately captured, and the staff responsible for keeping and maintaining these records should be identified and assigned.

Recommendation 45

The Department should establish a protocol to ensure regular review of litigation and other observations and cases to improve training, hiring or policies

The Department should institute a protocol to ensure regular review of criminal and civil litigation against the City, Field Training Officer observations, other training observations, cases declined by the King County prosecutor or the City Attorney, and OPA cases, help highlight needed improvements in training, hiring or policies. The OPA Auditor should provide oversight of the Department's protocol, and of the policy and practice improvements it proposes or institutes to make improvements.

Recommendation 46

The City Attorney's Office should assess arbitrator rulings and propose improvements

The City Attorney's Office should assess past arbitrator rulings with regard to disciplinary appeals from SPD to determine whether the standards for arbitral review of SPD termination and disciplinary decisions for officers who have committed misconduct comport with a robust accountability system and, if not, propose ways for the City to improve that aspect of accountability.

Recommendation 47

The City should establish a system to ensure responsiveness to recommendations to improve accountability

The Department and City officials should have a system to ensure responsiveness to and/or follow through on OPA Director, Auditor, and civilian oversight entity recommendations. The Mayor's performance contract with the Chief and the quarterly updates to the City Council by the Chief, Mayor's Office and the City Attorney should include progress on accountability recommendations. Within 30 days of receiving an oversight report, the Department should issue a response to the issuing entity and all those to whom the report was officially submitted as required by ordinance that articulates which recommendations it agrees with, by when they will be implemented, as well as which recommendations it disagrees with and why. The response should identify who is responsible for implementing the recommendations the Department intends to enact. Regular progress updates should follow.

Recommendation 48

The City Attorney's Office should alert OPA of issues raised due to grievance or appeal that suggest practice improvements

The City Attorney's Office should discuss with the OPA Director any issues related to the investigative or disciplinary process that suggest a practice, procedure or approach could be improved and that are raised due to a grievance or appeal so that the Director can make necessary improvements for future cases.

Recommendation 49

The OPA Auditor should analyze the appropriateness of discipline imposed in prior cases

The Department should regularly provide the OPA Auditor data on disciplinary decisions (see Recommendation #30) and in periodic scheduled reports, the OPA Auditor should present an analysis of the appropriateness of discipline imposed in prior cases.

Recommendation 50

The Department should discontinue "extended authority commissions"

The Department should discontinue the practice of "Extended Authority Commissions" that permits retired officers to act with all the authorities of a law enforcement officer, in uniform with duty weapon.

Under current practice, these retired officers are not required to take the annual trainings required of active duty officers and because the City ordinance that authorizes this role for retired officers specifically deems them not employees of the City, accountability to the public for misconduct or poor performance is unclear at best.

Recommendation 51

The Department should create an internal, civilian office for management and oversight of secondary employment work

The Department should create an internal, civilian office for the management and oversight of secondary employment work, where no relationships exist between those authorizing the work and those being assigned the work or those authorizing the work and the private businesses purchasing the services.

Recommendation 52

The Department should revise its In-Car Video review policy to allow for its use in training and coaching

The Department should revise the In-Car Video (ICV) review policy to allow for a more robust use of ICVs by supervisors, command and training staff to improve performance and highlight good work.

Recommendation 53
The Department should retain holding cell video for 90 days

The Department should retain holding cell video for 90 days rather than the current practice of retaining the video for 60 days.

Recommendation 54
Reports describing results of investigations should include changes made as a result of appeals or grievances

All SPD and OPA reports describing results of investigations, including monthly, quarterly and annual case and statistical summaries, should include changes made to dispositions as the result of any appeals or grievances.

Recommendation 55
The City Attorney's Office and the City's Personnel Division should provide the OPA Auditor quarterly reports and information on challenged cases

The City Attorney's Office and the City's Personnel Department should provide the OPA Auditor quarterly reports of cases being challenged by appeal or grievance, the nature of the challenge, the status of the case and any other information requested by the Auditor.

Form revised: February 26, 2014

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
LEG Council	Lisa Herbold/4-5331	

Legislation Title:

A RESOLUTION affirming the City's intent to consider, in good faith, ways to address public comments regarding how to strengthen the City's police accountability system.

Summary of the Legislation:

The Resolution institutionalizes the practice, started in 2006 with Resolution 30871, of the Council considering in good faith whether and how to carry forward the interests expressed at the public hearing. Neither preferences some recommendations over others, nor signals entering bargaining with a fixed position.

Background:

The Collective Bargaining Agreement (CBA) between the City of Seattle and the SPOG expired on December 31, 2013 and the parties will be negotiating a new contract and Seattle Municipal Code (SMC) 4.04.120(F) requires the City Council and the OPARB to jointly host a public hearing on the effectiveness of the City's police accountability system at least ninety (90) days before the City begins collective bargaining agreement negotiations with the SPOG.

Consistent with SMC 4.04.120, the proposed resolution indicates that City of Seattle will consider in good faith whether and how to carry forward the interests expressed at the public hearing. Further it states that those suggested changes that are legally required to be bargained with the SPOG or SPMA will be considered by the City, in good faith, for inclusion in negotiations but the views expressed in the public hearing will not dictate the city's position during bargaining.

Please check one of the following:

_X__ This legislation does not have any financial implications.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No

b) **What is the financial cost of not implementing the legislation?**

No costs

c) **Does this legislation affect any departments besides the originating department?**
This legislation tangentially affects the Labor Relations division.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
N/A

e) **Is a public hearing required for this legislation?**
No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No

g) **Does this legislation affect a piece of property?**
No

h) **Other Issues:**
N/A

List attachments to the fiscal note below: