



SENT VIA EMAIL

MEMORANDUM

December 5, 2019

- To:** Mayor Jenny Durkan; Council President Bruce Harrell; GESCNAEd Chair M. Lorena González; Councilmembers Sally Bagshaw, Lisa Herbold, Debora Juarez, Teresa Mosqueda, Mike O'Brien, Alex Pedersen, Kshama Sawant; City Attorney Pete Holmes
- From:** Andrew Myerberg, Director of the Office of Police Accountability; and Lisa Judge, Inspector General for Public Safety
- Re:** OPA/OIG joint recommendations for Seattle Police Management Association contract negotiations with the City

The City is required to consult with the accountability oversight entities 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>1</sup> The following are Office of Police Accountability (OPA) and Office of Inspector General (OIG) joint recommendations for the City's bargaining agenda for the Seattle Police Management Association (SPMA) contract. In developing these recommendations, OPA and OIG consulted with the Community Police Commission (CPC) and endeavored to take into account community concerns.

The recommendations below center around key elements that OPA and OIG believe are central to an effective accountability system for the City of Seattle. Those elements include the following:

- **providing transparency** in the collective bargaining process, and in disciplinary and appeals processes;
- **enhancing trust** through bargaining for strong accountability measures, providing mechanisms that are perceived by all parties as fair and effective; and
- **solidifying accountability entity independence** that allows oversight entities to function as intended.

The City should preserve and further the progress that was made in the current SPMA contract and use those successes in subsequent bargaining with SPOG. Commendably, the current SPMA contract contains numerous provisions that promote police accountability. To that end, OPA and OIG support prompt commencement of bargaining with SPMA, as additional progress with SPMA could be a valuable roadmap and serve as a beacon for the City's negotiations with SPOG.

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<sup>1</sup> Ordinance 125315 (3.29.510.A).



### **Increasing transparency in the bargaining process**

A recurring theme in the September public hearing and in Court statements is lack of transparency and, correspondingly, lack of public trust, in the collective bargaining process and disciplinary appeals system. When the public has insight into and understanding of the workings of government, it enhances public trust that the process is fair, community needs are considered, and the system is working as intended. Making the process more accessible to the public serves to inform community about issues being considered and provides a means of holding government to account if public needs are not being appropriately considered and bargained.

There are ways the City can make aspects of the process more transparent. The City should engage an external advisor with accountability expertise in the bargaining process. The City has authority to utilize an outside advisor, as either party in negotiations may utilize experts.<sup>2</sup> The accountability law touches upon complex systems within SPD, of which the disciplinary and appeals process is just one facet.<sup>3</sup> An external advisor during bargaining would be a valuable technical resource for the City on how bargained terms affect accountability system effectiveness. An expert versed in the nuances of the accountability law would also bolster public confidence that the City has made informed and strategic decisions from a community perspective.

An advisor who is endorsed by oversight entity partners would further enhance trust in the process. Ideally, the advisor would be engaged during the entire bargaining process and, consistent with confidentiality requirements, have the ability to report out to the public concerning whether the bargaining process was fair, effective, and appropriately considered community input.

### **Increasing trust through strong accountability measures**

During bargaining, the City should ensure that it addresses the most crucial elements of a strong accountability system by prioritizing elements that have been identified as most significantly affecting oversight authority and accountability-related operations.

There is substantial consensus on these issues, as they were previously identified by OPA, OIG, CPC, and the City in its briefing with the federal court.<sup>4</sup> Four key issues include the following, with a fifth issue added here:

- Subpoena power - Preserving subpoena power as achieved in the SPMA contract;

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<sup>2</sup> Use of a technical advisor is allowed under SMC 4.04.120.B, which provides that the City's Labor Relations Policy Committee "may designate representatives of the Executive or Legislative or other departments or other persons to assist the City's negotiators."

<sup>3</sup> Highlighting the complexity of the disciplinary system, in 2019, OIG developed a 40-page map of the SPD disciplinary and appeals process with the assistance of agencies with roles in that process. The map is a tool to have more transparent, accurate, meaningful conversations about areas of efficiency or need for change.

<sup>4</sup> Court Document 576, City of Seattle's Stipulated Motion to Approve Accountability Methodology, p. 24-25.



- Quantum of Proof - Holding all misconduct allegations to a preponderance of the evidence standard for determination by OPA and the Chief, as well as on appeal;
- 180-day timeline - Providing clarity around the calculation of the 180-day timeline for disciplinary investigations, including appropriate tolling for criminal investigations, newly discovered evidence, and time lags in reporting;
- Arbitration - Examining features of arbitration that affect public confidence, such as increasing transparency of hearings, setting and strictly enforcing firm timelines, prohibiting *de novo* review of final disciplinary decisions by the Chief, and improving the selection process for arbitrators to ensure objectivity, fairness, and expertise; and
- OPA Authority in Criminal Investigations - Providing authority for OPA to decide to whom criminal referrals are made and to oversee investigations of criminal SPD misconduct.

In addition to the issues above, OPA and OIG generally agree with the issues identified by the CPC in their feedback regarding upcoming SPMA negotiations and, if requested, will provide further explanation and/or analysis of any of those issues.

### **Solidifying Accountability Entity Independence**

Independence of OPA and OIG is critical to an accountability system that can stand the test of time and shifting politics and personalities. Currently, OPA and OIG are granted broad authority to exercise their respective oversight functions, both by the accountability law and the CBAs, but there is no uniform enforcement mechanism to ensure cooperation of SPD and its members in the event a cooperative relationship is lost. Subpoena power is an important means of allowing oversight entities to exercise proper authority without dependence on cooperation or assistance from a favorable administration. During SPMA negotiations, it is important to preserve that authority.

In line with the Court's suggestion to embrace new ways of thinking about accountability, the City also has the opportunity to innovate ways to strengthen oversight independence both within and outside the context of bargaining. For example, the City could explore additional ways to ensure that staffing and resources for oversight entities are sufficient to support robust accountability. When the City is no longer the subject of federal oversight and the Monitor is no longer routinely examining core accountability areas like use of force, that responsibility will fall to the existing entities, and they must be able to carry out those functions with proper resources without having to rely on favorable relationships or political expediency. OPA and OIG look forward to further conversation and collaboration in this regard.

In addition to bargaining, the City should employ means to solidify oversight authority in ways that cannot be weakened by bargaining. A strong accountability system should not rely on bargaining the authority and powers of independent oversight bodies every few years, or the acquiescence of those who are the subject of oversight. The City should, separate and apart from bargaining efforts, seek to safeguard the independent authority of the oversight entities in a manner that forecloses the possibility that SPD members can simply "opt out" of strong oversight measures. The effects of such powers may be ripe for bargaining, but without the inherent authority to enforce oversight measures



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and ensure compliance, there is no true means of ensuring accountability.

### **Conclusion**

It is well understood that all contract negotiations require compromise. However, the above recommendations, if adopted by the City as bargaining priorities, could strengthen the current system and more fully align the SPMA collective bargaining agreement with the landmark accountability legislation.

Contracts by their nature come up for renegotiation and individuals change, so to the extent necessary oversight authority can be preserved and maintained independently, institution of structural changes that can survive administrations are also critical in furthering Seattle's robust independent oversight process. OPA and OIG, with the CPC, seek to work with the City in responding to the Court on novel permanent ways outside of bargaining, where the City can strengthen its accountability system.