

MEMORANDUM

To: Councilmembers
From: Amy Tsai, Central Staff
Date: Jan. 24, 2017
Subject: Council Briefing Accountability Legislation Update on 1-23-2017

At Council Briefing on January 23, 2017, Central Staff presented an update on police accountability legislation that will shortly be transmitted from the Mayor's Office for Council consideration. The expectation is that the legislation will be heard in the Gender Equity, Safe Communities, and New Americans Committee (GESCNA), chaired by CM González.

The briefing was primarily a process update to set the stage for the content discussions that will be occurring in committee. It was divided into two components: 1) a high-level overview of the history and process that has led to today, and 2) a discussion of the accountability legislation – including its themes, challenges, and CM González's timeline for moving the legislation through the GESCNA committee. Footnotes in this staff memo contain additional reference information that was not provided during the Council Briefing presentation.

History

In 2009 and 2010, there were a series of racially charged incidents in the public eye, including the shooting death of First Nations woodcarver John T. Williams. Tensions in the community were high around law enforcement, and many community organizations signed onto a letter calling for a Department of Justice (DOJ) federal investigation.

The DOJ conducted an investigation in 2011 and had two primary findings. First, the DOJ found a pattern or practice of unconstitutional excessive or unnecessary **use of force**, resulting in part from structural inadequacies related to reporting, training, supervision, and SPD's early intervention system. Secondly, the DOJ expressed serious concerns about **biased policing** related to social contacts and potentially unlawful stops, with specific discriminatory events contributing to lack of community trust.

Following DOJ's findings, the City agreed to enter into a Settlement Agreement and Memorandum of Understanding (MOU) with DOJ, together known as the "consent decree." The consent decree reflects three goals of police reform. Specifically, the goals of the consent decree, which could also be said to be the goals of the City, are:

- Constitutional policing
- Effective policing that ensures public and officer safety, and
- Policing that promotes public confidence.¹

¹ See U.S. v. City of Seattle, 12-CV-1282, Settlement Agreement and Stipulated [Proposed] Order of Resolution, Exhibit A, p. 1, lines 2-7.

To achieve the three goals of the consent decree, the Settlement Agreement and MOU contain commitments in the following main areas:

- Use of force
- Crisis intervention
- Stops and detentions
- Bias-free policing
- Supervision
- Office of Professional Accountability processes
- Selection of a Court Monitor to oversee implementation of the consent decree
- Creation of the Community Police Commission (CPC) and CPC responsibilities

The consent decree also contains provisions for termination of the consent decree when the City has been deemed to be in compliance for two years.

Accountability Legislation Process

The purpose of the accountability legislation is to create an oversight structure to ensure that SPD continues to meet the goals of constitutional, effective policing with community trust, continuing past the life of the consent decree.

The **current oversight structure** is comprised of the following entities:

- Office of Professional Accountability (OPA) – a civilian-led entity within SPD that conducts investigations of individual officer alleged misconduct
- OPA Auditor – who reviews OPA complaint classifications and complaint investigations, as well as addressing some systemic reform issues
- OPA Review Board (OPARB) – another longstanding entity that was created to review OPA’s complaint handling process and conduct public outreach
- Community Police Commission – created by the consent decree

The proposed accountability legislation that will be coming to the Council is the product of years of conversations.

In 2014 and 2015, CPC, the OPA Auditor, and the City were engaged in formulating reports and recommendations on accountability. Those efforts led to City accountability recommendations that were brought to the Court’s attention in 2015.

The Court indicated that it felt the issues were not ripe for a legislative proposal, and asked for a working group to answer additional questions. In November 2015, a letter from over 40 community representatives urged action on accountability reform. Meanwhile, a working group was convened in early 2016 to respond to the judge’s questions; SPD, OPA, the OPA Auditor, OPARB, CPC, Mayor’s Office, City Attorney, DOJ, and Monitor met over the course of a couple months and identified areas of agreement and issue areas.

At a status conference in August 2016, the Court outlined a process for the accountability legislation to proceed. The Court would provide an initial 90-day review of draft accountability legislation to determine whether the draft legislation conflicts with the terms or purposes of the consent decree. The City could then go through its legislative process to adopt an accountability ordinance, followed by final Court review of any changes to the original draft.

A new legislative proposal developed by the Mayor's Office, CPC, and OPA Auditor, with Council consultation and legal assistance from the City Attorney's Office, was submitted to the Court for initial review in October 2016.²

A Court order in January 2017 gave the green light to proceed with the legislative process, with Court comments in four main areas, summarized below. Now that the Court has completed its initial review, the next step is for the Mayor's Office to transmit proposed legislation.³

Accountability Entities

In the draft legislation submitted to the Court, there are three main accountability entities that would track the three main functions of the current accountability structure, as follows:

1. **OPA** continues to investigate alleged misconduct of individual officers,
2. The OPA Auditor and OPARB's role in providing systemic review of SPD is replaced by an **Office of Inspector General (OIG)**, and
3. **CPC** is made permanent with new responsibilities.

Accountability Legislation Content

The draft legislation covers details about the power and structure of the three accountability entities, such as:

- How they are appointed, their required qualifications
- Who oversees them
- What powers they have – authority, scope of their duties
- Required reports
- Required meetings and consultations
- Their relationship to the Chief of Police and to each other

² The CPC, in providing input on police accountability, incorporated its previous work into a new set of draft recommendations in August and September 2016, available on their web site. Many elements of their previous work can be seen in the draft legislation that was ultimately filed with the Court in October 2016.

<http://www.seattle.gov/community-police-commission/recommendations-and-reports>

³ Because there were alternative options identified in the draft legislation submitted to the Court, at a minimum language will likely change in the transmittal as those options are converted into proposed ordinance language for Council consideration.

As it finalizes the accountability legislation, the Council will face challenges in building public trust. The Council will need to decide what is the appropriate role of the three oversight entities, including what place and voice the community has in the process. The offices will need to be independent and able to do their jobs free from unwelcome influences. There are many other issues in the initial draft legislation, such as the issue of whether civilian, sworn, or a mix of staff for OPA investigators is the right approach.

The Council legislative process will also need to take into consideration the comments received from the Court. In its review, the Court weighed in on four areas:

1. Requiring a higher standard of review (“clear and convincing”) for termination of police officers for dishonesty (compared to the “preponderance of the evidence” standard for other actions) would be inconsistent with the purposes of the consent decree.
2. Because the language of the consent decree currently requires police personnel as part of the makeup of the CPC, if the City wishes to remove SPD officers from the CPC, an amendment to the consent decree would need to occur. The Court noted, however, that removing law enforcement from the CPC membership had not been shown to be inconsistent with the purposes of the consent decree, thus signaling that it would be fair for the Council to decide that such a change in CPC makeup should occur.
3. If CPC’s duties are expanded, while the consent decree is in effect the CPC must prioritize its responsibilities under the consent decree.
4. An issue raised by DOJ in its response brief was whether CPC should have a role in evaluating the OIG. The Court concluded that this point does not implicate the consent decree so it is a matter for the Council deliberative process. This issue highlights one of the challenges facing the Council – which is what role each of the accountability entities should have, and their relationship to each other.

A question was raised in Council Briefing regarding the intersection of the accountability legislation with collective bargaining. The City is currently engaged in negotiating a contract for both police officers and police management, and the City was the recent subject of an unfair labor practice claim by the Seattle Police Management Association in regards to the content of the accountability legislation. The contract negotiations are a separate process that will be ongoing at the same time as Council deliberations on the accountability legislation. It remains to be seen how and when the two will intersect. Of note, however, the draft accountability legislation reviewed by the Court contains language that specifically recognizes that upon finalization of the legislation, the City intends to bargain with affected unions.

Events Timeline

To help inform the upcoming committee deliberations, GESCNA Chair González is leading a series of three site visits to learn from other jurisdictions about their successes and challenges. The first visit to New York City recently concluded, with Los Angeles and New Orleans remaining. From conversations with these and other jurisdictions, it is clear that every

jurisdiction has its own unique communities and challenges, so there will be no one-size-fits-all best model for police accountability. However, the lessons learned will highlight issues and inform the decisions Seattle has to make about its own accountability structures.

The current plan for GESCNA is for there to be seven hearings on the accountability legislation with public comment at each hearing. This includes two public meetings devoted to hearing from the community, and a final vote at full Council. The two public hearings are currently planned for evenings in March and May, with the legislative package being completed by May.

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