

**MEMORANDUM**

**To:** Gender Equity, Safe Communities and New Americans Committee  
**From:** Amy Tsai, Council Staff  
**Date:** May 5, 2017  
**Subject:** CPC Reporting and Budget Issues - CB 118907

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On Wednesday, February 1, 2017, the Mayor transmitted a police accountability reform legislative package to the City Council, including the accountability legislation (CB 118907) and the supplemental budget legislation (CB 118908). This staff memo marks the sixth Gender, Equity, Safe Communities and New Americans (GESCNA) Committee meeting on the police accountability legislation.

At the April 26 GESCNA meeting, the Committee voted on and approved changes that reflected previous discussions (“Amendment 7”). The Committee also engaged in further discussion on reporting and budgeting issues. A new Amendment 8 has been prepared for today’s Committee for discussion and possible action that reflects all of the changes approved in Amendment 7, changes to reporting and budget mechanisms, and further clarifications.

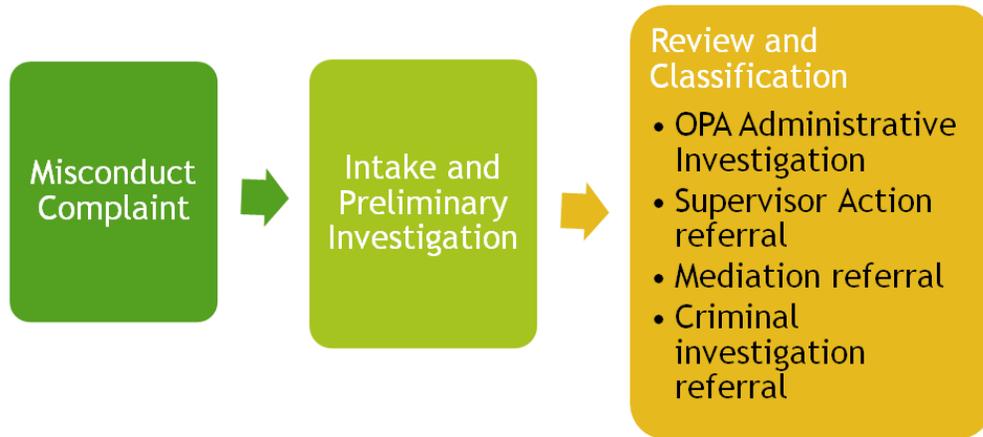
To date, the Committee has been briefed on oversight entity purposes, roles and responsibilities; independence mechanisms such as appointment and removal processes; qualifications and CPC membership; reporting; and budgeting. This memo discusses investigations and disciplinary processes, which are the last two major areas in CB 118907.

**Investigations**

*Intake Process*

The Office for Professional Accountability (OPA) has the authority to receive and initiate complaints of alleged misconduct or policy violations against SPD employees. After a preliminary intake investigation, OPA classifies the complaint to determine the appropriate action, which can include no further action, referring the complaint for supervisor action, conducting an investigation, referring it for criminal investigation, or referring it for mediation. The current OPA intake process is depicted in Figure 1 below.

**Figure 1. Current OPA intake process**



*Intake Changes from Current Practice in CB 118907*

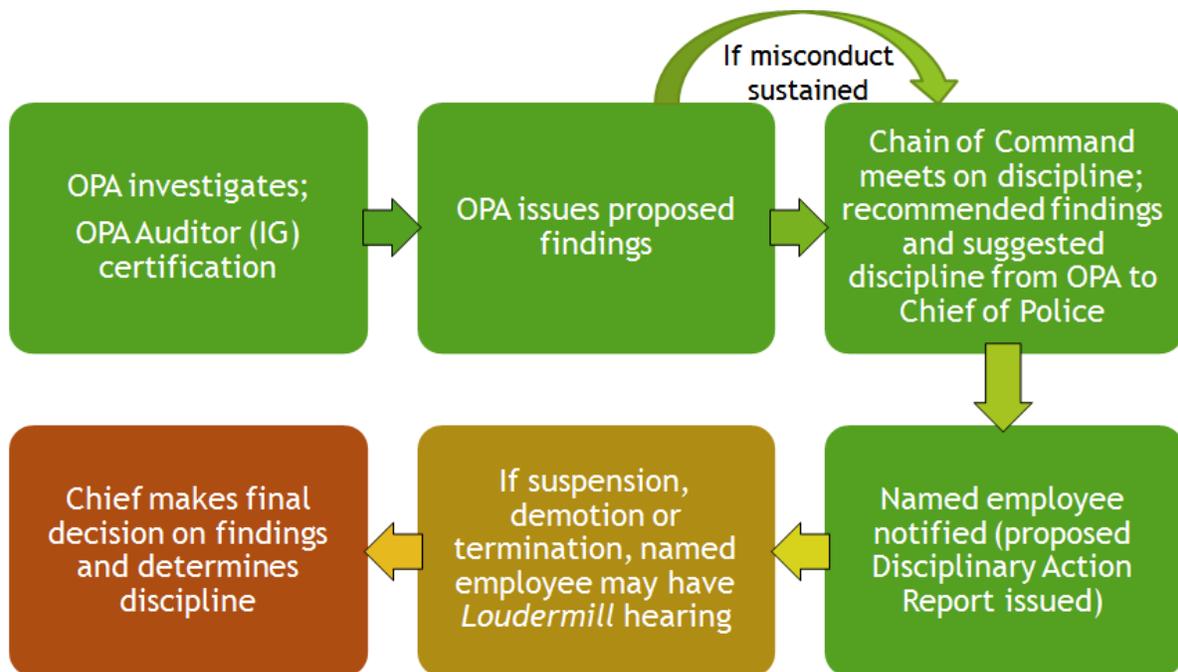
CB 118907 would authorize the OPA Director to create and maintain a Rapid Adjudication process as a new referral alternative. Rapid Adjudication is a complaint resolution where the employee would self-report or immediately acknowledge a policy violation, waive the right to an investigation, and agree to the imposition of predetermined discipline or other resolution. CB 118907 would also authorize the OPA Director to consider other alternative resolution processes.

The proposed legislation also would require that within 12 months, intake and investigator personnel would be entirely civilian or a mix of civilian and sworn staff. Within 18 months, all investigative supervisors would be required to be civilians.

*Investigative Process*

The investigative process is depicted in Figure 2. Whenever an OPA investigation is conducted, if the OPA Auditor (the OIG in the future) certifies the investigation as complete (i.e., thorough, timely and objective), then OPA sends its recommended findings to the Chain of Command for review. If there are any recommended sustained findings, the OPA Director's finding recommendations and suggested discipline are then sent to the Chief. SPD Human Resources then sends notice of the proposed discipline to the named employee. After any requested due process hearing by the named employee, the Chief makes a final determination of discipline.

Figure 2. OPA complaint investigation process



As is the case in current code, CB 118907 authorizes the OPA Director to conduct, and the Inspector General to review, investigations. The accountability legislation specifies details and deadlines around the investigation process. There are also aspects of the accountability legislation pertaining to public accessibility, such as keeping complainants apprised of the status of their complaint and prompt posting of closed cases. Some process highlights include the following:

OPA Director – Current investigative practice

- Authorizes the OPA Director to initiate complaints and conduct investigations and other duties of the office
- Gives the OPA Director full access to data and scenes
- Requires keeping parties apprised of ongoing investigation status and the prompt release of completed case information
- Requires the use of investigation plans and investigator training

OPA Director – New investigative provisions

- Directs the creation of a new Rapid Adjudication path with pre-determined dispositions for certain self-reported or violation-acknowledged cases
- Applies the investigation processes equally to all employees regardless of rank, which would eliminate the prohibition on line officers investigating sworn management

personnel and eliminate the option for those ranks to answer questions in writing as opposed to in person

- Gives the OPA Director subpoena power
- Sets the end of the 180-day period when findings are issued, as opposed to ending upon notification to the employee by SPD of the proposed discipline
- Identifies situations when the 180-day investigation timeline may be extended, such as interview delays due to named employee unavailability
- Provides the OPA Director authority to coordinate with criminal investigations of possible criminal misconduct

#### Inspector General – Current OPA Auditor practice

- Authorizes the Inspector General (IG) to review and certify OPA investigations
- Authorizes the IG to require OPA to conduct further investigation
- Gives the IG full access to data, administrative reviews and scenes
- Codifies the current OPA Auditor practice of requiring recertification after any additional OPA investigation

#### Inspector General – New investigative provisions

- Quarterly auditing of OPA classifications, which can revert to the current practice of pre-classification review and input into each recommended classification as deemed necessary
- Authorizes the IG to conduct investigations when OPA has a potential conflict that can't be addressed with an internal firewall
- Gives the IG subpoena power

Under the current Seattle Police Officers' Guild (SPOG) and Seattle Police Management Association (SPMA) collective bargaining agreements, the employee named in a complaint must receive written notice of the proposed investigative findings and proposed discipline within 180 days after receipt of the complaint by OPA, or alternatively when a sworn supervisor became aware of it, in the case of SPOG's CBA. In the event that the 180-day window is exceeded, with the possibility of extension under certain circumstances, the current labor contracts specify that discipline cannot be imposed. One difference in CB 118907 compared to current practice is that the 180-day clock would stop upon completion of OPA's investigation and issuance of findings, as opposed to ending upon notification to the employee of the proposed discipline (an aspect of the process that is outside of OPA's control).

Encouraging and requiring the prompt release of case information and effective communications with the public is another aspect that is new codification language. Ideally this should already be occurring, but the proposed legislation codifies it and emphasizes the commitment to community and complainants in the accountability process.

## **Disciplinary Processes**

The current disciplinary grievance and appeal process can be categorized as two tracks, one taken by the employee and one taken by the union on behalf of the employee. The process under each of these two tracks can take different routes depending on the nature of the grievance.

1. The Civil Service track
  - a. For misconduct resulting in demotion, suspension, or discharge, the employee can appeal to the Public Safety Civil Service Commission (PSCSC). The PSCSC is a creation of state law (e.g., RCW 41.12) and is codified in SMC 4.08, has three members including one Mayoral, Council, and police/fire appointee, and conducts open hearings.
2. The collectively bargained track
  - a. For misconduct resulting in transfer, demotion, suspension, or termination, the Guild can challenge the decision through the Disciplinary Review Board (DRB). The DRB is a process in the collective bargaining agreement. The DRB has two SPD members and an arbitrator agreed to by the parties and conducts closed hearings, but for complaints originating from outside the Department, a Mayor-appointed observer can attend.
  - b. For alleged contract violations that affect lower-level disciplinary decisions (sustained with no penalty, oral or written reprimands) the Guild can grieve the matter through a neutral arbitrator.

CB 118907 addresses aspects of the disciplinary process and calls for timely, fair, consistent and transparent disciplinary, grievance, and appeal policies and processes. Some specific provisions that would be new or changed requirements include the following:

- The Chief can place an SPD employee on leave without pay prior to the completion of an OPA administrative investigation when the employee has been charged with a gross misdemeanor in addition to a felony, as is currently in the CBAs.
- The PSCSC make-up is changed to two Mayoral appointees and one Council appointee.
- The Disciplinary Review Board is abolished; union challenges to disciplinary decisions are heard through the City Hearing Examiner.

Under the draft legislation that was transmitted to the Court for initial review, there were several possible courses of action for the disciplinary process that were proposed to the Court, as described below:

1. PSCSC as only avenue for disciplinary appeals

PSCSC would be the only avenue for SPD employee disciplinary appeals.

2. PSCSC as employee avenue; and arbitrator as union avenue for disciplinary appeals brought on the employee's behalf<sup>1</sup>

PSCSC would be the only avenue for disciplinary appeals brought by the SPD employee. If a law enforcement union challenged the imposition of discipline based on an alleged violation of the terms and conditions of the collective bargaining agreement, that challenge would be heard through an arbitrator. The arbitrator would be drawn at random from a list compiled by an independent body such as an established bar association committee with arbitration expertise. Neither party would have a role in approving or rejecting the arbitrator. Arbitrators would be removable from the list only if the Inspector General determined in writing that the arbitrator failed to meet minimum qualifications. If using a hearing examiner, the Inspector General would establish qualifications, conduct a hiring process, and nominate a hearing examiner subject to Council confirmation.

3. PSCSC as employee avenue; and City Hearing Examiner as union avenue for disciplinary appeals brought on the employee's behalf

PSCSC would be the only avenue for disciplinary appeals brought by the SPD employee. If a law enforcement union challenged the imposition of discipline based on an alleged violation of the terms and conditions of the collective bargaining agreement, that challenge would be heard by the City Hearing Examiner.

The version transmitted in CB 118907 was the third one.

### **Next Steps**

- May 8 – Reintroduction of accountability legislation to accommodate title changes
- May 16, 6:00-8:00 p.m. – Public hearing and presentation by CPC
- May 18, 9:30-11:30 a.m. – Special GESCNA meeting on accountability

cc: Kirstan Arestad, Central Staff Director  
Dan Eder, Central Staff Deputy Director

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<sup>1</sup> Another variation of this scenario that was submitted to the Court would activate the arbitrator process “[i]n the event any of the requirements related to the PSCSC set forth in this Section 3.29.310 are not mandated and/or an arbitrator is allowed to hear disciplinary appeals.”