

**MEMORANDUM**

**To:** Gender Equity, Safe Communities and New Americans Committee  
**From:** Amy Tsai, Council Staff  
**Date:** April 6, 2017  
**Subject:** CPC Membership, Reports, 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 fourth GESCNA committee meeting on the police accountability legislation, with a committee vote anticipated in May. The planned content of each meeting on the accountability legislation is as follows (also see Calendar at Attachment 1):

<b>GESCNA Date</b>	<b>Issues for Discussion</b>
1. February 8	<ul style="list-style-type: none"> <li>• Introduction and New York debrief</li> </ul>
2. February 23	<ul style="list-style-type: none"> <li>• Walk through of legislation and Los Angeles debrief</li> </ul>
3. March 17	<ul style="list-style-type: none"> <li>• New Orleans debrief</li> <li>• Roles and oversight</li> <li>• Independence mechanisms (appointment, removal, terms of office)</li> </ul>
<b>4. April 6</b>	<ul style="list-style-type: none"> <li>• <b>CPC Membership (qualifications, geographic representation)</b></li> <li>• <b>Reports</b></li> <li>• <b>Budget</b></li> </ul>
5. April 14	<ul style="list-style-type: none"> <li>• Investigations and disciplinary processes</li> <li>• Technical amendments and other issues as time permits</li> </ul>
6. April 26	<ul style="list-style-type: none"> <li>• Technical amendments and remaining issues</li> </ul>
7. May 5	<ul style="list-style-type: none"> <li>• Final committee vote</li> </ul>

This memo is organized into four sections:

- I. Proposed Amendments from March 17 issues
- II. CPC Membership
- III. Reporting
- IV. Budget

Issues that were raised by Councilmembers that have analysis pending are included in a parking lot as Attachment 2. Updates to Attachment 2 since the March 17 meeting are shown in track changes.

**I. Proposed Amendments from March 17 Issues**

The following table summarizes Committee and Councilmember direction to Central Staff for draft amendment language pertaining to the March 17 topics. A proposed amendment with a summary table that contains the bulk of the changes in the table below is attached as Attachment 3 and 4. Additional proposed amendment language will be provided as a separate document at Committee.

#	Issue	Proposed Amendments
#1	Roles and purpose	<ul style="list-style-type: none"> <li>• Add “findings” and “whereas” language</li> <li>• Develop purpose statements clarifying and strengthening roles of three oversight entities and emphasizing community</li> <li>• Add “civil rights” and “constitutional rights”</li> </ul>
#2	New Chief of Police section	<ul style="list-style-type: none"> <li>• Add section highlighting role of Chief of Police as final decision-maker</li> </ul>
#3	OPA, OIG, CPC civilian staff	<ul style="list-style-type: none"> <li>• Add prohibition on being prior SPD employees for all civilian positions</li> </ul>
#4	Clarity of roles throughout ordinance	<ul style="list-style-type: none"> <li>• Add language that emphasizes the collaborative consultative relationships amongst the three entities and their roles in overseeing all of Chapter 3.29</li> <li>• Revise OPA outreach language regarding CPC outreach to other stakeholders</li> <li>• Revise OPA access improvements to require use of complaint navigators and other methods</li> </ul>
#5	Clarity of reporting requirements	<ul style="list-style-type: none"> <li>• Enhance cross-reporting between three entities</li> <li>• Enhance cross-consultation between three entities</li> <li>• Allow Council to add items to IG workplan</li> </ul>
#6	Performance evaluation	<ul style="list-style-type: none"> <li>• Add option where IG evaluates OPA Director and CPC evaluates IG, with input</li> <li>• Add option where appointing authority evaluates head of each entity</li> </ul>
#7	Police intelligence auditor	<ul style="list-style-type: none"> <li>• Add option specifying creation of a deputy IG, but not assigned specific duties</li> </ul>
#8	Appointments– CPC ED	<ul style="list-style-type: none"> <li>• Use Seattle Ethics and Elections Commission language</li> </ul>
#8	Appointments – OPA Director	<ul style="list-style-type: none"> <li>• Change 3-member select committee role in vacancies to GESCNA committee</li> <li>• Increase CPC search committee representation to 25%</li> </ul>
#8	Appointments – IG	<ul style="list-style-type: none"> <li>• Change 3-member select committee role in appointment to GESCNA committee</li> <li>• Increase CPC search committee representation to 25%</li> </ul>

## **II. CPC Membership and CPC/OPA/OIG Qualifications**

The March 17 GESCNA meeting focused on the roles that each oversight entity plays in the accountability system. While final language regarding roles has yet to be resolved by this Committee, the functions of the three entities were described in the accountability legislation's original purpose statement as follows:

- OPA – to handle complaints of misconduct
- OIG – to provide systemic oversight of the management, practices, and policies of SPD and OPA
- CPC – to provide community input to ensure that police services are delivered in a lawful and nondiscriminatory manner and are aligned with community values and expectations.

### **Issue #1: OPA Director and Inspector General Job Qualifications**

One of the issues that has been raised is whether the job qualifications for OPA and OIG are sufficiently well defined in the accountability legislation. The National Association for Civilian Oversight of Law Enforcement (NACOLE) notes that in the field of civilian oversight of law enforcement, training and work qualifications are different for directors, investigators, supervisors, and board members.

NACOLE's recommended qualifications for oversight agency directors includes, among other things, a Bachelor's degree in a related field, legal or administrative experience and supervisory or managerial experience, ability to communicate and work effectively with both a multicultural community and institutions, and a strong knowledge of police operations rules and regulations.<sup>1</sup>

The OPA Director and Inspector General (IG) have a few required qualifications plus an additional list of desired qualifications. Because the OPA Director and IG have similar desired qualifications, only the OPA Director desired qualifications are listed below.

OPA Director required qualifications:

- Civilian
- Significant legal, investigative, human resources, law enforcement oversight, or prosecutorial experience

IG required qualifications:

- Civilian
- Background in criminal, civil rights, labor law, governmental investigations, and/or the management of governmental auditing

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<sup>1</sup> <http://www.nacole.org/qualifications>

- Demonstrated ability to lead and manage staff in auditing, evaluating, and conducting investigations; conducting audits, analyzing data for trends, and in recommending systemic improvements.

OPA Director desired qualifications:

- Reputation for integrity and professionalism and ability to maintain a high standard of integrity and professionalism in the office
- A commitment to and knowledge of the need for and responsibilities of law enforcement, including enforcement and community care-taking, and the need to protect the basic constitutional rights of all affected parties
- A commitment to the statements of purpose and policies in this Chapter 3.29;
- A history of leadership experience;
- The ability to relate, communicate, and engage effectively with all who have a stake in policing, including, but not limited to, the general public, complainants, disenfranchised communities, SPD employees, and relevant City and other officials including the Mayor, City Council, City Attorney, Chief of Police, Inspector General, and CPC
- An understanding of the City's ethnic and socio-economic diversity and proven experience working with and valuing the perspectives of diverse groups and individuals; and
- The ability to exercise sound judgment, independence, fairness, and objectivity, and to carry out the duties of the OPA Director in a manner that reflects sound judgment, independence, fairness, and objectivity in an environment where controversy is common.

### *Qualifications Compared to NACOLE Recommendations*

The main required qualification for the OPA Director and Inspector General in the accountability legislation is subject matter expertise. The subject matter areas for the OPA Director do not have clear ties to the job. For instance, it is not clear why prosecutorial experience might be desirable but not public defense experience. While NACOLE does not expressly list "related fields," it recommends expertise in general legal principles, experience with conducting investigations and administrative hearings, and strong knowledge of police operations. The Inspector General's areas of expertise appear more directly job related, including for example an auditing or investigative background as well as the ability to manage staff performing those functions.

NACOLE also recommends a minimum of a Bachelor's degree; the accountability legislation does not. It is worth noting that college degrees can serve as a barrier to some, considering both expense and institutional biases. In this case, there are several aspects of the desired qualifications that could be enhanced by college experience, such as communication skills (as might writing skills). Ultimately, the positions should be persons who can effectively manage and supervise their office and perform their duties.

**Issue #1 OPA and OIG qualifications:** Are the qualifications for OPA Director and IG adequate?

**Options:**

1. Direct staff to revise OPA Director and IG job qualifications in line with NACOLE and/or to align required job qualifications with job duties.
2. Status quo.

**Issue #2: What should CPC membership requirements be?**

The functions of the commission are relevant to determining the best qualifications. In this case, CPC faces a challenge of having dual roles. These roles can be loosely characterized as policy review and community engagement. For the former, subject matter expertise is helpful, and for the latter, geographic representation can be helpful. Ultimately, the Council will need to balance its priorities for these two roles in finding the best mix for the commission.

The consent decree requires the current CPC to be “representative of the many and diverse communities in Seattle,”<sup>2</sup> including:

- members from each precinct of the city,
- police personnel,
- faith communities,
- minority, ethnic, and other community organizations, and
- student or youth organizations.

Commissioners are required by proposed SMC 3.29.215.B. in the accountability legislation to have the following qualifications:

- Be respected members of Seattle’s many diverse communities;
- Be representative of Seattle’s diverse demographics, with some being knowledgeable about issues of limited-English speakers, homeless, or those with mental illness and substance abuse disorders (African-Americans are called out specifically, which has been flagged as an issue for potential removal);
- Have general knowledge of police accountability matters;
- Expertise in law enforcement, police accountability, human resources, community engagement, organizational change, constitutional, criminal, or labor law, social justice, training, or other disciplines important to CPC’s work;
- Two Commissioners must be attorneys in public defense and civil liberties law;

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<sup>2</sup> p. 1, Memorandum of Understanding between the United States and The City of Seattle, July 27, 2012

- Collectively, members shall have a balance of extensive subject matter expertise in the areas of law enforcement oversight, human rights, civil rights and civil liberties, and cultural competency;
- Commissioners are required to have qualifications that are very similar to those that are desirable, i.e., discretionary, qualities for the OPA Director and IG listed in the table above, although deep roots in the community can substitute for a history of leadership experience and members must have a reputation for effectiveness in a board or commission role; and
- Twelve of 15 Commissioners must live within Seattle and three do not have to live within the city but in that case must work within the city. A Commissioner who moves outside of the City for longer than 60 days can finish a term but not be reappointed.

#### *Extensiveness of qualification requirements*

The dual qualifications represent a skillset that may make these volunteer positions difficult to fill. The extensive qualification requirements have the potential to make that task even harder. One possible mitigation would be to make the qualifications that are discretionary for the OPA Director and Inspector General also discretionary for the CPC. Having similar desirable characteristics across all three oversight entities is a positive affirmation of their shared duty to provide meaningful, culturally competent police oversight.

#### *Public defense and civil liberties experience*

The question has been raised why there are two required legal positions in public defense and civil liberties law. In essence, these were considered by the drafters of the legislation to be two categories that are representative of the skillset required to wear the dual-hat role of CPC – namely to be able to provide systemic policy review with a critical eye and also serve as the conduit between government and residents who are most disenfranchised and more reluctant to contact the police and government. This dual role can also be seen in the qualifications as a whole, which reflect both a desire for law enforcement or other accountability-related expertise and cultural competency.

#### *Law enforcement representation*

Whether to have a law enforcement representative on the CPC has been a subject of some debate. The Department of Justice commented on the then-draft accountability legislation's removal of law enforcement positions from the CPC as follows:

As a preliminary matter, we believe that the removal of SPD officers from the CPC, as set forth in the Draft Legislation (e.g. at 3.29.215.B.3), conflicts with the terms and purposes of the Consent Decree. The Consent Decree clearly requires that SPD officers be members of the CPC. Dkt. No. 3-1 ¶ 5-6. This is a deliberative and bargained for position

of the Decree. Moreover, it is worth noting that DOJ has found that having SPD officers on the CPC has been helpful in ensuring that the CPC has ready access to the expertise and perspectives necessary to do their work effectively. We understand, however, that the City may have some administrative concerns related to having sworn officers participate in this body. If that is the case, and the Court is convinced that officers' removal is the better approach, their removal would at least require amendment to the Consent Decree. Id. ¶ 6; see also Transcript at 42 ("If [the City] want[s] to change the subjects that the CPC can deal with or the scope and nature of the CPC's efforts, [the City will] need to change the Consent Decree.") (citing Consent Decree ¶ 225 as the "mechanism" to do so).<sup>3</sup>

However, the Court noted that "there is no evidence that [removing SPD Officers from CPC] does not conform to the purposes underlying the Consent Decree – ensuring constitutional and effective policing and enhancing public confidence in the SPD."<sup>4</sup>

During the Seattle delegation's Inspector General study missions, some members of the community remarked that they would not want law enforcement officers on a board whose function is to represent the people, expressing discomfort with the idea.

In Seattle, the CPC strongly supports retaining two law enforcement members on the commission, specifically, a representative from each union representing officers and management. According to the CPC, the law enforcement perspectives have helped inform CPC's ultimate positions in the past and will do so going forward. It was felt by CPC that law enforcement participation also demonstrates a commitment to collaboration and trust-building.

In Portland, the Community Oversight and Advisory Board (COAB) was created with 15 voting members and five sworn officers as non-voting advisors. COAB was charged under a DOJ settlement agreement with restructuring community input mechanisms, enhancing community outreach, promoting community confidence in police, and educating the community about the police.<sup>5</sup>

One of the lessons learned from the Seattle delegation Inspector General study missions was that the success of various models will depend in part on the history of police relations in the jurisdiction, the community culture, and the governmental power structure.

The issue of law enforcement on a community board in a sense reflects the larger police accountability dynamic between government and community. In some jurisdictions, the strife runs so deep that the civilian commissions have difficulty getting work done as they are

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<sup>3</sup> United States' Response to City of Seattle's Draft Accountability Systems Legislation, U.S. v. City of Seattle, Dkt. 331 at 10.

<sup>4</sup> Order Regarding Accountability Legislation, U.S. v. City of Seattle, Dkt. 357 at 9.

<sup>5</sup> <http://cocl-coab.org/sites/default/files/Background%20Information%20re%20Settlement%20Agreement.pdf>

inundated with protests at their meetings. Bringing law enforcement onto a community board has the potential to bring those dynamics in-house. This is not to say that such a model cannot succeed; the CPC is a strong proponent.

As a word of caution, the present-day CPC has a large policy review component to its workload and conducts meetings that, while public, are not in general attended by community members seeking to express frustration with police. As CPC expands its community engagement role, the changing role has the potential to alter Commission-law enforcement dynamics both within its membership and with the public with which it interfaces. When relationships between the community and police are strained, the presence of police on a community board has the potential to introduce some distrust of the board as being less reflective of the community.

**Issue #2 CPC Commissioner qualifications generally:**

- Should the list of required qualifications be refined and narrowed?
- Should CPC have law enforcement on it, and if so, should they be voting members?

**Options:**

1. Direct staff to remove “African-American” and make discretionary qualifications consistent with OPA and OIG, and/or further refine the qualifications.
2. Direct staff to add two law enforcement positions to the CPC membership, with voting status.
3. Direct staff to add two law enforcement positions to the CPC membership as advisory, without voting status.
4. Status quo.

**Issue 3: Geographic Representation and City Residence**

The issue of geographic representation was briefly discussed at the March 17 GESCNA meeting. CPC does not favor a geographic-based membership requirement based on the argument that it limits the available pool of applicants to those living in the districts whose turns come up for appointment, when there might be an ideal candidate living elsewhere in the City.

A countervailing argument is that geographic representation is one means of achieving geographic parity in the voices on a community board. The Community Police Commission itself is, under the terms of the consent decree, to have membership that includes “members from each precinct of the city” (p. 1, Memorandum of Understanding between the United States and The City of Seattle, July 27, 2012; Executive Order 02-2012).



An example of appointments by district, the City of Long Beach, California, was referenced in the March 17 memo. With 771 sworn officers (about half the size of Seattle’s police force), Long Beach has a Citizen Police Complaint Commission<sup>6,7</sup> that directs investigations of allegations of police misconduct by an independent investigator<sup>8</sup> appointed by the City Manager. Members include 11 members appointed by the Mayor confirmed by the Council, with one Commissioner representing each of nine City Council districts nominated by the Councilmembers of that district and two at-large positions broadly representative of the demographics of the City. The Commissioners must reside in the City. Although the Long Beach Commission is more akin to Seattle’s OPA in its function, it is still instructive that Long Beach staff report that one of the values of appointments by districts for them is that it makes all areas of the City feel included in the police accountability process.<sup>9</sup>

Requirements of geographic representation are not uncommon. The City of Albuquerque has a nine-member volunteer Police Oversight Board as part of its Civilian Police Oversight Agency (CPOA), which is an agency charged with receiving, investigating and reviewing complaints and commendations, as well as reviewing polices and making recommendations to the Chief of Police.<sup>10</sup> Each City Councilor used to recommend two people residing in their district to the Mayor, who would then send one to the Council for confirmation. This was changed to a staff-led process at the recommendation of a Police Oversight Task Force.<sup>11</sup> The City of Denver’s Citizen Oversight Board is another example of geographic-based criteria. Their Board “should reflect the diversity of Denver, including the ethnic, racial, and geographic constitution of the population as well as the diverse professional backgrounds, experience, and expertise of the citizens of Denver.” (Ch. 2, Art. XVIII, Sec. 2-378) They are to be residents of the City.

A related issue is whether the Commissioners should reside in the City of Seattle. The transmitted accountability legislation requires that 12 members live in the City, with three not required to live in the City so long as they work in the City.

In the two examples above, members were both appointed using geographic criteria and required to live in the City. A person who lives in the City has additional reasons for feeling invested in police issues, such as frequency and proximity of police contact, financial or property investment in the City, and civic pride. These reasons are not exclusive to City of

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<sup>6</sup> <http://www.longbeach.gov/citymanager/cpcc/>

<sup>7</sup> <http://www.longbeach.gov/citymanager/cpcc/supporting-information/#charter>

<sup>8</sup> Staff include an Executive Director for the Commission, one full-time investigator, and one part-time investigator. <http://www.longbeach.gov/citymanager/media-library/documents/cpcc/annual-report/2014---2015-annual-report/>

<sup>9</sup> Personal communication, CPCC staff, 3/15/17.

<sup>10</sup> <http://www.cabq.gov/cpoa/documents/amended-cpoa-ordinance.pdf>

<sup>11</sup> Personal communication, staff, 4/15/16 and 3/28/17. The enabling legislation requires nine at-large members who “broadly represent the diversity and demographics of the City by way of, including but not limited to, cultural, gender and geographic diversity; and who are representative of the stakeholders of the police oversight process, and who reside within the City of Albuquerque.” <http://www.cabq.gov/cpoa/documents/oversight-ordinance-11-15-16.pdf>

Seattle residents, but residency increases the likelihood of such connections. The counter-argument is similar to that of geographic representation – by adding a residency requirement, there is the risk that an ideal candidate who lives outside of the City, but who might work here and have other connections, would be excluded from consideration.

If residency or geographic representation are added as a requirement, the qualification requirements should be examined as a whole for their ability to generate a sufficient number of qualified candidates to fill the commission.

Of note, although CPC does not favor appointment by districts, it internally assigns volunteer CPC Commissioners to represent each of the Council districts, in an effort to enhance the Commission’s outreach efforts throughout Seattle. These district representatives engage in at least one outreach per month in their assigned district (meetings, events, phone outreach, email outreach) and report back to the CPC on a monthly basis. If CPC Commissioners were to be appointed by district, the appointment process would need to be modified; the transmitted legislation proposes that five are appointed by the Mayor, five by the Council, and five by the CPC.

**Issue #3 Commission Geographic Representation and Residency:**

- Should CPC members be appointed by Council district?
- Should CPC members be required to live and/or work in the City?

**Options:**

1. Direct staff to draft language appointing CPC members by district.
2. Codify CPC’s existing practice of assigning Commissioners to serve in district capacities after appointment.
3. Direct staff to add language requiring residency.
4. Direct staff to draft alternative residency and/or work requirements.
5. Status quo.

**Issue #4: Commission Size**

It has been raised as an issue whether the CPC membership should be expanded from 15 to 19. A larger commission would allow more voices to be represented at the table in a community that is very diverse on multiple dimensions. On the other hand, it is also important to keep the size manageable to allow the group to get work done. To the extent that reporting or community engagement requirements are increased in the ordinance compared to current workload, there is also the ability to use CPC staff to support some of that work.

Having a large commission affects the ability to achieve a quorum, to have all members present, and to reach group consensus. Increasing the size of the commission increases the chances that they will not all speak with one voice. That can be a positive aspect of community representation and may even help them in remaining true to being the “voice” of the community, but the logistical impacts on a body that must regularly produce work product should not be underestimated.

**Issue #4 Commission size:**

- Should CPC membership be increased to 19; and if so, how should the Commissioners be appointed?

**Options:**

1. Direct staff to draft language increasing the size of CPC and creating an appointment process.
2. Status quo.

### **III. Reporting**

Reporting at first glance may appear to be a largely administrative function. In the accountability legislation. However, reporting on issues, recommendations, and follow-throughs is one of the accountability legislation’s main avenues of ensuring accountability. Reports contain the results of investigation, review, trend analysis, or auditing of OPA or SPD performance.

Reports by oversight entities daylight issues in the system, and there is a continuous cycle of written response<sup>12</sup> by OPA or SPD with reporting on the status of whether recommendations were followed, rejected, or still require further action. The reports are published and made accessible to the public, which adds another layer of public accountability. Reports are also a communication tool by which the oversight entities keep apprised of each other’s actions and findings. For instance, OPA and OIG reports are discussed as part of quarterly meetings with CPC on the effectiveness of the system.

There is, however, a large amount of reporting referenced within the accountability legislation, which could require a significant amount of resources and has the potential to create

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<sup>12</sup> After any written report by the oversight entities with recommendations to SPD or OPD, SPD or OPD has 30 days to meet and confer and respond in writing with a plan for implementation of accepted recommendations and regular progress reports, and explanation of recommendations not accepted or not scheduled for implementation.

information overload both on those doing the reporting and on those receiving the reports. If one defines “report” as any reporting, written report, or audit, there are at least 26 separate references to required reports in the accountability legislation for OPA, OIG, and CPC, not counting reporting requirements for SPD, Mayor’s Office, and City Attorney’s Office. Some of these have specified frequencies while others are unspecified or as-needed.

When counting number of required reports of specified frequencies (such as quarterly or annual), as opposed to duties to report on areas of concern that tend to be triggered as needed, the accountability legislation references at least 33 written report requirements amongst the three oversight entities each year.

The 33 reporting requirements referenced in the accountability legislation include the following:

- (3) Annual report for each entity
- (4) Quarterly OPA report on SPD’s response to OPA’s recommended actions
- (2) Semiannual OPA reports on status of criminal investigations
- (12) Monthly OPA compilations of summaries of completed investigations
- (4) Quarterly OIG recommendations and status of follow-through
- (4) Quarterly OIG status update on OPA follow-through of OIG recommendations
- (4) Quarterly OIG audit of sampling of classifications with recommendations to OPA

It should be noted that this count includes some that could be considered more routine work that reflects the functioning of the office, such as 12 monthly case summaries by OPA, and it is possible that some of the separate reporting requirements could be combined into a single report. However, this count also does not include 14 of the 26 reporting requirements in the legislation which did not specify frequencies (including performance audits, which have the potential to be a significant body of work).

At a minimum, reporting language could be clarified and streamlined to require an amount of outward facing reports that keeps the public, Council and other government entities informed at a reasonable level, both in terms of bandwidth to produce it and bandwidth of the receiving entity to absorb the information.

#### **Issue #5: Report Streamlining**

Central staff has already been tasked with streamlining the reporting language. Staff proposes to continue that body of work by clarifying when written reports are required, the subject of the reports, whether they can be part of larger reports, and generally consolidating the various reporting requirements.

## **IV. Budget**

### **Issue #6: Budgetary Independence**

The ability of an office to operate free from fear of reprisals is at the heart of independence. One means that has been used by some jurisdictions to further independence is to create an independent budget process. Two strategies include: 1) allowing the head of an entity to propose their own budget separate from any higher authority, and 2) setting minimum or fixed budgets, to limit the possibility of the office being weakened or eliminated through defunding.

The accountability legislation as transmitted provides that OPA, OIG, and CPC shall each submit annual budgets separate and distinct from the budget of other departments, including SPD. This language could be strengthened further. Under SMC 3.28.810.I., the OPA Director presently has the authority to make budgetary recommendations to the Chief of Police, Mayor and City Council. In practice, the OPA Director develops and submits a budget to the City Budget Office that is separate from SPD's budget.

At the March 17 meeting, Central staff presented examples of various jurisdictions that use a percentage based model. For Chicago's Civilian Office of Police Accountability, the budget is not less than 1% of the police department budget exclusive of grants. A prior draft version of the deputy IG ordinance appears to have proposed not less than 1% of the police budget for the deputy IG and at least 1 FTE for every 250 sworn officers.<sup>13</sup>

In New Orleans, the OIG, the Ethics Review Board, and the Office of the Independent Police Monitor receive an annual appropriation from the Council in an amount not less than 0.75% of the General Fund operating budget. The Council may by ordinance, adopted by unanimous vote of a quorum, provide for deviation from this percentage in cases of natural disaster or other extreme circumstances. Of that budget percentage, 0.04% is allocated for the operation of the Ethics Review Board and 0.16% is allocated for the operation of the Office of Independent Police Monitor.

In Albuquerque, the Civilian Police Oversight Agency has a dedicated and independent source of funding equal to, at a minimum 0.5% of the police department's annual operation budget (Albuquerque Code §9-4-1-4).

Setting a fixed or minimum budget has the independence benefits noted above, but on the other hand may result in budgetary fluctuations that are not directly tied to workload, such as staffing reorganizations that transfer staff to a different budget or fuel price changes. Another alternative would be to set a fixed budget on some other basis, such as with the Chicago draft

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<sup>13</sup> <https://www.communityrenewalsociety.org/sites/default/files/FAIR%20COPS%20Ordinance.pdf>

proposal (which ultimately was not adopted by the City), which was in part tied to the number of sworn officers.

The Mayor’s Office shares the community concern that budgets of civilian oversight entities should be protected from political pressure to ensure independence of these organizations. While some jurisdictions use a “budgeting by percentage” model to determine dedicated funding for police accountability, the Executive does not believe that is aligned with best business or budgeting practices. However, it does recognize that as SPD’s sworn force grows, so too should the accountability functions.

The Mayor’s Office has proposed a budgeting model based on sworn funded FTEs that would allow accountability functions to grow incrementally with the police department. The proposal would establish the base budgets for the CPC, OIG and OPA in 2017 and then increase those budgets proportionally as the number of funded sworn officers increases. The table below illustrates the basic funding approach.

<b>Oversight Function</b>	<b>2017 Budget</b>	<b>2017 – Total Funded Sworn SPD Positions</b>	<b>Incremental Oversight Funding Required for Each Additional Sworn Position</b>
<b>CPC</b>	\$878,557	1,456	\$603
<b>OIG</b>	\$843,200	1,456	\$579
<b>OPA</b>	\$3,139,466	1,456	\$2,156

Under the proposed model, there are three ways in which the budgets and/or incremental funding for the OIG, OPA and CPC can be revised:

1. Budgets will be adjusted as funded FTE sworn officers are added to or removed from the police department, consistent with the incremental funding levels calculated above;
2. Baseline budgets and incremental funding amounts will be revised annually to account for changes in citywide costs including healthcare, retirement, unemployment internal service rates and annual wage increases, per the baseline budget process (i.e., things that affect all departments);
3. The incremental funding amounts are intended to act as “floors” and do not preclude the organizations from requesting resources through the normal budget process. If an organization requests and receives an on-going position or other budget authority to support on-going needs, the funding amount will be revised.

The Executive proposes that the ordinance include 2017 starting incremental funding amounts for the three oversight functions. Each will be revised during the annual budget process and communicated to Council with the proposed budget.

**Issue #6: Budgetary Independence**

- Should the authority for each of the entities to develop and propose their own budgets be increased?
- Should the budget for each entity be given a fixed or minimum annual allocation? If so, using what basis?

Options:

1. Direct staff to strengthen the ability of each entity to independently request funding.
2. Direct staff to develop a fixed or minimum allocation model based on a percentage budget.
3. Direct staff to develop a fixed or minimum allocation model based on FTEs.
4. Status quo.

*Supplemental Budget Request (CB 118908)*

On February 1, the Mayor transmitted an accompanying supplemental budget request, CB 118908. This bill would transfer funding from Finance General to fund a new Office of Inspector General for part of 2017. The net effect of CB 118908 is as follows:

- Creates four positions in OIG, including the Inspector General, a deputy, administrative support, and a researcher. The expectation is that one auditor/investigator staff position would be onboarded in 2018.
- The position costs assume onboarding at different times throughout 2017, with the IG being hired first.
- The estimated cost of the four positions phased in during 2017 is \$216,000. The budget request also assumes start-up and other office costs at \$138,000 in 2017, for a total 2017 cost of \$354,000.

The budget office estimates that the ongoing annualized cost of the office, including five positions, would be \$843,000.

*Appropriate level of staffing*

It is CPC's position that OIG at a minimum needs an initial budget that supports an IG, Deputy IG, three audit staff and three support staff (8 FTE), in addition to operational expenses. CB 118908 starts with four positions in 2017, with an expectation of five in 2018. The appropriate level of initial and ongoing base funding to support the body of work for each entity requires further analysis. If a formulaic incremental model is adopted, starting with the appropriate base would be important for the future success of the entity.

**Next Steps**

The memorandum of Chair González’s timelines for the next round of issue identification is included in Attachment 1, with upcoming deadlines excerpted in the table below.

<b>Wed., April 5, 12:00 p.m.</b>	<b>DUE: Issue Identification Round #2</b> Final requests for additional information and staff analysis transmitted to Amy Tsai & GESCNA Chair
Fri., April 14, 9:30-11:30 a.m.	GESCNA Special Committee Hearing: Discussion of Issues Identified in Round #2  Discussion and Issue Identification Related to following categories: <ul style="list-style-type: none"><li>• Investigations and Disciplinary processes</li><li>• Technical Amendments (if time permits)</li><li>• Other (if time permits)</li></ul>

Attachment 1 – GESCNA memo of deadlines

Attachment 2 – Parking Lot Issues

Attachment 3 – Proposed Amendment 6 to CB 118907 db2

Attachment 4 – Proposed Amendment 6 Tables

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



ATTACHMENT 1

**CB 118907 POLICE ACCOUNTABILITY  
ISSUE IDENTIFICATION AND AMENDMENT DEADLINES**

<b>DATE</b>	<b>ACTIONS (and known issues)</b>
February 23, 2:00 pm	GESCNA Special Committee Hearing: In-Depth Briefing of Police Accountability Ordinance by Central Staff; CPC available for questions
<b>March 8, 12:00 p.m.</b>	<b>DUE: Issue identification Round #1</b> Requests for additional information and staff analysis transmitted to Amy Tsai & GESCNA Chair
March 9-11	New Orleans Study Mission
March 17	GESCNA Committee Hearing: Discussion of Staff Identified Issues and Issues Identified in Round #1  Discussion and Issue Identification Related to following categories: <ul style="list-style-type: none"> <li>• Independence mechanisms <ul style="list-style-type: none"> <li>○ Appointment and Removal Process for Directors and/or members of OPA, OIG, CPC</li> <li>○ Terms</li> </ul> </li> <li>• Roles and oversight</li> </ul>
<b>March 22, 12:00 p.m.</b>	<b>DUE: Proposed amendments Round #1</b>
Thurs., March 23, 6:00 p.m.	Evening public hearing
<b>Wed., April 5, 12:00 p.m.</b>	<b>DUE: Issue Identification Round #2</b> Final requests for additional information and staff analysis transmitted to Amy Tsai & GESCNA Chair
Thurs., April 6 9:30-11:30 a.m.	GESCNA Special Committee Hearing: Discussion and vote on Amendments Identified in Round #1  Discussion and Issue Identification Related to following categories: <ul style="list-style-type: none"> <li>• CPC Membership <ul style="list-style-type: none"> <li>○ Qualifications</li> <li>○ Residency Requirements</li> </ul> </li> <li>• Required reports</li> <li>• Budget</li> </ul>
Fri., April 14, 9:30-11:30 a.m.	GESCNA Special Committee Hearing: Discussion of Issues Identified in Round #2  Discussion and Issue Identification Related to following categories: <ul style="list-style-type: none"> <li>• Investigations and Disciplinary processes</li> <li>• Technical Amendments (if time permits)</li> <li>• Other (if time permits)</li> </ul>
<b>Wed., April 19, 12:00 p.m.</b>	<b>DUE: Proposed amendments Round #2</b>
Wed., April 26, 9:30 regular mtg	GESCNA Committee Hearing: Discussion and vote on Amendments Identified in Round #2  Discussion and Issue Identification Related to following categories: <ul style="list-style-type: none"> <li>• Technical Amendments</li> <li>• Other</li> </ul>
Thurs., April 27, 6:00 p.m.	Evening public hearing
Fri., May 5, 9:30-11:30 a.m.	GESCNA Committee Hearing: Vote on technical amendments and final committee vote on CB 118907, as amended
Mon., May 8	Full Council Vote on CB 118907

## **ATTACHMENT 2: Parking Lot Issues**

### **Investigations (4/14)**

- Should the 180-day clock begin only when OPA opens a complaint, not when it should've been referred but wasn't (3.29.026.B.)?
- Clarify language around what triggers tolling and restarting for administrative investigative steps
- Are there situations where 30-day complaint notice to employee would not make sense?
- Is a civilian observer on the Force Review Board still needed?
- Should investigations into serious and deadly use of force be conducted externally, informed by a stakeholder assessment to be led by CPC?
- Should IG handle complaints involving Chief of Police?

### **Disciplinary Processes (4/14)**

- What should be the evidence standard for discipline cases (preponderance)
- Should the disciplinary appeal process be one-track or two
- Should hearing examiner language on having appropriate subject matter expertise be removed?
- Can the discipline bar be reset through legislation by creating a new benchmark for "consistent with previous practices"?
- Clarify the default evidentiary standard for misconduct cases
- Be clear on implementation of discipline when imposed or "shortly thereafter" – 3.29.310.A.3.
- In making disciplinary processes fair, reviewing other jurisdictions may be beneficial, such as use of disciplinary matrices
- Add material dishonesty to list that is exempt from the 3-year statute of limitations on disciplinary action.

### **Other**

- Should standards be imposed, such as national auditing standards?
- Should oversight entities, CPC in particular, have a role during the bargaining process (while this is a "role" issue, staff do not have analysis available at this time)
- Examine existing OPARB and other code provisions for any language that should be preserved, such as regular transmittal of unredacted files to OIG or access to cases under active litigation
- Encourage continued posting by OPA of officer commendations on-line
- Discuss wisdom and logistics of protocols for referring criminal cases to prosecutors outside of the county – 3.29.325.A.
- Can hiring processes needed for the IG be set in motion in advance of the ordinance effective date?
- One-year review of police intelligence auditor Chapter 14.12
- Technical clean-up comments, e.g.,
  - streamlining of "intent" type statements, "OIG" vs. "IG" usage
  - defining "tolling", use of "sworn" vs. "commissioned"

- 3.29.110.A.4.b. IG response to scenes language is confusing
- 3.29.315.E. reference to ethical standards be clear if it is the Ethics Code
- 3.29.345.A. retaliation section unclear
- verify 3.29.401.B. effectiveness date language
- Clarification of provisions, e.g.,
  - 3.29.010.G. - civilian staff (precinct liaisons) assisting supervisors
  - 3.29.020.A.15 – any desired elaboration on language translation requirements
  - 3.29.026.A. – nondisclosure of names of complainants who aren't a member of the public

### **Legal**

- Is subpoena power by OPA and OIG lawful?
- How to address, synchronize, or eliminate past side agreements, practices and policies that are in conflict with the accountability legislation?
- Should CPC have separate legal counsel?
- Open bargaining