

**MEMORANDUM**

**To:** Gender Equity, Safe Communities and New Americans Committee  
**From:** Amy Tsai, Council Staff  
**Date:** April 26, 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 fifth GESCNA committee meeting on the police accountability legislation, with a committee vote anticipated in May.

At the April 6 GESCNA meeting, the Committee discussed proposed amendments. This staff memo provides a high-level summary of the proposed amendments from April 6 and contains reporting and budget information from the April 6 staff memo for continued discussion.

A proposed substitute bill that reflects areas of consensus reached in Committee on April 6 and additional proposed changes will be handed out separately at Committee. Issues that were raised by Councilmembers that have analysis pending are included in a parking lot as Attachment 1.

**Proposed Amendments from April 6**

The Committee considered six proposed amendments on April 6 for discussion purposes only, including the following:

1. Community outreach language clarifying the role of CPC in assisting OPA
2. CPC percentage composition of the search committee for the OPA Director
3. CPC percentage composition of the search committee for the Inspector General
4. Performance evaluation for the OPA Director
5. Performance evaluation for the Inspector General
6. A large volume of changes, including
  - a. clarifying the purpose and roles of the three entities,
  - b. adding Whereas recitals and findings,
  - c. prohibiting oversight entity staff from being former SPD sworn officers,
  - d. requiring use of OPA complaint navigators,
  - e. following the Seattle Ethics and Elections Commission process for appointment of the CPC Executive Director,
  - f. substituting the public safety committee instead of a Select Committee in appointment processes for the OPA Director and Inspector General, and
  - g. making other clarifications and technical changes.

## **Reporting**

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>1</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. As a result, reporting has the potential to require a significant amount of resources both for those doing the reporting and 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.

The accountability legislation references at least 33 written report requirements with timing due dates amongst the three oversight entities each year. These reporting requirements 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

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<sup>1</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.

legislation which did not specify frequencies (including performance audits, which have the potential to be a significant body of work).

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 the reports and bandwidth of the receiving entity to absorb the information.

#### **Issue #1: 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.

#### **Budget**

The ability 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>2</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

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<sup>2</sup> <https://www.communityrenewalsociety.org/sites/default/files/FAIR%20COPS%20Ordinance.pdf>

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 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. Table 1 below illustrates the basic funding approach proposed by the Mayor’s Office.

**Table 1: Mayor’s FTE-Based Budgeting Model Example Funding**

<b>Oversight Function</b>	<b>2017 Budget</b>	<b>2017 – Total Funded Sworn SPD Positions</b>	<b>Incremental Oversight Funding per Each Additional Sworn Position (2017 Budget divided by 2017 Positions)</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 #2: 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*

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**

Two areas remaining to be discussed are discipline and investigation processes. Staff will also continue to work on reporting, budgeting, and parking lot items.

- May 5, 9:30-11:30 a.m. – Special GESCNA meeting on accountability
- 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

### **Attachment 1 –Parking Lot Issues**

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

## **ATTACHMENT 1: 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)**

- When SPD is required to bring misconduct or policy matters to OPA's attention in a timely manner under 3.29.300, should there be an exception for issues arising through EAP process?
- 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 each public defense and civil liberties CPC Commissioner have one of those subject areas of expertise or both?
- Should standards be imposed, such as national auditing standards?
- Should oversight entities, CPC in particular, have a role during the bargaining process
- Examine existing OPARB and other code provisions for any language that should be preserved, such as regular transmittal of unredacted files to CPC 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