SEATTLE CITY COUNCIL
CENTRAL STAFF

December 7, 2020

M E M O R A N D U M

To: Public Safety and Human Services Committee
From: Dan Eder, Interim Director, and Greg Doss, Analyst
Subject: Council Bill (CB) 119974 - Subpoena Notification Bill

On December 8, 2020, the Public Safety and Human Services Committee ("PSHS") will discuss CB 119974 which would create a process for the Office of Police Accountability (OPA) Director and the Inspector General of the Office of Inspector General for Public Safety (OIG) to provide notice to affected parties when issuing subpoenas.

Bill Summary:

CB 119974 would add a notification process to the OPA Director's and Inspector General's existing subpoena powers. The notification process would govern how and when notification must be provided. The intent of the bill is to enhance due process by ensuring the recipient of the subpoena and the person whose information is sought (if different from the recipient) is aware of their due process rights when the City has issued such subpoenas.

CB 119974 would require notice to be given at the same time the OPA Director or Inspector General issues subpoenas. The notice must state:

A. The purpose of the subpoena and the basis for seeking the information;
B. An acknowledgment that the subpoena may be contested in court;
C. A statement describing the privileges and immunities of anyone who provides oral or documentary information; and
D. A statement that it would require a search warrant or equivalent to use any evidence obtained through the subpoena in a separate criminal proceeding.

Analysis:

The Seattle Municipal Code (SMC) currently includes provisions empowering the OPA Director and the Inspector General to issue legally binding subpoenas to compel employees or other entities (the Seattle Police Department, private banks, private cell phone carriers, etc.) to provide evidence in support of an investigation or systemic review. However, before this SMC-authorized power can become fully effective, the City must first negotiate terms governing such subpoenas in a collective bargaining agreement with affected employees.

The Seattle Police Management Association (SPMA) represents Lieutenants and Captains. The current collective bargaining agreement between the City and SPMA is silent on the issue of subpoenas and accepts the provisions of the Accountability Ordinance (ORD 125315) unless the

provisions are specifically excluded (see below for background on Ord. 125315). As a result, the OPA Director and Inspector General currently have subpoena power related to investigations of Lieutenants and Captains. CB 119974 would spell out due process and notification protections for any subpoenas that the OPA Director and Inspector General issue related to employees represented by SPMA.

The Seattle Police Officers Guild (SPOG) represents Officers and Sergeants. In contrast to the SPMA agreement, the current collective bargaining agreement between the City and SPOG contains a re-opener on subpoena authority because the parties did not come to an agreement on how the City's subpoena authority might extend to officers, families, and their personal records held by third parties. As a result, the OPA Director and Inspector General do not currently have full subpoena power related to investigations of Officers and Sergeants. CB 119974 provisions would therefore become effective for Officers and Sergeants only after the City and SPOG agree on applicable collective bargaining terms.

Background:

In 2017, the Police Accountability Ordinance (ORD 125315) authorized the OPA Director to "issue a subpoena at any stage in an investigation if evidence or testimony material to the investigation is not provided to OPA voluntarily, in order to compel witnesses to produce such evidence or testimony. If the subpoenaed individual or entity does not respond to the request in a timely manner, the OPA Director may ask for the assistance of the City Attorney to pursue enforcement of the subpoena through a court of competent jurisdiction" (Seattle Municipal Code Section 3.29.125.E).

The same Police Accountability Ordinance also authorized the Inspector General to "[i]ssue a subpoena if evidence or testimony necessary to perform the duties of OIG set forth in this Chapter 3.29 is not provided voluntarily, in order to compel witnesses to produce such evidence or testimony. If the subpoenaed individual or entity does not respond to the request in a timely manner, the Inspector General may ask for the assistance of the City Attorney to pursue enforcement of the subpoena through a court of competent jurisdiction" (SMC Section 3.29.230.K).

Next Steps:

The PSHS Committee may consider voting on CB 119974 at the special meeting scheduled for December 17, 2020.