

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to civilian and community oversight of the police; establishing a process for investigating complaints naming the Chief of Police; adding a new subchapter V to Chapter 3.29 of the Seattle Municipal Code; and amending Section 49 of Ordinance 125315 to renumber the existing Subchapter V of Chapter 3.29 and Sections 3.29.500 and 3.29.510 of the Seattle Municipal Code.

..body

WHEREAS, The City of Seattle’s accountability system established in Ordinance 125315 (the Accountability Ordinance) with a civilian-led misconduct investigations unit, an independent police inspector general for public safety, and a strong community-based oversight commission, has strength not found in other models of oversight, and addresses systemic weaknesses with which other systems have struggled; and

WHEREAS, the goals of Ordinance 125315 are to institute a comprehensive and lasting police oversight system that ensures police services are delivered to the people of Seattle in a manner that fully complies with the Constitution and laws of the United States and State of Washington, effectively ensures public and officer safety, and promotes public confidence in the Seattle Police Department (SPD) and the services that it delivers; and

WHEREAS, a lasting police oversight system that ensures police services are delivered to the people of Seattle benefits from an ongoing practice of re-examining and improving processes, particularly after the occurrence of a significant event that becomes a catalyst for system change or adaptation; and

WHEREAS, such an event occurred when three Office of Police Accountability (OPA) Complaints were filed in 2020 against the Chief of the Seattle Police Department, and the complaints were logged by OPA as follows: 1. OPA 2020-0345 (tear gas used after 30

1 day ban); 2. OPA 2020-0355 (sharing misinformation about crime in CHAZ/CHOP); and
2 3. OPA 2020-0476 (Chief lied about dispatch error during CHOP shooting); and

3 WHEREAS, the OPA Dashboard currently shows that each of these complaints is less than 50
4 percent investigated and that the OPA Director requested over 18 months ago that then-
5 Mayor Durkan forward the complaints for investigation to an agency external to The City
6 of Seattle; and

7 WHEREAS, Mayor Harrell's office has indicated that the complaints have been forwarded to an
8 external agency for investigation; and

9 WHEREAS, the OPA Policy Manual (OPA Manual) identifies a process for determining
10 whether OPA or an outside agency would investigate the Chief of Police, but the manual
11 does not include policies that can protect against any abuse of discretion that might occur
12 if the Mayor or OPA Director are involved in the complaint or seek to conceal the
13 complaint; and

14 WHEREAS, OPA's current procedures do not provide for notification of elected officials upon
15 commencement of an investigation or for an evaluation of the credibility of the
16 complaint, as should be conducted by an independent oversight entity such as the Office
17 of the Inspector General for Public Safety (OIG); and

18 WHEREAS, the Seattle Department of Human Resources houses the City of Seattle's
19 Investigations Unit, which investigates complaints and alleged violations of applicable
20 City Personnel Rules and/or related policies, including allegations of harassment,
21 discrimination, and misconduct such as those that are prohibited under the Equal
22 Employment Opportunity Act; and

1 WHEREAS, the Accountability Ordinance did not contemplate the processes necessary to ensure
2 that a City-led investigation of the Chief of Police is fair, transparent, and free of any
3 potential conflicts of interest; and

4 WHEREAS, although the OPA Manual establishes a process and structure for complaint review
5 that is consistent with the relevant collective bargaining agreements, the same process
6 and structure may not be appropriate for an investigation into the Chief of Police;

7 NOW, THEREFORE,

8 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

9 Section 1. A new Subchapter V is added to Chapter 3.29 of the Seattle Municipal Code as
10 follows:

11 **Subchapter V Investigation of the Chief of Police**

12 **3.29.500 Definitions**

13 As used in this Subchapter V:

14 “Contact Log” means the term as it is defined in the OPA Manual. “Contact Log”
15 includes circumstances when: (a) the complaint does not involve a potential policy violation by
16 an SPD employee; (b) there is insufficient information to proceed with further inquiry; (c) the
17 complaint has already been reviewed or adjudicated by OPA and/or OIG; or (d) the complaint
18 presents fact patterns that are clearly implausible or incredible, and there are no indicia of other
19 potential misconduct.

20 “Expedited Investigation” means the term as it is defined in the OPA Manual. “Intake
21 Investigation” includes circumstances when a complaint alleges a violation of SPD policy or
22 other category of violation that OPA is required by law and policy to investigate. However,
23 OPA, with the agreement of OIG, determines that findings can be reached based on the intake

1 investigation, and no further investigation needs to be conducted. This classification is most
2 appropriate when: (a) the evidence shows that misconduct did not occur as alleged; (b) minor
3 misconduct occurred, but OPA does not deem corrective action other than discipline to be
4 appropriate; or (c) minor misconduct may have occurred, but there is a systemic issue with SPD
5 policy or training for which OPA deems a Management Action Recommendation (MAR) to be
6 appropriate.

7 “Intake Investigation” means the term as it is defined in the OPA Manual.

8 “Investigation,” when used to describe a type of classification, means the term as it is
9 defined in the OPA Manual.

10 “Investigative plan,” when used to describe a document, means a document that aims to
11 specify and direct, as required, the investigative aims and objectives, for which purpose it may be
12 continually updated until such time as the investigation is closed.

13 “Non-City entity” means an entity other than The City of Seattle.

14 “Supervisor Action” means the term as it is defined in the OPA Manual. “Supervisor
15 Action” includes circumstances when a minor policy violation or personnel issue is best
16 addressed through training, communication, or coaching from the employee’s supervisor.

17 **3.29.510 OPA intake, classification, and investigation scoping**

18 A. If the Chief of Police is named in a complaint, the initial screening process required
19 under the OPA Manual shall include the immediate creation of a case file and the immediate
20 notification of the OPA Director.

21 B. OPA shall within 30 calendar days provide notice of the complaint to the Chief of
22 Police. A civilian supervisor investigator shall be assigned to complete the intake of the

1 complaint, which shall consist of a preliminary process that is designed to answer relevant
2 factual questions and ensure the collection and preservation of time-sensitive evidence.

3 C. OPA shall examine the results of the intake process to determine whether any laws or
4 SPD policies would have been violated if the alleged actions are later proven to be true. OPA
5 shall classify the complaint according to the OPA Manual categories of Contact Log, Supervisor
6 Action, Expedited Investigation, or Investigation.

7 D. If the OPA Director determines that the intake warrants an investigation, then they
8 will determine:

9 1. Whether OPA, the Seattle Department of Human Resources (SDHR), or a non-
10 City entity will perform the investigation. In making this determination OPA shall consider
11 whether there are any conflicts of interest, real or potentially perceived, that could undermine the
12 public trust if the investigation is conducted by OPA or SDHR; and

13 2. Whether criminal charges could result from the investigation, and, if so,
14 whether an SPD criminal investigation undermine public trust.

15 3. Whether the investigation could result in a finding of a violation or violations of
16 the Equal Employment Opportunity Act.

17 E. If the OPA Director determines that the intake warrants an investigation, then the
18 Director shall prepare an investigative plan that includes, at a minimum, information that will be
19 necessary in the case that OIG must issue a request for proposal for an investigation by a non-
20 City entity.

21 F. OPA shall within 30 calendar days route to OIG all documentation of the intake and
22 classification process, including the recommendations from subsection 3.29.510.D regardless of
23 the classification decision.

1 **3.29.520 OIG review**

2 A. OIG shall conduct a review of OPA’s intake investigation and classification to ensure
3 that (1) the intake investigation was timely, thorough, and objective, and (2) OIG concurs with
4 the classification determination.

5 B. If OIG does not concur with OPA’s classification determination, the OIG
6 determination shall prevail and shall be considered definitive for the complaint.

7 C. If the classification determination is other than Contact Log, Supervisor Action, or
8 Expedited Investigation, then OIG shall review the OPA recommendation on whether a full
9 investigation should be conducted and whether that investigation should be (1) conducted by
10 either OPA or SDHR; or (2) conducted by a non-City entity. OIG shall then determine whether it
11 concurs with OPA’s recommendations. In making this determination, OIG shall consider
12 subsections 3.29.510.D.1 and 3.29.510.D.2. If OIG and OPA do not concur, the OIG
13 determination shall prevail and shall be considered definitive for the complaint.

14 D. If OPA has determined that the investigation could result in a finding of a violation or
15 violations of the Equal Employment Opportunity Act, then OIG shall review the OPA
16 recommendation on whether a full investigation should be conducted by SDHR or by a non-City
17 entity. OIG shall then determine whether it concurs with OPA’s recommendations. In making
18 this determination, OIG shall consider subsection 3.29.510.D.1. If OIG and OPA do not concur,
19 the OIG determination shall prevail and shall be considered definitive for the complaint.

20 E. Where OIG has determined, either solely or with the concurrence of OPA, that a non-
21 City entity should conduct the investigation, OIG shall consult with OPA to (1) discuss which of
22 these two agencies should manage the contract for that entity’s work and (2) identify one or more
23 candidate entities to conduct the investigation. However, following this consultation OIG shall

1 solely make decisions about (1) whether the investigation contract should be managed by OPA
2 or OIG and (2) which non-City entity should conduct the investigation.

3 E. If OIG believes that criminal charges could result from the investigation, then it shall
4 consult with OPA and determine whether SPD or a non-City entity would be most appropriate
5 for the investigation. If OIG and OPA do not concur, the OIG determination shall prevail and
6 shall be considered definitive for the complaint.

7 **3.29.530 Notification and reporting**

8 A. Where the classification determination is Contact Log, Supervisor Action, or
9 Expedited Investigation, OIG shall include the finding in its annual report required under
10 Subchapter II of this Chapter 3.29. No other notification or reporting is required.

11 B. Where the classification determination is other than Contact Log, Supervisor Action,
12 or Expedited Investigation, and the investigation will be:

13 1. Conducted by OPA or SDHR, OPA shall immediately notify the Mayor, the President
14 of the City Council, the Chair of the Council's public safety committee, the Executive Director
15 and Co-Chairs of the Community Police Commission, the City Attorney, the City Director of
16 Human Resources, and the complainant. Notification shall consist of: (1) the classification type;
17 (2) whether OPA or SDHR will conduct the investigation; (3) the rationale for the determination
18 as supported by the factors in subsections 3.29.510.D.1 and 3.29.510.D.2; and (4) if the
19 investigation will be conducted by SDHR, whether the investigation could result in findings of a
20 violation or violations of the Equal Employment Opportunity Act.

21 2. Conducted by a non-City entity, OIG shall immediately notify the entities in
22 subsection 3.29.530.B.1. by OIG pursuant to subsection 3.29.530.B.2 shall consist of: (1) the
23 classification type; (2) the non-City entity by whom OIG has determined, either solely or with

1 the concurrence of OPA, that the investigation be conducted; and (3) the rationale for the
2 determination as supported by the factors in subsections 3.29.510.D.1 and 3.29.510.D.2.

3 F. Notification pursuant to this Section 3.29.530 shall include no more information that
4 would otherwise be available to the public on the OPA website, so as to not compromise the
5 integrity of the investigation.

6 **3.29.540 Assigning the investigation**

7 A. Any investigation conducted by OPA shall be conducted exclusively by civilian
8 personnel. If OIG, either solely or with the concurrence of OPA, has determined that an
9 investigation should be conducted by OPA and OPA is unable to commit that it will be
10 conducted exclusively by civilian personnel, then the investigation shall be reassigned to a non-
11 City entity.

12 B. If the investigation could result in findings of a violation or violations of the Equal
13 Employment Opportunity Act and OIG has determined, either solely or with the concurrence of
14 OPA, that it should be conducted by SDHR, then SDHR shall have the opportunity to notify OIG
15 that it declines to conduct the investigation. In this case, OIG shall consult with OPA to (1)
16 discuss which of these two agencies should manage the contract for the investigation to be
17 conducted by a non-City entity and (2) identify one or more candidate entities to conduct the
18 investigation. However, following this consultation OIG shall solely make decisions about (1)
19 whether the investigation contract should be managed by OPA or OIG and (2) which non-City
20 entity should conduct the investigation.

21 C. If criminal charges could result from an investigation and OIG, either solely or with
22 the concurrence of OPA, has determined that an SPD investigation could compromise public
23 trust, then OIG shall consult with the Director of the State Office of Independent Investigations

1 (OII) to identify the investigative agency. The OII contract shall be managed by OIG, who shall
2 solely receive the final investigation and findings.

3 **3.29.550 Investigation**

4 A. The Chief shall fully cooperate with any investigation. When necessary, the Inspector
5 General for Public Safety or OPA Director may issue on behalf of an OPA investigation, or an
6 investigation conducted by a non-City entity, a subpoena consistent with Section 3.29.125 and
7 Ordinance 126264.

8 B. Where the investigation is conducted by OPA, the investigation shall follow the
9 policies and procedures identified in the OPA Manual and accord with any relevant collective
10 bargaining agreements, except: (1) the OPA Director shall not develop a range of recommended
11 discipline; and (2) the investigation file shall not be presented to the Chief.

12 C. Where the investigation is conducted by SDHR, the investigation shall be conducted
13 consistent with that unit's standards and practices and in accordance with any relevant collective
14 bargaining agreements.

15 **3.29.560 OIG review of the intake investigation, classification, and investigation**

16 A. OIG shall immediately notify the entities in subsection 3.29.530.B if it: (1) is unable
17 to determine whether the OPA intake was timely, thorough, and objective; or (2) disagrees with
18 the OPA Director's classification decision.

19 B. OIG shall conduct a review of any investigation completed by OPA or by SDHR,
20 consistent with the requirements of Section 3.29.260, to determine whether the investigation was
21 timely, thorough, and objective.

1 C. OIG shall conduct a review of any investigation completed by any non-City entity,
2 consistent with the requirements of Section 3.29.260, to determine whether the investigation was
3 timely, thorough, and objective.

4 D. To determine whether any investigation completed by OPA, by SDHR, or by a non-
5 City entity was timely, thorough, and objective, OIG shall retain the authority to access any
6 investigative materials that will support making the determination.

7 E. OIG shall immediately notify the entities in subsection 3.29.530.B if it is unable to
8 determine whether an outside investigation was timely, thorough, and objective. In such case,
9 OIG shall choose a new non-City entity to perform a new investigation.

10 **3.29.570 Transmittal of investigative results**

11 A. For any investigation completed by OPA, upon determination by OIG that the
12 investigation was timely, thorough, and objective, OPA will transmit the investigation file and
13 findings to the Mayor.

14 B. For any investigation completed by SDHR, upon determination by OIG that the
15 investigation was timely, thorough, and objective, OIG will transmit the investigation and
16 findings, as determined by SDHR, to the Mayor.

17 C. For any investigation conducted by a non-City entity, upon determination that the
18 investigation was timely, thorough, and objective, OIG will transmit the investigation and
19 findings, as determined by the non-City entity, to the Mayor.

20 **3.29.580 Notification of investigative results**

21 Within 30 calendar days of receiving the results of the investigation, the Mayor shall
22 communicate to the entities in subsection 3.29.530.B:

1 A. A statement on the investigation and its findings, including whether the Chief's
2 actions were consistent with SPD department policy as articulated in the SPD police manual, the
3 City's values, and SPD's values to protect and serve;

4 B. Notification of whether the Mayor intends to discharge the Chief or take any
5 disciplinary action against the Chief, regardless of when such action will be final; and

6 C. Investigative detail that mirrors the detail that would otherwise be provided to the
7 public by OPA in a closed case summary, discipline action report, or other related report.

8 Section 2. Section 49 of Ordinance 125315 is amended as follows:

9 **Subchapter VI Construction and implementation**

10 **~~((3.29.500))~~ 3.29.600 Construction**

11 A. In the event of a conflict between the provisions of this Chapter 3.29 and any other
12 City ordinance, the provisions of this Chapter 3.29 shall govern.

13 B. It is the express intent of the Council that, in the event a subsequent ordinance refers to
14 a position or office that was abolished by the ordinance introduced as Council Bill 118969, that
15 reference shall be deemed to be the new position or office created by the ordinance introduced as
16 Council Bill 118969, and shall not be construed to resurrect the old position or office unless it
17 expressly so provides by reference to the ordinance introduced as Council Bill 118969.

18 C. It is the express intent of the Council that, in the event a subsequent ordinance refers to
19 or amends a section or subsection of the Seattle Municipal Code or a previously enacted
20 ordinance that is amended or recodified in the ordinance introduced as Council Bill 118969, but
21 the later ordinance fails to account for the change made by the ordinance introduced as Council
22 Bill 118969, the two sets of amendments should be given effect together if at all possible. The

1 code reviser may publish the section or subsection in the official code with all amendments
2 incorporated therein.

3 D. The terms and provisions of this Chapter 3.29 are not retroactive and shall apply only
4 to those rules, orders, actions, or proceedings that occur, or have been initiated, on or after the
5 effective date of the ordinance introduced as Council Bill 118969.

6 E. Nothing in this Chapter 3.29 creates or is intended to create a basis for any private
7 cause of action.

8 F. The provisions of this Chapter 3.29 are declared to be separate and severable. The
9 invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Chapter
10 3.29, or the invalidity of its application to any person or circumstance, does not affect the
11 validity of the remainder of this Chapter 3.29, or the validity of its application to other persons or
12 circumstance.

13 ~~((3.29.510))~~ **3.29.610 Implementation**

14 A. Provisions of the ordinance introduced as Council Bill 118969 subject to the Public
15 Employees' Collective Bargaining Act, chapter 41.56 RCW, shall not be effective until the City
16 completes its collective bargaining obligations. As noted in Section 3.29.010, the police are
17 granted extraordinary power to maintain the public peace, including the power of arrest and
18 statutory authority under RCW 9A.16.040 to use deadly force in the performance of their duties
19 under specific circumstances. Timely and comprehensive implementation of this ordinance
20 constitutes significant and essential governmental interests of the City, including but not limited
21 to (a) instituting a comprehensive and lasting civilian and community oversight system that
22 ensures that police services are delivered to the people of Seattle in a manner that fully complies
23 with the United States Constitution, the Washington State Constitution and laws of the United

1 States, State of Washington and City of Seattle; (b) implementing directives from the federal
2 court, the U.S. Department of Justice, and the federal monitor; (c) ensuring effective and
3 efficient delivery of law enforcement services; and (d) enhancing public trust and confidence in
4 SPD and its employees.

5 For these reasons, the City shall take whatever steps are necessary to fulfill all legal
6 prerequisites within 30 days of Mayoral signature of this ordinance, or as soon as practicable
7 thereafter, including negotiating with its police unions to update all affected collective
8 bargaining agreements so that the agreements each conform to and are fully consistent with the
9 provisions and obligations of this ordinance, in a manner that allows for the earliest possible
10 implementation to fulfill the purposes of this Chapter 3.29.

11 B. Until the effective date of the ordinance introduced as Council Bill 118969, the current
12 accountability system shall remain in place to the extent necessary to remain consistent with
13 provisions of the Consent Decree in the matter of United States of America v. City of Seattle, 12
14 Civ. 1282 (JLR).

15 C. Provisions of the ordinance introduced as Council Bill 118969 for which the City has
16 fulfilled its collective bargaining requirements, if any, will go into effect after Court approval in
17 the matter of United States of America v. City of Seattle, 12 Civ. 1282 (JLR) and 30 days after
18 Mayoral signature, or after 40 days if the Mayor fails to sign the bill. Consistent with Section
19 ~~((3.29.500))~~ 3.29.600, any provisions for which bargaining is not yet complete shall not go into
20 effect until collective bargaining obligations are satisfied.

1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the _____ day of _____, 2022,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2022.

7 _____
8 President _____ of the City Council

9 Approved / returned unsigned / vetoed this _____ day of _____, 2022.

10 _____
11 Bruce A. Harrell, Mayor

12 Filed by me this _____ day of _____, 2022.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)
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20 Attachments: