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CM BURGESS - DISCIPLINARY/SPD PROCESSES - AMENDMENT 2

This amendment would amend CB 118969 to make changes to investigation, discipline, and appeal processes, clarify other SPD provisions, and make technical corrections.

~~((3.28.800))~~ **3.29.100 Office of ((Professional)) Police Accountability established ((created—**
)) = Functions and authority ((=))

J. OPA shall be responsive to community needs and concerns through means including, but not limited to, the following:

1. Maintaining frequent and regular communications with complainants and named employees about the status of their investigations, including information to complainants about disciplinary appeal and grievance processes and any outcomes that result in the modification of final findings and discipline determinations;

3.29.130 Office of Police Accountability – Classification and investigation timelines

D. If an SPD employee fails to timely refer a complaint to OPA the failure to refer shall also constitute misconduct subject to complaint and investigation, and discipline under this Chapter 3.29 and the authority of the Chief. OPA shall initiate a complaint and investigation of such failure to timely refer.

3.29.420 Disciplinary, grievance, and appeals policies and processes

1 A. SPD disciplinary, grievance, and appeal policies and processes shall be timely,
2 fair, consistent, and transparent.

3 1. SPD shall track all records of Chief disciplinary determinations. The OPA
4 Director and the Inspector General shall have unfettered access to this information, and SPD
5 shall report on disciplinary patterns in such a way that the public can assess whether the Chief of
6 Police is exercising disciplinary authority in a fair and consistent manner.

7 2. To help ensure timeliness, ~~there shall be set and enforceable timeframes~~
8 ~~for any named employee to be notified by SPD of proposed findings and discipline, for any~~
9 ~~named employee and/or the named employee’s union representative to request a due process~~
10 ~~hearing, for the Chief to issue a final finding and disciplinary decision, and for any named~~
11 ~~employee to file an appeal.~~ the following deadlines shall apply to the disciplinary and appeal
12 processes:

13 a. OPA shall complete investigations within the period set forth in Section
14 3.29.130.

15 b. SPD shall provide a copy of any proposed Disciplinary Action Report
16 or successor disciplinary action document to the affected employee via electronic
17 communication. If the employee seeks a due-process meeting with the Chief or the Chief’s
18 designee, the employee must communicate that request to the Chief’s office electronically within
19 ten days of the date of receipt of the disciplinary action document.

20 c. The Chief or the Chief’s designee shall hold the due process meeting
21 within 30 days of the employee’s request.

1 d. The Chief or the employee may request one reasonable postponement
2 of the due-process meeting, not to exceed two weeks from the date of the originally scheduled
3 meeting.

4 e. The Chief shall issue a final disciplinary decision within two weeks of
5 the due-process meeting. This decision may be delivered electronically, with an electronic copy
6 sent to the employee’s collective bargaining representative.

7 f. An employee may appeal a disciplinary decision as set forth in Chapter
8 4.08.

9 g. The Public Safety Civil Service Commission (PSCSC) shall adhere to
10 the timelines set forth in Chapter 4.08.

11 3. SPD shall implement discipline when it is imposed or shortly thereafter,
12 not upon conclusion of any disciplinary appeal process.

13 4. The Chief shall have the authority to place an SPD employee on leave
14 without pay prior to the initiation or completion of an OPA administrative investigation where
15 the employee has been charged with a felony or gross misdemeanor; where the allegations in an
16 OPA complaint could, if true, lead to termination; or where the Chief otherwise determines that
17 leave without pay is necessary for employee or public safety, or security or confidentiality of law
18 enforcement information. In any case of such leave without pay, the employee shall be entitled to
19 back pay if reinstated, less any amounts representing a sustained penalty of suspension.

20 5. No disciplinary action will result from a complaint of misconduct where
21 ~~the complaint is made to OPA~~ misconduct comes to the attention of OPA more than ~~three~~ five
22 ~~years after the date of the incident which gave rise to the complaint~~ alleged misconduct, except
23 where the ~~OPA complaint alleges~~ alleged misconduct involves criminal conduct law violations,

1 ~~dishonesty that is of a material nature, or Type III Force, as defined in the SPD policy manual or~~
2 ~~by applicable laws, or that where the named employee has concealed acts~~ alleged act of
3 misconduct was concealed.

4 6. All appeals related to employee discipline shall be governed by this
5 Chapter 3.29 and Chapter 4.08. Only appeals for which the hearing has already been scheduled
6 prior to the effective date of the ordinance introduced as Council Bill 118969—including
7 Disciplinary Review Board proceedings for officers and sergeants, and arbitration proceedings
8 for lieutenants and captains—shall continue in accordance with the relevant contractual or
9 legislated procedures. ~~After~~ As of the effective date of the ordinance introduced as Council Bill
10 118969, all other disciplinary appeals may proceed only under ~~this Chapter~~ this Chapter 3.29 and
11 Chapter 4.08.

12 7. Public Safety Civil Service Commission

13 a. All appeals related to SPD employee discipline shall be open to the
14 public and shall be heard by PSCSC.

15 b. The PSCSC shall be composed of three Commissioners, none of
16 whom shall be current City employees or individuals employed by SPD within the past ten years,
17 who are selected and qualified in accordance with subsection 4.08.040.A.

18 c. Oral reprimands, written reprimands, “sustained” findings that are
19 not accompanied by formal disciplinary measures, and alleged procedural violations may be
20 processed through grievance processes established by the City Personnel Rules or by Collective
21 Bargaining Agreements, but no grievance procedure may result in any alteration of the discipline
22 imposed by the Chief. Such grievances are not subject to arbitration and may not be appealed to
23 the PSCSC or any other forum.

1 F. SPD shall ensure that its “take-home” policy for SPD vehicles, and the
2 opportunities for assignments that provide additional financial remuneration, are ~~fair and~~
3 ~~operationally efficient~~ consistent with SPD accountability practices and an effective use of
4 taxpayer resources.

5 ***

6 Section 45. Section 4.08.040 of the Seattle Municipal Code, ~~which section was~~ last
7 amended by Ordinance 123744, is amended as follows:

8 **4.08.040 –Public Safety Civil Service Commission((;))**

9 A. There is created a Public Safety Civil Service Commission composed of three
10 members. ~~((One))~~ Two members shall be appointed by the Mayor ~~((;))~~ and one by the City
11 Council ~~((and one elected by and representing employees))~~. Commissioners shall be selected
12 using merit-based criteria and shall have appropriate expertise and objectivity regarding
13 disciplinary and promotional decisions. The Commissioners’ terms shall be staggered; initial
14 appointments terms shall be for one year for one Mayoral appointment, two years for the
15 Council appointment, and three years for the ~~third~~ second Mayoral appointment. ~~=Subsequently,~~

16 ~~((The))~~ the term of each Commissioner shall be three full years ~~((; provided, that the term of the~~
17 ~~first Council Commissioner shall be two years and the term of the first Mayor's Commissioner~~
18 ~~shall be one year.))~~ Each term shall commence on January 1 ~~((st))~~, and appointments to fill
19 vacancies shall be for the unexpired term. A Commissioner shall be eligible to serve three full
20 terms plus any time spent filling a vacancy for an unexpired term or a shortened initial term.

21 Two Commissioners shall constitute a quorum. ~~((-))~~ Commissioners may receive compensation
22 for their services as may be fixed from time to time by ordinance. The term of the first
23 Commissioners appointed after the effective date of the ordinance introduced as Council Bill

1 118969 shall begin at the time of appointment, but shall be deemed to begin for the purpose of
2 calculating term length on the following January 1. Commissioners who will continue to hold
3 office after the effective date of the ordinance introduced as Council Bill 118969 may continue
4 to hold their positions until those first terms begin; they may also be reappointed by the Mayor
5 or Council in accordance with this subsection 4.08.040.A.

6 B. ~~((Officers and employees in the Mayor's office, on the City Council staff, and on~~
7 ~~the Public Safety Civil Service Commission staff, and employees holding exempt~~
8 ~~positions))Current City of Seattle employees, as well as individuals employed by SPD within
9 the past ten years, shall be ineligible for the office of Commissioner.~~

10 ~~((C. All regular and probationary employees who are members of this system are~~
11 ~~eligible to vote for an employee-selected Public Safety Civil Service Commissioner.~~

12 D. ~~Election shall be administered by the City Clerk. Election shall be held during the~~
13 ~~week beginning on the first Monday in November, 1987, and every third year thereafter. The~~
14 ~~City Clerk shall give notice of such election and furnish ballots therefor. Balloting shall be~~
15 ~~permitted by mail postmarked between the hours of 12:01 a.m. Monday to 12 midnight of the~~
16 ~~succeeding Friday of the election week. Provided however that when there is a holiday during~~
17 ~~that week, ballots may be postmarked no later than 12 midnight the following Monday. Ballots~~
18 ~~may also be deposited during regular office hours at polling places prescribed by the City Clerk.~~

19 E. ~~Not earlier than the first Monday in October of each year in which a~~
20 ~~Commissioner will be elected, nor later than the succeeding Friday, any person who is to~~
21 ~~become a candidate for Commissioner shall file a declaration of candidacy for office with the~~
22 ~~City Clerk, on a form furnished by the City Clerk.~~

23 F. ~~The candidate receiving the majority of votes cast shall win the election. If no~~

1 candidate receives a majority of the votes cast, the two candidates receiving the highest and
2 next highest number of votes shall be candidates in a runoff election at a date and time to be
3 determined by the City Clerk. The runoff election be scheduled so that completion of balloting
4 and certification shall occur before 5 P.M. on the last business day of December of the election
5 year. Notice and balloting shall be the same as for a regular Commissioner's election.

6 G.—— Vacancies occurring in the office of the employee's Commissioner shall be filled
7 at a special election to be called for such purpose by resolution of the City Council.

8 H.—— No City employee who is elected to the Public Safety Civil Service Commission
9 shall suffer a monetary loss or other penalty on account of his/her absence from his/her regular
10 position during regular hours while performing the duties of Commissioner.

11 I.—— Candidates for Public Safety Civil Service Commission shall comply with the
12 terms of the Fair Campaign Practices Chapter 2.04 regarding filing of disclosure statements
13 regarding campaign financing.))

14 ((F-))C. Pursuant to ((the)) City Charter Article XIX, Commissioners may be removed for
15 cause by the City Council following a hearing and the Mayor's ((appointee))appointees may
16 also be removed by the Mayor upon filing a statement of reasons therefor.

17 Section 46. Section 4.08.070 of the Seattle Municipal Code, ~~which section was~~ last
18 amended by Ordinance 124567, is amended as follows:

19 **4.08.070 - Powers and duties of Commission((s))**

20 The Commission shall:

21 ***

22 F. 1. With the support of the Seattle Human Resources Director, prepare a register
23 for each class of positions in this system from the returns or reports of the examiners of the

1 persons whose standing upon examination for such class is not less than the minimum
2 established by the Commission. Persons, when graded, shall take rank upon the register as
3 candidates in the order of their relative excellence as determined by competitive examination.

4 a. Veteran's Preference preference. Veteran's preference in examination and appointment
5 shall be granted as required by federal and state law including RCW ~~((41.08.040 and 41.12.040))~~
6 41.04.010; provided, a person shall be entitled to use such preference only once to successfully
7 attain an appointment or promotion to a position.

8 b. Language Preference preference. An applicant for ~~an SPD~~ a Seattle Police Department
9 (SPD) position deemed fluent in a language other than English may be entitled to have 10
10 percent credit added to his or her the applicant's examination score for initial hiring or promotion.
11 To receive such credit on his or her examination score, the applicant's fluency will be verified by
12 the hiring authority based on a measure to be established by the Department.

13 c. Community Service/Work Experience Preference service/work experience preference.
14 An applicant for an SPD position who has completed service in the Peace Corps, AmeriCorps or
15 other verified equivalent work experience or community service of two years or more may be
16 entitled to have 10 percent credit added to his or her the examination score. An applicant seeking
17 credit for service in the Peace Corps must present a Peace Corps Description of Service (DOS)
18 certifying completion of their service in the Peace Corps. To receive such credit on his or her
19 examination score, an applicant's equivalent work experience or community service will be
20 assessed by the hiring authority based on standards to be established by the Department. For
21 example, equivalent work experience or community service might include professional or
22 volunteer experience providing domestic violence counseling, mental health care, or social
23 services. The equivalent work experience or community service must be confirmed through

1 regular Department background verification processes.

2 2. No applicant for an SPD position may receive more than a single 10 percent credit,
3 which may be either for ~~Veteran’s Preference, Language Preference, or Community Service~~
4 ~~Preference~~ veteran’s preference, language preference, or community service/work experience
5 preference.

6 ***

7 J. ~~((To hear))~~ Hear and determine appeals or complaints respecting the
8 administration of this ~~((chapter))~~ Chapter 4.08, including, but not limited to, all appeals affecting
9 discipline of SPD employees defined in ~~Section~~ subsection 4.08.060.A. In hearing police
10 discipline cases, the Commission may delegate its authority to conduct hearing appeals to a
11 ~~Hearing Officer~~ ~~hearing officer~~ ~~Hearing Officer~~ that it retains ~~who has appropriate expertise and~~
12 ~~objectivity regarding police disciplinary decisions~~, or to a ~~Hearing Officer~~ ~~hearing officer~~ in the
13 City of Seattle Office of the Hearing Examiner, subject to Commission review. Any hearing
14 officer shall have appropriate expertise and objectivity regarding police disciplinary decisions.

15 ***

16 *Section 47 is added by this amendment, with changes to the current Seattle Municipal Code*
17 *shown in double underline.*

18 Section 47. Section 4.08.100 of the Seattle Municipal Code, last amended by Ordinance
19 107791, is amended as follows:

20 **4.08.100 Tenure of employment for firefighters – Removal for cause~~(())~~**

21 A. The tenure of every regular employee who is a member of this system and
22 employed by the Seattle Fire Department (SFD) shall be only during good behavior and
23 acceptable job performance, and any such employee may be removed, suspended, demoted, or

1 discharged for cause. Suspensions shall not exceed ~~((thirty (30)))~~ days. Any regular SFD
2 employee may be removed, suspended, demoted, or discharged by the appointing authority only
3 upon the filing with the Commission of a statement in writing of the reasons therefor, a duplicate
4 of which shall be served upon the employee. Any regular SFD employee so removed, suspended,
5 demoted, or discharged may within ten days from the date of service of such statement, file with
6 the Commission a written demand for a hearing, whereupon, in due course, the Commission
7 shall conduct such hearing. The hearing shall be confined to the determination of the question of
8 whether such removal, suspension, demotion, or discharge was made in good faith for cause.
9 After such hearing, the Commission may affirm the action of the appointing authority, or if it
10 shall find that the action was not made in good faith for cause, shall order the immediate
11 reinstatement or reemployment of such person in the office, place, position or employment from
12 which such person was removed, suspended, demoted, or discharged. The Commission upon
13 such hearing, in lieu of affirming the removal, may modify the order of removal, suspension,
14 demotion, or discharge by directing a suspension, without pay, for up to ~~((thirty (30)))~~ days,
15 and subsequent restoration to duty, or demotion in classification, grade or pay. The findings of
16 the Commission shall be certified in writing by the appointing authority, and shall be forthwith
17 enforced by such officer.

18 ***

19 Section 48. A new Section 4.08.105 of the Seattle Municipal Code is added to Chapter
20 4.08 as follows:

21 **4.08.105 Tenure of employment for police officers — Removal in good faith for cause**

22 A. The tenure of every police officer who is an employee under this system shall be
23 only during good behavior and acceptable job performance, and any such employee may be

1 removed, suspended, demoted, or discharged in good faith for cause. Suspensions shall not
2 exceed 30 days.

3 1. Any employee removed, suspended, demoted, or discharged may within
4 ten days from the date of electronic service of the final disciplinary decision by the Chief of
5 Police, file with the Commission a written notice of appeal. The notice of appeal may be filed
6 electronically, and the employee shall submit copies of this notice to the City Attorney and the
7 Chief of Police.

8 2. The Commission shall ensure that a hearing is conducted as soon as
9 practicable, but in no event later than three months after submission of the notice of appeal. The
10 hearing shall be confined to the determination of whether the employee’s removal, suspension,
11 demotion, or discharge was made in good faith for cause.

12 3. Within 30 days of a hearing conducted by the Hearing Officer, the
13 Hearing Officer shall issue a recommended decision. If neither party files written objections to
14 the recommended decision within 20 days of the date of the decision, the recommended decision
15 shall be the final decision of the Commission. If either party objects to the decision, the
16 Commission shall set a schedule for briefs and oral argument. The oral argument shall occur in a
17 public meeting of the Commission and shall be held within 60 days of the date of the
18 recommended decision. The Commission will review the recommended decision and, within 30
19 days of the oral argument, issue a final determination whether the disciplinary decision was in
20 good faith for cause, giving deference to the factual findings of the Hearing Officer. Both the
21 recommended decision and the final decision should affirm the disciplinary decision unless the
22 Commission specifically finds that the disciplinary decision was not in good faith for cause, in

1 which case the Commission may reverse or modify the discipline to the minimum extent
2 necessary to achieve this standard.

3 4. The final decision of the Commission shall be certified in writing to the
4 Chief of Police and shall be forthwith enforced by the Chief.

5 5. Any failure by the City to adhere to a deadline in this Chapter 4.08 will
6 not, in itself, invalidate the Chief’s disciplinary decision. The Commission may, however,
7 consider missed deadlines in in determining whether the disciplinary decision is in good faith for
8 cause.

9 B. All hearings pursuant to this Section 4.08.105 shall be open to the public.
10 Hearings shall be held after due notice of the time and place of hearing to the affected employee.
11 The employee has the right to union and legal representation of the employee’s choosing and at
12 the employee’s own expense. Hearings and related deadlines shall not be delayed more than two
13 weeks due to the unavailability of the City’s or the employee’s union representative or legal
14 counsel.

15 C. The Commission shall cause to be made a record of all such hearings. Upon
16 request, the Commission shall furnish such record to the employee.

17 Section ~~4.749~~. A new Subchapter V, which includes new Sections 3.29.500 and 3.29.510,
18 is added to Chapter 3.29 of the Seattle Municipal Code as follows:

19 **Subchapter V Construction and ~~Implementation~~implementation**

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22
23 *Renumber sections accordingly.*