

**June 22, 2015 1pm**

**CPC DRAFT LEGISLATION TO ENHANCE CIVILIAN OVERSIGHT OF SPD**

**To be submitted with a companion resolution related to intended next steps on police accountability**

**Chapter 3.28 - POLICE DEPARTMENT**

**NEW – Purpose - enhancing and sustaining effective civilian oversight**

Because the police are granted extraordinary power, including the use of lethal force and the authority to constrain personal liberty, and civilian oversight of police is critically important to enhancing the trust, respect and confidence of the community, it is the City's intent to ensure by law rather than solely by policy or directive a comprehensive, independent and sustained approach to civilian oversight of the Seattle Police Department. It is the purpose of this Chapter to provide the authority necessary for that oversight to be as effective as possible.

**Subchapter VII - Office of Police Accountability**

**3.28.800**

**Office of Police Accountability established—Purpose and authority**

- A. There is established as a separate and independent office of the City an Office of Police Accountability (hereinafter "OPA") to provide oversight, guidance and leadership in matters related to police accountability for the Seattle Police Department (hereinafter "SPD") to help ensure the actions of SPD employees are Constitutional; comply with federal, state and local laws, and City and SPD policies; and are respectful, effective, and conducive to the public good. The work of the OPA is intended to instill confidence and public trust in the fairness and integrity of the police accountability system and in the effectiveness and professionalism of SPD.
- B. OPA shall be organizationally housed in SPD, but shall be as operationally independent of SPD as possible in all respects to enhance public trust and confidence in OPA's independence and impartiality. The reason OPA will be an office within SPD is to increase and strengthen OPA's capacity by providing it access to SPD resources, including unfettered and immediate access to all relevant SPD data systems, personnel and evidentiary information necessary for thorough investigations, and to benefit from the insights of sworn personnel in the investigative process.
- C. The OPA Director shall be a civilian, and together with the Independent Police Accountability Auditor (hereinafter "Independent Police Auditor") and the Community Police Commission (hereinafter "CPC"), provide civilian oversight of police conduct and practices.
- D. OPA shall establish and manage processes to receive and investigate allegations of police misconduct that are fair, impartial, consistent, thorough, timely, understandable, transparent and accessible for the public, employees and complainants.
- E. OPA shall initiate and receive complaints of misconduct against SPD employees, and resolve those complaints through investigation, mediation, supervisor action and/or other problem-solving alternatives that provide effective solutions and help deter future misconduct.

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- F. In addition to individual SPD employees having an obligation to refer possible misconduct or non-minor policy violations to OPA, any unit or board established by SPD with authority to conduct administrative investigations, review compliance with policy or recommend possible discipline to the Chief of Police shall have a similar responsibility, codified in the SPD and OPA Policy Manuals, for ensuring complete and timely referral to, and unfettered access by, OPA of any incident reviewed by other SPD investigative units indicating possible misconduct or non-minor policy violations. OPA shall conduct investigations of all such cases referred.
- G. OPA shall identify and make recommendations to correct systemic problems in SPD policies, training, supervision and management, identified in the course of OPA's investigation of possible misconduct or other obligations under this ordinance, to help improve SPD standards and enhance employee conduct.
- H. OPA shall work with SPD to ensure that disciplinary and disciplinary appeals processes are fair, objective, certain, timely and effective and shall report out to the public on any concerns with regard to discipline or disciplinary processes.
- I. OPA shall support the appropriate role of SPD line supervisors in the accountability system, including their responsibilities to mentor employees and to investigate, document and address low-level minor policy violations, performance and customer service concerns at the precinct or unit level.
- J. OPA shall work with SPD and the City Attorney's Office to help reduce or prevent misconduct through identification of trends or patterns arising through complaints, investigations, lawsuits, early warning intervention systems or other means, and, without waiving any attorney-client privilege, shall report to the public recommendations made by OPA to City officials based on those patterns or trends.
- K. OPA shall work with SPD and the City Attorney's Office to ensure as much swiftness and transparency in releasing information associated with police misconduct cases as law and collective bargaining agreements allow.
- L. OPA shall develop or review and oversee SPD in-service training related to the accountability system.

**NEW SECTION**

**Office of Police Accountability—Access and independence**

- A. The OPA Director and OPA staff shall exercise their discretionary and investigatory responsibilities without interference from the Chief of Police, other SPD employees or City officials.

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- B. The OPA Director shall have authority for hiring and supervision of all civilian staff and for the supervision of all sworn staff. The OPA Director and the Chief of Police shall enter into a memorandum of understanding to ensure sworn staff assigned by the Department to OPA as investigators or supervisors have necessary skills and abilities, that the length of assignments are conducive to the operational effectiveness of OPA, and that the OPA Director may decline the assignment of any sworn staff who do not meet the requisite criteria.
- C. Only the OPA Director shall comment publicly on OPA cases under investigation. This does not preclude the Chief of Police from acknowledging that a case has been referred to OPA.
- D. A budget with sufficient staffing and resources to ensure effective OPA operations shall be submitted to the City Council annually by the OPA Director separate and distinct from the SPD budget.
- E. Because OPA is housed organizationally within SPD, in order to enhance public trust in its objectivity, OPA's physical location and communications shall reflect its independence, the impartiality of its investigators and promote public access and transparency.

**3.28.810**

**Office of Police Accountability—Director**

- A. The duties of the OPA Director are to:
  - 1. Manage all functions and responsibilities of OPA.
  - 2. Ensure the effectiveness, accessibility, transparency and responsiveness of the complaint system.
  - 3. Ensure all concerns regarding police misconduct are initiated or referred, classified, and resolved or investigated at the appropriate level.
  - 4. Establish a protocol for investigation of allegations against OPA staff.
  - 5. Make written recommendations to the Chief of Police with regard to findings and discipline upon completion of investigations, and, where requested, advise the Chief and City Attorney with regard to the consideration of findings, discipline and disciplinary appeals.
  - 6. In sustained cases where hearing from the complainant would help the Chief better understand the significance of the concern or weigh issues of credibility, recommend to the Chief that he or she meet with the complainant prior to the Chief making a final disciplinary decision.

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7. Ensure OPA investigative processes employ best practices for administrative investigations and are in compliance with policies in the OPA Manual and the purposes of this Chapter. Direct OPA investigative processes; classify complaints with input from the Independent Police Auditor, as described in Subsection xxx below; ensure timely completion of any additional investigative work requested or directed by the Independent Police Auditor; certify in writing the completion and recommended findings, including possible discipline, of all OPA investigations and convey these recommendations to the Chief of Police; participate in meetings related to recommended findings and discipline and in due process hearings; and testify as needed in disciplinary appeals.
8. Ensure investigations are provided to the Independent Police Auditor for his or her review as soon as possible after the investigator submits them, so there is sufficient time to conduct additional investigation if requested or directed or to consider new material facts raised by the named employee during the due process hearing. The Independent Police Auditor shall review any such further investigation.
9. When necessary, 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 non-SPD 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 order.
10. In accordance with the provisions of this Chapter, report on the timeliness and effectiveness in resolving all OPA complaints, including those investigated by OPA, those referred by OPA for Supervisor Action, those handled directly by frontline supervisors and those mediated, as well as those addressed by other means.
11. Report on the implementation of OPA recommendations for Management Actions and on Training Referrals in a manner that encourages timely and substantive follow-up by SPD that is responsive to the public and complainants.
12. Ensure OPA maintains frequent and regular communications with complainants and named employees about the status of their investigation, including information to complainants about disciplinary appeal and grievance processes and the outcome of such challenges to final findings and discipline determinations.
13. Oversee, strengthen and report on the effectiveness of mediation programs and other alternative resolution processes.

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14. Ensure all OPA investigators and investigative supervisors receive orientation training about the accountability system and training in administrative investigation best practices, including the importance of being respectful to all, interacting and communicating with complainants, witnesses and employees in equivalent ways; exercising independence and objectivity; and having expertise on tactics, equipment, procedures, and relevant policy and law.
15. Provide materials and information for the public about OPA processes, how to access the accountability system, the possibility and results of disciplinary appeals; maintain a robust website that is easy to navigate; and collaborate with the CPC to ensure materials and information are readily understandable and widely available to Seattle's diverse residents.
16. Facilitate access to the accountability system, including the use of community-based organizations to provide additional channels for filing complaints and support understanding of the system and how to access it.
17. Consistent with obligations to maintain confidentiality, brief the CPC on issues of significant public interest related to police accountability and professional conduct.
18. Provide recommendations related to the purposes of this Chapter to the Mayor, City Attorney, City Council, Chief of Police and the CPC for improving SPD policies and practices.
19. Serve as technical advisor to the CPC.
20. Report regularly to the CPC on the implementation status of OPA Director recommendations, as well as of Independent Police Auditor recommendations related to OPA.
21. Advocate for and provide technical expertise to policymakers with regard to needed improvements to collective bargaining agreements, City ordinances and State laws in order to best meet the purposes of this Chapter and public expectations.
22. Collaborate with the Chief of Police and other SPD leaders, including precinct captains and lieutenants, to strengthen the involvement of supervisory personnel in the accountability system so as to build a culture of accountability throughout SPD.
23. Formalize a memorandum of understanding with the Chief of Police that documents provisions for coordination between OPA and SPD that support OPA's operational independence and ensures both OPA and SPD needs for effective operations are met.

**B. Qualifications**

The OPA Director shall be a civilian with significant legal, investigative, human resources, law enforcement oversight, or prosecutorial experience and shall have the following additional qualifications and characteristics:

1. A reputation for integrity and professionalism, and the ability to maintain a high standard of integrity in the office;
2. A commitment to and knowledge of the need for and responsibilities of law enforcement, as well as the need to protect the basic constitutional rights of all affected parties;
3. A commitment to the statements of purpose and policies in this Chapter;
4. A history of leadership experience;
5. The ability to gain the respect of complainants, SPD employees, and the public;
6. The ability to work effectively with the Mayor, City Council, City Attorney, Chief of Police, Independent Police Auditor, SPD employees, the CPC, other public agencies, private organizations, and the public;
7. The ability to work with diverse groups and individuals; and
8. The ability to maintain independence, fairness and objectivity and to advocate where appropriate in an environment where controversy is common.

**C. Appointment, removal and compensation**

1. The OPA Director shall be appointed and reappointed by the Mayor, after receiving input from the CPC, and subject to confirmation by the City Council. To strengthen the independence of the OPA Director, the Mayor may remove the Director from office only for cause with sufficient notice to, and the concurrence of, the City Council, following input from the CPC and a public hearing.
2. The OPA Director may be appointed for up to three, three-year terms for a total of nine years. Succeeding terms that are not reappointments of the same individual shall commence for three (3) years upon appointment of a new OPA Director, regardless of the length of term served by the preceding OPA Director. Reappointments shall commence for three (3) additional years from the date that individual's previous term expires if the incumbent is reappointed within ninety (90) days before or ninety (90) days after the expiration of the previous term; otherwise the successive term shall commence upon reappointment. Each appointment shall be made whenever possible prior to the termination or expiration of the latest incumbent's term of office so as to have a seamless

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transition without a gap in oversight. If an incumbent is reappointed, the City Council should act to approve or disapprove the reappointment at least forty-five (45) days before the expiration of the present term.

3. The OPA Director shall be paid at a salary consistent with the level of responsibility established in this section as provided by ordinance.
4. The Washington State Patrol shall conduct a thorough background check of nominees for OPA Director identified by the Mayor and shall report the results to the Mayor.

**3.28.812**

**Office of Police Accountability—Explanations of certain complaint dispositions**

- A. If the Chief of Police decides not to follow the OPA Director's written recommendations on findings or discipline of an OPA investigation, the Chief of Police shall provide a written statement of the material reasons for the decision. If the basis for not sustaining the complaint or revising the discipline or remedial action is personal, involving family or health-related circumstances about the named employee, the statement shall refer to "personal circumstances" as the basis. The Chief of Police shall make this written statement within 30 days of his or her final decision. The written statement shall be provided to the Mayor, City Council, OPA Director and Independent Police Auditor, and be included in the OPA case file. If the findings or discipline are changed pursuant to an appeal or grievance, this responsibility shall rest with the City Attorney.
- B. If no discipline results from an OPA complaint because an investigation time limit specified in a collective bargaining agreement between the City and the named employee's bargaining unit has been exceeded, within 30 days of the final certification of the investigation by the OPA Director, he or she shall make a written statement of the nature of the allegations in the complaint and the reason or reasons why the time limit was exceeded. This requirement applies whether the OPA Director recommended the complaint be sustained or declined to make a recommendation because the time limit had been exceeded. The written statement shall be included in the OPA case file and provided to the Mayor, City Council and Independent Police Auditor.
- C. The written statements required by Subsections A and B of this Section shall not identify named employees or divulge personal information about named employees or anyone else involved in the complaint and shall be subject to any applicable confidentiality requirements in state or federal law. The statements shall not affect any discipline decisions; the Chief of Police remains the final SPD decision maker in disciplinary actions.
- D. The OPA Director shall include summaries of the written statements required by Subsections A and B of this Section in the OPA Director's reports required by this Chapter. The summaries shall not identify named employees or divulge personal

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information about named employees or anyone else involved in the complaint and shall be subject to any applicable confidentiality requirements in state or federal law.

**3.28.825**

**Office of Police Accountability—Reporting**

- A. Timely and informative reporting to the public and its elected officials by OPA is important to sustain public trust and ensure the City's police accountability system functions effectively and can be regularly and continuously improved. The OPA Director shall collaborate with the CPC to ensure that OPA reports are readily understandable, focused on issues and trends of most concern to the public and stakeholders, and delivered through channels that are easily accessible to the broad public.
- B. OPA shall maintain an easily navigable website with comprehensive, substantive and timely information on matters of public interest concerning SPD's accountability system, with links to a separate CPC website. OPA shall maintain a page on its website that provides information about the Independent Police Auditor and contains the Independent Police Auditor's reports.
- C. OPA shall post online, in a timely manner, summaries of completed investigations, including the allegations, the analysis, the findings, and the results of disciplinary appeals; and shall distribute a compilation of these summaries electronically, no less than once a month, to interested stakeholders.
- D. OPA shall post online timely updates on the outcome of Management Actions directed as a result of OPA investigations or complaints, including the status of changes recommended to SPD policies or practices.
- E. OPA shall regularly report on the effectiveness of the disciplinary system and the nature of discipline imposed.
- F. OPA shall electronically distribute and post online at least two reports each year to the Mayor, the City Attorney, the City Council, the Chief of Police, the Independent Police Auditor, the CPC; and to the City Clerk for filing as a public record. These reports by the OPA Director shall describe the work of OPA and include any recommendations for policy or practice changes arising from investigation of complaints.
- G. Each year at least one of the OPA Director's reports shall include the following, which may be modified in consultation with the CPC if it is determined that other information would better help public understanding:
  - 1. The number and percentage of all complaints by classification and nature of allegation received by OPA;

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2. The number and percentage of all complaints and allegations sustained, and the specific disciplinary or other remedial action taken in sustained cases;
  3. The number and percentage of cases which were appealed or grieved, and the number and percentage of these cases in which findings and/or discipline determinations were changed, and the nature of those changes, as a result of appeals or for other reasons;
  4. The number and percentage of all complaints and allegations not sustained, and the basis for all not sustained findings, e.g., unfounded, inconclusive, lawful & proper;
  5. The number and percentage of all complaints handled directly by frontline supervisors, referred for Supervisor Action, Management Action, training or alternative resolution;
  6. The geographic and shift distribution of incidents underlying complaints;
  7. The racial, ethnic, gender and geographic distributions of complainants, as this information is provided voluntarily by complainants;
  8. The racial, ethnic, gender, assignment, shift and seniority distributions of employees who are subjects of complaints;
  9. The number of employees who have received two or more sustained complaints within one year;
  10. The timeliness and thoroughness of certain OPA and SPD processes, including but not limited to complaint handling, investigations, handled directly by frontline supervisors, Supervisor Actions, mediations, Management Actions, rapid adjudications and Training Referrals;
  11. Patterns and trends in all OPA complaints, including year-to-year comparisons of demographic data that can help identify problems, deter misconduct and inform SPD policy and practice improvements; and
  12. A summary of all cases of significant public concern related to public confidence and trust, including the outcome of reviews by SPD units of officer-involved shootings and in-custody deaths.
- H. The OPA Director shall make available to the Independent Police Auditor and the CPC information necessary for their respective auditing and oversight functions set forth in this Chapter, in a timeframe allowing for the timely performance of those auditing and oversight functions.

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**NEW SECTION**

**Office of Police Accountability—Meetings**

- A. The OPA Director or his or her designee shall meet regularly with the CPC, its committees or staff to provide and receive information consistent with the purposes of this Chapter. The OPA Director shall review his or her reports with the CPC, and the implementation status of recommendations made to improve OPA and SPD policies and practices.
- B. The OPA Director shall meet periodically with the Mayor, City Council, and the Chief of Police advising on the investigatory and disciplinary functions of OPA and SPD and making recommendations to improve OPA and SPD policies and practices consistent with the purposes of this Chapter.
- C. The OPA Director and the OPA staff shall solicit and review community input on policies and practices related to police accountability and professional conduct. This obligation may be performed in coordination with the CPC and its staff.

**3.28.830**

**Office of Police Accountability—Confidentiality of files and records**

The OPA Director shall protect the confidentiality of OPA and SPD files and records to which he or she has been provided access to the extent permitted by applicable law and collective bargaining agreements, in accordance with the provisions of this Chapter, and in the same manner and to the same degree as he or she would be obligated to protect attorney-client privileged materials under legal and ethical requirements. The OPA Director shall also be bound by the confidentiality provisions of the Criminal Records Privacy Act (RCW Chapter 10.97) and Public Disclosure Act (RCW Section 42.17.250 et seq.) The OPA Director shall not identify the subject of an investigation in any public report required by this Chapter.

**Subchapter VIII –Independent Police Accountability Auditor**

**3.28.850**

**Independent Police Accountability Auditor established—Purpose and authority**

- A. Since OPA is housed within SPD and its intake staff, investigators and investigation supervisors other than the OPA Director are sworn employees, there is established additionally a position of Independent Police Auditor to provide objective, third party review of complaint handling, internal investigations, and other OPA activities, as well as to serve the public interest by providing unbiased analysis and objective recommendations to City policymakers about OPA and SPD policies, procedures and practices based on review of complaints and internal investigations. The Independent Police Auditor is an essential component of the checks and balances that comprise the City's civilian oversight system for police accountability.

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- B. So as to eliminate the potential for conflicts of interest that exist when an audit or investigative function is placed under the authority of the official whose programs or agencies are being scrutinized, to insulate against possible reprisal and to promote independent and objective analysis and reporting, the Independent Police Auditor shall be a civilian independent contractor, wholly independent of all City departments and agencies.
- C. The work of the Independent Police Auditor is intended to further instill confidence and public trust in the fairness and integrity of the police accountability system and in the effectiveness and professionalism of SPD by providing additional professional review of OPA case handling and investigations, and an independent perspective on the efficacy of policies, procedures and practices of OPA and SPD.
- D. To ensure that allegations of misconduct reported by members of the public are addressed at the appropriate level, the Independent Police Auditor shall, in addition to the OPA Director, review the proposed classification and allegations for those complaints involving allegations of misconduct related to violations of law; integrity and ethics; honesty; discretion and authority; professionalism; courtesy and demeanor; duty to provide identification; use of position or authority for personal gain; conflicts of interest; gifts and gratuities; off-duty conduct; insubordination; bias-free policing; retaliation and harassment; use of force and use of force reporting; primary investigations; stops, detentions and arrests; arrests, search and seizure; responsibilities of employees regarding complaints of misconduct; responsibilities of supervisors; violation of rules and regulations; failure to take action; juvenile investigations and arrests; alcohol and substance use; demonstration management; after-action reports; citizen observation of officers; collisions involving department vehicles; and management and transportation of detainees. This list may be supplemented by specific designation of the Independent Police Auditor from time to time should circumstances warrant in order to best effectuate the purpose of this Chapter. The Independent Police Auditor's review shall occur in parallel with the OPA Director so that a recommended classification or allegation can be revised if the Director deems it appropriate in light of the Independent Police Auditor's input. This process of review of recommended classifications of complaints will determine whether each complaint should be investigated by OPA, referred to the employee's supervisor for follow-up or handled through an alternative resolution.
- E. To help ensure that OPA investigations are thorough, fair, objective and timely, the Independent Police Auditor shall review investigations involving the above allegations at the time at which OPA believes an investigation to be complete. If the Independent Police Auditor determines that the investigation is thorough, fair and objective, the Independent Police Auditor will certify it and the OPA Director may then proceed to issue recommended findings to the Chief of Police. If, however, the Independent Police

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Auditor finds that the investigation is not ready to be certified, he or she may request or require additional evidence be obtained, additional witnesses interviewed or other steps taken. Upon completion of any additional work requested or directed by the Independent Police Auditor, the case shall be re-submitted to the Independent Police Auditor for certification before the OPA Director may issue his or her proposed findings. If additional investigation is requested by the Chief of Police after the due process hearing, as allowed by collective bargaining agreement, the investigation shall be re-submitted to the Independent Police Auditor for certification.

- F. For cases referred to supervisors, or for mediation or alternative resolution in lieu of an investigation, or for cases resulting in Management Action or Training Referral upon completion of an investigation, the Independent Police Auditor shall conduct a review at least twice each year to ensure the ensuing actions taken were sufficient and timely.

**NEW SECTION**

**Independent Police Accountability Auditor—Access and independence**

- A. The Independent Police Auditor shall exercise his or her discretionary and oversight responsibilities without interference from the Chief of Police, other SPD employees or City officials.
- B. OPA shall provide secure, private space in OPA for the Independent Police Auditor to conduct case reviews, and provide administrative and technical support to facilitate full and timely access, either directly or electronically, to necessary files and other records.
- C. The Independent Police Auditor shall have full access to all OPA files and records and is authorized to request any information on OPA cases, workload or procedures that he or she finds necessary to perform the duties set forth in this Section. OPA shall make any requested information available to the Independent Police Auditor in a timely and comprehensive manner and shall provide secure access to necessary data systems in a manner consistent with the integrity of the independent audit function.
- D. The OPA Director shall provide the Independent Police Auditor each year in June and December status reports regarding OPA cases which were referred by OPA for possible criminal investigations during the previous six months. These status reports shall include the nature of the criminal allegation, the case number, date of complaint, and the current status of the case.
- E. The OPA Director shall provide the Independent Police Auditor each year in June and December status reports regarding OPA cases in which the findings or discipline have been appealed during the previous six months. These status reports shall include all OPA cases not yet closed due to appeal, the case number, date of complaint, date of disciplinary action, date of appeal, nature of the appeal, and current status of the case, including any modification to the case disposition as a result of appeal.

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- F. The OPA Director shall provide the Independent Police Auditor each year in June and December a report of the number of investigations not involving allegations identified in Subsection xxx and thus not submitted for the Independent Police Auditor's review during the previous six months, and the nature of the allegations in these cases.
- G. OPA files and records made available to the Independent Police Auditor are the property of OPA and shall not, by operation of this Subchapter, become the property of the Independent Police Auditor. The Independent Police Auditor shall make every reasonable effort to maintain the security of files belonging to OPA while in the Independent Police Auditor's possession. Any requests made to the Independent Police Auditor for OPA files or records, whether through litigation discovery or pursuant to public disclosure, shall be referred to the City Attorney for response.
- H. Upon completion of an audit, the Independent Police Auditor shall return to the OPA all files, reports, and records to which he or she has been provided access pursuant to these audit procedures and standards.

**3.28.855**

**Independent Police Accountability Auditor—Auditor**

- A. The duties of the Independent Police Auditor are to:
  - 1. Review proposed classifications and allegations for complaints of misconduct identified in Subchapter xxx above and provide input to the Director.
  - 2. Review investigations identified in Subchapter xxx above prior to certification by the OPA Director to ensure thoroughness and objectivity.
  - 3. Request or direct further investigation.

The Independent Police Auditor shall use best efforts to complete his or her review of investigative files without unreasonably delaying certification by the OPA Director and review by the named employee's chain of command. After reviewing the investigation, the Independent Police Auditor shall certify the case as thorough, objective and timely, note if it is not but additional investigation is not requested or directed, or may request or direct OPA to conduct further investigation. The Independent Police Auditor shall provide a written statement in the case file indicating the date of review, whether the case has been certified or whether further action is requested or directed, with the reasons for further actions. If the Independent Police Auditor finds the investigation not to be timely, thorough or objective and that cannot be corrected by further OPA action, the Independent Police Auditor shall indicate in writing that the investigation is not certified. Criteria the Independent Police Auditor should consider in reviewing investigations include, but are not limited to: (a) whether witnesses were interviewed and all other material evidence collected; (b)

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whether interviews were thorough; (c) whether additional clarifying information would strengthen the investigation; (d) whether the written summary and analysis are objective and accurately reflect the evidence; and (e) whether applicable OPA procedures were followed. In the event the OPA Director disagrees with the Independent Police Auditor's request for additional investigation, after giving due consideration to the OPA Director's explanation, the Independent Police Auditor may require the OPA to conduct the specified further investigation.

If within ten (10) days after being notified that a case file has been preliminarily completed, the Independent Police Auditor has not advised OPA of his or her concerns with the investigation, the OPA Director may certify the case and forward it to the named employee's chain of command; in these instances, the Independent Police Auditor is precluded from requiring further investigation.

4. Through semi-annual review, assess the thoroughness and timeliness of OPA complaint handling for those cases not investigated, including cases referred to supervisors, mediated, resolved through alternative resolution, and for the timely and substantive follow-through on OPA recommendations for Management Actions and Training Referrals..
5. Audit any and all OPA or other accountability system records.

The Independent Police Auditor may audit any and all OPA and SPD systems, policies and practices related to the scope of this Chapter with the goal of enhancing effectiveness, and increasing the public's trust and confidence in the police. The Independent Police Auditor shall be provided staff capacity to help conduct such audits.

6. At the same time as the CPC, review proposed revisions to the OPA Internal Operations and Training Manual and to SPD's policy manual prior to their finalization and issuance by the OPA Director or SPD..
7. Advise the OPA Director, the Chief of Police, the Mayor, City Council, City Attorney and the CPC on the caliber of complaint-handling, investigatory and disciplinary functions of the OPA and SPD, and recommend changes to training, policies and practices to support systemic improvements and other enhancements of SPD performance.
8. Advocate for and provide technical expertise to policymakers with regard to needed improvements to collective bargaining agreements, City ordinances and State laws;
9. Serve as technical advisor to the CPC.

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**B. Qualifications**

The Independent Police Auditor shall be a civilian who is a graduate of an accredited law school and member in good standing of the Washington State Bar Association and, prior to appointment, shall have had at least five years of experience in the practice of law, or serving as a judicial officer, or in another similar position in which objectivity and integrity are required primary attributes, with demonstrated skills in evaluating investigative records and system processes. The Independent Police Auditor shall have the following additional qualifications and characteristics:

1. A reputation for integrity and professionalism, and the ability to maintain a high standard of integrity in the office;
2. A commitment to and knowledge of the need for and responsibilities of law enforcement, as well as the need to protect basic constitutional rights of all affected parties;
3. A commitment to the statements of purpose and policies in this Chapter;
4. A history of leadership experience;
5. The ability to gain the respect of complainants, SPD employees, the CPC, and the public;
6. The ability to work effectively with the Mayor, City Council, City Attorney, Chief of Police, the OPA Director, SPD employees, the CPC, other public agencies, private organizations, and the public;
7. The ability to work with diverse groups and individuals; and
8. The ability to maintain fairness and objectivity in an environment where controversy is common.

In addition to the qualifications and characteristics set forth in subsection B above, it would be helpful for the Independent Police Auditor to have a background in organizational management or performance auditing in order to review and make recommendations on the effectiveness of police policies, practices and training.

**C. Appointment, removal and compensation**

1. The Independent Police Auditor shall be appointed and reappointed by the Mayor, with input from the CPC, and subject to confirmation by the City Council. The OPA Auditor shall serve a term of three years and may be reappointed to two subsequent three year terms for a total of nine years. To strengthen the independence of the Independent Police Auditor, the Mayor may remove the Independent Police Auditor from office only for cause, with sufficient

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notice to, and with the concurrence of, the City Council, following input from the CPC and a public hearing.

2. Succeeding terms that are not reappointments of the same individual shall commence for three (3) years upon appointment of a new Independent Police Auditor, regardless of the length of term served by the preceding Independent Police Auditor. Reappointments shall commence for three (3) additional years from the date that individual's previous term expires if the incumbent is reappointed within ninety (90) days before or ninety (90) days after the expiration of the previous term; otherwise the successive term shall commence upon reappointment. Each appointment shall be made whenever possible prior to the termination or expiration of the latest incumbent's term of office so as to have a seamless transition without a gap in oversight. If an incumbent is reappointed, the City Council should act to approve or disapprove the reappointment at least forty-five (45) days before the expiration of the present term.
3. The Independent Police Auditor shall not be a City employee and shall be compensated at a rate consistent with the level of responsibility established in this section as provided by ordinance or by appropriation in the City's annual budget, and at a rate that ensures the Independent Police Auditor has capacity to perform the responsibilities specified in this Subchapter.
4. The Washington State Patrol shall conduct a thorough background check of nominees for Independent Police Auditor identified by the Mayor and shall report the results to the Mayor.

**3.28.860**

**Independent Police Accountability Auditor—Reporting**

- A. To enhance the transparency and openness of the police accountability system, the Independent Police Auditor shall issue a public report semi-annually. The Independent Police Auditor shall provide public presentations of highlights of these reports to the CPC. The Independent Police Auditor will collaborate with the CPC to ensure reports are readily understandable and delivered through channels that are easily accessible to the broad public. The Independent Police Auditor's reports shall contain a general description of the complaints and cases reviewed, and should include, but not be limited to:
  1. The number of investigations reviewed, a description of those cases in which the Independent Police Auditor requested or required further investigation and a description of OPA's follow-up;
  2. The number of investigations not reviewed, the nature of the allegations involved in those cases and a description of any cases that should have been referred for review that were not;

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3. The semi-annual reviews of OPA complaint handling for cases not investigated, including Supervisor Actions, contact logs, mediations, Management Action, Training Referral and other alternative resolutions;
  4. A description of any concerns or trends noted in OPA complaint intake and classification;
  5. A description of other issues, problems and trends noted by the Independent Police Auditor as a result of his or her oversight;
  6. Recommendations that SPD or OPA make policy, practice, training or procedural changes;
  7. Findings from audits of OPA records or the OPA Director's reports; and
  8. Other information, as appropriate, requested by the CPC that would help make reporting out to the public by the Independent Police Auditor as useful as possible.
- B. The Independent Police Auditor shall deliver a preliminary draft of his or her semi-annual report to the OPA Director and Chief of Police for review and comment. The OPA Director and the Chief of Police shall review and comment on the preliminary report to the Independent Police Auditor within ten (10) working days after receipt of the report. The Independent Police Auditor shall then issue the final report within ten (10) working days after receipt of comments from the OPA Director and the Chief.
- C. The Independent Police Auditor shall issue these reports to the Mayor, City Attorney, City Council, Chief of Police, OPA Director and the CPC; and to the City Clerk for filing as a public record. OPA shall post the Independent Police Auditor's reports on the Independent Police Auditor section of the OPA website.
- D. The Independent Police Auditor's reports shall not contain any recommendations concerning the discipline of any particular named employee, nor shall the reports comment upon or make any recommendation concerning potential civil or criminal liability of any employee, police officer, or member of the public.

**NEW SECTION**

**Independent Police Accountability Auditor—Meetings**

- A. The Independent Police Auditor shall meet periodically with the Mayor, the City Council, the CPC, and the Chief of Police advising on the caliber of the performance and functions of OPA and SPD and making recommendations to improve OPA and SPD policies and practices.

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- B. The Independent Police Auditor shall meet regularly with the CPC, its committees or staff to provide and receive information concerning the SPD accountability system, and the extent to which the purposes and requirements of this Chapter are being met. The Independent Police Auditor shall review his or her reports, and recommendations and the implementation status of those recommendations with the CPC.

**3.28.870**

**Independent Police Accountability Auditor—Confidentiality of files and records**

The Independent Police Auditor shall protect the confidentiality of OPA and SPD files and records to which he or she has been provided access to the extent permitted by applicable law and collective bargaining agreements, in accordance with the provisions of this Chapter, and in the same manner and to the same degree as he or she would be obligated to protect attorney-client privileged materials under legal and ethical requirements. The Independent Police Auditor shall also be bound by the confidentiality provisions of the Criminal Records Privacy Act (RCW Chapter 10.97) and Public Disclosure Act (RCW Section 42.17.250 et seq.). The Independent Police Auditor shall not identify the subject of an investigation in any public report required by this Chapter.

**Subchapter IX - Community Police Commission**

**3.28.900**

**Community Police Commission established—Purpose and authority**

- A. One of the cornerstones of effective oversight of law enforcement is community involvement. The CPC is to provide the public with meaningful participatory oversight of SPD policies and practices in accord with the purposes of this Chapter to help ensure police services are delivered in a lawful and nondiscriminatory manner and are in alignment with the values and expectations of the community.
- B. The CPC was originally established by ordinance with responsibilities under a Settlement Agreement between the City of Seattle and the United States Department of Justice. This ordinance assigns additional and ongoing responsibilities, detailed in this Subchapter, separate from those under Seattle Municipal Code 3.14 Subchapter IX, to make clear the City's intention that civilian oversight be enhanced and broadened beyond the limited time and scope initially set forth in the Settlement Agreement in order to better serve the public.
- C. The CPC shall not review the investigation of specific OPA complaints; and shall not seek to influence the course or outcome of specific OPA investigations or any discipline or other remedial action imposed.
- D. The CPC is situated within the City of Seattle's Executive Department, but is self-governing and functionally independent. The CPC shall conduct a search for an Executive Director in the case of a vacancy and refer at least two candidates to the

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Mayor, with an assessment of their qualifications. The Mayor shall select the Executive Director from among those candidates referred by the CPC. The Executive Director's appointment by the Mayor is subject to confirmation by the City Council. The Mayor may remove the Executive Director from office only for cause with sufficient notice to, and the concurrence of, the City Council, following input from the CPC and a public hearing. In order to ensure independence, the Executive Director of the CPC takes program direction only from the Commissioners, and the CPC has budget and program control of its operations. In conducting its activities, the CPC follows bylaws adopted by the Commission.

**3.28.905**

**Community Police Commission—Commission**

A. The duties of the CPC are to:

1. Review and provide input to OPA and SPD on the police accountability system and SPD policies, training and practices of significance to the public, consistent with the purposes of this Chapter.
2. Review SPD policies of particular significance to the public, and to public trust; suggest revisions; and consult with SPD and other involved City officials prior to the Department's final revision of such policies.
3. Engage in extensive outreach and conduct surveys to obtain the perspectives of community members and SPD employees on police-community relations, SPD policies, training and practices, and on other matters consistent with the purposes of this Chapter.
4. Review and comment on proposed revisions to the OPA Internal Operations and Training Manual.
5. Review and provide input on all memoranda of understanding provisions between the Chief of Police and the OPA Director prior to their finalization to help ensure consistency with the purposes pursuant to this Chapter.
6. Monitor and report on the implementation by City elected officials and SPD of recommendations made by the OPA Director, the Independent Police Auditor and the CPC.
7. Review and provide input into SPD recruiting, hiring and promotional practices.
8. Provide a regular opportunity for the OPA Director and the Independent Police Auditor, no less than quarterly, to review information they wish to provide the CPC concerning the effectiveness of SPD or any obstacles to the OPA Director's or the Independent Police Auditor's abilities to perform their duties.

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9. Review reports required by this Chapter and any recommendations of the OPA Director and the Independent Police Auditor.
10. Advise the Mayor on the recruitment and selection process and nomination of OPA Directors and Independent Police Auditors; and review and provide input to the Mayor on the reappointment or removal of OPA Directors and Independent Police Auditors.
11. Annually review the effectiveness of the OPA Director and the Independent Police Auditor after soliciting public, Mayoral, City Council, City Attorney, Chief of Police and SPD employee perspectives.
12. Advise policymakers with regard to needed improvements to collective bargaining agreements, City ordinances and State laws.
13. Convene an annual meeting to receive public comments and to formally report to the community on the effectiveness of the police accountability system, including providing an update on the implementation status of any previously recommended improvements.
14. Serve as an advisory council to the OPA Director and the Independent Police Auditor, identifying problems and recommending improvements to police accountability, including ways to make the system more accessible and transparent to the public.
15. Consult with OPA on the development, revision and distribution of public and employee informational materials and the OPA website.
16. Collaborate with SPD, OPA and the City Attorney's Office in improving system transparency, including improving SPD public disclosure procedures and providing for timely online posting of information about the status of investigations and their outcomes.
17. Consistent with the purposes of this Chapter, recommend to the Independent Police Auditor topics for review.
18. Propose a budget with sufficient staffing and resources to ensure effective CPC operations for submittal to the City Council annually by the CPC separate and distinct from the Executive Department's budget.

**B. Qualifications**

1. Commissioners shall be respected members of Seattle's many diverse communities, and include a representative from the Seattle Police Officers Guild

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and a representative from the Seattle Police Management Association. The remaining Commissioners shall reside in or work in Seattle, and members shall collectively include residents from each of the City's police precincts.

2. Collectively, Commissioners shall have a deep understanding of community interests and needs, all shall have general knowledge of police accountability matters and some shall have extensive subject matter expertise, including in the areas of law enforcement oversight, civil rights and civil liberties, and cultural competency. Altogether, there shall be a balance that allows the CPC as a whole to benefit from the knowledge and expertise of its individual members.
3. Commissioners shall be representative of Seattle's diverse population, drawn from different racial and ethnic groups, including immigrant/refugee communities, and from the LGBT, youth, faith, business and other communities reflecting the overall demographics of Seattle residents. Some shall represent or be knowledgeable of the issues of those who are limited-English speakers, homeless or who have mental illness and substance abuse disorders or shall be drawn from communities that have had difficulties in their interactions with SPD.
4. Individual Commissioners shall have 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 the CPC's work, and all shall have the following qualifications and characteristics:
  - a. A reputation for integrity and professionalism, and for effectiveness in a board or commission role;
  - b. An understanding of the responsibilities of law enforcement, including enforcement, care-taking and the need to protect basic constitutional rights of all affected parties;
  - c. A commitment to the statements of purpose and policies in this Chapter;
  - d. A history of leadership experience and/or deep roots in communities represented;
  - e. The ability to work with diverse groups and individuals; and
  - f. The ability to maintain fairness and objectivity in an environment where controversy is common.

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**C. Appointment, removal and compensation**

1. The CPC shall consist of 15 to 17 Commissioners, appointed and reappointed by the Mayor and confirmed by a majority vote of the City Council. Removal of Commissioners from office by the Mayor may only be for cause and with the concurrence of the City Council after a public hearing. The Mayor shall obtain the concurrence of the CPC Executive Director and its co-chairs prior to making appointments.
2. The Mayor shall select appointees in a manner consistent with qualifications outlined in this section and in a manner that effectuates the bylaws of the CPC with respect to the composition of the CPC. All reappointments shall be made so as to allow for continuous service of the Commissioner without interruption. All new appointments shall be made as soon as such can reasonably be done, but no later than three months after the termination or expiration of the latest incumbent's term of office or the creation of a vacancy.
3. Commissioners shall be appointed and reappointed to staggered second and third terms. The maximum length of terms shall be three years and no Commissioner shall serve more than three terms, with each appointment from the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in the office before the expiration of the former incumbent's term, a successor shall serve the remainder of the said former incumbent's term and may be reappointed to up to two additional three-year terms.
4. The staggered terms shall be such that no more than six Commissioners' terms expire in any year.
5. Commissioners shall be compensated as provided by ordinance.

**D. Staff**

Professional staff shall be provided by the City to ensure the CPC has the capacity to perform the responsibilities specified and fulfill its duties under this Chapter.

**NEW SECTION**

**Community Police Commission—Reporting**

- A. The Community Police Commission shall issue, and post online, an annual public report and provide the report to the Mayor, City Attorney, City Council, Chief of Police, OPA Director, Independent Police Auditor; and the City Clerk for filing as a public record. These reports shall describe the work of the CPC in fulfilling the responsibilities detailed in this Subchapter, including:

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1. The extent to which the purpose, duties and responsibilities detailed in this Subchapter have been met;
2. The extent to which prior recommendations for improvements to SPD and OPA policies, practices, systems, training and the accountability system have been implemented; and, if they have not, the reasons;
3. Any new CPC recommendations for systemic, training, engagement, policy and practice changes; and
4. Information about the CPC's outreach to SPD employees and the public, and about the perspectives gathered by the CPC from such outreach.

**NEW SECTION**

**Community Police Commission—Meetings**

- A. The CPC shall periodically meet with the Mayor, City Attorney, City Council, and Chief of Police, to discuss its work under this Subchapter.
- B. The CPC shall hold regular public meetings, no less than once a month, and establish workgroup subcommittees of its members to meet as necessary.

**NEW SECTION**

**Mechanisms to support accountability**

- A. SPD shall establish written policies to ensure that all significant matters involving potential police misconduct, including cases originating from outside sources and all other SPD investigative units, are documented and forwarded in a timely manner to OPA for review. The obligation to report potential misconduct or policy violations to OPA shall apply to all SPD employees without exception, including those employees who participate in various SPD internal investigation and review processes.
- B. SPD shall ensure policies and procedures are in place to document all relevant information related to OPA cases upon referral of the case from the OPA Director to the Chief of Police and that this documentation is entered and retained in OPA and Department data systems.
- C. SPD shall establish a public response protocol for communications related to major or high profile incidents. The protocol shall identify those responsible for speaking on behalf of the Department and OPA, and detail specifics of the information to be shared with the public by these representatives which maintains neutrality and supports public trust that an objective and impartial investigation is being conducted.
- D. While a use of force, incident of possible policy violation, or incident of public concern is under any form of City review, including OPA investigation, SPD Force Review Board

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or other review, neither SPD nor any SPD management employee shall comment in a way that suggests that any factual, policy or legal conclusions have been reached about the incident.

- E. SPD shall establish protocols for continuous learning and adoption of improvements to its policies and practices by review of relevant claims, litigation and disciplinary appeals; observations from its training programs; cases declined by prosecutors; major incidents; OPA cases; and other events.
- F. The City Attorney's Office shall inform the OPA Director and the Chief of Police of any issues raised in the course or outcome of a grievance or disciplinary appeal that suggest OPA policy or practice improvements.
- G. The Chief of Police shall impose discipline after the due process hearing, or at the time such hearing is declined, not upon conclusion of any disciplinary appeal process. SPD shall maintain a tool to track all records of the disciplinary determinations of the Chief of Police in order to establish that discipline is imposed consistently. The OPA Director and the Independent Police Auditor shall have unfettered access to this information.
- H. The named employee and/or his or her union representative shall provide notice to the City Attorney as well as to the Chief of Police at the time a grievance or disciplinary appeal is filed.
- I. If a final determination of discipline by the Chief of Police is appealed, the City Attorney's Office shall represent SPD in the hearing or arbitration. The City Attorney's Office shall only consider settlement of a disciplinary appeal, in consultation with the OPA Director and the Chief of Police, where there is a legal and/or factual cause to do so and settlement is in the best interests of SPD and the City.
- J. SPD shall provide the CPC a quarterly policy review schedule and establish a process by which the CPC, the OPA Director and the Independent Police Auditor shall provide input prior to the finalization of any modifications to existing, or issuance of new, SPD policies or regulations of significance to the public, including, but not limited to, standards and duties, bias-free policing, voluntary contacts and Terry Stops, reporting arrests, searches, secondary employment, video recording, responsibility to report misconduct, demonstration management, interactions with those in behavioral crisis, interactions with juveniles, use of surveillance technology, secondary employment, public disclosure, and use of force. The CPC, Independent Police Auditor and OPA Director shall designate the policies, in addition to those specified above, on which they intend to comment, and SPD shall review their comments prior to finalizing new or revised policies.
- K. SPD shall put in place systems for self-monitoring of its practices, procedures and systems, including formal processes for conducting internal audits of operations. These reviews should focus on ways to improve policies, training and supervision so as to help prevent misconduct, poor performance or other adverse outcomes.

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- L. Depending on who has responsibility for implementation, either the Chief of Police or the Mayor shall respond to recommendations issued by the OPA Director, the Independent Police Auditor or the CPC within 30 days, providing a schedule for implementation of supported recommendations, and a rationale or other explanatory information for those recommendations not supported or scheduled for implementation.
- M. The Chief of Police shall ensure there is timely and substantive follow-through on OPA recommendations for Management Actions and Training Referrals.
- N. SPD shall make available information about its policies and operations that are matters of concern to the public by posting such information online, including its policy and procedure manual, performance audit reports, reviews of shootings by officers and in-custody deaths, and its documented plans for addressing issues and recommendations concerning police accountability and professional conduct.

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