EXAMPLES OF WAYS THE PROPOSED SEATTLE POLICE OFFICERS' GUILD (SPOG) CONTRACT IMPACTS POLICE ACCOUNTABILITY REFORMS

Seattle Community Police Commission

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Examples of ways the proposed police officers' contract impacts the police accountability system

The reforms incorporated into the Accountability Legislation adopted last year to strengthen the accountability system were based on review of cases by independent experts, and the experiences of the public, where weaknesses in the system had been identified that undermined accountability. The Community Police Commission's concern is that the community advocated for those reforms in the Legislation, had understood they would be implemented, and that City leaders would prioritize this package in collective bargaining. If the terms of the collective bargaining agreement with the Guild mean those reforms will no longer be implemented or a weaker alternative will be implemented, it is important that there be a full and accurate explanation of what changes are being proposed and why, and what the impact will be.

There are dozens of ways the proposed contract would in some way weaken the accountability system, many of which are difficult to explain succinctly and in non-technical terms. The following are just a few of the many examples we've identified. In addition, there are terms in the appendices to the agreement where the parties "reinterpret" the Accountability Legislation or agree it will not be implemented as written; terms where certain elements of the legislation are included but others not, so one can't tell whether that is an intentional roll-back; terms where the drafting makes the impact unclear; and terms where the parties stated the impact is as written, but then that language is not included. There is also no reference to accountability or to protecting the public interest anywhere in the stated purpose, so one can't use that as a foundation from which to understand intent.

What the Accountability Legislation Promised	Some of What the Proposed SPOG Contract Does
The legislation explicitly stated that the City's goal was to make sure the collective bargaining agreements with SPOG and with SPMA (the union for Lieutenants & Captains) allowed the new accountability law to be fully implemented: "For these reasons, the City shall take whatever steps are necessary to fulfill all legal prerequisites within 30 days of Mayoral signature of this ordinance, or as soon as practicable thereafter, including negotiating with its police unions to update all affected collective bargaining agreements so that the agreements each conform to and are fully consistent with the provisions and obligations of this ordinance, in a manner that allows for the earliest possible implementation to fulfill the purposes of this Chapter 3.29." **(Accountability Legislation - 3.29.510)**	Rather than ensuring that the contracts were brought into conformance with the new law, the proposed language in the contract weakens, takes away, or makes a reform less clear than what is in the law, or omits language in the ordinance in an area covered by the contract, and then states that if there is any conflict between the law and the contract, (and even the appendices to the contract), the contract will prevail. This means that even if City does not formally amend the law, and the public expectation is that the law must be complied with, it will be the contract that must be complied with. **(Proposed SPOG Contract - Article 18.2 and Appendix E.3)** Note, by contrast, the SMPA contract says: "The results of the bargaining on the Accountability Ordinance are incorporated into Article 16 of the CBA between the parties. In accordance with this, the City may implement the Accountability Ordinance."
The standard of review for all misconduct allegations, including those involving dishonesty, is "a preponderance," meaning an allegation is sustained if the evidence shows it's more likely than not the alleged offense happened. Termination for an initial instance of dishonesty used to require a higher standard of "clear and convincing," but that was reformed in the legislation so that the standard for all discipline is the same.	While the contract still sets a preponderance as the standard for imposition of all discipline, that step is undermined by the introduction of new language that there will be an "elevated standard of review" for any termination to be sustained on appeal if the offense could be stigmatizing to an officer seeking other employment. This could be virtually any offense, and effectively nullifies the preponderance standard for discipline by the Chief. The legislation had also removed

(Accountability Legislation – 3.29.135 & the Federal court affirmed and so ordered in response to a City filing as part of the consent decree.) Another reform goal was to not have to prove an officer was being *intentionally* dishonest (which is nearly impossible). Also, according to SPD policy, officers are required to be truthful and provide complete information in all communications. **(SPD Policy 5.001)**	arbitration as the way appeals are handled and provided for a clear standard of review by the independent body hearing appeals. Those reforms were also rolled back. The proposed contract also leaves in the old contract language requiring proof of intentionality for dishonesty, and the old contract language that limits when the officer must provide complete and honest information to times when officers are answering questions in administrative investigations. This contradicts the departmental policy with which all employees must comply, that officers are always required to be truthful and provide complete information - whether in reports, in testimony, when making a stop, etc. This has very wide implications given the tens of thousands of people detained and arrested with supporting police reports each year. (**Proposed SPOG Contract - 3.1)**
In the past, if a complaint was not filed within three years of the incident occurring, when video evidence later turned up, or a complainant who was frightened later came forward, or for any other reason the alleged misconduct came to light, no discipline could be imposed, regardless of how serious the misconduct was, unless it was criminal, could be proven the officer concealed it, or was due to litigation. The legislation reformed this by also removing any time limitation for dishonesty and Type III excessive force, and extending the time allowed for discipline to be imposed (the "statute of limitations") for all other types of misconduct to five years after the incident. **(Accountability Legislation – 3.29.420)**	The proposed contract changed the statute of limitations for disciplining an officer from three to four years, rather than to five years. Dishonesty and Type III Use of Force are no longer included as exceptions for which discipline can be imposed whenever the misconduct comes to light (no statute of limitations). The only exceptions remain what was in the contract before - criminal allegations, where the misconduct was concealed, or 30 days following an adverse disposition in civil litigation alleging intentional misconduct by an officer. **(Proposed SPOG -Contract 3.6.G)** (*And note that the contract does not say adverse to whom.*)
Under the old contract, if an OPA investigation was not completed within 180 days, discipline could not be imposed. In the legislation, the improvement made was that the 180-day limit is kept as a performance measure that OPA must report on each year to show that it is meeting that deadline, but discipline is no longer foreclosed if it takes OPA longer than 180 days to complete the investigation. This helps keep investigations timely without resulting in the public losing the ability to hold officers accountable for misconduct. Also, how the 180 days is counted, when it starts and stops, and when it must be extended, were clearly laid out in the legislation, to eliminate the frequent challenges and disputes about whether the 180-day timeline was met, as well as the need for OPA to ask the Guild's permission when an extension is warranted. **(Accountability Legislation – 3.29.130)**	The proposed contract rolls these reforms back. Once again, no discipline can be imposed if the investigation takes more than 180 days. In addition, the way in which the 180 days is calculated is less clear; the 180-day clock again includes steps outside of OPA's control (the notice that must be sent to the employee within the 180 days is sent by the department), and OPA again has to ask the Guild for permission for extensions, which the Guild may refuse in light of their duty to represent their members (such refusal would probably be "reasonable" under the contract because it is to the benefit of the SPOG member being represented by the Guild) **(Proposed SPOG Contract - 3.6.B)**

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The legislation also addressed the problem of the 180 days continuing to run even when the OPA administrative investigation has to be put on hold because of a related criminal investigation. If the criminal investigation takes months, that does not leave OPA much time to do its investigation. Under the legislation, if the 180-day requirement were retained, the 180-day time would be paused while the criminal investigation is ongoing. This was to help ensure both investigations have sufficient time to be done thoroughly. Cases involving possible criminal misconduct are often the most serious, so cutting short the investigative time OPA has does not serve the public well. **(Accountability Legislation – 3.29.130)**	The proposed contract rolls back this pausing of the 180-day time period to the old contract language. If the OPA administrative investigation has to be put on hold so as not to compromise a criminal investigation, OPA's 180-day clock continues to run; it is only paused during the time the case is being reviewed by the prosecutor. The result is that OPA may have insufficient time to investigate, whether or not charges are ever filed, in some of the most serious cases of potential misconduct. **(Proposed SPOG Contract - 3.7)**
The officer or the Guild must fully disclose any relevant information of which they are aware during the OPA investigation. If they don't, they can't raise it later at the discipline Due Process Hearing or on appeal. This reform was to make sure OPA can conduct as thorough an investigation as possible, without information being withheld and then later raised at the hearing, grievance, or appeal as a rationale for arguing the Chief did not have "just cause" for her decision. **(Accountability Legislation - 3.29.130)**	This reform is rolled back; there is no express provision prohibiting information from being disclosed for the first time at the discipline hearing or on appeal. **(Proposed SPOG Contract -Appendix E.12)**
It had been a long-identified weakness in Seattle's police accountability system that for cases that are often the most serious – when a crime may have been committed – OPA was prohibited from doing anything other than taking the complaint and then referring it to SPD for criminal investigation, without the ability to coordinate and collaborate on who would do the criminal investigation, without the ability to work with the prosecutor and the criminal investigator on how the possible criminal violations and the administrative ones might rely on similar or different evidence, whether the investigations should run concurrently and the investigators should interview some witnesses together, etc. The legislation allowed for that kind of coordination, to make sure both investigations can be thorough and timely: "OPA's jurisdiction shall include all types of possible misconduct. In complaints alleging criminal misconduct, OPA shall have the responsibility to coordinate investigations with criminal investigators external to OPA and prosecutors on a case-by-case basis to ensure that the most effective, thorough, and rigorous criminal and administrative investigations are conducted." **(Accountability Legislation - 3.29.100 G)**	The proposed contract, in contrast, appears to roll OPA's authority back to a very limited role : "…OPA will not conduct criminal investigations. OPA and specialty unit investigators conducting the investigation may communicate about the status and progress of the criminal investigation, but OPA will not direct or otherwise influence the conduct of the criminal investigation. In the discretion of the Department, simultaneous OPA and criminal investigations may be conducted… Then the Appendix adds: "The City agrees that the intent of the Ordinance is that OPA will not itself conduct criminal investigations, but rather that the OPA *will have responsibility to coordinate its investigations* with criminal investigators and/or prosecutors from the City or other jurisdictions." **(Proposed SPOG Contract - 3.7 & Appendix E.12)** (emphasis added) [The SPMA contract provides additional detail, and different parameters, regarding OPA's role.]

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OPA has always had a civilian director, but all the investigators, intake staff and supervisors were sworn. The legislation adopted the reform that the supervisors would be civilian, and investigators and intake staff would be a mix of civilian and sworn, as determined by the director, based on the best mix of skills and background needed to serve the public well. **(Accountability Legislation – 3.29.140)**	The proposed contract limits OPA's civilian investigators to two, limits how they get assigned, prohibits them from investigating allegations that might result in termination (or requires them to be paired with a sworn investigator to do – the language used in the contract is unclear.) So for the most serious allegations, this doesn't make OPA any more accessible for complainants who were not trusting of having sworn investigators, which was one of the goals of civilianization nor does it help with the challenges inherent in a sworn investigator having to recommend a colleague or superior be fired for misconduct. The contract also prohibits civilians from being dispatched to, or assigned as a primary unit to, investigate any criminal activity. This language may interfere with civilian personnel in OPA being involved at FIT call-outs and with Type III Use of Force. **(Proposed SPOG Contract - Appendix D & 7.10)**
Because there are some allegations where it does not serve the public well to have the employee continue on active duty and/or continue to get paid while the criminal and/or administrative investigations proceed, the reform adopted in the legislation provided the Chief greater authority to put an officer on leave without pay, if the officer has been charged with a felony or gross misdemeanor; if the allegations could lead to the officer being fired if they're found to be true; or if the Chief finds it necessary for the officer's or public safety, or security or confidentiality of law enforcement information. The officer will get back pay if reinstated, less any amounts representing a sustained penalty of suspension. **(Accountability Legislation - 3.29.420)**	The contract changes this, limiting the Chief's authority. An officer can't be suspended longer than 30 days pending investigation unless they've been charged with a felony or gross misdemeanor, and that only if that gross misdemeanor involved moral turpitude or a sex or bias crime; or if the allegation could lead to termination if proven true. It eliminates the Chief's authority to do this if the Chief finds it necessary for the officer's or public safety, or security or confidentiality of law enforcement information. Given the length of time prior to filing of charges, this could well mean needing to return an officer to active duty who will later be charged with a serious crime, which damages public trust, especially in highly visible cases. **(Proposed SPOG - Contract 3.3)**
The old contract allowed officers to use vacation time or any other accrued time to be compensated when they had been disciplined with an unpaid suspension, for any suspension of less than 8 days. The legislation reformed this to prohibit the use of accrued paid leave regardless of the length of the suspension. This addressed the widespread public perception of officers being paid to sit at home as their 'accountability' for misconduct. **(Accountability Legislation – 3.29.420 A.8)**	The proposed contract rolls this back to the old contract language allowing officers to use vacation time or any other accrued time balance to get paid during an unpaid suspension, as long as the suspension is less than eight days (which suspensions frequently are). **(Proposed SPOG - Contract 3.4)**
The legislation addressed the problem of destruction of personnel and OPA records by requiring that all of an officer's personnel and OPA files must be kept on record as long as the officer is still employed with the City, plus six years or as long as an action related to that employee is ongoing.	The proposed contract partially rolls this back. OPA files on an officer will only be retained based on their outcome. If an investigation finding is "sustained," the record will be kept as long as the Accountability Ordinance says it should. But, if the finding is "not sustained," it will only be kept for three years.

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The Ordinance also clearly defined what personnel records are, and for the sake of transparency, proving progressive discipline, and public records obligations, ensured the parties couldn't negotiate later removal of records of discipline imposed: "SPD personnel files shall contain all associated records, including Equal Employment Opportunity complaints, and disciplinary records, litigation records, and decertification records; and OPA complaint files shall contain all associated records, including investigation records, Supervisor Action referrals and outcomes, Rapid Adjudication records, and referrals and outcomes of mediations. Records of written reprimands or other disciplinary actions shall not be removed from employee personnel files." **(Accountability Legislation – 3.29.440)**	The proposed contract also removes the specific requirements in the Ordinance for what must be retained and the prohibition on negotiating the later removal of records of sustained findings and discipline, which can impede the department's ability to prove appropriate progressive discipline and fair/uniform application, as well as frustrate public disclosure obligations. **(Proposed SPOG contract - 3.6.L)**
The legislation reformed the disciplinary appeals process in several ways, to make the system fair, timely, transparent, efficient and uniform. For example, eliminating other employees being involved in deciding appeals of discipline, and arbitrators who both the City and Guild must agree on, and instead having only the Public Safety Civil Service Commission (PSCSC) working with a professional, neutral Hearing Examiner decide appeals; having a standard of review that gives deference to the factual findings of the Hearing Officer, and requires the recommended decision and the final decision affirm the disciplinary decision unless the PSCSC specifically finds that the disciplinary decision was not in good faith for cause, in which case they may reverse or modify the discipline only to the minimum extent necessary to achieve this standard; having strict timelines for each phase from how much time the officer has to request a hearing to how quickly the ruling must be issued, so that appeals don't drag on for months or years; not allowing grievance procedures to result in any alteration of the discipline imposed by the Chief; and requiring all disciplinary hearings to be open to the public. **(Accountability Legislation - 3.29.420 and 4.08.105)**	Other than maintaining some of the timelines, none of the other reforms to the disciplinary appeals process are retained in the contract. These reforms were all recommended based on extensive reviews of problems that had come to light with the City's disciplinary appeals processes.
The legislation stated that the accountability system should work the same way for employees of all ranks. This was to ensure that the public and employees can rely on complaint, investigation, discipline, disciplinary appeals and related processes that do not treat higher ranking personnel differently than officers and sergeants. **(Accountability Legislation - 3.29.100 D.)**	There is no language in the contract that states that accountability policies and practices shall be applied uniformly regardless of rank or position, and the two contracts (SMPA for Captains & Lieutenants and SPOG for sergeants and officers) now have very different terms. This means different standards for different ranks. OPA will either have to establish two different systems for

	complaints and investigations involving employees from SPOG and employees from SPMA (different 180-day deadlines, different burdens of proof, different statutes of limitations, different approaches to investigations of possible criminal misconduct, different notice requirements, etc.) even if the employees are all involved in the same incident; or OPA will instead apply all the roll-backs in the SPOG contract to all employees, giving those roll-backs to employees who have not bargained for them.
The legislation stated that the police department will establish a civilian office to manage secondary employment (off-duty work) of employees, providing appropriate oversight as well as independence from those who benefit from receiving off-duty work assignments. **(Accountability Legislation -3.29.430 (D))** The Interim Mayor then issued an Executive Order in the fall of 2017 and the department was to move forward by the beginning of 2018 with new secondary employment management and policies. The existing system has for years suffered from real and perceived conflicts of interest, has internal problems among employees competing for business, is technologically out of date, and lacks appropriate supervisory review and management. Among many reforms, the department was to create an internal civilian-led and civilian-staffed office to handle assignments for off-duty work; eliminate the practice of having the work managed outside of the department, often by current employees acting through their private businesses created for this purpose or through contracts between the employee and a private business; make clear that all policies still apply when employees are performing secondary employment work; and establish clear and unambiguous policies, rules and procedures consistent with strong ethics and a sound organizational culture.	The contract states: "Employees covered by this Agreement shall be allowed to engage in off-duty employment subject to the same terms and conditions in effect on January 1, 1992" and "the City may reopen this Agreement on the issue of Secondary Employment. In the event the City does re-open, the Guild may re-open the Agreement on any economic issue that is directly related to and impacted by the change in Secondary Employment." The impact of this is unclear. Employees do not have a right to additional work in addition to their on-duty work, and the system providing for greater accountability was to be in place. **(Proposed SPOG Contract - 7.9 & 21.5)**
Another improvement adopted in the legislation was to address the problem lack of transparency for the complainant, public and others if a sustained finding or discipline is changed at some point in the process after the employee's Due Process Hearing. The ordinance already required the Chief to send a written summary to the Mayor and Council if the Chief decides not to follow one or more of the OPA Director's written recommendations on findings following an OPA investigation. The legislation strengthened this in	The proposed contract eliminates these transparency and timeliness improvements. "When the Police Chief changes a recommended finding from the OPA, the Chief will be required to state his/her reasons in writing and provide these to the OPA Director. A summary of the Chief's decisions will be provided to the Mayor and City Council." **(Proposed SPOG -Contract 3.5.G)**

several ways: it must be done within 30 days of the Chief's decision on the disposition of the complaint (this was to address long delays that had occurred in the past). In addition to the Mayor, the statement must be specifically sent to the Council President and the Chair of the public safety committee, the City Attorney, the OPA Director, the Inspector General, and the CPC Executive Director. It must be included in the OPA case file and communicated to the complainant. It must also be included in OPA's public summaries. Lastly, to address the problems of findings or discipline resulting from an investigation being changed later in the process as the result of an appeal or grievance, whenever that happens, the City Attorney must send the statement to those recipients, with the same information provided to the complainant and the public. **(Accountability Legislation - 3.29.135)**	
The legislation set forth that if officers are to be in specialty units and be entitled to the higher pay that comes with that, their performance record and OPA history must meet certain standards. It also made clear that they could be transferred out if performance standards, including OPA history, were not maintained. "SPD shall adopt consistent standards that underscore the organizational expectations for performance and accountability as part of the application process for all specialty units, in addition to any unique expertise required by these units, such as field training, special weapons and tactics, crime scene investigation, and the sexual assault unit. In order to be considered for these assignments, the employee's performance appraisal record and OPA history must meet certain standards and SPD policy must allow for removal from that assignment if certain triggering events or ongoing concerns mean the employee is no longer meeting performance or accountability standards." **(Accountability Legislation - 3.29.430)**	The proposed contract requires that a transfer based on inadequate performance may only occur if the department has documented a repetitive performance deficiency and informed the employee, and the employee has had a reasonable opportunity to address the performance deficiency, normally no less than thirty (30) and no more than ninety (90) days. This doesn't align with the goal of allowing for removal from a specialty assignment if certain triggering events, including misconduct or other conduct that warrants transfer. It also does not address the required standards for the initial appointment to a specialty unit. **(Proposed SPOG Contract - 7.4.G & 7.4.4)**
The legislation requires all other agreements between the City and the Guild must be made publicly available and incorporated in the contract, or they must be considered no longer in effect. The purpose of this improvement was to address a past problem that there have been other terms and conditions imposed by those separate agreements (often made to resolve a grievance or unfair labor practice) that also impact the public, but they are not publicly known. **(Accountability Legislation - 3.29.460)**	The contract appendices list many agreements that haven't been made publicly available and won't be, presumably, until after the contract is approved. Only their titles are listed, not their terms, so it is impossible for the public to know in what ways they additionally affect how the accountability system works. **(Proposed SPOG Contract - Appendices E.12 & F)**