



SEATTLE CITY COUNCIL | POSITION 9

COUNCILMEMBER M. LORENA GONZÁLEZ

May 17, 2017

Kathleen O'Toole
Chief of Police
Seattle Police Department
610 Fifth Avenue
Seattle, WA 98104

Pete S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104

Re: Council Bill 118969 (Police Accountability Legislation)

Dear City Attorney Holmes and Chief O'Toole:

I am in receipt of your respective letters dated May 12, 2017. Thank you for providing me with your reflections on the above-referenced legislation. I write this letter to provide you with greater context about the City Council's work on this legislation and my vision for police reform and accountability.

Introduction

As you know, I approach my police accountability and reform policy work through a unique perspective. Prior to being elected a councilmember, I practiced civil rights and constitutional law for approximately 10 years. I represented many ordinary people in and outside of Seattle in cases involving civil rights violations, including excessive force, biased-policing, failure to train and other systemic failures. In my case work, I had many opportunities to critically evaluate and question police department policies, practices, procedures and training specifically through the lens of the U.S. Constitution and applicable case law. Of course, I do not purport to understand the day-to-day management and operational demands that a Chief, her command staff, lieutenants, and captains face every day. Rather, given the content of your letters, I think it's important to communicate the breadth of my litigation experience in recognizing and evaluating how accountability and reform systems work together to achieve sustainable police reform.

The Process and My Vision of Police Reform and Accountability

To begin with, together with Councilmember Tim Burgess, I had an opportunity to meet with City Attorney Holmes weeks ago, to discuss the issues outlined in his letter. Similarly, I have discussed this legislation and the proposed model with Chief O'Toole on at least three occasions beginning in March.¹

¹ I also separately met with representatives of SPMA and SPOG to hear their concerns about this legislation.

While I respect your perspectives, it appears that the Council is indeed at an impasse with your views regarding the mission, purpose and scope of the Community Police Commission and who should oversee the accountability system and ongoing police reform efforts.²

My vision for the future of our police accountability system and iterative reform efforts can be best summarized as follows:

- 1. Create three co-equal organizations that will collaborate but remain independent from *undue* influence from each other and external forces;**
- 2. Create an accountability system that inspires confidence and legitimacy amongst complainants and law enforcement;**
- 3. Cement ongoing fidelity to organizational reforms implemented pursuant to the goals of the 2012 federal Consent Decree in *United States of America v. City of Seattle*, 12 Civ. 1282 (JLR); and,**
- 4. Fundamentally shift culture within the police department to ensure constitutional policing is a top priority for command staff, supervisors and rank and file officers well into the future.**

As the chair of the Gender Equity, Safe Communities and New Americans Committee, I am responsible for leading the public and internal process for improving the legislation transmitted to Council by the Mayor on January 31, 2017. The full Council was first briefed at a full Council Briefing on January 23rd about the work plan, legislative process, Consent Decree and the Court's Order dated January 5, 2017; all relevant to this legislation. Since then I have led six public committee hearings and two public testimony hearings.³

For the past sixteen weeks, councilmembers have publicly debated and deliberated the issues you have articulated in your respective letters and in one-on-one meetings.

(1) The Proposed Model. Because I recognized the importance of framing the duties roles and responsibilities of the CPC, the OPA and the OIG, I frontloaded the conversation about the purpose, roles, duties and authority of each of these entities to my February 23, 2017, committee hearing. Defining these aspects would fundamentally influence the final product.

The model reflected in the amended legislation is rooted in the revised and adopted purpose of the OPA, the OIG and the CPC. These entity purpose statements are intended to set a clear framework that guide the structure and content of the entire legislation. It is not just a myriad of parts but specific powers granted in support of my vision as informed by my 50+ meetings with the CPC.

² Ultimately, the Mayor and City Council are responsible to the public for the success or failure of our extensive efforts to reform the Seattle Police Department and its accountability processes.

³ Our seventh and final public committee hearing will be on Thursday, May 18, 2017 at 9:00 am. Our final committee hearing will be followed by a public Full Council hearing where we will, for the third time, hear additional public comment about this legislation.

I disagree with the characterization that the proposed model is abjectly complex. From a structural perspective, the model proposed by the Mayor is exactly what currently exists. Council has not fundamentally changed that model but it has enhanced the duties, powers and responsibilities of each entity. The Department of Justice, the Mayor, the Council, the CPC and others agree that we should not abandon the three-pronged structure of our police accountability system. The proposed legislation, even as amended, stays true to the model that has existed since the early 1990s.

Existing Model	Proposed Model
Office of Professional Accountability	Office of Police Accountability
Office of Professional Accountability Auditor	Office of Inspector General
Office of Professional Accountability Review Board	Community Police Commission

I think it is more accurate to state that you have expressed concerns about who is running the show. You collectively argue that it should be the Inspector General while the Community Police Commission argues it should be the 21-member CPC. This represents two points on a spectrum. The Council wrestled with this issue early on and a majority of the Council concluded that our police reform efforts and accountability system is best served by adopting a model that requires collaboration, strategic overlap in key functions and streamlined obligations to report and respond to recommendations. In effect, our shared interest in engaging in ongoing and meaningful police reform and accountability are best served by creating three co-equal organizations who have an unfettered ability to self-govern and call out failures in the system. I believe the proposed legislation creates the necessary checks-and-balances while preserving each entities independence from *undue* influence from each other and internal and external forces.

During our study missions across the country, we learned that intentional overlap in key functions was important to ensure the healthy functioning of the overall system and ongoing police reform efforts. In some instances, the goal was precisely to daylight areas where there was disagreement and tension between the IG and a civilian-led commission or between the Chief and the investigation unit. Indeed, our current accountability system has a degree of healthy tension already built into it. For example, when the Chief of Police disagrees with a discipline recommendation or finding of the OPA Director, she must inform the Mayor and the Chair of the public safety committee, in writing, of that disagreement and the reasons for the deviation. It is this principle that anchors the approach reflected in the heavily amended legislation.

I agree that the IG will serve an important and critical function in our iterative reform efforts and continuous improvement of accountability systems. However, the IG's role will be enhanced if it is rooted in the knowledge and understanding of the deep needs of impacted communities. That is precisely why the legislation requires intentional collaboration between the IG and the CPC both in development of the IG's work plan and in the IG's community engagement efforts.

(2) Purpose, Scope and Power of the CPC. The councilmembers at the May 5th Committee hearing agreed that the CPC should be a strong voice and advocate for community-based concerns regarding policing matters. However, in our Committee hearings we have also discussed how to best define the purpose, duties and powers of the CPC in a manner that does not effectively relegate it to being a re-incarnation of the OPA Review Board, which had limited power, limited access to information and limited influence over the accountability system and police reform efforts. The Committee debated and approved a purpose for the CPC that would allow it to be more than a mere megaphone.

I believe that the current version of the legislation is a balanced approach. It provides the CPC with the role of continuing to be the main conduit for the community to provide community-based oversight to our accountability system. But it also does more than simply provide CPC with a legislative right to speak and/or issue reports. The legislation requires the CPC to make substantive policy recommendations related to SPD policies, practices and training. Notably, the CPC's policy work will not be limited to "misconduct" or "complaint processes" as OPARB was. The legislation provides the CPC with the power to analyze everything from accountability-related policies to policing trends to operational issues that impact public confidence. I believe that the CPC must always be the community voice with a strong and clear purpose and mission that provides them with the authority to influence policing trends and our accountability system.

(3) CPC Duties, Responsibilities and Authority. Having defined the purpose of the CPC, the Council then tackled the CPC's duties, responsibilities and authority. As you know the CPC has consistently been on the opposite spectrum of your collective perspectives with regard to the level of control it should have over collective bargaining, the OPA Director, the IG, itself and the overall system. I believe that the current version of the legislation plus the amendments that will be considered in my committee on May 18th provide a middle ground between these differing perspectives. A comparison of the OPARB model and the Los Angeles Police Commission (LAPC) model, which has existed since the 1970s, is instructive in this context.

There are five commissioners on the LAPC; all appointed by the Mayor. The LAPC has the authority to fire and discipline the chief, which the CPC has not advocated for in our own model. The LAPC also reviews completed internal investigations and assesses the quality of the investigation and has the authority to issue a finding of whether the conduct fell in or out of department policy but does not make discipline recommendations. The Chief of Police remains the final word on discipline. The LAPC and its staff also direct the work of the Inspector General's work plan; something the CPC continues to advocate for within our own model. During our visit to Los Angeles, we met with police reform advocates and activists. These leaders shared a common perspective: (i) the commissioners were not representative of impacted communities and (ii) the IG, as an institution, had no legitimacy in community because of perceived "coziness" with the commissioners. Community members reported that they did not trust the IG because they have historically "just done what the LAPC tells them to do." In other words, the advocates in Los Angeles essentially believed that the IG worked for the LAPC and not for the community.

The needle that Council must thread is how do we maximize the long-term legitimacy, strength and viability of the CPC as true advocates for the community while not compromising other critical functions within our accountability system? I believe that we have struck this balance through our amendatory work. Please see Attachment 1 as the highlights of the power, duties and responsibilities of the CPC as defined in the amended legislation.

(4) CPC Residency Requirement & District Representation. As I understand it, you are proposing (i) a residency requirement that would require that each CPC Commissioner live in the City of Seattle and (ii) a district-representation model that would further require that a CPC Commissioner live within the Council district that the commissioner seeks appointment to. To be clear, the Mayor’s originally transmitted legislation did not propose either of these criteria as qualifications to serve as a CPC Commissioner. Rather, the original legislation was devoid of district representation and required that 80% of the CPC’s membership be Seattle residents.

In discussions during my Committee, councilmembers expressed concerns about the lack of intentional district representation. Some councilmembers expressed concerns that a Seattle residency requirement was out of touch with the realities of the affordability crisis besieging our City and especially our communities of color. Others expressed concerns that non-resident workers may also be impacted by policing.

As you know, communities of color are disproportionality impacted by policing, and therefore stand to be the greatest beneficiaries of the policies memorialized in CB 118969. For these reasons, the Committee supported Councilmember Debora Juarez’s amendment to require that prospective commissioners live, work or have significant professional or civic ties to a Council district. After much consideration and reviewing the practices of other similarly situated police commissions, the Council will vote on eliminating a residency requirement altogether and instead opt for a “live or work” standard in combination with a district representation requirement. I assure you that we have taken your concerns into consideration during the six public committee hearings we have already had.

(5) Appointments of Commissioners and CPC Executive Director. Councilmembers have also had an opportunity to debate this issue and we have concluded that having a mixture of who appoints members to the CPC is critically important to its legitimacy. During our study missions, we learned that centralized appointment authority of agency directors and commissioners fostered mistrust within the community. There was a clear sense that allowing a community-focused organization to self-select its members and its executive director was critical to retaining the trust of those most affected by unlawful policing. Additionally, because it is our intent to insulate the CPC from undue political influence, we favor providing the CPC with the authority to select its own Executive Director.⁴

⁴ Our amendments are modeled after the Seattle Ethics and Elections approach to self-governance.

Conclusion

I want to thank you for sharing with me, once again and in written form, your perspectives about this important legislation. And I thank you for your ongoing partnership and commitment to ensuring that we establish a model in which we can continue to reform every aspect of the police department and continually improve our police accountability processes.

Very truly yours,



Councilmember M. Lorena González
Chair of the Gender Equity, Safe Communities & New Americans Committee

cc: Mayor Edward B. Murray
Council President Bruce Harrell
Councilmember Tim Burgess
Councilmember Sally Bagshaw
Councilmember Lisa Herbold
Councilmember Rob Johnson
Councilmember Debora Juarez
Councilmember Mike O'Brien
Councilmember Kshama Sawant