

MEMORANDUM

To: Charter Review Commission

From: Equity for All Subcommittee, King County Charter Review Commission

Date: May 31, 2019

Re: Proposed Changes to the Charter Provisions Related to the Office of Law Enforcement Oversight

This memo is intended to lay out the purpose of making certain changes to Charter Section 265 related to the Office of Law Enforcement Oversight. The subcommittee has met and discussed these changes. Our initial view is that Charter amendments that support strengthening OLEO's ability to discharge the obligations articulated in ordinance and provide a clear statement of the will of the people of King County to include those powers in any collective bargaining agreement between the County and the unions representing its law enforcement employees is a valuable contribution.

There are several proposed changes that could accomplish this goal, some of which the committee expressed unanimous agreement that one should be brought in the early round. We describe that issue below.

Brief History.

For more than a decade, King County has worked to improve oversight of the King County Sheriff's Office (KCSO). In 2006, the county council's Law, Justice and Human Services Committee held eleven meetings to consider civilian oversight for the sheriff's office. The committee reviewed existing systems for the resolution of complaints and other investigations of employee misconduct. The committee also reviewed the systems used by the Ombuds/Office of Citizen Complaint to evaluate, categorize, and investigate complaints against KCSO employees. Additionally, the committee received an extensive briefing on the systems in place in KCSO's Internal Investigations Unit for their review of allegations of misconduct and other complaints. Finally, committee members had several briefings from the sheriff's Blue Ribbon Panel which was charged in March 2006 to evaluate many of the areas that the committee was reviewing.

Ordinance 15611—Initial Oversight Ordinance. Based on its deliberations and review of the KCSO Blue Ribbon Panel report, the King County Council developed legislation designing a system for civilian oversight that allowed for independent civilian monitoring and evaluation of ongoing investigations. On October 9, 2006, the Council approved Ordinance 15611 regarding civilian oversight of KCSO and creating the Office of Law Enforcement Oversight (OLEO) as an independent office within the legislative branch. The legislation gave OLEO authority to review complaints and investigations that paralleled the responsibilities identified as best practices during Council deliberations and

advanced by the Blue Ribbon Panel. The legislation also allowed for the creation of an oversight committee made up of members of the public to support the new office.

Shortly after the council approved Ordinance 15611 however, the King County Police Officers Guild (KCPOG) filed an unfair labor practice charge against the county. On November 19, 2007, the county and the KCPOG finalized an agreement that Ordinance 15611 would be treated as a labor policy and that this policy would need to be bargained in good faith. After which, the KCPOG dismissed its unfair labor practice charge against the county. As a consequence of this agreement, the executive took no action to implement Ordinance 15611.

Oversight Legislation Modified to Address Labor Agreement. On December 8, 2008, the Council passed Ordinance 16327 approving a new five-year collective bargaining agreement between King County and the KCPOG. The new collective bargaining agreement required the county to repeal most of Ordinance 15611, eliminating the primary components of the legislation establishing the OLEO. However, also on December 8, 2008, the Council adopted Motion 12892, which reaffirmed its commitment to establishing a system of civilian oversight.

Following through on that commitment, the Council adopted Ordinance 16511 in May 2009 to establish a system of civilian oversight in accordance with the existing labor agreement. The ordinance was developed to address the adopted collective bargaining agreement while also preserving some civilian oversight capabilities for the OLEO.

Establishing a Citizen's Committee on Independent Oversight. In Ordinance 16511, the Council created an eleven member Citizen's Committee on Independent Oversight (committee) to work with OLEO. The legislation directed the committee to advise the OLEO Director on matters important to the county's diverse communities and to provide community input as needed. The Council also intended the committee to serve as a resource that represented the county's diverse population and to advise the Director on policy and public perceptions of the sheriff's office.

The Council envisioned that the committee would advance community communication that fosters accountability and public understanding of the misconduct and discipline policies, procedures and practices of the sheriff's office, as well as, other issues related to the OLEO Director's oversight responsibilities. However, Ordinance 16511 made it clear that the committee shall not review or advise the OLEO Director on individual complaints, investigations, or disciplinary actions.

Additionally, the legislation provided no direct guidance for the establishment of committee operations including, how often meetings should be convened, what level of support the committee would need from the OLEO Director, or how the committee could best support the OLEO Director in carrying out oversight requirements.

Charter Amendment and Council Action Expanding OLEO Authorities. In November, 2015, the voters of King County approved an amendment to the King County

Charter that established OLEO as a charter-mandated county office within the legislative branch. This amendment, now Section 265 of the King County Charter, increased oversight responsibilities for OLEO and required that those authorities be established by ordinance.

In April 2017, the Council adopted Ordinance 18500 expanding OLEO's authorities to align with the 2015 voter approved charter amendment. Examples of the expanded powers, under Ordinance 18500, include:

- investigatory authority with subpoena powers for the office;
- complaint and concern intake responsibilities, including the authority to review KCSO complaint intake classifications;
- authorization to review policies, procedures, training, operations, et al and make recommendations prior to adoption;
- access to relevant information and crime scene authorities;
- notification requirements regarding the KCSO complaint handling process; and
- review inquests findings.

These responsibilities are currently the subject of bargaining with the KCPOG.

Subpoena Power.

The power to issue subpoenas is an established power among oversight agencies nationwide. The enabling ordinance for OLEO currently provides OLEO the power to “issue a subpoena to compel any person to appear, give sworn testimony or produce documentary or other evidence reasonable in scope and relevant to the matter under inquiry and limited to the matters associated with the authority granted under K.C.C. 2.75.040.A.2.” KCC 2.75.055. [add link to ordinance.] The King County Charter does not currently include an explicit grant of subpoena power to OLEO.

An investigative process that could lead to discipline is a matter over which the union and the County must bargain. Even where the legislative branch enacts an ordinance related to this area, the employer must bargain with the union before its implementation. Because no agreement has yet been reached with the union to allow for subpoena power, this ordinance section has not been implemented.

Amending the Charter to include subpoena power will not change the current collective bargaining agreement, but it could help significantly with the re-negotiation of the agreement and any subsequent interest arbitration. The sub-committee believes that amending the Charter to be consistent with the ordinance is important because it will be a direct demonstration of the will of people of King County that this oversight office be empowered to gather the information it needs to be an effective oversight agency.

This, in turn, would provide parties at the negotiating table, especially the elected Sheriff and the County Executive, information as to what their constituents desire. Of course, it does not guarantee that the unions representing public safety employees will agree. In the event that the parties cannot come to an agreement in negotiations for public safety

employees, like Sheriff's Deputies, the parties are bound to place the outstanding issues before an interest arbitrator. The interest arbitrator is a private person, ideally with experience in the field. That arbitrator has broad authority to impose contract terms. See RCW 49.60.465. [add link to statute] An amendment to the Charter would demonstrate the will of this Commission, the County Council and the voters of King County in support of subpoena power for OLEO. It hard to imagine that would not be persuasive to an interest arbitrator.

Even in the absence of a change in the outcome of collective bargaining negotiations, placing this power in the Charter would enshrine this expression of the will of the voters even if the terms of the ordinance were to be changed by a future County Council.

All committee members at the April 15 meeting agreed that this is an issue that should be placed before the Council in the early round.