## STAFF REPORT

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| **Agenda Item:** | 5 | **Name:** | Nick Wagner |
| **Proposed No**.: | 2015-0275 | **Date:** | July 15, 2015 |

**SUBJECT**

A proposed charter amendment: (1) establishing a charter-based civilian office of law enforcement oversight, (2) providing the office with appropriate authority to carry out its duties, and (3) establishing a charter-based citizen advisory committee on law enforcement oversight.

**SUMMARY**

Proposed Ordinance 2015-0275 (Att. 1) would place on the November 3, 2015, ballot a proposed charter amendment concerning law enforcement oversight. If approved by the voters, the amendment would:

1. Establish a charter-based civilian office of law enforcement oversight (OLEO) to investigate, review, and analyze complaints about law enforcement conduct and the use of force by county law enforcement officers; this would include review and analysis of internal investigations conducted and disciplinary action taken by the King County Sheriff’s Office[[1]](#footnote-1) (KCSO) regarding that conduct or use of force;
2. Provide OLEO with appropriate authority to carry out its duties; and
3. Establish a charter-based citizen advisory committee on law enforcement oversight, which would review, advise, and report on OLEO and advise the Sheriff and the Council on matters of equity and social justice related to law enforcement; the advisory committee would also be permitted to advise the Sheriff and the Council on any systemic problems and opportunities for improvement in KCSO law enforcement practices.

Section I of the findings of the proposed ordinance provides: “Civilian oversight of law enforcement is a fundamental principle that should be enshrined in the King County Charter.“

The proposed ordinance would preserve the existing OLEO and citizen advisory committee, including the applicable provisions of the county code, to the extent that they are consistent with the proposed charter amendment.

There are two proposed amendments: Striking Amendment S1 (Att. 2), which would clarify the meaning of the ordinance and make technical changes: and Title Amendment T1 (Att. 3), which would amend the title to more accurately reflect the substance of the proposed ordinance.

**BACKGROUND**

**King County Sheriff’s Office**

The Sheriff’s Office is the law enforcement agency for unincorporated King County and provides police services under contracts with 12 cities within the County and others including Metro Transit, Sound Transit, the Muckleshoot Tribe, and King County International Airport.

**Law Enforcement Oversight**

Law enforcement oversight in King County is governed in part by the King County Code and by the collective bargaining agreements (CBAs) between the County and the bargaining representatives of the represented KCSO employees, as described below. The County’s law enforcement oversight has also been the subject of recent review by the King County Auditor, whose preliminary findings are also described below.[[2]](#footnote-2)

**King County Code**

After extensive consideration of ways to improve civilian oversight of the Sheriff’s Office, the Council established the King County Office of Law Enforcement Oversight (OLEO) in 2006 by Ordinance 15611, which was codified as Chapter 2.75 of the King County Code (Att. 4). The King County Police Officers Guild (KCPOG), which is the bargaining representative of the Deputies and Sergeants in the Sheriff’s Office, soon thereafter filed an unfair labor practice (ULP) charge, contending that certain provisions of Ordinance 15611 were mandatory subjects of bargaining and therefore should have been bargained first with KCPOG. The ULP charge was settled, and the Council subsequently amended Chapter 2.75 in 2009 by Ordinance 16511.

The original OLEO ordinance, Ordinance 15611, also established a citizens’ committee on independent oversight of law enforcement. That ordinance was codified as KCC § 2.36.050 (Att. 5), which has since been amended by Ordinance 16511 in 2009 and by two subsequent ordinances.

**Collective Bargaining Agreements**

Civilian oversight of the Sheriff’s Office is also addressed in Article 22 of the collective bargaining agreement between King County and KCPOG, which is Attachment 6 to this staff report, and in the collective bargaining agreements of other bargaining units within the Sheriff’s Office.

**King County Auditor Report**

On July 14, 2015, the King County Auditor is expected to issue a report on Law Enforcement Oversight in King County. A preliminary draft of the report was made available for review to the Sheriff, the Executive, and the Council. The following discussion is based on the preliminary draft, not the final report, which was not available when this staff report was prepared and may differ from the preliminary draft.

The Auditor found, among other things, that King County’s system of law enforcement oversight “has limited authority compared with other oversight functions across the United States” and that “there are significant barriers in place that undermine OLEO’s independence and access to information—elements that are critical to its success.” The Auditor’s preliminary recommendations included, among others:

* Considering a change in the process for hiring the OLEO director to remove or dilute conflicts of interest that give those being overseen an opportunity to have undue influence on oversight; and
* Providing OLEO with access to all relevant information, with accountability provided by ordinance to ensure proper use of the information, rather than by the Sheriff.

**ANALYSIS**

**Preservation of Existing OLEO and Citizens’ Committee**

Proposed Ordinance 2015-0275 recognizes in section I of the findings that the Council has already established by ordinance an OLEO and a citizens’ advisory committee on law enforcement oversight. Section I states: “This proposed charter amendment is not intended to dissolve those entities or to require readoption of existing code provisions that are consistent with this proposed amendment, but rather is intended to provide the office and the committee with a foundation in the county Charter as well as the county code and to set forth the essential authority of the office and the committee.”

**Appointment of the OLEO Director**

Like the existing OLEO, the charter-based OLEO would be part of the legislative branch. Under the proposed charter amendment, however, the OLEO director would be appointed by a majority of the Council.

**Change from Status Quo:** Currently, KCC 2.75.030 and Article 22, Section 17, of the KCPOG CBA provide that the OLEO director is to be appointed by the Executive and that the appointment must be made from among three candidates recommended by a five-member committee consisting of one member appointed by each of the King County Police Officers Guild, the Puget Sound Police Managers Association (which represents Captains and Lieutenants in the Sheriff’s Office), the chair of the Council, and the Executive, and a fifth member appointed by the other four. The County Auditor’s preliminary draft report indicated that in the view of the experts it consulted, this composition of the hiring committee constitutes a significant overrepresentation of the law enforcement community in the selection process and that those who are the subject of oversight should not have such a strong influence over the selection of the OLEO director.

**Authority of Charter-based OLEO**

The authority of the charter-based OLEO would be prescribed by ordinance and would include:

* Investigation, review, and analysis of: (1) conduct of county law enforcement officers that has been the subject of a complaint and (2) the use of force by county law enforcement officers regardless of whether it has been the subject of a complaint;
* Review and analysis[[3]](#footnote-3) of internal investigations conducted and resulting disciplinary action taken by the department of public safety regarding that conduct or use of force;
* Preparation and publication of findings, conclusions, and recommendations related to OLEO’s oversight of the Sheriff’s Office;
* Community outreach concerning the Sheriff’s Office and OLEO; and
* Access to all relevant information, including authority to review and copy relevant department of public safety files, inspect crime scenes, conduct interviews, and participate in internal investigations and review hearings.

**Change from Status Quo:** This scope of authority for OLEO is broader than currently provided for under the county code and the KCPOG CBA in the following respects:

1. Investigation. The proposed charter amendment would permit OLEO itself to investigate the conduct of law enforcement officers that results in a complaint or that involves the use of force, rather than being limited to monitoring investigations conducted by KCSO’s Internal Investigation Unit (IIU). Investigation by OLEO is currently prohibited under both the county code (KCC 2.75.040(C)) and the KCPOG CBA (Art. 22, § 2), except that an OLEO representative may participate in administrative interviews regarding complaints that could lead to discipline of a law enforcement officer—excluding criminal investigations of KCSO employees (Art. 22, § 8).

The Auditor’s preliminary draft report lists the advantages and disadvantages of the three models of civilian oversight—investigative, monitoring, and auditor/ombudsman (Appendix 3 in the report)—but concludes that no single model or best practice exists for how civilian oversight should function or be structured. Currently, section 260 of the King County Charter provides for the County’s Office of Citizen Complaints (also known as the Ombudsman’s Office) to have “sufficient power to permit it quickly and efficiently to investigate and to make and publicize recommendations concerning its findings, including the power to subpoena witnesses, documents and other evidence and to administer oaths”; however, the Ombudsman’s office has usually deferred to OLEO as the body primarily responsible for law enforcement oversight.

1. Real-time Monitoring of Criminal Investigations of Officers. Unlike the current county code and CBA, the proposed charter amendment contains no explicit prohibition against OLEO monitoring criminal investigations of law enforcement officers or participating in interviews that are part of such investigations. The amendment would not preclude the Council from prescribing by ordinance such limitations as the Council might deem appropriate.
2. Review of Use of Force in Absence of Complaint. Under the proposed charter amendment, even in the absence of a complaint, OLEO’s oversight would extend to matters involving the use of force by county law enforcement officers. This is not currently provided for under the county code, though the KCPOG CBA was recently amended to allow OLEO to “monitor” “Critical Incidents,” which are defined to include “the use of deadly force, in-custody deaths, officer-involved shootings, and any use of force or vehicular pursuit that results in death or injury requiring hospitalization” (Art. 22, § 1).
3. Scope of Findings, Conclusions, and Recommendations. The proposed charter amendment imposes no limitation on OLEO’s preparation and publication of findings, conclusions, and recommendations related to OLEO’s oversight of the Sheriff’s Office, whereas the KCPOG CBA provides that OLEO “shall not take issue with discipline imposed by the Sheriff in specific cases” (Art. 22, § 15).
4. Access to Information. The proposed charter amendment provides for OLEO to have access to all relevant information, whereas the county code exempts “files related to ongoing investigations of deputies or other sheriff’s staff who are under criminal investigation” (KCC 2.75.060(A)) and the KCPOG CBA (Art. 22, § 5) imposes substantial limitations on OLEO use of Sheriff’s Office records, as described below.

The CBA provides that the Sheriff’s Office will not provide OLEO with copies, either paper or electronic, of complaints and investigative files, nor is OLEO permitted to “print or download KCSO complaints or investigative records of any kind.” This provision arose from concerns about whether the confidentiality of documents downloaded by OLEO was being adequately protected and whether copies downloaded by OLEO constituted new public records that would need to be disclosed separately from the originals that were located in the Sheriff’s Office, especially if OLEO added handwritten notes to them. Centralizing the function of responding to public records requests in the Sheriff’s Office also allows the Sheriff to know when documents have been requested and to notify officers and other individuals whose conduct might be addressed in the documents.

The CBA provides that OLEO “will have subsequent access to closed cases for up to two years solely for reporting purpose, unless there is a legitimate business necessity to review older files,” but without defining “legitimate business necessity” or making clear who is entitled to make that determination. The CBA requires OLEO to “notify the KCSO in writing of such business necessity when requesting access to cases older than two (2) years.” According to the Sheriff’s Office, this provision arose from concerns about whether past searches had extended beyond OLEO’s mission.

The CBA also provides: “If the Sheriff determines that a member of OLEO has violated the terms of access to investigative records, the Sheriff shall have the right to deny the OLEO member further access to investigative records.” As far as it can be determined from Section 5, a claimed violation could take the form of OLEO printing or downloading a complaint or investigative record “of any kind” or obtaining access to files older than two years without “legitimate business necessity.” Section 5 contains no provision for review of the Sheriff’s determination that a violation has occurred or for review of the Sheriff’s decision that the violation is sufficiently serious to justify denial of “further access to investigative records.” Without access to investigative records, OLEO’s ability to exercise oversight could be severely constrained.

The Auditor’s preliminary draft report cites experts as stating that the Sheriff, as head of the overseen entity, should not be able to restrict access to information. If issues arise concerning OLEO’s use of information, according to experts cited by the Auditor, there should be a process in place for an independent investigation of the matter in which a neutral party would determine the appropriate response. As a result of the restrictions in the CBA, according to the Auditor, OLEO does not have the access to information that experts agree is necessary for effective oversight.

**Charter-based Citizen Advisory Committee on Law Enforcement Oversight**

The citizen advisory committee would review, advise, and report on OLEO in a manner prescribed by ordinance. The committee would also be required to advise the Sheriff and the Council on matters of equity and social justice related to law enforcement and would be permitted to advise the Sheriff and the Council on any systemic problems and opportunities for improvement in the law enforcement practices of the Department of Public Safety.

The Council would prescribe by ordinance the committee’s membership, qualifications, and rules and procedures, and the process for appointment of committee members. The committee could be assigned additional duties by ordinance.

**Change from Status Quo:** Under the existing county code, KCC 2.36.050, the mission of the citizens’ committee on independent oversight is to advise the OLEO director. There is no provision for the committee to advise the Sheriff or the Council.

**Operation of the Proposed Charter Amendment**

**Implementation by Ordinance**

As provided in the proposed charter amendment, the amendment would need to be implemented by ordinance.

**Effect on Inconsistent County Code Provisions**

To the extent that the proposed charter amendment is consistent with the current code, adoption of the charter amendment would not invalidate the current code. Code provisions that are inconsistent with the charter amendment would need to be amended, which could be done in an ordinance implementing the charter amendment.

**Effect on Inconsistent CBA Provisions**

To the extent that the proposed charter amendment is inconsistent with an existing CBA provision, adoption of the charter amendment would not invalidate the inconsistent CBA provision. To promote consistency with the charter amendment, the Council could adopt a labor policy directing its bargaining agent, the Sheriff,[[4]](#footnote-4) to try to negotiate, in the next CBA, terms that are consistent with the charter amendment. The outcome would depend on the negotiations or, if negotiations reached an impasse, on the decision of the arbitrator in interest arbitration. (Commissioned law enforcement officers are eligible for interest arbitration under state law.)

**AMENDMENT**

Striking Amendment S1 (Att. 2) would: clarify the intended meaning of lines 28-36 and 73-82 of the proposed ordinance; substitute “department of public safety” in place of “sheriff's office” to conform to the existing usage in the charter; and make clear that the amendment is to be implemented by ordinance. A redline showing the changes that would be made by S1 is Attachment 7 to this staff report.

Title Amendment T1 (Att. 3) would amend the title to more accurately reflect the substance of the ordinance. A redline showing the changes that would be made by T1 is Attachment 8 to this staff report.

**TIMING OF LEGISLATIVE ACTION**

According to the Prosecuting Attorney’s Office, a charter amendment ordinance must be effective by August 4 in order to be placed on the November 3, 2015, ballot. To meet that deadline:

* The last regular Council meeting at which final action could be taken by a five-member majority of councilmembers would be Monday, July 20;
* The last regular Council meeting at which final action could be taken as an emergency by a six-member majority of councilmembers would be Monday, July 27.
* The last date for a special Council meeting to take action as an emergency by a six-member majority would be Monday, August 3.

The July 15 meeting of the Committee of the Whole is the committee’s last regular meeting for reporting Proposed Ordinance 2015-0275 out of committee in time to be placed on the July 20 or July 27 Council agenda. If the ordinance is not reported out of committee, either with or without recommendation, the Council would need to relieve the committee of the ordinance if the Council wished to take final action on July 20 or July 27.

**ATTACHMENTS**

1. Proposed Ordinance 2015-0275
2. Striking Amendment S1
3. Title Amendment T1
4. KCC Chapter 2.75 (Law Enforcement Oversight)
5. KCC § 2.36.050 (Citizens’ Committee on Independent Oversight)
6. Collective Bargaining Agreement between King County and the King County Police Officers Guild, Article 22
7. Redline showing changes to be made by S1
8. Redline showing changes to be made by T1

**INVITED**

1. Patti Cole-Tindall, Interim Director, King County Office of Law Enforcement Oversight, and Director, King County Office of Labor Relations
2. John Urquhart, King County Sheriff
3. Steve Eggert, President, King County Police Officers Guild
4. Carl Cole, President, Puget Sound Police Managers Association
5. Kymber Waltmunson, King County Auditor

1. The Sheriff’s Office is referred to in the King County Charter—and therefore in the proposed charter amendment—as the “department of public safety.” [↑](#footnote-ref-1)
2. The authority of the King County Office of Citizen Complaints (also known as the Ombudsman’s Office) under the county charter is sufficient to encompass complaints about the conduct of county law enforcement officers, but the Ombudsman’s office has usually deferred to OLEO as the body primarily responsible for law enforcement oversight. [↑](#footnote-ref-2)
3. An amendment of the ordinance is in development to make clear that this is the intended meaning. [↑](#footnote-ref-3)
4. The Sheriff is the County’s bargaining agent regarding the working conditions (as opposed to compensation and benefits) of employees in the Sheriff’s Office. [↑](#footnote-ref-4)