

Police Contracts as Policy Documents

DRAFT MEMO FOR COUNCIL CONSIDERATION

Councilors Bok, Campbell, & Edwards filed Docket #0840 in July 2020 for the purposes of discussing policy principles that the Boston City Council should uphold in its review of the city's upcoming round of police contracts. Below, in rough draft form by the Chair, are some core principles and potential applications that emerged from the Council's scrutiny of the existing police contracts and overtime budget. This memo was originally shared with the Council on November 30, 2020 and is being resubmitted in 2021 for further consideration and feedback.

Principles for Discussion

- 1. Fiscal Responsibility and Fairness to All City Workers.** In the context of a recession whose impacts on the City's tax base will be felt for years and the legal requirement that the City maintain a balanced budget, this Council has a duty to all Boston residents to approve only fiscally responsible contracts, and a duty to civilian City employees to ensure that the financial impacts of tighter budgets be shared fairly across all units.
- 2. Accountability for Use of Force and Abuse of Power.** Both the Walsh Administration and members of this Council are pushing for new police accountability mechanisms: an Office of Police Accountability and Transparency and/or an empowered Civilian Review Board. In this context, this Council must insist that the next round of police contracts include adequate provisions to allow any such new mechanisms to work effectively.
- 3. Civilianization of Civilian Work.** Given existing staffing pressures in regard to sworn officers, and broad consensus within both the community and the police department that a significant portion of the work currently being done by police would be better addressed by unarmed civilians, sworn officers should be reserved for true police work. The Council should expect that the next round of police contracts will allow both for the civilianization of administrative work currently performed by sworn officers and for some civilian duties to be moved out of the department entirely. This should include the opportunity for a substantial portion of construction detail work to be claimed by a new community-based civilian workforce.
- 4. Transparency to Enhance and Ensure Public Trust.** In order to ensure democratic accountability for how policing is conducted and how police funds are used, and thereby underpin community confidence in the police, the Council has an interest in demanding that the next round of police contracts enable the universal wearing of body cameras and consistent public data sharing about many aspects of police department work.

All these principles are consistent with public safety, good policing, and good government.

The Council's public policy interests in the City's police contracts reflect the unique role of policing as a frontline public service entrusted with the use of force, and as a major portion

of the City budget. We are grateful for informative conversations with various stakeholders to date, including fiscal analysts, community advocates, BPD command staff, & the public.

Possible Applications of these Principles

1. Fiscal Responsibility and Fairness to All City Workers

- a. **Expectation 1.1: Reach pay terms in parity with civilian workforce.** As was pointed out in the City of Boston's 2013 dissent from the state-level Joint Labor-Management Committee decision on the BPPA contract for FY11-16 ([Exhibit A](#), p. 12), that major decision gave police a 25.4% raise over six years while the civilian workforce only saw a 12.3% increase over the same period. This gap has since widened still further; in the most recent set of contracts, police appeared to receive the same annual 2% increase as other bargaining units, but in fact received a significant additional bump in the form of a hazard pay increase, which is counted as regular compensation for all relevant purposes ([Exhibit B](#)). As the Council stated in a unanimous 2016 letter ([Exhibit C](#)), "we are deeply concerned by the widening pay disparity between public safety unions and our civilian city employees," and "escalating public safety salaries have squeezed out other City positions." The Council is therefore unlikely to approve further arbitration awards that exacerbate this dynamic. **The Council expects that the new round of police contracts will narrow this disparity with civilian pay, not widen it.**
- b. **Expectation 1.2: Reform structures that treat overtime as a routine measure.** The cost of police overtime to the City has ballooned enormously over the past decade; as shown by the *BMRB's* July 2020 report ([Exhibit D](#)), it has increased from approximately \$40 million in 2010 to \$72.5 million in 2020, an 81% increase. This is *four times* the rate of inflation, which is **up only 19%** over the same decade. A number of provisions of the contract appear designed to maximize overtime, including a provision (Article IX, Section 3.D) requiring that shifts not be rearranged to reduce overtime opportunities ([Exhibit E](#), p. 20). By contrast, if officers who routinely attend court were on regular duty for at least some hours when courts normally operate, or officers routinely attending community events were on regular duty on weekday evenings, officers' legitimate desire for predictable hours could be harmonized with the public fiduciary interest in minimizing overtime. **The Council expects that new police contracts should seek to convert such routine uses of overtime into regular hours, thereby reserving overtime for genuinely unpredictable aspects of public safety work.**
- c. **Expectation 1.3: Enable overall overtime and department budget reductions.** In light of the aforementioned recession, along with ongoing evaluations as to which tasks currently assigned to the police department could be more appropriately handled by civilian or service-provider partners, the City requires the flexibility to make appropriate public safety budgeting decisions in the coming year. These could include an overall reduction in the police budget in order to enable other public-safety-related reinvestments. **The Council expects that the new police contracts will recognize the need to achieve financial efficiencies, and therefore make amendments to tighten**

overtime and other provisions such as would have saved the City at least \$40 million if applied in FY20.

- d. **Expectation 1.4: Tighten oversight on injured-duty list.** Article XIII of the BPPA contract ([Exhibit E](#), p. 31) lays out the parameters by which a BPD officer is placed and retained on injured duty; surprisingly, a provision of that article currently allows some partial-duty officers to continue to serve paid details. As shown by data provided by the Boston Police Department on November 16, 2020 ([Exhibit F](#), p. 7), the number of officers on long-term injured or illness status was stable for FY17-19, increasing only slightly from 146 in Jan'17 to 151 in Jan'18 to 158 officers in Jan'19. This number then rose dramatically as of January 2020 to 216 officers, and it stands as of September 2020 at 270 officers, or about a tenth of the total force. This represents a 71% increase over 21 months, an uptick that predates the onset of COVID-19. Just the cost of replacing these additional 112 officers (158 vs. 270) likely amounts to \$17.5 million or more in overtime costs. It is imperative both fiscally and for the health of the City's police officers that the department reverse this recent alarming trend, as we know it is endeavoring to do. **The Council expects that new police contracts will aim to curb this dramatic increase in officers on injured duty, whether through modification of Article XIII, new injury risk mitigation protocols, or other steps.**

2. Accountability for Use of Force and Abuse of Power

- a. **Expectation 2.1: Remove binding arbitration for major discipline and enable new accountability measures to operate effectively.** Article VI of the 2007 BPPA contract, entitled "Grievance & Appeal" ([Exhibit E](#), p. 7), is the mechanism that drives almost all labor-management disputes in the police department to binding arbitration. Arbitrators have overturned nearly three-quarters of BPD discipline and nearly a third of firings over the past 13 years, per *Campaign Zero* ([Exhibit G](#), pp. 6-7). The 1979 BPPA contract previously exempted decisions regarding suspension and discharge from binding arbitration, but the 2007 contract removed that exemption ([Exhibit H](#), p. 5). For the recommendations of an empowered Civilian Review Board—whether as proposed by the Mayor ([Exhibit I](#)) or by certain Councilors ([Exhibit J](#))—to not only be acted upon by the Police Commissioner but actually upheld, **the Council expects that new contracts will either exempt discipline and discharge from binding arbitration, or at minimum allow the recommendation of a duly-constituted Civilian Review Board to supersede the judgment of an arbitrator.**

3. Civilianization of Civilian Work

- a. **Expectation 3.1: Civilianize administrative roles within the department.** In its July 28, 2020 presentation to the Council, BPD made reference to a long-term goal of civilianizing 80 to 100 administrative positions currently filled by sworn officers, who are paid at regular and hazard pay rates commensurate with their training for police work ([Exhibit K](#), p. 5). Given that the department back-fills about 94 police shifts each day, driving high replacement overtime costs, it would be advantageous to return more of these sworn officers to direct police work. Of the administrative positions currently occupied by sworn officers, 32 are involved in operating a decentralized detail system

([Exhibit E](#), p. 8) which has been mentioned for reform since at least the 1993 contract ([Exhibit E](#), p. 29), and which currently costs the department more than the 10% administrative fees that it receives. A number of detail system roles and other desk jobs are specifically designated for sworn officers in the BPPA contract. **The Council expects that new contracts will provide the Police Commissioner with the necessary discretion to civilianize such roles where appropriate.**

- b. **Expectation 3.2: Open up construction detail opportunities to a local civilian workforce.** The Boston Police Department reports that over the last ten months, 26,410 details have gone unassigned/unclaimed, compared to 23,856 details claimed by officers over the same period ([Exhibit E](#), p. 8). A large proportion of these details, claimed and unclaimed, are construction details throughout the city. With wages paid mainly by developers and utility companies, assigning a portion of these details to civilian flaggers could represent an exciting opportunity to create good new jobs for Boston residents, especially the residents of color disproportionately impacted by unemployment, long-time economic inequities, and the current recession, as *Families for Justice as Healing* has pointed out ([Exhibit L](#)). Furthermore, the 10% in administrative fees for the details currently going unclaimed could definitely cover the administrative costs for such a civilian employment effort. **The Council expects new contracts to enable the Police Commissioner to assign some portion of these construction details to be filled outside the Police Department.**
- c. **Expectation 3.3: Ensure that latitude exists to create unarmed civilian entities to respond to some 911 calls.** Councilors have raised the possibility of establishing an alternative 911 emergency response ([Exhibit M](#)), and the Boston Police Reform Task Force included in its final report ([Exhibit N](#)) the recommendation that “the City should identify, strengthen, and expand services that appropriately serve and support the BPD in shifting responsibility in responding to instances involving people experiencing homelessness, substance use, mental health crises, or other social vulnerabilities.” A large number of BPD officers are already working in partnership with service-providers around such issues, and BPD leadership has reported actively looking at models that would allow for formally establishing such alternative response mechanisms. In the past, however, efforts to create alternative public safety response models – from Mattapan civilian patrols in the 1970s, to the establishment of the Downtown Business Improvement District in the 1990s, to municipal police supplementing public housing security in the 2000s – have foundered on questions of compatibility with the City’s police contracts ([Exhibit H](#), p. 11). As the City continues to explore such alternative models, **the Council expects new police contracts to be written so as to allow for the creation of such alternative response frameworks outside of the police department.**

4. Transparency to Enhance and Ensure Public Trust

- a. **Expectation 4.1: Universalize body cameras.** In the interest of transparency and for the protection of both police officers and other Boston residents, body cameras should be extended to all BPD units and should be required to be worn during overtime hours,

as called for by the Boston Police Reform Task Force ([Exhibit N](#)). In January 2017, a provision (Article XVI, Section 25) was added to the contract allowing for bargaining to extend or expand this program ([Exhibit O](#)); **the Council expects that a full expansion will be achieved, whether through department policy or contract change as necessary.**

- b. **Expectation 4.2: Share all information provided to the unions with the public as well.** At various points, our police contracts require that information like work schedules, shift vacancies, available overtime or detail shifts, seniority lists, orders, etc. be publicly posted on department bulletin boards or otherwise shared with the unions. This information should be publicly posted and shared with the public as well, especially given the recent lack of clarity about minimum staffing levels. **The Council expects increased transparency about how the police force is typically distributed across the City, and to what extent this distribution is dictated by contracts or at Police Commissioner discretion.**
- c. **Expectation 2.2 Ensure that contract language does not impede the sharing of important use-of-force and “sensitive officer conduct” accountability data with the public.** The Boston Police Reform Task Force’s recommendations #4 and #5 ([Exhibit N](#)) focus on the creation of public-facing data dashboards in regard to use of force, FIOs, complaints, search warrants, etc., to be disaggregated by categories such as race, ethnicity, and zip-code. **The Council expects that new police contracts will not include any provisions that would block this important proposed step to enhance public confidence.**

List of Exhibits A-O

- Exhibit A: [BPPA JLMC Award & City Dissent for 2010-2016](#)
Exhibit B: [BPPA Agreement for 2016-2019](#)
Exhibit C: [Boston City Council, Unanimous Letter of February 24, 2016](#)
Exhibit D: [BMRB Research Update for July 2020: Boston Police Budget in Context](#)
Exhibit E: [BPPA Contract for 2007-2010](#) (*Note: This remains the base contract. The BPPA contract referenced here is also illustrative of the other unit contracts, which move in tandem.*)
Exhibit F: [Boston Police Department, City Council Presentation for November 16, 2020](#)
Exhibit G: [Campaign Zero, Boston City Council Presentation for September 8, 2020](#)
Exhibit H: [Councilor Bok, Boston City Council Presentation for September 8, 2020](#)
Exhibit I: [Mayor Walsh, Ordinance for Office of Police Accountability & Transparency](#)
Exhibit J: [Councilors Campbell, Arroyo, & Mejia, Ordinance for Civilian Review Board](#)
Exhibit K: [Boston Police Department, City Council Presentation for July 28, 2020](#)
Exhibit L: [Families for Justice as Healing Report: Invest in Community Not Policing](#)
Exhibit M: [Councilors Wu, Edwards, & Mejia, Ordinance for Unarmed Civilian Response](#)
Exhibit N: [Boston Police Reform Task Force, Recommendations to the Mayor](#)
Exhibit O: [BPPA Agreement for 2016-2017](#)

All exhibits are hosted for download [here](#).

As Ways & Means Chair, Councilor Bok will welcome feedback on the above principles and related expectations from Councilors, stakeholders, and the public over coming sessions.

Appendix: Other Policy Suggestions by Advocates & Councilors in Recent Discussions
Recorded here for possible further conversation

1. Create mechanisms to enable the hiring and promotion of a more diverse force; this mainly requires Civil Service reforms at the state level.
2. Convert court overtime records to an electronic system, to better catch potential abuse, and work with the District Attorney's office to reduce occasions for court overtime, especially as more than half of paid court overtime last year was for hours unworked ([Exhibit P](#)).
3. Explore ways to make the swapping of tours for mutual convenience more common than absences that result in overtime.
4. Experiment with alternative shift models that could better match the rhythm of the work and result in less overtime.
5. Lower the weekly maximum of 90 hours worked, due to safety concerns for both officers and city residents.
6. Reconsider the provision that applies the Boston residency requirement to BPD officers only for their first ten years of service.
7. Call for open police contract negotiations, the inclusion of community observers, the noticing of contract meetings, and/or public reports on major topics at issue.
8. Hold the Police Department to municipal ordinance 6-1.12.b ([Exhibit Q](#)), that no city employee may earn more than 10% of their regular salary in overtime without express authorization by the Mayor and City Council. The City's Corporation Counsel takes the position that this ordinance is superseded by the City's collective bargaining agreements and the Fair Labor Standards Act, given the police department's assignment of shifts beyond such a limit ([Exhibit R](#)).
9. Apply more narrowly the City Charter language in Section 42 ([Exhibit S](#)) by requiring the Police Commissioner to make a specific and public declaration of a "case of extreme emergency involving the health or safety of the people or their property" that justifies spending over the police department's budget limit, rather than treating all police overtime as automatically meeting this standard.

List of Exhibits P-S

Exhibit P: [Councilor Arroyo, ACLU, Prog. MA, BU Spark! Lab – Court Overtime Report](#)

Exhibit Q: [Ordinance Establishing Standard Provisions for Annual Appropriate Orders, 1980](#)

Exhibit R: [Gene O'Flaherty, Corporation Counsel, Correspondence with Councilor Bok](#)

Exhibit S: [Boston City Charter, ed. 2007](#)

All exhibits are hosted for download [here](#).