



MEMORANDUM

To: Mayor and Council

From: Elaine Hart, Interim City Manager *Elaine Hart*

Date: October 31, 2017

Subject: Austin Police Association Tentative Agreement

As you are aware, the City of Austin and the Austin Police Association reached a tentative agreement on October 19, 2017. We have received several questions about specific articles in this tentative agreement. I am enclosing several documents for your information.

1. Staff's response to eight points raised regarding Discipline and the Citizens Review Panel.
2. A table that describes the impact of not approving this tentative agreement (specific impacts to the City of Austin and Austin Police Association). New pay additions are noted in red ink under the "Pay Related" column.
3. A Wage Proposal Summary.

The Austin Police Association is scheduled to vote on the tentative agreement during the week of November 13, 2017. We plan to bring this to the Council for ratification on December 7, 2017.

Please let me know should you have any additional questions.

xc: CMO Executive Team
Larry Watts, Interim Labor Relations Officer

Response to Issues Identified

Issue 1. “Suspensions should not be automatically reduced to written reprimand and the Chief should be able to consider all past misconduct in future discipline.”

Response:

- Under the current requirements a reduction to a written reprimand is not automatic, but is only applicable to suspensions of 3 days or less, and requires a waiver of the Officer’s right to arbitration.
- Under the proposed Agreement, language had been added to exclude suspension Under Policy 200, Response to Resistance and Policy 328, Biased Based Profiling:
- In the event the Chief believes the conduct should not be reduced to a written reprimand he can take into account the nature of the misconduct and impose 4 days if this section is not appropriate

Issue 2. “The Chief should be able to discipline an officer if facts emerge after 180 days has passed.”

Response:

Prior Labor Arbitrations in Texas under 143.052 have resulted in conflicts about who has to be aware of misconduct for the deadlines to run for the 180 day discovery rule to apply. The proposed language in the Agreement identifies the Assistant Chief or Chief. It also eliminates the criminal law standards for proof, and makes the statutory exception very useful to the Department.

Issue 3. “History of misconduct should be included as a system of deductions from the scoring system used to promote officers.”

Response:

- The department currently takes an officer’s history of misconduct into account before promotion. He is entitled to do so under what is known as the Rule of 3.
- Local Government Code Sections 143.031 - 143.038 dictate the manner in which promotions are to be made. The Chief of Police must promote the individual having the highest score unless the Chief states a “valid reason” for bypassing that person. Courts have found that disciplinary history constitutes a “valid reason.” This is currently being done by Department policy in the promotional process and each officer who is disciplined is so advised in the suspension papers.

Issue 4: “Citizens should be able to make phone and online complaints, and management should be able to make a preliminary review of any evidence without a “verified” statement.”

Response:

On-line and verbal complaints which are not-sworn, as well as anonymous complaints are permitted in the proposed agreement.

Issue 5: “The Citizens Review Panel should be able to freely ask questions, subpoena witness and evidence, and listen to witnesses at the same time as the panel hears from police officers and union reps.”

Response:

The City sought this authority in multiple proposals. The proposed Agreement expands the role of the panel and their scope of access and authority, including questions at the panel meetings. No subpoena is necessary for access to evidence. Current provisions already allow access by the Panel of all evidence. The only persons who are interviewed in private by the Panel are Internal Affairs officers who may discuss (g) file materials which are not subject to disclosure publicly beyond the CRP. Union reps do not address the CRP in private and traditionally have not done so in the public session either.

Issue 6: “The Office of Police Monitor should have the power to initiate investigations, even if a citizen has not filed a complaint.”

Response:

The Police Monitor already has this ability, but it has been greatly enhanced by the new definition of “complaint” which now includes non-sworn to anonymous, phone, or email complaints.

Issue 7: “Stop sealing records of misconduct in 143.089(g), as can be done through this contract. Publish and make readily available to the public internal affairs transcripts of interview with officer and all final disciplinary decisions.”

Response:

The City is bound by 143.089(g) without a Contract change. The Association was willing to broaden this access for the Panel Members, but not to make it public in the absence of discipline imposed.

Issue 8: “Reports/recommendations should all be released to the public without expurgation based on the city legal’s determination that other possible exceptions to the Public Information Act could be claimed.”

Response:

There is no provision in the Statute that allows a meet and confer Agreement to supersede generally applicable state law. The Texas Public Information Act and other statutory privacy provisions are not laws that can be modified through this Agreement.

Additionally raised by the Justice Coalition:

Drug Testing for performance enhancing substances like steroids:

The current Agreement already provides for both reasonable suspicion and random drug testing. Steroids are being tested for under the current Agreement and the Association has specifically agreed this is appropriate.

POLICE MEET AND CONFER

IMPACT OF NOT APPROVING THE PROPOSED CONTRACT

(All statutory references are to the Texas Local Government Code)

APA LOSSES IF THE PROPOSED CONTRACT IS NOT APPROVED	
2017 Proposed Contract (Includes relevant provisions from the 2013-2017 contract as well as new proposals)	Without Contract
PAY RELATED	
<u>BASE PAY</u> (ARTICLE 7 § 1) <ul style="list-style-type: none"> • FY 17-18: 1% increase • FY 18-19: 1% increase • FY 19-20: 2% increase • FY 20-21: 2.5% increase • FY 21-22: 3% increase 	143.041 (Salary): Without a contract, the City Manager may terminate step pay increases and may roll-back wages to pre-contract levels. Future pay increases will be subject to council approval during the annual budget process. Officers are not automatically entitled to receive the same base wage increase as non-public safety employees.
<u>LONGEVITY</u> (ARTICLE 7 § 2) Paid in a lump sum on the officer's anniversary date at the rate of \$107 per year up to 25 years (\$2675/year max) <i>(No \$ change from current contract)</i>	141.032 (Longevity Pay): Without a contract, each officer is entitled to Longevity Pay in the amount of \$4 per month (\$48/year) for each year of service up to 25 years (\$1200/year max). The City is allowed to determine the payment schedule.
<u>FTO PAY</u> (ARTICLE 7 § 3) \$175/MONTH <i>(No \$ change from current contract)</i>	143.043 (Field Training Officer Assignment Pay): Without a contract, FTO pay will be paid in accordance with Ordinance No. 980212-K, which authorizes FTO pay in the amount of "\$1.00 per hour for each training hour with cadets or new officers."

<p><u>MENTAL HEALTH PAY (ARTICLE 7 § 4)</u> Mental health certification pay of \$175 per month to each officer assigned to a patrol shift and serving as a mental health officer. <i>(No \$ change from current contract)</i></p>	<p>143.042 (Assignment Pay): Council has not passed an ordinance authorizing mental health certification pay. Without a contract, mental health pay will be eliminated.</p>
<p><u>BILINGUAL PAY (ARTICLE 7 § 5)</u> \$175/MONTH <i>(No \$ change from current contract)</i></p>	<p>143.042 (Assignment Pay): Without a contract, Bilingual Pay will be paid in accordance with Ordinance No. 980212-K, which authorizes bilingual pay in the amount of \$75.00 per month.</p>
<p><u>EDUCATION AND CERTIFICATE PAY (ARTICLE 7 § 9)</u> An officer is entitled to either certificate or education pay but not both.</p> <ul style="list-style-type: none"> • Certificate: Intermediate/Advanced/Master: \$50/100/150 a month • Education: 60 hours/Bachelors/Masters: \$100/220/300 a month <p><i>(No \$ change from current contract)</i></p>	<p>143.044 (Certification, Educational Incentive Pay): Council has not passed an ordinance authorizing certificate or educational pay. Without a contract, educational incentive and certificate pay will be eliminated.</p>
<p><u>SHIFT DIFFERENTIAL (ARTICLE 7 § 6 & 10)</u> \$300 per month to an officer (up to and including lieutenant) normally assigned to an evening or night shift in patrol for a 28 day period when 50% or more of the shift begins at or after 12:00 pm. <i>(No \$ change from current contract)</i></p>	<p>143.047 (Shift Differential Pay): Council has not passed an ordinance authorizing shift differential pay for police officers. Without a contract, shift differential pay will be eliminated.</p>

<p><u>PATROL ASSIGNMENT PAY (ARTICLE 7 § 15 (new contract provision))</u> Patrol assignment pay for officers, corporals and sergeants assigned to patrol for 4 years:</p> <ul style="list-style-type: none"> • 2018: \$200/month • 2019: \$250/month • 2020: \$300/month • 2021: \$350/month 	<p>143.042 (Assignment Pay): Council has not passed an ordinance authorizing patrol assignment pay. Without a contract, patrol assignment pay is not authorized.</p>
<p><u>RATIFICATION INCENTIVE (ARTICLE 7 § 16) (new contract provision)</u> Officers will receive a \$1000 contract incentive payment upon ratification of the new agreement.</p>	<p>Without a contract, no ratification incentive payment will be forthcoming.</p>
<p><u>OVERTIME (ARTICLE 8 § 1)</u> All approved paid leave, except for sick and vacation time, is calculated as hours worked, for overtime purposes. The Chief has the discretion to allow vacation leave to be counted as hours worked if the overtime is due to a work shortage, including a special event.</p>	<p>Under the current contract, vacation time is considered productive time for overtime purposes. The proposed contract makes vacation time non-productive. Without a contract, the City Manager may classify vacation leave as non-productive time (not considered “hours worked”) for overtime purposes.</p>
<p><u>ON-CALL STATUS (ARTICLE 8 § 2)</u> A non-exempt officer on call, as defined by department policy, is entitled to 8 hours compensatory time per week.</p>	<p>Without a contract, the mandatory 8-hour compensation will be eliminated. The FLSA criteria for determining whether on-call status mandates overtime compensation will apply.</p>
<p><u>CALL BACK & COURT TIME (ARTICLE 8 § 3)</u> The contract provides a minimum 3 hours call back and 4 hours court time at time and a half.</p>	<p>Without a contract, call back and court time will be paid for the actual amount of time worked and will only be paid at the overtime rate if the officer has actually worked 40 hours during that workweek.</p>

<p><u>PAYMENT OF SICK LEAVE UPON SEPARATION</u> (ARTICLE 9 § 2) Upon separation, an officer is entitled to payment of up to 1700 hours of accrued sick leave if the officer has 12 years of actual service with APD and leaves in good standing.</p>	<p>143.045 (Accumulation and Payment of Sick Leave): Without a contract, an officer is only entitled to be paid for up to 90 days (900 hours) of accumulated sick leave upon separation regardless of the officer's tenure with the Department or the circumstances of the separation.</p>
<p><u>HOLIDAYS</u> (ARTICLE 10) Adds Thanksgiving as a premium holiday (overtime pay) if the officer has to work that day.</p>	<p>Without a contract, an officer is not entitled to overtime pay for working a holiday (XMAS is paid at an OT rate) unless the officer has actually worked 40 hours during that workweek.</p>
<p>ASSOCIATION BUSINESS</p> <ul style="list-style-type: none"> PROVISIONS REGARDING ABL AND UNION DUES DEDUCTION REMAIN IN EFFECT TILL 9-30-18. 	
<p><u>ASSOCIATION BUSINESS LEAVE</u> (ARTICLE 11 § 1) Increases the use of ABL from 300 hours to 400 hours per year for APA Board Members and Committee Chairs.</p>	<p>There is no statute that creates an ABL pool and no statutory requirement that the City must grant APA members paid leave to attend to Association related matters. 143.071 provides that if manpower permits, the City must allow an officer a non-paid leave of absence to attend to matters related to securing a more efficient department and better working conditions for department personnel.</p>
<p><u>APA PRESIDENT FULL-TIME ABL LEAVE</u> (ARTICLE 11§ 3)</p>	<p>Without a contract, the APD president is not entitled to full-time, paid, ABL status.</p>

<p><u>UNION DUES DEDUCTION (ARTICLE 6)</u> Payroll deduction for APA dues</p>	<p>Without a contract, the City is not required to allow a payroll deduction for APA dues unless the City allows payroll deductions for purposes other than charity, health insurance, taxes, or other purposes for which the City is required by law to permit a deduction.</p>
<p>OFFICER’S RIGHTS (INVESTIGATIONS, DISCIPLINE, ASSIGNMENTS, GRIEVANCES)</p>	
<p><u>OFFICER ACCESS TO EVIDENCE BEFORE AN INTERVIEW (ARTICLE 17 § 4)</u> Prior to the subject officer’s interview by Internal Affairs, the officer is allowed to review certain pieces of evidence, including videos recordings of the incident under investigation.</p>	<p>Without a contract, the officer is no longer entitled to review any evidence prior to the Internal Affairs interview. The officer need only be informed in writing of the allegations in the complaint and may not be interviewed until 48 hours later.</p>
<p><u>OFFICER ACCESS TO EVIDENCE BEFORE A DISCIPLINARY MEETING (ARTICLE 17 § 4)</u> Prior to a disciplinary hearing, the officer is allowed to review the Internal Affairs investigative file for up to 8 hours.</p>	<p>Without a contract, the officer is not entitled to review the Internal Affairs investigative file prior to a disciplinary meeting.</p> <p>*For pending Internal Affairs cases, pending disciplinary meetings, and pending disciplinary appeals, the provisions of the current agreement will remain in effect until the conclusion of those proceedings.</p>
<p><u>RIGHT TO REPRESENTATION (ARTICLE 17 § 7)</u> The subject officer has the right to representation by an attorney and/or a union representative during the Internal Affairs interview and a subsequent disciplinary meeting.</p>	<p>Without a contract, the officer is not entitled to representation during the interview or a disciplinary meeting unless allowed by the Chief.</p>

<p><u>DISCIPLINE (ARTICLE 18 § 7)</u> The Chief may offer the officer a Last Chance Agreement to avoid termination that includes counseling or rehabilitation and a 1 year probationary period. If the offer is accepted, the officer may not appeal.</p>	<p>Without a contract, the Chief will not be able to enforce a Last Chance Agreement and will not be able to terminate the officer without the right of appeal for violations that occur during the probationary period.</p>
<p><u>SUSPENSION REDUCTION (ARTICLE 18 § 1)</u> Under the current contract, suspensions of three days or less are automatically reduced to a written reprimand after the expiration of a defined period of time regardless of the nature of the violation provided that the officer waives the right to appeal. The proposed contract does not allow this reduction to occur if the suspension involves a use of force or biased based policing violation.</p>	<p>Without a contract, 143 does not provide for the automatic reduction of a suspension of 3 days or less to a written reprimand. A decision to reduce a disciplinary action is within the sole discretion of the Chief of Police.</p>
<p><u>INDEFINITE SUSPENSIONS (ARTICLE 13, § 14)</u> An indefinite suspension creates a promotional vacancy</p>	<p>Without a contract, an indefinite suspension does not create a vacancy.</p>
<p><u>SPECIAL EVENT ASSIGNMENTS (ARTICLE 18 § 5)</u> Establishes a voluntary overtime sign-up roster for APD officers wishing to work SXSW overtime, negating the need to reassign those officers from their normal duties during the event.</p>	<p>Without a contract, the City may require officers to work overtime in an emergency situation. The City may also hire law enforcement personnel from other agencies under the direction of APD supervisors without giving APD personnel preferential status for working those overtime assignments (e.g. DPS and Travis County Sheriff's Office).</p>

<p><u>ASSIGNMENT CHANGES</u> (ARTICLE 19 § 1) The Department shall provide officers with 28 days' notice of an assignment change unless prior notice is not in the best interests of the Department or in an emergency situation.</p>	<p>Without a contract, 143 does not require any advance notice of assignment changes.</p>
<p><u>PROPOSED ADJUSTMENTS TO WORK SCHEDULES</u> (ARTICLE 19 § 3) The Department shall provide officers with 30 days' notice of a proposed adjustment to work schedules that would have a significant impact upon working conditions except as a result of an emergency or unforeseen event, staffing shortage, or emergency crime threat to the community.</p>	<p>Without a contract, 143 does not require any advance notice of proposed adjustments to work schedules.</p>

CITY LOSSES IF THE PROPOSED CONTRACT IS NOT APPROVED

2017 Proposed Contract

Without Contract

HIRING:

Initial Hiring (Article 14):

1. The Chief establishes the eligibility requirements for cadets.
2. No written entrance examination.
3. Structured oral interview board used.
4. Police Internship: interns who successfully complete the program will be placed at the top of the hiring list. Up to 38% of an academy class may consist of interns.
5. Modified hiring process for experienced officers with a shorter academy.
6. Extends the probation period for 12 months from date of hire to 15 months from date of commission.
7. Hiring list valid for 24 months rather than 6-12 months.

143.021-.027. Without a contract, hiring will revert to the statutory process:

1. Must take and pass a general knowledge written examination based on a score of 100% with a passing score of 70%.
2. Placement on the hiring eligibility list is based solely on written test score.
3. Structured oral interview may be utilized as a pass/fail tool but cannot be calculated in the overall final score.
4. Department may not utilize a modified hiring process for experienced officers.
5. Probationary period will revert to 12 months from date of hire.
6. Police interns will receive no preferential treatment.
7. Hiring eligibility list will be valid for no less than 6 months and no more than 12 months as determined by the Civil Service Commission.

*A hiring process commenced under the current agreement will remain in effect until the conclusion of that process even if the current agreement expires.

PROMOTIONS

<p><u>PROMOTIONS</u> (ARTICLE 13)</p> <ol style="list-style-type: none"> 1. Written examination based upon score of 100% (70% passing) 2. Promotion to Corporal/Detective requires 4 years continuous service in the classification of police officer. 3. Increases seniority points added to the written test score from 10 to 15 for Corporal/Detective. 4. Maximum 7 points for time in rank added to written test score for Sgt., Lt., and Cmdr. 5. Maximum of 2 points added to test score for educational achievement. 6. Optional Assessment Center or Technical Skills Evaluation for Sgt., Lt., & Cmdr. 7. Eligibility lists valid for 24 months 8. Indefinite suspension creates a vacancy. 9. Promotional reinstatement lists: no expiration date. 	<p>143.028-.036: Without a contract, the statutory promotional process will apply:</p> <ol style="list-style-type: none"> 1. Promotions to all ranks only require 2 years continuous service in the current civil service classification. 2. Promotions must be based solely upon a written examination based upon a score of 100% (70% is passing). 3. Assessment Centers and Technical Skill Evaluations cannot be used. 4. Maximum addition of 10 seniority points. 5. No additional points for time in rank or educational achievement. 6. Eligibility list valid for 1 year. 7. Indefinite suspension does not create a vacancy. 8. Reinstatement list is valid for only 1 year. <p>*Promotional eligibility lists created under the current contract will remain in effect until their normal expiration date (24 months) even if there is no successor agreement.</p> <p>*Promotional reinstatement lists created under the current agreement remain in effect indefinitely even if there is no successor agreement.</p>
<p><u>ASSISTANT CHIEFS</u> (ARTICLE 7) Permits one AC to be the Chief of Staff and receive higher pay.</p>	<p>143.041 (Salary): All police officers in the same civil service classification must receive the same base salary. Without a contract, one AC cannot not receive additional compensation for being the "Chief of Staff."</p>

OVERSIGHT & DISCIPLINE

OVERSIGHT (ARTICLE 16)

- Broader role for Citizen Review Panel (CRP) to recommend changes to Police Chief on training and procedure issues
- CRP can observe subject officer's Internal Affairs interview from an adjoining room
- CRP can obtain more information during the public portions of their meetings
- Greater public access to CRP recommendations, including Police Chief's response
- Verbal, written, and anonymous complaints are accepted.
- The Police Monitor can initiate a complaint.
- Complaints do not have to be sworn to anymore.

OVERSIGHT: Without a contract:

- The CRP will not have access to APD Internal Affairs investigative files (including critical incidents such as officer-involved-shootings) unless the case results in formal disciplinary action, which is defined as a suspension of at least 1 day, an indefinite suspension, or a demotion.
- The loss of CRP access to APD Internal Affairs investigative files will negatively affect the CRP's ability to make recommendations to the Chief of Police on cases that did not result in formal disciplinary action.
- The Police Monitor may continue to perform its oversight function but recommendations to the Chief, as well as the Chief's response, will not become public unless the officer receives formal discipline.

OVERSIGHT & DISCIPLINE CONT.	
<ul style="list-style-type: none"> • Police Monitor can give more information to the complainants in close-out meetings • Police Monitor can present cases to the CRP without a request from the complaint • Term limits for CRP members <p>DISCIPLINE (ARTICLE 18 § 1 & 8)</p> <ul style="list-style-type: none"> • The 180-Day Discovery rule for alleged criminal conduct requires discovery by an Assistant Chief or the Chief of Police • An officer may elect not to appeal a suspension of 3 days or less and is allowed to substitute paid vacation for any or all of the suspension period. 	<p>DISCIPLINE: Without a contract</p> <ul style="list-style-type: none"> • The 180-day discovery rule for alleged criminal behavior will be subject to interpretation by a hearing examiner or court, meaning someone else will decide when the Department was put on notice of the alleged criminal behavior thereby triggering the 180 day clock. • Eliminating the ability to substitute vacation for unpaid days of suspension will likely increase the number of appeals significantly.
NEUTRAL	
<p>DRUG TESTING (ARTICLE 15) Random and Reasonable Suspicion drug testing, including for anabolic steroids.</p>	<p>State and Federal courts have repeatedly held that a police department can institute drug testing with or without an employment contract.</p>

LRO APA Wage Proposal Summary

October 19, 2017

DRAFT

Year 1 - 1.0% Base Wage & Lump Sum \$1,000; Year 2 - Patrol Pay, Thanksgiving Day & 1.0% Base Wage; Year 3 - 2.0% Base Wage; Year 4 - 2.5% Base Wage; Year 5 - 3.0% Base Wage

FY 2018 Projected		FY 2019 Projected		FY 2020 Projected		FY 2021 Projected		FY 2022 Projected		5-Year Cumulative Cost
Proposal	Cost	Proposal	Cost	Proposal	Cost	Proposal	Cost	Proposal	Cost	
1.0% Base Wage	\$1,078,606									5,393,032
Lump Sum \$1,000	\$1,946,312									1,946,312
		Annualized FY 18 1.0%	\$1,078,606							4,314,426
		Patrol Pay - \$200	\$1,444,232							5,776,930
		Thanksgiving Day	\$100,000							400,000
		1.0% Base Wage	\$2,178,785							8,715,140
				Patrol Pay - \$250	\$361,058					1,083,174
				2.0% Base Wage	\$4,401,146					13,203,438
						Patrol Pay - \$300	\$361,058			722,116
						2.5% Base Wage	\$5,611,461			11,222,922
								Patrol Pay - \$350	\$361,058	361,058
								3.0% Base Wage	\$6,902,097	6,902,097
TOTAL	\$3,024,918	TOTAL	\$4,801,624	TOTAL	\$4,762,204	TOTAL	\$5,972,519	TOTAL	\$7,263,155	\$60,040,646

* Year 1 - 1.0% base wage effective 1st pay period after April 1, 2018

5-Year Cumulative Est. Total	\$60,040,646
5-Year Budgeted Step Pay Est. Total	\$22,500,000
Estimated Total 5-Year Contract Cost	\$82,540,646