

ATTACHMENT A

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:12-cv-01282-JLR

v.

CITY OF SEATTLE,

Defendant.

BRIEF OF AMICUS COMMUNITY
POLICE COMMISSION

RE: SEATTLE POLICE DEPARTMENT
ACCOUNTABILITY SYSTEMS
REVIEW

I. INTRODUCTION

Reform of Seattle’s police accountability system is overdue. In 2013, thousands of community members and 13 community organizations participated in the CPC’s extensive public-engagement program.¹ In 2014, after four months of weekly meetings, the information obtained through this public engagement, together with the CPC’s study of accountability system needs and alternatives, drawing on subject matter expertise of Commission members and

¹ Dkt. No. 240 at 5:11–6:12.

1 technical advisors,² yielded fruit in the form of concrete reform recommendations regarding both
2 structure and processes of Seattle's police accountability system.³ Further refinement of these
3 recommendations occurred during talks among all City parties in summer 2015. Since that time,
4 however, the City has refrained from moving ahead with the legislative processes that govern
5 much of the package proposed in 2014 and 2015. That is because of confusion since the June 30,
6 2015 status conference with the Court concerning the scope of authority the City retained under
7 the Settlement Agreement to govern its own police accountability system and because the City
8 desired the constructive input of the United States and the Monitoring Team on the proposed
9 approach. Although this impasse arose with all parties no doubt acting in good faith, from a
10 community perspective, the result has been a frustrating delay in fixing many aspects of the
11 current system that are well-understood to be in need of strengthening or overhaul.
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14 The CPC agrees with the City that, consistent with the terms of the Consent Decree, the
15 power and, indeed, the duty to enact structural accountability reform resides with the City's
16 legislative leaders.⁴ The CPC therefore requests that the Court enter a ruling giving the City
17 clearance to consider and enact SPD accountability reform now, with the understanding that,
18 before any legislation takes effect, the Court would have time to review any aspects of the
19 package that affect matters governed by the Settlement Agreement.
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22 ² Technical advisors included the Office of Professional Accountability (OPA) Auditor, the OPA
23 Director, City Council Central Staff, the Mayor's Special Advisor on the Seattle Police
24 Department, the Criminal Division Chief of the King County Prosecutor's Office, and
25 representatives of the Seattle Police Department, the Office of Professional Accountability
26 Review Board (OPARB), and the City Attorney's Office. The CPC accountability workgroup
meetings in 2014 were also attended by representatives of the Monitoring Team. The
Department of Justice/U.S. Attorney's Office provided historical background at the first of
these meetings.

³ Dkt. No. 240 at 5:11–6:12.

⁴ See Dkt. No. 289 at 2.

1 Approaching four years after the Settlement Agreement and Memorandum of
2 Understanding (MOU), there will be a loss of community confidence in the reform process if
3 immediate action is not taken on concrete proposals for structural changes to Seattle's police
4 accountability system that have been on the table in some form for more than two years.

5 **II. THE SEATTLE COMMUNITY'S INVESTMENT IN ACCOUNTABILITY** 6 **REFORM**

7 In 2012, when the City of Seattle and the Department of Justice (DOJ) signed the
8 Settlement Agreement and MOU, they established the CPC and charged its members to review
9 Seattle's civilian oversight structure and recommend reforms to improve accountability and
10 transparency.⁵ In 2013, pursuant to that charge, the CPC engaged in a massive public-
11 engagement program, including many community-based organizations and thousands of
12 individual participants. In 2014, the CPC—using information received through public
13 engagement, drawing on the subject matter expertise of many of its members, utilizing a
14 professional staff, and consulting with a wide range of technical advisors⁶—delivered its reform
15 recommendations after carefully examining how the accountability system was working at
16 present and what options for change were possible and desirable. That summer, stakeholders
17 including the CPC, the OPA Auditor, and the Mayor's Special Advisor, Bernard Melekian,
18 engaged in collaboration and discussions that led to the announcement of a package of reforms
19 expressing unanimity among all three as to almost all major points.

22 In 2015, after a vigorous negotiation process, the Office of the Mayor, Seattle Police
23 Chief Kathleen O'Toole, and the CPC announced an agreement for a package of accountability
24 reform legislation, which they intended to jointly present to the City Council but only after first
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26 ⁵ MOU § III.C.2.i.15 at 4–5.

⁶ See, *supra*, n.2.

1 consulting the DOJ and the Monitor. On June 30, 2015, however, the Court put the legislative
2 process on hold with concerns over possible conflicts with the Consent Decree, which then
3 began a new process⁷ that led in 2016 to the work group meetings held under the auspices of the
4 Court.⁸ The net result has been that structural accountability system changes, urgently needed yet
5 largely outside the scope of the Settlement Agreement, have been stalled for the past year with
6 the City unable to act.

8 III. WORK GROUP MEETINGS

9 As stated in the City's brief,⁹ the primary goal of the March–April 2016 work group
10 meetings was for participants to attempt to answer questions posed by the Court and other
11 parties¹⁰ concerning SPD accountability systems. The CPC requested that the work group
12 meetings be open to the public,¹¹ but the public was not allowed to attend. City Councilmembers
13 and Council staff also were not allowed to attend. The meetings were in the nature of a multi-
14 session symposium, with participants sharing varied expertise and perspectives on important
15 topics. The CPC believes that everyone participated in good faith. But the work-group process
16 was never intended to yield a set of reforms, nor could it do so given the participants and the
17 nature of the forum. The process was preparatory to, not in lieu of, legislative action. Thus, even
18 if the participants in the room agreed on a particular point, that point would not acquire any more
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22 ⁷ See Dkt. No. 228.

23 ⁸ Dkt. No. 275.

24 ⁹ Dkt. No. 289 at 11: 8-10.

25 ¹⁰ Some of the questions ultimately included in the plan for the work groups filed by the Monitor
26 (Dkt. No. 274) originated with the Monitoring Team and with the OPA Auditor. The City
Attorney's own set of questions was also included in the Monitor's filing.

¹¹ See App'x A.

1 than the persuasive weight of those assembled when the issues appropriately move to the Mayor
2 and the Council.

3 Although the CPC does not entirely concur with the catalog of consensus points
4 described in the City's brief—including the framing of the CPC's own positions—we believe the
5 appropriate forum for various entities to identify their respective positions is in the City's
6 legislative process. Consequently, the CPC does not detail here its position on all points, which it
7 has for the most part done elsewhere.¹² The CPC notes only that, contrary to the City Attorney's
8 recollection,¹³ the CPC's position on whether OPA should be fully external to SPD did not
9 change during the course of the work group sessions, nor for that matter did that of the OPA
10 Auditor.

11 In its overview of the work group meetings, the City notes that participants flagged
12 several areas in which they believe the consensus legislative package of summer 2015 could be
13 enhanced. The CPC identified several of these¹⁴ and currently is updating its accountability
14 reform recommendations with respect to those topics. Some of these areas (including
15 strengthening the independence from political influence of the civilians involved in the oversight
16 system and exploring the feasibility of externalizing the investigation of deadly force incidents)

21 ¹² CPC, *Accountability Recommendations* (Apr. 24 & 30, 2014) (including policy and practice
22 recommendations and structure recommendations), available at <<http://bit.ly/1YT3Doo>>; CPC,
23 *Comments on Accountability System Recommendations of Dr. Bernard Melekian* (August 11,
24 2014), available at <<http://bit.ly/1s5Amwh>>; Dkt. No. 233 at 13-35.

25 ¹³ Dkt. No. 289 at 16:17–20.

26 ¹⁴ In several of these areas, the CPC was joined by other participants in the work group meetings
who concurred. On some points, the CPC concurred with the need to address topics identified
by other participants. Overall, there was little disagreement about the general direction in which
it would be desirable to go: specifically adding to the summer 2015 package without disturbing
the core consensus among multiple stakeholders that resulted in that agreement.

1 have emerged in light of events that occurred since the CPC made its initial proposals two years
 2 ago. Some (including a complainant appeal process and the possibility of augmenting the OPA
 3 Auditor function in an Office of Inspector General or Independent Police Monitor) were flagged
 4 for further work when the CPC proposed its initial reforms.¹⁵ It is important to note that
 5 continuous review, and proposals for improvement, of the accountability system are an intended
 6 feature of the system the CPC recommended. The fact that the package of 2014 and 2015 can be
 7 improved upon is not a reason to withhold action in areas all can agree need change.
 8

9 In addition to areas identified in the City's brief for strengthening of the endorsed
 10 legislative package, the CPC expects to recommend that negotiation of collective bargaining
 11 agreements with SPD unions be conducted publicly as far as is permissible under state labor
 12 law.¹⁶ The CPC appreciates that some, if not a majority, of the participants in the work group
 13 meetings agreed with this view.
 14

15 IV. RECOGNIZING THE CITY'S LEGISLATIVE AUTHORITY

16 Wholesale reform of the accountability system was not part of the Settlement Agreement.
 17 Nonetheless, some aspects of the accountability system—including the internal process for
 18 reviewing use of force, the OPA Manual, and certain SPD policies pertaining to misconduct
 19 investigation—were addressed by the Settlement Agreement or have subsequently been
 20 incorporated by Court order into the Monitoring Plan. Consequently, although for the most part
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 23 ¹⁵ CPC, *Accountability System Structure Recommendations 7* (Apr. 30, 2014), available as part
 24 of <<http://bit.ly/1YT3Doo>>; CPC, *Comments on Accountability System Recommendations of Dr.*
 25 *Bernard Melekian* (Aug. 11, 2014) (relating to Prof. Melekian's recommendations 21 and 22),
 available at <<http://bit.ly/1s5Amwh>>; Office of the Mayor, *Seattle Police Accountability &*
Civilian Oversight 8 (Nov. 12, 2014), available at <<http://bit.ly/1TzCBkw>>.

26 ¹⁶ The CPC understands that state law permits, but does not compel, the City to conduct its side
 in preparing the bargaining agenda to be conducted in secret. We attach as Appendix B a memo
 prepared at our request by the City Attorney's Office in 2014 analyzing these questions. The
 CPC waived attorney-client privilege in releasing this analysis.

1 reform of the accountability system lies outside the Court-supervised process, accountability
2 reform legislation must be consistent with the Court-supervised process for reforming those
3 policies and practices that *are* covered by the Consent Decree. All parties appear to recognize
4 and concur as to this state of affairs.

5
6 The work group identified areas that—depending on decisions made by the City
7 Council—could implicate provisions of the Settlement Agreement or Monitoring Plan. The CPC
8 fully supports the City’s request for an order clarifying that the City can proceed through normal
9 processes to legislate in those areas, with the proviso that any such legislation would not go into
10 effect for a period of time sufficient to either allow the Court to be assured that nothing in the
11 adopted legislation is at odds with the Settlement Agreement or allow amendment of the
12 Settlement Agreement to permit the legislated changes.

13
14 The City’s brief details the following areas in which changes have been proposed that
15 could potentially affect the Consent Decree:

- 16 1. Modifications to the OPA Manual, and to related SPD Policies 5.002 and
17 5.003;
- 18 2. Moving OPA outside SPD;
- 19 3. Establishing SPD’s permanent civilian oversight body;
- 20 4. Modifying or terminating OPARB’s role or existence; and
- 21 5. Modification of other internal SPD accountability components called out in the
22 Consent Decree, such as the FIT, FRB or EIS.¹⁷

23 The CPC would make two modifications to this list:

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26 ¹⁷ Dkt. No. 289 at 26:7–13. OPARB refers to the OPA Review Board. FIT refers to the Force
Investigation Team. FRB refers to the Force Review Board. EIS refers to the Early Intervention
System.

- 1 • No. 5 should be revised to read: “Modification of internal investigative processes such as
2 the Force Investigation Team, the Force Review Board, and the Collision Review Board
3 and of other internal accountability-related systems, such as EIS; and defining the nexus
4 between those internal processes, OPA, and the Auditor/Independent Monitor/Inspector
5 General.”
- 6 • No. 6 should be added: “Modification of the OPA Auditor role, either increasing that
7 office’s authority and capacity, or subsuming it under an Independent Police Monitor or
8 Inspector General’s Office.”¹⁸

10 V. CPC’S ROLE

11 The City Attorney recently reportedly observed that “there’s nothing in the consent
12 decree that suggests the CPC was to be basically given the council’s legislative authority.”¹⁹
13 This misunderstands the role the CPC has assumed, and indeed, was given under the MOU
14 between the City and the United States. The MOU gave the CPC authority to “issue its own
15 reports or recommendations to the City on the implementation of the Settlement Agreement” and
16 “other initiatives of SPD and the City to support the reform process.”²⁰ The CPC has *never* taken
17 the position that the Council must adopt our recommendations verbatim. Of course, the CPC,
18 like all other interested parties, is free to advocate to the Council and the Mayor. The CPC feels
19 obligated to make the most effective case it can for the nuanced, integrated approach to
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23 ¹⁸ See, *supra*, Part III. This item was discussed at some length in the work group meetings, and
24 the CPC believes its omission from the City’s list was a simple oversight.

25 ¹⁹ David Kroman, *The Path Clears Toward Permanent Police Reform. Maybe*, Crosscut (May
26 11, 2016), available at <<http://crosscut.com/2016/05/the-path-may-clear-toward-true-police-reform/>>.

²⁰ MOU § III.B.5 at 2.

1 accountability reform that many inside and outside the CPC have devoted thousands of hours
2 developing. It must be remembered that the CPC was created in the first place to “leverage the
3 ideas, talent, experience, and expertise of the community” in the reform process.²¹ Were the
4 CPC not to play this advocacy role as effectively as possible, it would not long retain the support
5 of the diverse communities of Seattle.

6
7 Collectively, the CPC has substantial expertise on police accountability matters.²² For
8 example, five of its original commissioners served on the Minority Executive Directors Coalition
9 Multiracial Task Force on Police Accountability. CPC staff and commissioners have included
10 signatories to the December 2010 letter sent by 35 community organizations asking the U.S.
11 Attorney’s Office for the Western District of Washington and the DOJ’s Civil Rights Division to
12 conduct a pattern and practice investigation of excessive force by SPD; one original CPC
13 member served on the 2008 Blue Ribbon Task Force on police accountability reform; two served
14 on the Mayor’s 2001 Racial Profiling Task Force; and one current member was on the selection
15 panel for the present OPA Director.²³

16
17 Therefore, it only made sense that the CPC’s mandate from the beginning included the
18 “review [of] Seattle’s current three-prong civilian oversight structure to determine if there are
19 changes it would recommend for improving SPD accountability and transparency.”²⁴ The CPC
20 “may consider alternative civilian oversight models and whether clarifications or changes in
21 roles and responsibilities for the OPA) Director, the OPA Auditor, and/or the OPA Review
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24 ²¹ Settlement Agreement § I.B.6 at 2.

25 ²² Dkt. No. 240 App’x A.

26 ²³ *Id.* at 1:21–2:8 and App’x A.

²⁴ MOU § III.C.2.i.15 at 4–5.

1 Board would improve the confidence of the community and officers in the system.”²⁵ OPA also
2 was to consult with the CPC to “assess ways to reduce [OPA’s] investigative timeliness” and
3 “develop and implement, in coordination with the [CPC], a program to broadly educate the
4 Seattle community about the various methods for making misconduct complaints.”²⁶

5 Making recommendations relating to accountability reform is squarely within the CPC’s
6 mandate. The CPC would fail community expectations were it not to advocate for these changes.
7

8 Since making its reform proposals in 2014, the CPC has continued its work on police
9 accountability. The City’s brief correctly observes that “CPC commissioners attend a wide
10 spectrum of community meetings, listening to concerns that are articulated.”²⁷ The “CPC has
11 conducted reviews of SPD action and/or closed OPA investigations in order to make systemic
12 recommendations.”²⁸ We respectfully disagree that this “expanded role that the CPC has been
13 playing is not codified and is arguably at odds with language within the Consent Decree and
14 Memorandum of Understanding that precludes CPC review of OPA files.”²⁹ One of the goals of
15 the MOU is “ensuring police services are delivered ... in a manner that fully complies with the
16 Constitution and the laws of the United States, effectively ensures office and public safety, and
17 promotes public confidence in SPD.”³⁰ The CPC is responsible for making recommendations on
18 the implementation of the Settlement Agreement in furtherance of reforms intended to meet
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22 ²⁵ *Id.*

23 ²⁶ *Id.* § III.C.2.ii.16–.17 at 5–6.

24 ²⁷ Dkt. No. 289 at 23:22–23.

25 ²⁸ *Id.* at 23:23–24:1.

26 ²⁹ *Id.* at 24:7–9.

³⁰ MOU § I.1 at 1.

1 those goals.³¹ Most important, the CPC is given the express authority under the MOU to “issue
2 reports or recommendations as to ... other initiatives of SPD and the City to support the reform
3 process.”³² The City itself noted this broad authority under the MOU for the CPC to advocate as
4 it felt appropriate in its letter to the Monitor on August 21, 2015.³³

5
6 The City is correct that the Settlement Agreement and MOU limit the uses to which the
7 CPC can put closed OPA investigative files. Since such files are available to all members of the
8 public, it is plain that the CPC is not prohibited from reading them and learning and being
9 informed by what they contain. Rather, the agreements direct that the CPC not operate as a
10 civilian review board, opining about the appropriateness of misconduct findings or discipline in
11 specific cases.³⁴ The CPC has scrupulously adhered to this limitation. Despite some community
12 members’ hopes and expectations that the CPC could immediately set about changing
13 disciplinary outcomes, the CPC has been clear that this is not its function. Notably, the CPC’s
14 accountability reform package did not propose that the CPC undertake the function of examining
15 outcomes in individual allegations of misconduct. The CPC instead proposed that it function as a
16 board that provides civilian oversight of the accountability *system*. Our current analysis of
17 pertinent closed OPA files to identify systemic reform issues is in keeping with that approach
18 and does not violate any prohibition on use of those files. It would be ill-advised for any
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22 ³¹ *Id.* § III.B.5.b at 2.

23 ³² *Id.* § III.B.5.c at 2.

24 ³³ Letter from City of Seattle to Monitor and DOJ, August 21, 2015. *See* Dkt. No 233 at
Appendix A.

25 ³⁴ MOU § III.B.10 at 3. The MOU entered into by the City with the Seattle Police Management
26 Association (SPMA) at the time the CPC was established confirms the concern involved that
the CPC not function as a de facto civilian review board. The CPC has not functioned in that
manner.

1 organization to meaningfully evaluate accountability processes without examining and being
2 informed by how certain illuminating investigations of misconduct are actually carried out. In
3 reviewing several closed cases of substantial public interest recently,³⁵ the CPC did not consider
4 the validity of any specific allegations or the appropriateness of any findings or
5 recommendations. Rather, the CPC focused on flagging possible systemic issues in SPD and
6 OPA systems and practices that might offer opportunities for improvement. The scope of the
7 CPC's analysis was communicated to both police unions. Neither expressed any concerns with
8 the CPC's focus, understanding the CPC was not engaging in review of alleged misconduct,
9 findings, or discipline.

11 VI. WHAT WILL BE POSSIBLE ONCE ACCOUNTABILITY REFORM IS 12 ADDRESSED

13 Had the City been permitted to move ahead with the accountability reform process in
14 2015, much could have been accomplished since. With clear and recognized authority for policy
15 oversight in areas concerning fairness and public trust, if our recommendations regarding the
16 community oversight body were adopted, the CPC would have had a clearer path to provide
17 input and guidance in critical areas:

- 19 • Review of SPD policies and training of critical importance to the community,
20 including in the areas of crowd management and body-worn cameras;
- 21 • Review of other policies developed or revised by SPD independently or in
22 response to OPA Director, OPA Auditor, and other external recommendations;
- 23 • Tracking and reporting on the implementation status of recommendations for
24 systemic improvements, primarily those of the OPA Director, the OPA Auditor,
25 and the CPC itself; and
- 26 • Advising the OPA Director on ways to make the accountability system more
accessible and transparent to the public.

³⁵ These were the Mohammad Said investigation and May Day 2015 blast ball investigations.

1 reform could be delayed for yet another year—into 2017—would be contrary to community
2 expectations of this process. Because the Council’s work will almost exclusively focus on the
3 Mayor’s proposed biennial budget beginning in late September and extending through
4 November, and because the Council will require sufficient time to deliberate on critical options
5 in any accountability system legislation, it is important that the Council be able to commence its
6 work in June.
7

8 **VIII. CONCLUSION**

9 The CPC respectfully requests that this Court approve the parties’ anticipated stipulated
10 Order giving the City of Seattle’s legislative leaders clearance to consider and enact
11 accountability reform.

12 RESPECTFULLY SUBMITTED, this 23rd day of May, 2016.

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15 By: /s/Lisa Daugaard
16 Lisa Daugaard, Co-Chair
Community Police Commission

By: /s/ Rev. Harriett Walden
Rev. Harriett Walden, Co-Chair
Community Police Commission

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18 By: /s/ Fé Lopez
19 Fé Lopez, Executive Director
Community Police Commission
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APPENDIX A



February 25, 2016

VIA EMAIL

Peter S. Holmes
Seattle City Attorney

Dear Mr. Holmes:

We write as you requested in your letter of February 22, 2016 to the SPD Accountability Structure Working Group, noting your proposal to schedule five meetings between March 1 and March 29 to discuss and answer questions raised by Judge Robart and yourself concerning the police accountability system. There are several items we would like to address concerning the proposed arrangements for these sessions.

When you met with commissioners on February 10, 2016, you urged full CPC engagement in the upcoming sessions of the SPD Accountability Structure Working Group, noting that this is our "last best chance" under the Settlement Agreement to affect meaningful reform of SPD's accountability system. We agree that Seattle has an unprecedented opportunity to realize true reform at this time and that the upcoming discussions of the Working Group are of paramount importance.

The CPC was charged under the Memorandum of Understanding with evaluating the accountability system and recommending improvements to it—the CPC did so, and shepherded long discussions that led to the package of reforms which has been endorsed by multiple City stakeholders. The CPC was uniquely positioned to take responsibility for this assigned work, given its broad community representation, which includes the perspectives of police union representatives. For more than two years we have been engaged in extensive discussions about how best to reform the accountability system, and as the lead in those efforts have a profound interest in the outcome of the Working Group's deliberations.

We believe at minimum four commissioners should participate, in addition to CPC staff members. As community representatives, commissioners have an important role to play in witnessing and vouching for the legitimacy of the process. Also, as you know, we have had a dedicated staff member working on the accountability project for more than two years and she should be present, and it is appropriate that the CPC's Executive Director attend—it will only make the process less efficient were the Executive Director excluded. We are entirely committed to full participation, but the CPC is not a homogenous entity and its perspective cannot be fairly represented by one or two members, particularly if it is to weigh in on possible revisions to the currently endorsed package of reforms.

Also, in your February 22, 2016 letter you state that "[n]ews media and public observers will not be permitted." However, in our view these meetings should be open to the public. Attendance by at least four commissioners and CPC staff, as well as having the meetings open to the public, will better ensure

the Working Group adheres to principles you have outlined—a focus on attaining consensus, being inclusive, and maintaining transparency.

While many of the CPC's recommendations are incorporated in the proposed legislation, certain important recommendations are outstanding, including those that are pending the outcome of contract negotiations. These outstanding items are memorialized in a draft resolution (enclosed) which was prepared to accompany the legislation. We also note that in her February 9, 2016 report, the OPA Auditor cites additional recommendations she has made that should be addressed in collective bargaining. Since approval of a contract by the union membership is anticipated shortly, we advise that the Working Group address at the outset those recommendations subject to bargaining, including considering the implications of any of these recommendations not being adopted in the contract agreement.

As with the subsequent review of the proposed legislation, it would be helpful to begin all of the discussions by having the City Attorney, the DOJ, the Monitoring Team, and other participants identify what you refer to as "unique procedural and substantive issues in light of the Consent Decree," surfacing critical considerations that the group should address in the course of its work. The focus of the Working Group's efforts should be on determining 1) whether the proposed legislation and other recommendations contradict the Consent Decree and how those contradictions can be remedied, and 2) whether additional refinements can strengthen the improvements to the system which have already been proposed and endorsed by all City stakeholders.

Broad consensus on how to reform the accountability system is imperative. The CPC's effective participation in determining what more may be needed could be helpful in gaining the community's confidence in the ultimate outcome of the Working Group's deliberations. Certainly, if improvements can be made to the widely endorsed package of currently proposed reforms, the CPC will be strongly supportive.

Sincerely,



Rev. Harriett Walden, Co-Chair
Community Police Commission



Lisa Daugaard, Co-Chair
Community Police Commission

Enclosure

Cc:

Mayor Ed Murray
Seattle City Council
Chief of Police Kathleen O'Toole
Office of Professional Accountability Director Pierce Murphy
Office of Professional Accountability Auditor Judge Anne Levinson (Retired)
Office of Professional Accountability Review Board Chair Elizabeth R. Holohan
Monitor Merrick Bobb
Assistant United States Attorney Michael Diaz
Community Police Commission

APPENDIX B

SEATTLE CITY ATTORNEY
PETER S. HOLMES

- ATTORNEY-CLIENT PRIVILEGED -

MEMORANDUM

TO: Lisa Daugaard and Diane Narasaki
Co-Chairs, Community Police Commission

FROM: Jean Boler and Greg Narver, Assistant City Attorneys

SUBJECT: Confidentiality of Bargaining Parameters

DATE: March 19, 2014

INTRODUCTION

As co-chairs of the Community Police Commission, you have asked for legal advice on issues relating to the City's bargaining position in negotiations with the Seattle Police Officers Guild ("SPOG"). Specifically, you have asked (i) whether it would be permissible for the City to formulate and discuss its negotiating position and negotiating goals in public prior to the commencement of negotiations; and (ii) whether negotiating sessions between the City and SPOG could be open to the public.

The City is allowed to formulate its negotiating position in confidence, out of the public eye (which your request for legal advice acknowledged). However, subject to the limitations discussed below it would be permissible for certain negotiating parameters to be the subject of open discussion prior to negotiations. Once actual negotiations are under way, they must be conducted in strict confidentiality.

DISCUSSION

A. Labor Law Principles Issues Related to Public Discussion of Bargaining Positions

City representatives who participate in public events prior to police union negotiations must bear in mind two labor law principles: the duty to bargain in good faith, and the prohibition against interference with collective bargaining.

1. The duty to bargain in good faith

The City is required to bargain in good faith, which means coming to the bargaining table without positions already set in stone. Given that obligation, City representatives cannot state in the course of public events or hearings what must be contained in a collective bargaining contract. If a City representative gives the impression in pre-negotiation events that some terms are non-negotiable and that position is carried through in negotiations, SPOG could show that the City has

Lisa Daugaard and Diane Narasaki
March 19, 2014
Page 2

not bargained in good faith. See *Public, Professional and Office Employees Local 763 v. Snohomish*, Decision 1661 (PECB 1983) (announcement of bottom-line position at a public meeting contributed to evidence of bad faith). City representatives should therefore refrain from stating rigid positions during public events, and in the course of any give-and-take with the public should phrase any discussion of policy so as to avoid the appearance of taking a position.

2. Prohibition against interference with collective bargaining

It is an unfair labor practice to “interfere with, restrain, or coerce public employees in the exercise of their rights.” RCW 41.56.140. Public statements that could interfere with collective bargaining rights include those that “disparage, discredit, ridicule, or undermine the union,” or are “argumentative”, communications with members that constitute direct dealing or communications that “appear to have placed the employer in a position from which it cannot retreat.” *IFPTE, Local 17 v. City of Seattle*, Decision 3566 (PECB, 1990). On the other hand, RCW 41.59.140(3) gives broad protection to the expressions of views, argument or opinion “or the dissemination thereof” to the public as long the expressions do not contain threats “of reprisal or force or promise of benefit.”

Given these somewhat vague and broad parameters, it appears that there can be public discussion of issues that are the subject of bargaining in a way that would not constitute an interference unfair labor practice, as long as City representatives did not make statements that disparaged or undermined the union or locked the City into specific bargaining positions.

B. Confidentiality of Negotiation Strategy and Parameters

The only law that directly requires confidentiality of labor negotiations is Seattle Municipal Code 4.04.120 (E), which provides: “All elected public officials and appointed City officers assigned the responsibility of proposing, reviewing, or determining labor relations policies shall maintain strict confidentiality during the period of negotiations.”

Although state law does not contain the same specific prohibition, it does contain a prohibition against the disclosure of “confidential information” that would likely apply to labor negotiations. Specifically, RCW 42.23.070(4) states in part that “[n]o municipal officer may disclose confidential information gained by reason of the officer’s position.” The term “confidential” is not defined in the statute. However, because the Open Public Meetings Act (“OPMA”) treats labor negotiations as not subject to the open meetings provisions of the act, it is likely that information concerning negotiations would be considered “confidential.” under RCW 42.23.070. See RCW 42.30.140(4)(a) (OPMA does not apply to “[c]ollective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement”).

The OPMA allows closed sessions during “that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in negotiations or proceedings while in

Lisa Daugaard and Diane Narasaki

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progress.” RCW 42.30.140(4)(b). The Public Records Act exempts from disclosure documents used to set policy in collective bargaining negotiations under the deliberative process exemption. RCW 42.56.280; *American Civil Liberties Union of Washington v. City of Seattle*, 121 Wn. App. 544, 548-54, 89 P.2d 295 (2004). Neither the OPMA nor the Public Records Act requires the confidentiality of these proceedings or documents, but they do allow them to remain confidential. SMC 4.04.120(E), however, requires confidentiality.

While SMC 4.04.120(E) requires strict confidentiality during negotiations, it does not address post-negotiation conduct. The City may have arguments that documents that memorialize negotiation strategy and rationale should remain exempt from public disclosure after a contract is reached because those documents will be part of the deliberative process in setting parameters for the next bargaining session. However, that theory has not been addressed by the courts.

APPENDIX C

November 30, 2015

Mr. Merrick Bobb, Seattle Police Monitor

Via E-mail: merrickbobb@parc.info

Dear Mr. Bobb,

Since late June 2015, draft legislation to reform the Seattle Police Department's accountability system has been ready for submission to the City Council. This package has been jointly endorsed by all City stakeholders and came out of a comprehensive set of recommendations originally issued by the Community Police Commission (CPC) in April 2014. The legislation provisions ready for immediate action (others must await the conclusion of collective bargaining) are detailed in an August 21, 2015 letter from the City to you and the U.S. Department of Justice (DOJ).

We wish to be on record with our strong support of the proposed legislation as represented in the City's letter. We also believe it is urgent that all impediments to City Council action and the Mayor's signature need to be removed. Twenty months after the CPC identified, on behalf of the community, needed improvements to the accountability system, further delay in moving forward with the full package does not meet the expectations of our communities for substantive and timely reforms.

Among other important elements in the legislation are provisions to strengthen the independence and authority of the professional civilian oversight bodies, the Office of Professional Accountability (OPA) and the Office of the OPA Auditor. Critically, the legislation also provides that the CPC become the permanent community-based oversight body for the police department.

In many respects we were Seattle's first *de facto* community police commission—many of our organizations were among the thirty-five community groups that signed the 2010 letter asking DOJ to investigate SPD. Before the Settlement was finalized, we strongly urged that the community have a seat at the table during the reforms and stated that, on an ongoing basis, SPD had to be accountable to the community.

Through the CPC, the Settlement Agreement and the Memorandum of Understanding (MOU) between the City and the DOJ provide that the community's voice is heard during the reform process. Now it is time to make permanent the community's role in overseeing our police department. We have high confidence in the CPC which has served as the community oversight body to the reform work for nearly 3 years. It has a positive track record of openness and fairness that we respect, and it takes seriously its role in both directly representing a wide range of community perspectives and in engaging community members to obtain their views.

All of the City of Seattle partners have expressed their agreement with the CPC on a consensus package of comprehensive reforms. Almost exactly one year ago, in the face of the impending unrest nationally in the wake of events in Ferguson, Missouri, Mayor Murray predicted that matters in Seattle would go differently in large part because the CPC stepped up to channel community sentiment into the reform process. He committed to forwarding an accountability reform package to the City Council by early in 2015. Councilmembers have also

expressed their willingness to move expeditiously on the package. Yet, despite our understanding that the accountability system was largely left to the political leaders of the city and the CPC under the MOU, accomplishing these agreed upon reforms seems to have stalled.

Many CPC members come from our communities and they have put in significant time, both previously and in their current capacity, to championing and working collaboratively to achieve police reforms. Their participation in the work of the CPC requires an extensive investment of effort, some of which is offered at the expense of their other responsibilities. We see that sacrifice as worthwhile if it results in substantive, effective changes to our police department. However, we are concerned that the CPC's hard-won accountability system recommendations, which are embraced by all City stakeholders, are at risk. We are also concerned that the credibility of community involvement in the reform process is being undercut.

In requesting a DOJ investigation and court supervision, we did not think it would replace the community's expertise and leadership. In respect to the accountability legislation, this guidance has been provided, as required by the MOU, and we ask that you seek the court's permission for the City to move forward with the jointly agreed to accountability reform package immediately.

Sincerely,

The Reverend Aaron Williams, Senior Pastor
Mount Zion Baptist Church

Diane Narasaki, Executive Director
Asian Counseling and Referral Service

Estela Ortega, Executive Director
El Centro de La Raza

S. Arsalan Bukhari, Executive Director
Council on American-Islamic Relations of Washington State

Pamela Stearns, President
King County Native American Leadership Council

The Reverend Steve Baber, President
Washington Christian Leaders Coalition

The Reverend Lawrence Willis, President
United Black Clergy

Sheley Secrest, Vice President
NAACP Seattle King County

Rich Stolz, Executive Director
OneAmerica

Diakonda Gurning and Sheri Day, Coalition Designated Representatives
John T. Williams Organizing Coalition

Jorge Barón, Executive Director
Northwest Immigrant Rights Project

Dorothy Wong, Executive Director
Chinese Information and Service Center

Andrea Caupain, CEO
Centerstone

Alison Eisinger, Executive Director
Seattle-King County Coalition on Homelessness

Timothy Harris, Executive Director
Real Change

Daniel Malone, Executive Director
Downtown Emergency Services Center

The Reverend Paul Benz, Co-Director
Faith Action Network

Michael Ramos, Executive Director
Church Council of Greater Seattle

Rebecca Saldana, Executive Director
Puget Sound Sage

Pamela Banks, President and CEO
Urban League of Metropolitan Seattle

Christopher T. Stearns
Native American attorney and past Seattle Human Rights Commission Chair

Jeff Johnson, President
WA State Labor Council, AFL-CIO

Beto Yarce, Executive Director
Ventures Non-Profit

Hilary Stern, Executive Director
Casa Latina

Jacqueline Wu, President
OCA – Greater Seattle

Jafar "Jeff" Siddiqui
American Muslims of Puget Sound

Kevin Cummings, Founder and President
Council for First Inhabitants Rights and Equality (Council FIRE)

Maiko Winkler-Chin, Executive Director
Seattle Chinatown International District Preservation and Development Authority

Marcos Martinez, Executive Director
Entre Hermanos

Maria Batayola, President
Filipino American Political Action Group of Washington

Mozart Guerrier, Executive Director
21 Progress

Nina Martinez, Chair
Latino Civic Alliance

Paul Tashima, President
Japanese American Citizens League - Seattle

Peter Bloch Garcia, Executive Director
Latino Community Fund

Rogelio Riojas, President and CEO
SeaMar Community Health Centers

Sharonne Navas, Co-Founder and Executive Director
Equity in Education Coalition

Teresa Mosqueda, Political and Strategic Campaign Director
WA State Labor Council, AFL-CIO

Tony Lee, Co-Chair
Asian Pacific Islander Coalition of King County

Beth Takekawa, Executive Director
Wing Luke Museum

Tony To, Executive Director
HomeSight

The Honorable State Representative Phyllis Gutierrez Kenney

Frances Carr, Community Leader

Kitty Wu, Community Leader

Michael Woo, Community Leader

Samantha B. Morales, Community Leader

Sharon Maeda, Community Leader

Tammy Morales, Community Leader

Cc:

Hon. Loretta Lynch, Attorney General, United States of America
Vanita Gupta, Civil Rights Division, US Department of Justice
Tim Mygatt, Civil Rights Division, US Department of Justice
Puneet Cheema, Civil Rights Division, US Department of Justice
Hon. James L. Robart, US District Court, Western District of Washington
Annette L. Hayes, US Attorney, Western District of Washington
Hon. Edward Murray, Mayor, City of Seattle
Tim Burgess, President, Seattle City Council
Jean Godden, Member, Seattle City Council
Kshama Sawant, Member, Seattle City Council
Bruce A. Harrell, Member, Seattle City Council
Sally Bagshaw, Member, Seattle City Council
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Nick Licata, Member, Seattle City Council
Mike O'Brien, Member, Seattle City Council
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The Reverend Harriett Walden, Co-Chair, Seattle Community Police Commission
Lisa Daugaard, Co-Chair, Seattle Community Police Commission
Fe Lopez, Executive Director, Seattle Community Police Commission