

THE HONORABLE JAMES L. ROBERT

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
CITY OF SEATTLE,  
  
Defendant.

No. 2:12-cv-01282-JLR

**UNITED STATES’ RESPONSE TO  
CITY OF SEATTLE’S DRAFT  
ACCOUNTABILITY SYSTEMS  
LEGISLATION**

Pursuant to this Court’s minute order of September 9, 2016 (Dkt. No. 310, “Court’s Order”), the following is Plaintiff United States of America’s response to the draft accountability systems legislation submitted by Defendant City of Seattle on October 7, 2016, as revised on October 28, 2016 (Dkt. Nos. 320-1 & 328-1, “Draft Legislation”).

**I. INTRODUCTION**

At the most recent status conference on August 15, 2016, the Court posed the question: “Is the City better constitutionally policed than when we started?” Dkt. No. 316 (Transcript of Status Conference held on August 15, 2016, “Transcript”) at 9. The Court answered, “Undeniably, yes.” *Id.* The Court continued on: “Is the [police accountability] system at this time perfect? No.” *Id.*

1 The Department of Justice Civil Rights Division, and the United States Attorney’s Office  
2 (“DOJ”) recognize that the Draft Legislation is the result of considerable work by many in the City  
3 of Seattle to establish a “more perfect” police accountability system. As set forth in greater detail  
4 below and pursuant to the Court’s Order, DOJ has reviewed the Draft Legislation to identify  
5 whether it contains any provisions that: (1) conflict with the terms of the Consent Decree, or (2)  
6 conflict with the reform purposes of the Consent Decree.

## 7 **II. BACKGROUND**

8 Before addressing these matters, it is important to provide some context for DOJ’s review  
9 of the Draft Legislation. As has been true throughout, DOJ undertook its review mindful of its  
10 obligations under the Consent Decree, and the Memorandum of Understanding (“MOU”), since  
11 these are the bedrock documents guiding the Court-ordered reform process in Seattle.<sup>1</sup> The  
12 Consent Decree makes clear that the fundamental goals of the reform process are to “ensur[e] that  
13 police services are delivered to the people of Seattle in a manner that fully complies with the  
14 Constitution and laws of the United States, effectively ensures public and officer safety, and  
15 promotes public confidence in the Seattle Police Department ... and its officers.” Dkt. No. 3-1 at  
16 Introduction; MOU ¶ 1.

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19 Following on those guiding principles, the Decree makes clear that ensuring a community  
20 voice in the reform process is crucial to its success:

21 The community is a critical resource. Certain aspects of the reform efforts embodied in  
22 the Agreements are best developed by dialogue and wide-spread input. Moreover, ongoing  
23 community input into the development of reforms, the establishment of police priorities,

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24 <sup>1</sup> For ease of reference and unless otherwise specified, when the United States refers to the “Consent Decree” in this  
25 document, it is referring to both governing documents – the Consent Decree, found at Dkt. No. 3-1, and the MOU,  
July 27, 2012, available at [https://www.justice.gov/crt/about/spl/documents/spd\\_mou\\_7-27-12.pdf](https://www.justice.gov/crt/about/spl/documents/spd_mou_7-27-12.pdf).

1 and mechanisms to promote community confidence in SPD will strengthen SPD and  
facilitate police/community relationships necessary to promote public safety.

2 Dkt. No. 3-1, at ¶ 4.

3 Consistent with this admonition, the Consent Decree requires the City to establish a  
4 Community Police Commission (“CPC”) “[t]o leverage the ideas, talent, experience, and expertise  
5 of the community” as part of the reform process. *Id.* at ¶ 6. The Consent Decree then lays out the  
6 general obligations of the CPC, while the MOU sets out a more specific list of duties that include  
7 reviewing “Seattle’s current three-prong civilian oversight structure to determine if there are  
8 changes it would recommend for improving SPD accountability and transparency.” MOU at ¶ 15.  
9 Although the MOU emphasizes that “DOJ found that the overall [police accountability] system is  
10 sound,” the MOU permitted the CPC to “consider alternative civilian oversight models and  
11 whether clarifications or changes in roles and responsibilities for the OPA Director, the OPA  
12 Auditor, and/or the OPA Review Board would improve the confidence of the community and  
13 officers in the system.” *Id.*

14 Pursuant to that authority, CPC undertook the following actions. In 2013, the CPC met  
15 with community members and community organizations to obtain their feedback on what they  
16 wanted in a civilian oversight system. *See* Dkt. No. 290-1 at 1. In 2014, after months of weekly  
17 meetings, the CPC presented the City with its recommendations concerning Seattle’s police  
18 accountability systems. *Id.* at 1-2. And, in 2015, CPC further refined its recommendations in talks  
19 with its City partners. *Id.* at 2.

20 After considerable debate and discussion within the City, and between the Parties and the  
21 Monitor, and pursuant to further orders from the Court, the City Attorney established a process  
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1 earlier this year that brought together various City stakeholders, DOJ, and the Monitor to discuss  
2 in detail the range of issues raised by the Seattle Police Department's ("SPD") accountability  
3 systems, including the CPC's above-referenced recommendations. *See* Dkt. No. 291 at 1-2. Out  
4 of this process came the Draft Legislation that the City filed with the Court on October 7, 2016.

### 5 **III. THE DRAFT LEGISLATION**

6 As a preliminary matter, it is worth noting several things about the Draft Legislation. First,  
7 as the City stated in its brief accompanying the Draft Legislation (Dkt. No. 320 at 2, "City's  
8 Brief"), the document reflects considerable collaborative work by many City actors: from the  
9 community advocates who volunteer their time on the CPC; to police officers (some also serve on  
10 the CPC); to members of the City's executive branch who are obligated to put this legislation into  
11 practice; to technical experts, such as the Office of Professional Accountability ("OPA") Director  
12 and Auditor; as well as Seattle City Council members and their staffs; and this Court's own  
13 Monitor, and DOJ. These discussions and consultations proceeded in accordance with the  
14 direction provided by the Court, including at the most recent status conference on August 15, 2016.  
15 *See* Transcript at 11. And notably, despite differing perspectives and responsibilities, proceeded  
16 in a respectful and collaborative manner that allowed the work to get done.  
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19 Second, the participants were able to reach consensus on much of the Draft Legislation.  
20 Indeed, as the City states in its Brief, "[t]he vast majority of this draft legislative package was  
21 agreed to by all City stakeholders involved in the process." City's Brief at 2-3. Of the  
22 approximately 260 paragraphs in the Draft Legislation, fewer than 25 reflect some type of  
23 disagreement, and even fewer reflect fundamental (as opposed to technical) disagreement among  
24 the stakeholders. At a time when the topic of police accountability is being hotly debated across  
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1 the country, the ability to reach such agreement is both noteworthy and commendable.  
2 Furthermore, this accomplishment validates one of the Consent Decree’s foundational assertions  
3 referenced above; namely, that the “reform efforts embodied in the [Consent Decree] are best  
4 developed by dialogue and wide-spread input ... [because such] input ... will strengthen SPD and  
5 facilitate police/community relationships necessary to promote public safety.” Dkt. No. 3-1 ¶ 4.

6 Finally, the Draft Legislation incorporates some additional provisions that are consistent  
7 with the reform process to date:

- 8
- 9 1. It codifies several of the Consent Decree reforms that up until now were set forth only  
10 in SPD policy. These include:
    - 11 a. Authorizing the OPA Director “to respond to the scene of all SPD officer-  
12 involved shootings and other serious use of force” (Draft Legislation ¶  
13 3.29.020.A.12; *see also* Dkt. No. 204-1 at 45);
    - 14 b. Ensuring civilian participation (through the Office of Inspector General,  
15 “OIG”) in “administrative investigation unit interviews and [Force Review  
16 Board and other] meetings held to review [Force Investigation Team]  
17 information” (*id.* ¶ 3.29.110.A.4.b; *see also* Dkt. No. 204-1 at 54); and
    - 18 c. Continuing community participation in “SPD policies and practices of  
19 significance to the public” (*id.* ¶ 3.29.215A.1; *see, e.g.*, Consent Decree at ¶  
20 146).
  - 21
  - 22 2. It ensures that additional recommendations to improve civilian oversight made by the  
23 Director and Auditor of OPA, and the CPC are codified in legislation. These  
24 recommendations are distinct from, but build off of the Consent Decree-driven reform  
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1 process. They include, for example, the “rapid adjudication” of certain types of OPA  
2 complaints to achieve quicker and more effective discipline (*id.* ¶ 3.29.007 &  
3 3.29.020.A.5) and the standardization of tolling of deadlines for complaints that  
4 implicate criminal conduct (*id.* ¶ 3.29.026.F).

- 5 3. It lays out the entire universe of “structural accountability” proposals that will be  
6 considered by the City’s legislative branch – the City Council. And although it  
7 contemplates possible further development and refinement of the proposals, it  
8 recognizes any such revised proposals would require the Court’s review and approval  
9 before they could be implemented. City’s Brief at 4.  
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#### 11 **IV. THE SCOPE OF THE DEPARTMENT OF JUSTICE’S REVIEW**

12 Upon receipt of the City’s Draft Legislation, DOJ reached out to all City stakeholders to  
13 ensure it had their input on the legislation. DOJ met with the CPC, the OPA Director and Auditor,  
14 the elected Seattle City Attorney and his staff, the Mayor’s staff, as well as members and staff of  
15 the City Council. DOJ also met with the Monitor and his staff to solicit their views.  
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17 As the Court ordered, DOJ’s focus has been to assess whether the Draft Legislation is  
18 “consistent with the terms and purpose of the Consent Decree.” City’s Brief at 3; Dkt. No. 291 at  
19 4 (laying out scope of DOJ’s review); Dkt. No. 305 at 3 (previous Court order laying out the scope  
20 of the Court’s own review as one focused on the “terms” and “purpose” of the Consent Decree).  
21

22 The following provides some context for how DOJ has approached this review process.  
23 As an initial matter, three key principles of police reform relating to civilian oversight and  
24 community input bear repeating given their importance to DOJ’s work in this area. First, civilian  
25 oversight of the police is essential to effective and constitutional policing. *See* President’s Task

1 Force on 21<sup>st</sup> Century Policing, May 2015, at 2 (“President’s Task Force”), *available at*  
2 [https://cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf). Second, community input into  
3 civilian oversight bodies is essential to building an effective policing program. *See, e.g.,*  
4 President’s Task Force at 46; Dkt. 3-1 ¶ 4. Third, as DOJ has stated previously (Dkt. No. 291, at  
5 3), there is no single, best way to structure civilian oversight of all police departments. *See*  
6 President’s Task Force at 26 (“Every community should define the appropriate form and structure  
7 of civilian oversight to meet the needs of that community.”).

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9 As a result, DOJ’s review does not reflect prescriptive dictates that apply to police  
10 accountability systems across the board, nor should DOJ’s review be seen as a blanket approval  
11 of the approach that Seattle has decided to take in the Draft Legislation. There simply is no “best  
12 way” to structure an accountability system. Thus, DOJ has conducted its review with deference  
13 to the elected representatives of the citizens of Seattle to craft a system that works best for this  
14 community. The fundamental limits to that deference are the Constitution and the Consent Decree  
15 itself.

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17 With that framework in mind, DOJ’s review, pursuant to the Court’s direction, was a  
18 relatively narrow one: whether any aspect of the Draft Legislation — including portions reflecting  
19 “non-consensus” (City’s Brief at n.1) — conflicts with the terms of the Consent Decree, or is in  
20 conflict with the reform goals underlying the Decree.<sup>2</sup> *See also* Dkt. No. 291 at 4 (laying out scope  
21 of DOJ’s process at this stage of this process). DOJ has identified those portions or provisions of  
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25 <sup>2</sup> DOJ also has provided the City a technical assistance letter addressing aspects of the Draft Legislation that do not meet this standard, but nevertheless deserve additional consideration.

1 the Draft Legislation that it believes conflict or may conflict below.<sup>3</sup>

2 **V. THE DEPARTMENT OF JUSTICE’S COMMENTS ON THE DRAFT**  
3 **LEGISLATION**

4 As a preliminary matter, DOJ notes with approval that the Draft Legislation begins by  
5 clearly setting forth what the overall purposes of the legislation are. While perhaps an obvious  
6 place to start, this statement – by emphasizing among other things the need to “enhance and sustain  
7 effective civilian oversight” of SPD, and provide clear statutory authority to ensure oversight is  
8 “as effective as possible” – provides a helpful point of reference from which to consider the rest  
9 of the legislation.

10 The Draft Legislation also begins by providing a concise statement of the roles of the three  
11 bodies involved in civilian oversight:

- 12 ○ “[A]n Office of Police Accountability (OPA) to handle complaints of misconduct”;
- 13 ○ “[A]n Office of Inspector General (OIG) to provide systemic oversight of the  
14 management, practices, and polices of SPD and OPA”; and
- 15 ○ “[A] Community Police Commission (CPC) to provide community input to ensure  
16 that police services are delivered in a lawful and nondiscriminatory manner and are  
17 aligned with community values and expectations.”

18 Draft Legislation at 3.29.005.

19 DOJ believes this statement of the roles of OPA, OIG, and CPC is consistent with the terms  
20 and reform purposes of the Consent Decree. It sets forth clear roles and distinct purposes for each  
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23 <sup>3</sup> It is important to note in this context that DOJ has not been notified by the City that any aspect of the Draft Legislation  
24 implicates any City collective bargaining agreement. As set out in the Consent Decree, DOJ expects that the  
25 “City and SPD [will] promptly notify DOJ if any term of the [Consent Decree] becomes subject to collective  
bargaining consultation. DOJ agrees to work in good faith to accomplish the goals through alternate means, if  
necessary” and will seek additional guidance from the Court, as required. Dkt. No. 3-1 ¶ 227.



1 body focused on “ensuring that police services are delivered to the people of Seattle in a manner  
2 that fully complies with the Constitution and laws of the United States” and the other overarching  
3 goals of the Consent Decree. Dkt. No. 3-1, at Introduction. By providing defined roles, this  
4 statement emphasizes the need to avoid overlapping responsibilities that can result in either the  
5 inefficient duplication of efforts, or the converse – the failure of anyone in the system to satisfy  
6 important accountability requirements.<sup>4</sup>

7  
8 We have used these statements in the Draft Legislation as guideposts to test whether the  
9 specific provisions addressing the roles and duties of the OPA, the IG and the CPC are consistent  
10 with the Consent Decree. As set forth below, we have flagged portions of the legislation that we  
11 believe are not consistent with this “clear roles” approach. We believe the Court should do this as  
12 well. Similarly, we encourage the City – to the extent it is authorized by the Court to present the  
13 Draft Legislation to the City Council – to consider any proposed amendments against these same  
14 “clear roles” benchmarks.

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16 Beyond these preliminary comments, DOJ provides the following observations concerning  
17 specific provisions of the Draft Legislation.

18 3.29.027 – F.: Burden of Proof for Termination for Dishonesty

19 This provision sets forth three standards for terminating an officer for dishonesty. We  
20 believe one of these may conflict with the terms and purposes of the Consent Decree, in particular,  
21 its focus on “promot[ing] public confidence in [SPD]” and ensuring that “all complaints regarding  
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25 <sup>4</sup> These kinds of issues were present at the time DOJ issued its finding letter. Dkt. No. 1-1 at 7.

1 officer conduct [should be] fully and fairly dealt with.”<sup>5</sup> To the extent that it imposes a higher  
 2 burden for termination for dishonesty (*i.e.*, “clear and convincing evidence” as opposed to  
 3 “preponderance of the evidence”), this provision undermines confidence in the disciplinary system  
 4 without any clear basis.

5 3.29.215 – Subchapter III – Community Police Commission

6 This subchapter sets out the duties and responsibilities of the CPC. As a preliminary  
 7 matter, we believe that the removal of SPD officers from the CPC, as set forth in the Draft  
 8 Legislation (*e.g.* at 3.29.215.B.3), conflicts with the terms and purposes of the Consent Decree.  
 9 The Consent Decree clearly requires that SPD officers be members of the CPC. Dkt. No. 3-1 ¶ 5-  
 10 6. This is a deliberative and bargained for position of the Decree. Moreover, it is worth noting  
 11 that DOJ has found that having SPD officers on the CPC has been helpful in ensuring that the CPC  
 12 has ready access to the expertise and perspectives necessary to do their work effectively. We  
 13 understand, however, that the City may have some administrative concerns related to having sworn  
 14 officers participate in this body. If that is the case, and the Court is convinced that officers’  
 15 removal is the better approach, their removal would at least require amendment to the Consent  
 16 Decree. *Id.* ¶ 6; *see also* Transcript at 42 (“If [the City] want[s] to change the subjects that the  
 17 CPC can deal with or the scope and nature of the CPC’s efforts, [the City will] need to change the  
 18 Consent Decree.”) (citing Consent Decree ¶ 225 as the “mechanism” to do so).

19 Further, in order to ensure that the provisions related to the role of the CPC in the Draft  
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24 <sup>5</sup> Dkt. No. 3-1 at ¶ 5 (stating the overarching goal of “promot[ing] public confidence in [SPD]”) & ¶ 164 (“all  
 25 complaints regarding officer conduct [should be] fully and fairly dealt with”).

1 Legislation do not in any way interfere with the role assigned to the CPC in the Consent Decree,  
2 we believe that the Draft Legislation must contain specific language requiring the CPC to prioritize  
3 its obligations under the Consent Decree and reiterating the City's obligation – via the CPC – to  
4 meet certain Consent Decree driven objectives. Absent such a prioritization, we believe the  
5 additional duties conflict with the express terms and purposes of the Consent Decree.

6 Finally, we believe one portion of this subchapter may undermine CPC's ability to fulfill  
7 the role assigned to it in the Consent Decree. The Draft Legislation permits the CPC to evaluate  
8 the OIG, as opposed to providing input into the OIG's operations. Section 3.29.215.A.9 states that  
9 the CPC will "evaluate the performance of OIG ... management and leadership." As stated above,  
10 community input into civilian oversight bodies is essential to building an effective policing  
11 program. *See, e.g.*, President's Task Force at 46. However, to the extent that this provision gives  
12 the CPC the authority to formally evaluate the OIG (as opposed to providing input into that  
13 evaluation), it confuses the role of the CPC with those responsible for the functioning of the OIG.  
14 Draft Legislation at 3.29.114.E.

## 15 VI. CONCLUSION

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18 After taking into account the matters addressed above, the United States respectfully  
19 requests that the Court provide the Parties further guidance on the Draft Legislation — in  
20 particular, on whether any of its provisions are inconsistent with the Consent Decree — and then  
21 allow the City to begin its formal legislative process subject to the conditions that the City set forth  
22 in its submission to this Court.  
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Respectfully submitted this 4<sup>th</sup> day of November, 2016.

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**CERTIFICATE OF SERVICE**

I certify that on the 4th day of November, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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