

THE HONORABLE JAMES L. ROBART

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’S SUBMISSION OF  
ACCOUNTABILITY ORDINANCE**

Pursuant to this Court’s order of June 23, 2017 (Dkt. No. 397), the United States of America, through its undersigned counsel at the United States Department of Justice (“DOJ”), files this brief to provide the Court its views on the amendments to the accountability legislation (Dkt. No. 396, the “Ordinance”), which the City originally submitted in October 2016 (Dkt. No. 320), and the Court approved with specified exceptions in January 2017 (Dkt. No. 357). As the Court is aware, following an extensive legislative process, City Council passed the legislation unanimously on May 22, 2017, and the Mayor signed the resulting Ordinance.

**I. BACKGROUND**

Neither the Consent Decree nor the Memorandum of Understanding contain any kind of requirement that the City make changes to its civilian oversight structure to address any of the findings that DOJ made as part of its Civil Rights Pattern and Practice investigation. *See* Dkt. No. 3-1 (Consent Decree); Memorandum of Understanding (“MOU”), found 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). As explained in further detail below, the only obligation that the City took on as part of these documents was a requirement that the Community Police Commission (“CPC”) review that structure. Since the CPC completed that work long ago, the City is in full compliance with its specific obligations with respect to civilian oversight of SPD. As a result, although the development of the Ordinance that is now before the Court was triggered by the MOU (*i.e.*, CPC’s review), it is the result of legislative and executive decisions that are entirely within the purview of the City, and not subject to direct DOJ oversight.

This does not mean, however, it is not subject to any oversight of any kind. As the Court has made clear, it is responsible not only for ensuring that the City complies with all the specific terms and conditions of the Consent Decree, but also that it does not do anything that – while not specifically mandated by the Consent Decree – would undermine compliance with that document. DOJ’s review of the Ordinance is focused on this same question. In short, is there anything in the Ordinance that undermines or impedes the reforms that are mandated by the Consent Decree or the MOU? Beyond that, it is up to the City to decide how to handle this

1 aspect of policing in Seattle, and not within DOJ’s purview under the Consent Decree to dictate  
2 specific terms.<sup>1</sup>

3 As set forth in greater detail below, given this limited role, DOJ is satisfied that the  
4 Ordinance does not in any way violate the terms or purposes of the Memorandum of  
5 Understanding or the Consent Decree and, therefore, does not object to its enactment.

## 6 II. DOJ REVIEW

7 **The Ordinance fulfills the terms and purposes of the MOU.** The Memorandum of  
8 Understanding between the parties to this litigation included a requirement that the Community  
9 Police Commission (“CPC”) review “Seattle’s current three-prong civilian oversight structure to  
10 determine if there are changes it would recommend for improving [Seattle Police Department,  
11 “SPD”] accountability and transparency.” *See* MOU at ¶ 15. The MOU further provided for  
12 consideration of “alternative civilian oversight models and whether clarifications or changes in  
13 roles and responsibilities for the OPA Director, the OPA Auditor, and/or the OPA Review Board  
14 would improve the confidence of the community and the officers in the system.” *Id.* The MOU  
15 delegated this process to the CPC, in part, because of the need for such systems to be tailored to  
16 local needs and community priorities. At this time, DOJ notes with approval that the review  
17 required by the MOU has been performed.

18 **The Ordinance satisfies the terms and purposes of the Consent Decree.** As noted, the  
19 City of Seattle filed its draft accountability legislation in October 2016. *See* Dkt. No. 320-1,  
20 amended by Dkt. No. 328-1 (“Filed Legislation”). At that time, DOJ filed a response that  
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22 <sup>1</sup> DOJ did provide some technical assistance to the City regarding some aspects of the legislation, both in  
23 writing and through discussions with the City and the CPC.

1 identified a few areas of the Filed Legislation that it believed could conflict with the terms of the  
2 Consent Decree. *See* Dkt. No. 331 at 8-11. Specifically: (1) the enhanced burden of proof for  
3 termination of an officer on the grounds of dishonesty; (2) the removal of SPD officers from  
4 representation on the CPC; (3) the lack of a clause prioritizing the CPC's work on obligations  
5 stemming from the Consent Decree; and (4) the role of the CPC with respect to the Office of  
6 Inspector General ("OIG"). *Id.* The Court considered and addressed these concerns in its own  
7 review and ruling on the Filed Legislation, finding some would indeed be inconsistent with the  
8 Consent Decree (*viz.*, #1-#3), while others would not (*viz.* #4). *See* Dkt. No. 357.

9 Based upon our review, the Ordinance includes the necessary revisions to conform to the  
10 Court's ruling. Specifically, it no longer includes an increased burden of proof regarding an  
11 officer's possible termination for dishonesty; it requires the inclusion of SPD officers among  
12 CPC's membership; and it requires the CPC to prioritize its obligations under the Consent  
13 Decree over additional obligations imposed by the Ordinance. *See* Dkt. No. 396-1 at pp. 36  
14 (3.29.135(F)), 72 (3.29.340(D)), and 66 (3.29.300(B)), respectively. Furthermore, the Ordinance  
15 does not appear to add any other language or requirement that inherently conflicts with the terms  
16 or purposes of the Consent Decree.

### 17 III. CONCLUSION

18 For the foregoing reasons, DOJ does not object to the enactment of the City's Ordinance.<sup>2</sup>

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20 <sup>2</sup> As part of our ongoing efforts, we intend to monitor the implementation of the Ordinance during the  
21 pendency of the Consent Decree to ensure that it does not undermine the terms or purposes of the Consent  
22 Decree once its provisions are actually put into practice. Furthermore, we understand that some  
23 provisions of the Ordinance may be subject to the collective bargaining process. To the extent the  
bargaining processes results in conflicts with the Consent Decree, we will address them consistent with  
applicable law and the relevant Consent Decree provisions. *See* Dtk. No. 3-1 (Consent Decree) at 70  
(¶ 227).

1 Respectfully submitted this 10th day of July, 2017.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

It is further certified that on July 10, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

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I further certify that on July 10, 2017, I mailed by United States Postal Service the foregoing document to the following non-CM/ECF participant(s)/CM/ECF participant(s), addressed as follows:

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Dated this 10th day of July, 2017.

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