

August 14, 2019

Mayor Jenny A. Durkan  
Seattle City Hall  
600 Fourth Avenue, 7<sup>th</sup> Floor  
Seattle, Washington 98104

*SENT VIA EMAIL*

Re: *U.S. District Judge James L. Robart's Order Regarding City of Seattle Having Fallen Out of Compliance with the Consent Decree*

Mayor Durkan,



901 Fifth Ave, Suite #630  
Seattle, WA 98164  
(206) 624-2184  
aclu-wa.org

Tana Lin  
*Board President*

Michele Storms  
*Executive Director*

The undersigned civil liberties, civil rights, faith, and community organizations write to renew our June 21 request that the City engage in meaningful consultation with the Seattle Community Police Commission (CPC) and jointly develop a proposal to regain full and effective compliance with the terms and purposes of Seattle's 2012 Consent Decree. We specifically request the City work with the CPC to remedy the ways in which the Collective Bargaining Agreement (CBA) reached with the Seattle Police Officers Guild (SPOG) in November 2018 undermined and eliminated reforms promised by the unanimous passage of Seattle's Accountability Ordinance in May 2017, thereby causing the City to fall out of compliance with the Consent Decree on the issue of accountability.

We are at a critical juncture in this years-long effort. We've recently witnessed, within one week of the City approving the CBA,<sup>1</sup> a stark example of how advances toward reform can quickly dissolve without the support of the Ordinance's fair and transparent accountability system—a system informed by, and expertly tailored to, the specific history and experiences of Seattle's police department and communities. Judge Robart articulated well the importance of this segment of the work:

[I]n the court's view, ensuring that appropriate oversight and accountability mechanisms are in place is one of the cornerstones to securing constitutional and effective policing in this City beyond the life of the Consent Decree. In short, getting this aspect of reform right may well be a linchpin to the long-term success of this entire process.<sup>2</sup>

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<sup>1</sup> Steve Miletich, *Judge orders city, DOJ to explain rehiring of fired cop*, SEATTLE TIMES, Dec. 4, 2018, at A1.

<sup>2</sup> Order To Show Cause Whether the Court Should Find That the City Has Failed To Maintain Full and Effective Compliance with the Consent Decree, *United States of America v. City of Seattle*, No. C12-1282JLR (W.D. Wash., filed July 27, 2012), at 5 (Dec. 3, 2018).

Events since we last wrote concern us. On May 21, Judge Robart ordered the City to formulate, by July 15, “a methodology (1) for assessing the present accountability regime, and (2) for how the City proposes to achieve compliance” *with the assistance of the Monitor and the CPC*.<sup>3</sup> When we learned in mid-June that the City still had not invited the CPC to collaborate on this deliverable, we wrote to encourage the City’s prompt action. Shortly thereafter, we learned you had already unilaterally decided to contract with out-of-state consultants who have had no prior involvement with Seattle’s Consent Decree work, to conduct a comparison of Seattle’s police accountability system with the systems of other cities via surveys of unspecified respondent samples, site visits with unidentified stakeholders, and redundant review of the CBA and state and local law.

We urge you to reconsider. It would be a mistake and waste of City and community time to cast aside the work done by local legal, policing, directly impacted, and community experts to guide the drafting and passage of the Ordinance,<sup>4</sup> and the CPC’s analysis of the CBA’s impact on the Ordinance and its intended outcomes. Judge Robart has already determined the root cause of our current problem: “the CBA eliminates reforms instituted by the Accountability Ordinance and leaves the old arbitration regime ‘materially unchanged.’”<sup>5</sup> This is the precise reason he found that “the City and SPD have fallen out of full and effective compliance with the Consent Decree concerning SPD discipline and accountability.”<sup>6</sup>

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<sup>3</sup> Order Finding City of Seattle Partially Out of Compliance with the Consent Decree, *USA v. Seattle*, at 14 (May 21, 2019).

<sup>4</sup> *See, e.g.*, Seattle Police Monitor Third Semiannual Report at 72-74 (“Pursuant to the Consent Decree and the Memorandum of Understanding, the CPC is tasked with reviewing and making recommendations for changes to the OPA process and structure. In order to accomplish this, the CPC established an Accountability Workgroup consisting of a subgroup of the CPC members. This Workgroup has been meeting regularly since December 2013. Members of the Monitoring Team and DOJ have consistently attended these meetings. ... The Monitoring Team has reviewed the CPC’s recommendations. Many constitute extremely promising steps toward creating a more transparent, reliable, and fair accountability system. The Monitoring Team hopes that all interested stakeholders give their recommendations serious and thoughtful consideration as the discipline system is finally reformed to ensure fairness and accountability.”) (June 2014) (available online at <http://www.seattlemonitor.com/reports-resources>).

<sup>5</sup> The City was on notice that CBA negotiations would be critical to achieving and sustaining constitutional and effective policing in which the community could have confidence. “The City must regain its ability to manage, discipline, and hold officers accountable without the impediments that have been inserted into collective bargaining agreements over the years,” [Seattle City Attorney Pete] Holmes wrote.” Casey Jaywork, *City Attorney Says Seattle Settled With Whitlatch So That She’d Never Police Again: The former SPD officer who was fired for racial bias received more than \$100,000 from the city*, *SeattleWeekly.com* (Sept. 1, 2017).

<sup>6</sup> Order Finding Seattle Partially Out of Compliance, *supra*, at 13. We note that while Judge Robart focused on the SPOG CBA in his findings and ruling, we agree with the

We acknowledge that the Court has not yet ordered the City to implement the Accountability Ordinance as originally written:

“[T]he court also is not ruling *today* that—to be in full and effective compliance—the City must *necessarily* return to the provisions of the Accountability Ordinance referenced herein as those provisions existed prior to collective bargaining.<sup>7</sup>

However, this begs the question of why the City is not advocating for this resolution. There are good reasons supporting such an approach, and we urge you to consider them.

Implementing the Accountability Ordinance would demonstrate support for the Seattle Police Department.

Our support for the Accountability Ordinance underscores our support for Seattle police officers. We want our law enforcement officers to be well trained, well compensated, and to serve as a model for law enforcement nationwide. Supporting excellence in law enforcement includes holding accountable those who do not live up to the highest standards of constitutional policing.

The CBA damaged the Accountability Ordinance to such an extent that it is now unclear what standards police officers will be held to, making their adherence to those standards, accountability, and discipline more difficult, and successful appeals of merited discipline much more likely. When the public perceives police officers appearing to “get off on a technicality,” community trust in our officers, including the vast majority who execute their duties professionally, suffers. Our support for the 2017 Accountability Ordinance goes hand in hand with support for our police officers.

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CPC that provisions of the Seattle Police Management Association (SPMA) CBA contributed to the undermining of the Accountability Ordinance and that moving forward, the City should negotiate the two contracts together “at the same table or in parallel, not sequentially.” *Analysis of Proposed Methodology*, enclosure with letter from CPC to 21CP Solutions, LLC, at 8 (Aug. 7, 2019). This would help prevent different accountability standards and systems being applied to higher ranking personnel than to officers and sergeants, *id.*, and eliminate the risk that the weaker set of standards—the lowest common denominator—would be applied across ranks for the appearance of consistent treatment. *See* Declaration of Judge Anne Levinson (Ret.) in Support of Community Police Commission’s Response to Court’s Order To Show Cause, *USA v. Seattle*, at 17-18 (Feb. 20, 2019).

<sup>7</sup> Order Finding Seattle Partially Out of Compliance, *supra*, at 13 (emphasis supplied).

It's time to move forward to deliver accountable policing and restore community trust.

Now is the time for the City of Seattle, together with the CPC and Monitor, to move forward with a substantive plan “for how the City proposes to achieve compliance.” Every delay in resolving the accountability and compliance issues further erodes community trust in our police. Our highest aim is for community trust in policing to be strong and secure. Community trust in policing improves public safety. Hiring new consultants and diverting attention away from the Court’s directive serves to undermine, rather than build, community trust.

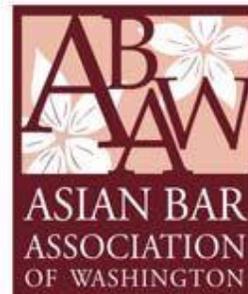
The community stood behind the Accountability Ordinance, and the City Council passed it unanimously. This is the one reform vehicle that has been vetted by both experts and lay people alike and is tied to Seattle’s needs, and it ensures an oversight system that is effective, clear and, we believe, compliant with the Consent Decree. We strongly concur with the CPC’s August 7 letter to 21CP Solutions, LLC, outlining its recommendations on the information that should be submitted to the Court to be responsive to the Court’s findings and order. We again ask the City to collaborate with the CPC and the Monitor as ordered by the judge, to move our system into compliance under the Ordinance. Public safety and community trust demand it.

Sincerely,



A handwritten signature in black ink, appearing to read "Michele Storms". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Michele Storms  
Executive Director



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Aileen Tsao  
Board Member



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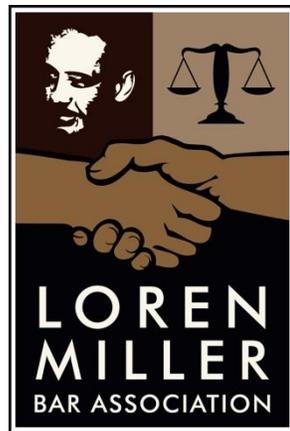
Nina Martinez  
Board Chair



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Raina V. Wagner  
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Rev. Harriett Walden  
Founder



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Jorge L. Barón  
Executive Director

Andrè Taylor  
Co-Founder & Executive  
Director



A handwritten signature in black ink, appearing to read "Prachi Dave".

Prachi Dave  
Senior Attorney

Rich Stolz  
Executive Director



A handwritten signature in black ink, appearing to read "Matt Etter".

Matt Etter  
President

A handwritten signature in blue ink, appearing to read "Tim Harris".

Tim Harris  
Founding Director



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LGBTQ Commission**



**Seattle  
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Idabelle Fosse, Darya Farviar,  
Jamilah Williams & Min Pease  
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Alison Eisinger  
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The Defender Initiative, Seattle  
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Kshama Sawant, Seattle City Councilmember  
Pete Holmes, Seattle City Attorney  
Merrick J. Bobb, Monitor  
Bessie Scott, Interim Executive Director, Community Police  
Commission  
Lisa Judge, Inspector General for Public Safety  
Andrew Myerberg, Director, Office of Police Accountability  
Christina Fogg, Assistant U.S. Attorney