City of Seattle

May 31, 2012

Jonathan M. Smith
U.S. Department of Justice
Special Litigation Section – PHB
950 Pennsylvania Ave. NW
Washington D.C., 20530

Re: DOJ Investigation of the Seattle Police Department

Dear Mr. Smith,

Thank you for your letter of May 23, 2012. We appreciate and share your desire to resolve this matter in a fair and just manner that meets the needs and concerns of the City, the United States, and the community. We believe reaching this resolution will require dialogue and a willingness to listen to each side's concerns.

As you know, DOJ completed its investigation in this matter and offered findings in a letter dated December 16, 2011. We were told that DOJ would offer a proposed agreement and reform plan for the Department in the next several weeks, but the plan was not provided to us until March 31, 2012.

After receiving DOJ's proposal, we studied it carefully and identified a number of concerns. As we have discussed, we are concerned that DOJ's proposal addresses many areas that were not subject to any rigorous analysis or findings by DOJ, and that it includes measures that are cost-prohibitive, operationally impossible, untested, inconsistent with policing best practices, and harmful to police responsiveness and effectiveness.

On May 16, we presented you with our proposal to address DOJ's findings. Our proposal draws on best practices we have identified in other departments, the expertise of a national policing expert, and input from police and city staff. We believe the measures in our proposal would establish the Seattle Police Department as a national model in reporting, monitoring and reviewing use of force.

Since presentation of the City's proposal, the parties have had only one half-day meeting to discuss our respective positions. DOJ has cancelled or declined additional negotiation meetings, and repeatedly asserted that the City must first agree to certain preconditions before further dialogue can occur. Perhaps as a result of lack of discussions, we appear to have several misunderstandings regarding our respective positions.

First, DOJ has dismissed the City's budget concerns, stating that an initial $41 million estimated cost was "simply wrong" and "irresponsible." We hope you will agree that cost is an appropriate consideration for the City; accepting reform measures that are not cost-effective would create undue strain on public safety and other essential City services that help keep our community

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safe. For example, if we are to move toward a 1:6 staffing ratio for sergeants as you have suggested, we need to consider the cost of the proposal (approximately $7.3 million per year), and we need to be satisfied that the benefits justify the costs. We would be happy to review with you how our initial cost estimate was reached. If you have any information that informs your position in this matter, we would be happy to review that as well.

Second, your May 23 letter asserts that our proposal will not achieve reform that is "measurable and enforceable." It is not clear to us why you believe DOJ's proposal is "measurable and enforceable," and the City's proposal is not. We would be pleased to hear your ideas for what is needed to make reforms measurable and enforceable, so we can determine if additional measures can be implemented in a way that meets the needs and concerns of the City and the community.

Third, your letter asserts that "the City has acknowledged, most recently in its 'SPD 20/20,' that the reforms we proposed in our draft consent decree are necessary." That is incorrect. The 20/20 plan acknowledges that SPD can do better on many fronts; it reflects our efforts to provide a transparent, community-oriented process to develop reforms that are lasting, effective, and affordable. It does not amount to an acknowledgment that DOJ's proposal – which includes measures that appear impractical, ineffective, and unaffordable – is the best way to get there.

Fourth, your assertion that the Department has "gone backwards" in negotiations mischaracterizes our efforts thus far. In order to address the substantive findings in DOJ's December 16 letter, the City prepared a proposal to ensure that any instances of excessive force are identified and addressed by the Department. Subsequently, in response to DOJ's insistence that the agreement should include an array of measures upon which the DOJ made no findings, the City proposed that the parties could explore an alternate form of agreement such as a Memorandum of Agreement. Offering an alternative approach is consistent with good faith negotiations; it does not amount to a step "backwards."

We continue to believe that the best way to overcome these misunderstandings and move toward an agreement is to engage in substantive dialogue. DOJ's insistence that the City must first agree to pre-conditions in order to have a dialogue is not consistent with our understanding of how good faith negotiations should proceed.

Your May 23 letter identifies two preconditions the City must meet at this point "in order for [DOJ] to consider whether to continue negotiations." You demand that the City must (1) "commit to include all crucial provisions in a court-enforceable reform plan"; and (2) "have representatives at the table with authority to negotiate on all issues."

We are open to discussing different forms of agreement, including a court-enforceable reform plan for use of force provisions and a memorandum of agreement for other provisions. Whatever form the agreement takes, we cannot make a commitment to include any provisions without consideration of whether they are well-founded, effective and affordable. We remain willing to engage in negotiations regarding any and all provisions you have proposed, to determine whether we can reach agreement on specific reform measures.

With regard to the question of authority: So far, the City's negotiators appear to possess the same level of authority as the DOJ's negotiators. On each side, final authority to approve a settlement proposal rests with individuals who are not in the room. In the City's case, this is a

necessity; any measures that involve budget authority or lasting legal obligations will likely need to be presented by the Mayor and approved by the City Council in an open public meeting. We do not believe this reality prevents substantive dialogue and progress toward an agreement. We do believe it would be helpful if both sides, including DOJ, had access to policing experts during negotiations; we can see that the attorneys' understanding of how individual measures affect policing operations is limited, and would benefit from better understanding of the context in which written policies are applied.

We would be happy to arrange for discussions between the Mayor and the Attorney General Holder or Assistant Attorney General Perez, as a way to move discussions forward. We believe staff level discussions could still be productive in the interim, pending such a meeting. We would also like to explore with you ways to engage the community in our discussions, as we believe it will be helpful to bring more perspectives to bear in considering the potential benefits and costs of specific provisions. Finally, if we reach a point where negotiations are truly stalled, we would be willing to engage a mediator to facilitate a resolution.

We have a strong desire to resolve the DOJ's claims, so that the Seattle Police Department can move forward with clear and consistent guidance from policy-makers. While it is important that we move quickly to address these issues, it is also critically important that we get it right. We continue to believe the best way to do this is to engage in substantive dialogue regarding the specific issues DOJ has identified, and the best ways to address those issues. We stand ready to move forward with those discussions.

Sincerely,

Carl J. Marquardt
Legal Counsel to the Mayor

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