



U.S. Department of Justice

Civil Rights Division

JYP:LC:JG:BB
DJ 207-61-1

Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

August 10, 2015

Via email

Ellen Osoinach, Deputy City Attorney
Office of the City Attorney
1221 SW 4th Avenue, Ste 430
Portland, OR 97204

RE: *United States v. City of Portland*, 3:12-cv-02265-SI

Dear Ms. Osoinach:

This letter memorializes the status and process of the United States' ongoing monitoring review of Portland Police Bureau ("PPB") policies in connection with paragraphs 157 and 169 of the settlement agreement in *United States v. City of Portland*. We share our understanding of this process to further a cooperative, transparent policy review.

As you know, the District Court's order entering the settlement agreement has been subject to appeal and mediation. The parties have reached resolution and, on Thursday, July 30, the District Court entered the agreed amended order approving the settlement agreement. We thank the City for its efforts in mediation to resolve the appeal and its continuing efforts to implement portions of the settlement agreement remedies during the pendency of the appeal. With the rededication of resources following the resolution of appeal we continue to develop our compliance monitoring plan, including seeking a more efficient review of policies.

We continue to seek to provide comments to policies within the 45-day timeframe afforded under the settlement agreement, and in coordination with PPB's current Universal Review process.¹ Thus far, under that process, we have recommended substantial reconsideration of crisis intervention and mental health policies and officer accountability policies. Also under that process, we have asked for PPB forbearance on reconciliation of certain policies. Namely, for officer accountability and force reporting policies the City must first meet the settlement agreement's conditions precedent concerning those issues before promulgating and implementing policies.

¹ Within 180 days of the effective date, i.e., August 29, 2014 to February 25, 2015, the settlement agreement required the revision and/or development of all policies, procedures, protocols, training curricula, and practices specific to force, training, community-based mental health services, crisis intervention, employee information system, officer accountability, and community engagement to ensure that they are consistent with, incorporate, address, and implement all provisions of the agreement.. See Paragraph 169. The settlement agreement also provides the United States and COCL 45 days within which to comment on new or revised policies. *Ibid*. Though the City did not meet the 180-day deadline for development/revision of policies, we commend the City on including a 30-day public comment period in the Universal Review process for receipt and consideration of public input.

The parties acknowledged in the settlement agreement that community input is critical to promote public confidence in PPB. Despite the 30-day timeframe for public comment under the existing Universal Review process, given the settlement agreement requirement that the COAB vote on settlement agreement recommendations (Par. 151), and the COAB’s meeting schedule, DOJ and COCL likely will not have time to consider COAB recommendations prior to submitting our comments with the current structure of the Universal Review Process.² We therefore ask the City to consider an extension of the Universal Review process timeline on specific policies that the City and the United States identify as relating to settlement agreement compliance, to allow time to consider COAB comments on those identified policies before we submit our comments. Moreover, to allow the United States time to consider COAB and public comment prior to submitting our comments, we request our initial 30 days to run at the close of the public comment period. We will continue to offer joint comment with the COCL where we can reach agreement in a timely fashion.

Under this approach, a policy will not be considered approved under the settlement agreement until after: (a) PPB produces a final policy following PPB’s internal reconciliation, i.e., “revised” policies “as they are promulgated” under Paragraph 169, and (b) the United States then reviews and approves the revised policy for compliance with the settlement agreement and constitutional standards. The parties anticipated this final step in our earlier discussions regarding policy review, which is consistent with paragraph 169 of the settlement agreement. We earlier sought to fold into Paragraph 169’s 45-day time frame the 30 days for Universal Review and 15 days for final approval after PPB reconciliation. With the exception of the requested extensions to provide COAB a process to comment, we still seek to accomplish approvals within this timeframe, though we anticipate PPB’s reconciliation between these steps will vary in length of time depending on comments and prerequisites for policies.

Regarding the substance of our policy review, we seek to apply a trunk-and-branch rubric to the policy areas specific to the settlement agreement. If we first approve a trunk policy, PPB can more consistently and logically address all branch policies that flow from the trunk. For example, all force policies for use of different devices and reporting must follow from the principle force policy that governs the overall force standard. There are four policy trunks relating to provisions of the settlement agreement: (1) force; (2) training; (3) crisis intervention and mental health; and (4) accountability. A fifth area related to the settlement agreement, Employee Intervention System, is a stand-alone policy.

We have identified the following policies as relating to settlement agreement compliance for which we anticipate providing review and comment, and we propose a process that will allow for efficient processing of review and comments by the public, COCL, and COAB:

Force – Settlement Agreement Section III:

Directive 1010.00 – Use of Force	On October 30, 2013, before entry of the settlement agreement, we approved a version of 1010.00 that was subject to our district court mediation to resolve the objections to the
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² COAB’s review of policies has only recently begun in earnest. On July 20, 2015, the COCL provided a document request form to COAB members. It is our understanding that COAB subcommittees or workgroups are seeking production of documents to facilitate their review of certain policies.

	<p>agreement by the PPA and AMAC. COCL cited in its initial quarterly report an alleged lack of clarity in policy 1010.00. We have initiated a review of the current 1010.00 with COCL and while COCL has offered comments on the policy, COCL has also solicited comments from COAB. COCL wants the benefit of COAB's comments before finalizing COCL's own comments. We anticipate COCL's comments on these policies by the end of August.</p>
<p>Policy 315.30 – Satisfactory Performance</p>	<p>On October 30, 2013, before entry of the settlement agreement, we approved a version of 315.30 that was subject to our district court mediation to resolve the objections to the agreement by the PPA and AMAC. We anticipate further review of this policy following COCL and COAB review of 1010.00, from which policy PPB split the performance standard into this stand alone policy.</p>
<p>Directive 416.00 – Post Officer Involved Deadly Force/Temporary Altered Duty (overlaps 48-hour rule issue)</p>	<p>On June 30, 2015, we advised PPB that PPB had not completed the conditions precedent in Paragraphs 124-127, necessary to promulgate these policies. We further advised that we had requested COCL to opine on these policies. Finally, we requested certain documents to assess the current practice with respect to these policies. Accordingly, we requested PPB to forebear on reconciliation of these policies. We anticipate COCL comments on these policies by the end of August. We anticipate coordinating with COCL to provide comments shortly after COAB completes its review.</p>
<p>Directive 1010.10 – Post Deadly Force Procedures (overlaps 48-hour rule issue)</p>	
<p>Policy 940.00 – After Action Reports and Operation Orders</p>	
<p>Policy 910.00 – Filed Reporting Handbook Instructions</p>	
<p>Directive 1051.00 – Electronic Control Weapon</p>	<p>On October 30, 2013, before entry of the settlement agreement, we approved a version of 1051.00 that was subject to our district court mediation to resolve the objections to the agreement by the PPA and AMAC. We</p>

	anticipate further review of this policy following COCL and COAB review of 1010.00.
Policy 630.45 – Emergency Medical Care Custody Transports	
1010.20 – Physical Force	If not replaced by revised 1010.00, no longer listed as a separate policy.
1020.00 – Firearms	
1030.00 – Baton Use	
1040.00 – Aerosol Restraints	
1050.00 – Less Lethal Weapons and Restraints	
1090.00 – Special Weapon Use	
Policy 635.10 – Crowd Management/Crowd Control	
Executive Order re Directive 850.30 – Temporary Detention and Custody of Juveniles	To the extent it implicates use of force, force reporting, and medical care
Executive Order re Directive 850.50 – Arrests, Felony Processing of Adults	To the extent it implicates use of force, force reporting, and medical care
870.20 – Custody & Transportation of Subjects	May also relate to crisis and mental health, if no separate policy is developed for transport to the anticipated Unity Center for Behavioral Health ³

Training – Settlement Agreement Section IV

Executive Order 1500.00 – Training	This policy is currently in a comment period.
Policy 690.00 – Training – Precinct/Division	
Policy 210.05 – Field Training	
Policy 412.00 – Employee Retraining Program	

³ The Unity Center for Behavioral Health is being developed to provide psychiatric emergency services, a co-located centralized inpatient facility, and enhanced partnerships with community organizations providing behavioral health and substance use disorder services, and is anticipated to open in November 2016. See <http://www.legacyhealth.org/for-health-professionals/tools-and-resources-for-providers/edoctalk/2015-04-edition/apr-2015-unity-update.aspx>.

Crisis Intervention – Settlement Agreement Section VI

Directive 850.20 – Mental Health Crisis Response	On May 8, 2015, we provided PPB with DOJ comments on these policies, with which COCL concurred.
Directive 850.21 – Peace Officer Custody	
Directive 850.22 – Police Response to Requests for Mental Health Custody	On May 12, 2015, we met with representatives of the City and COCL to review these policies. The City withdrew the policies and agreed to redraft.
Directive 850.25 – Police Response to Mental Health Facilities	On June 23-24, 2015, we provided our expert, Dr. Mark Munetz, for meetings with PPB and BOEC to assess implementation and provide technical assistance that would inform the redraft of the policies. The City is currently considering our technical assistance in its further redrafting of these policies.
640.30 – Communications with People with Disabilities	
BOEC Mental Health Reference Guide, Suicide Reference Guide, and Project Respond Reference Guide	BOEC furnished the Mental Health Reference guide during our June 23-24, 2015 assessment with Dr. Mark Munetz. We have requested, but have yet to receive, the other two guides.
Policies regarding transportation, handover, and referral to the anticipated Unity Center for Behavioral Health	With the expected development of the Unity Center facility, we expect PPB to develop protocols for its officers’ interactions with the facility, which protocols we will review.

Employee Intervention System – Settlement Agreement Section VII

Policy 345.00 – Employee Information System	On May 8, 2015, we provided PPB with written comments on this policy. On May 14, 2015 we met with City officials and provided comments to this policy.
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Officer Accountability – Settlement Agreement Section VIII

Directive 330.00 – Internal Affairs, Complaint Intake and Processing	On May 8, 2015, we provided PPB with written comments on these policies. On May
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Directive 331.00 – Service Improvement Opportunities	14, 2015, we and COCL met with PPB and IPR officials to discuss these policies and the requirements of the settlement agreement. Our expert, Chief Charles Reynolds, and COCL’s expert attended by telephone. We asked PPB and IPR to convene a work group to undertake the tasks required by the settlement agreement in order to revise the policies in a compliant fashion. PPB still has these policies under consideration.
Directive 332.00 – Administrative Investigations	
Directive 330.00 – Criminal Investigations of Police Bureau Employees	
Directive 334.00 – Performance Deficiencies	
Directive 335.00 – Discipline Process	
Directive 336.00 – Police Review Board	
Directive 337.00 – Police Review Board Selection	
Directive 338.00 – Discipline Guide	
Policy 341.00 – Discipline	
Policy 220.40 – Lawsuits and Claims	
Policy 120.00 – Inspections	
Directive 310.20 – Retaliation Prohibited	
Directive 310.50 – Truthfulness	
Directive 315.00 – Laws, Rules, and Orders	
Directive 344.00 – Prohibited Discrimination	
Directive 344.05 – Bias-Based Policing	
Executive Order re: Directive 215.00 – Sworn Performance Evaluations	
Executive Order re: Directive 310.00 – Conduct, Professional	
Directive 310.40 – Courtesy	

We thank you and the PPB for its continued efforts toward implementation of the settlement agreement with respect to meaningful policy revision, and we look forward to further discussing this process with you.

Sincerely,

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District of Oregon

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