# SEATTLE CITY COUNCIL
## CENTRAL STAFF

September 12, 2017

# M E M O R A N D U M

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| **To:** | Members of the Civil Rights, Utilities, Economic Development & Arts Committee |
| **From:** | Asha Venkataraman, Council Central Staff |
| **Subject:** | Challenges for the Office for Civil Rights and Independence as a Policy Solution |

### Introduction

This memorandum is intended to inform a discussion regarding how Council might provide a legislative solution to address multiple challenges faced by the Seattle Office for Civil Rights (SOCR). After hearing concerns that SOCR's ability to carry out its mission is limited by its current authority and structure, some Councilmembers requested Central Staff examine whether and how making SOCR more independent from the executive branch of government could address these challenges. This memorandum focuses on increased independence from the executive branch as one possible policy solution to the challenges identified. A range of other policy options exist and some are mentioned briefly in the context of resolving challenges increased independence might not, but their merits are not analyzed in depth. The concept of increased accountability as a policy solution has been raised and SOCR is currently conducting a racial equity toolkit (RET) on that issue for one of SOCR's functions, the Race and Social Justice Initiative (RSJI). Accountability and independence are separate but related concepts. However, as the RET is not yet complete, how they might work together is not yet clear.

Section I provides a general overview of SOCR's functions and the challenges associated with lack of independence. Section II assesses whether and how distance from the executive may help resolve the challenges identified, and discusses the challenges independence may not resolve. Section III describes how Council can ascertain a department's level of independence and insulation from the executive, and surveys other City and non-City entities to see where SOCR lands on the independence spectrum. It also discusses how Council can legislatively create independence. Section IV lays out potential next steps for Council.

## I. <u>Overview of the Functions and Challenges of the Office for Civil Rights</u>

As established by the Seattle Municipal Code (SMC), SOCR is charged with providing

…citywide leadership and guidance in the areas of civil rights and equal opportunity. It shall promote equal access to services within The City of Seattle and work to eliminate discrimination in housing, employment, and public accommodations for Seattle residents; recommend policies to all departments and divisions of City government in matters affecting civil rights and equal opportunity to all people; recommend legislation for the implementation of such programs and policies; promote awareness within City government and The City of Seattle through public education and outreach; and provide staff support for the Seattle Women's Commission, the Seattle Human Rights

Commission, the Seattle LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) Commission, and the Seattle Commission for People with Disabilities.[1]

SOCR accomplishes its mission through policymaking, enforcement, RSJI work, and ancillary functions requiring civil rights expertise.[2]

## A. Policy Making and Enforcement

SOCR creates and enforces legislation and rules that advance the civil rights of Seattle residents. Staff research best practices and determine how those practices apply to Seattle, consult communities most impacted by City decisions, and apply a racial equity lens in drafting policy proposals. Staff enforce anti-discrimination laws[3] which apply both to employers external to the City and the City itself. But it is not always clear to communities or employees of color that the City values their input and experiences or that SOCR can resolve discrimination issues.[4]

One major challenge is the conflict between reporting issues about one department to another department when both ultimately report to the Mayor.[5] Unlike in the case of City employees, SOCR can investigate and make decisions about compliance of conduct in the community because SOCR is not a party. But with internal enforcement, SOCR is part of one of the parties. SOCR cannot guarantee that despite its best efforts, how it treats the complaint and the risk to the employees is insulated from political concerns. The current national political climate has seen a rise in reported racist incidents, some of which City employees have experienced.[6] "Often, affected employees who report these issues to supervisors or management see little or no action prohibiting the behavior, and sometimes endure retaliation for reporting it. Reports to superiors or to department management about this discrimination are addressed minimally or not at all."[7] The experience of many City employees of color is that there is little recourse for them when they experience superiors or peers engaging in racist behaviors.

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[1] SMC 3.14.900.

[2] Though SOCR has been central to much of the RSJI work in each department, and accomplished much in its own right, this memo focuses on the struggles and resistance encountered on the way to achieving this mission. SOCR's accomplishments can be reviewed in its annual reports, RSJI reports, surveys, and planning documents.

[3] See SMC Title 14, Title VI of the Civil Rights Act, and Title II of the Americans with Disabilities Act.

[4] Letter from City of Seattle Affinity and Employee Groups to Mayor Murray, Director Coskey, Director Lally, February 13, 2017 (hereinafter "2017 Letter") (Attachment A); Seattle Office for Civil Rights, Race & Social Justice Initiative, Vision and Strategy 2015-2017 at 3, *available at* http://www.seattle.gov/Documents/Departments/RSJI/rsji-2015-2017-plan.pdf (hereinafter "2015-2017 RSJI Plan"); Seattle Office for Civil Rights, City of Seattle Racial Equity Community Survey at 15, March 2014, *available at* https://www.seattle.gov/Documents/Departments/RSJI/2013-Community-Survey-RSJI.pdf; Seattle Office for Civil Rights, RSJI Community Survey at 18-29, April 2017, *available at* https://www.seattle.gov/Documents/Departments/CivilRights/2016%20RSJI%20Community%20Survey.pdf.

[5] Note: References to "the executive," "the executive branch," "the Mayor," "Council," and "the legislative branch" are descriptors of those entities as structural branches of government and generic leaders of those branches and do not refer to current City administration, unless specific members are identified.

[6] 2017 Letter.

[7] Id.

**B. RSJI**

In creating RSJI, the City committed to eliminating race-based disparities within Seattle and eliminating institutional racism within its government.[8] The City focused on its internal programs and operations[9] and "committed to getting our own house in order."[10]  In 2009, Council adopted an RSJI resolution to show legislative support and to ensure RSJI transcended multiple administrations. In 2014, Mayor Murray issued an executive order to affirm the City's commitment to RSJI and charged SOCR with overseeing RSJI work in executive departments, including establishing and implementing new goals and tracking outcomes. [11] Part of SOCR's work plan includes "[c]halleng[ing] City leadership, including managers and supervisors, to more consistently model the principles and practices of RSJI by: []Providing support to City departments' change teams [and] [m]eeting the goals of the Mayor's performance plans for departments."[12] The 2015 RSJI annual report clarifies that a key tool to make systemic, transformative change is "disrupting inequitable decision making processes."[13] Questioning the power of the status quo is how SOCR helps to eliminate institutional racism.

Though the City is a leader in pursuing RSJI work and has made many advances, major challenges still exist. A central challenge lies in the conflict of interest between the job SOCR employees must do and their own job security. Accomplishing RSJI work requires that staff critique how the leadership that is ultimately responsible for all policy and departmental employees in the City—the Mayor as the leader of the executive branch—does his or her job. However, the Mayor is the very person who has the indirect, but ultimate authority to hire and fire SOCR staff. This presents a paradox because if employees do not question leadership for fear of losing their job, they cannot accomplish the very thing they were hired to do.

The consequences of this conflict are evident in the frustration RSJI leaders and many employees of color express about the work to be done.[14] If SOCR employees specifically responsible for implementing RSJI and overseeing the progress of all City departments can only be as questioning and challenging as their job security permits them to be, all the other employees across the City, particularly employees of color, are even more limited in their capacity to do RSJI work. For example, there is a difference between how RSJI work is reported as a priority to the executive leadership and Council but does not always get sufficient investment:  most employees are not compensated for the time they spend doing such work, so they must fit it in around their current responsibilities. Different divisions and departments

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[8] RES 31164 (2009).

[9] 2015-2017 RSJI Plan at 2.

[10] Seattle Office for Civil Rights, RSJI Goals document at 1, *available at* http://www.seattle.gov/Documents/Departments/RSJI/RSJI_Goals.pdf.

[11] Executive Order 2014-02, Race and Social Justice Initiative, April 3, 2014, *available at* http://murray.seattle.gov/wp-content/uploads/2014/04/RSJI-Executive-Order.pdf.

[12] 2015-2017 RSJI Plan at 11.

[13] Seattle Office for Civil Rights, Race and Social Justice Initiative at 3, 2015 (Attachment B).

[14] *See, e.g.*, Seattle Office for Civil Rights, 2016 Race and Social Justice Initiative Annual Report at 10 (September 2017).

prioritize building racial equity analysis capacity differently and allocate funding and staff for RSJI work differently, if at all. Some managers and supervisors allow people of color to lead while some do not recognize and even perpetuate the behavior of rewarding white people for diversity work and punishing people of color for doing the same.[15] Employees of color doing RSJI work feel at risk when they ask for more support or push change in a way that supervisors or peers perceive as "aggressive," which feeds into already existing implicit bias. Pushing for racial equity could put a non-SOCR employee's job in danger as well.

## C.  Ancillary Functions

SOCR provides its civil rights expertise to all of City government. In 2016 and 2017, SOCR, Finance and Administrative Services and the Human Services Department signed a memorandum of agreement for SOCR to monitor removal of homeless encampments. SOCR takes on a role similar to auditing— the intent is to ensure encampment removal staff comply with the civil rights protections in the City rules. Auditors usually follow a set of principles to ensure that they can do work neutrally and without conflicts of interest. Best practices include organizational independence which protects the entity from political interference or retaliation for carrying out duties; a formal mandate; unrestricted access; sufficient funding; competent leadership; objective staff; competent staff; stakeholder support; and professional audit standards.[16] Though many of these requirements were and will be present in SOCR's monitoring of encampment removal, several key requirements are not: organizational independence and objective staff. Without those, unbiased analysis and objective advice may not be possible, either as perceived or in reality.

Even assuming the best case in which a Mayor encourages neutrality and does not interfere, future administrations could subject SOCR to a more politically active view informing how SOCR portrays the executive. In that case, even if staff are objective at the time they monitor, the political climate in which the Mayor exists can skew what SOCR ultimately reports to the public or another branch of government. SOCR's ability to match the perception amongst some community members that SOCR is transparent, impartial, neutral, and objective is limited by the Mayor's political influence. This reality can foster distrust from the community as to whether SOCR is providing accurate and objective reports without political considerations.

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[15] *See, e.g.*, Stefanie K Johnson and David R. Hekman, "Women and Minorities are Penalized for Promoting Diversity," Harvard Business Review, March 23, 2016, *available at* https://hbr.org/2016/03/women-and-minorities-are-penalized-for-promoting-diversity; Bryce Covert, "Women And People Of Color Get Punished For Hiring To Increase Diversity, White Men Get Rewarded," thinkprogress.org, July 23, 2014, *available at* https://thinkprogress.org/women-and-people-of-color-get-punished-for-hiring-to-increase-diversity-white-men-get-rewarded-a4a73b4a33d3/.
[16] The Institute of Internal Auditors, "Supplemental Guidance: The Role of Auditing in Public Sector Governance," 2nd ed.,Jan. 2012, PP 6-8 *available at* https://na.theiia.org/standards-guidance/Public%20Documents/Public_Sector_Governance1_1_.pdf

## II. **Independence and its Ability to Address SOCR's Challenges**

At a theoretical level, making any executive department more independent could allow that department to function further from the political concerns that can shift a department's focus or style of governance. Whether a department executing policy and enforcement functions, some of which are primarily the role of the executive branch, should be more independent from that branch depends on the reasons for creating distance. This section addresses those policy reasons by examining whether moving away from the executive will help resolve SOCR's challenges, and if not, the additional policy solutions that might lead to resolution.

### A. **Policy and Enforcement**

The challenges described in Section I regarding policy and enforcement speak to the disparity between the City's commitment to achieve racial equity and end institutional racism and both the reasons employees feel reluctance to go to SOCR and the lack of response employees encounter when reporting incidents of racial harassment.[17] Both these issues could be addressed by providing SOCR with distance from the executive branch because it could ease employee perceptions and concerns about who SOCR is really representing when internally enforcing the SMC. Given SOCR's anti-racism expertise, employees could be sure that SOCR was approaching their issues with an equity lens and all parties could rely on SOCR's enforcement experts to be free from politics in assessing any claims. Fixing the conflict of interest at the root of the problem may also disabuse anyone committing or tolerating discrimination of the assumption that the political risk of negative perceptions limit enforcement.

However, creating distance from the executive may not resolve these concerns and could create new ones. The City's workforce is highly unionized and collective bargaining addresses personnel issues in a very specific manner. It is unclear what additional recourse an independent SOCR could offer in the way of personnel disputes, at least without further bargaining. Some community members perceive SOCR to be biased in favor of employees when conducting investigations of alleged private sector discriminatory activity, so further independence could hamper SOCR's position as a neutral arbiter and willingness of actors in the community to cooperate during enforcement actions. A combination of measures other than independence, such as strengthening disciplinary procedures for racial harassment, outreach and education on explicit harassment and microaggressions, and increased accountability in how complaints are tracked and resolved, might help addition to, or instead of, independence.

### B. **RSJI**

Independence could help resolve the challenges described in Section I regarding RSJI. The challenge of questioning power when the person holding that power also controls whether staff has a job can be resolved if the person staff is questioning no longer has the authority to remove those staff. SOCR's role in RSJI is unique amongst the executive departments in that SOCR is not just charged with executive functions – it is also charged with holding the leaders

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[17] 2017 Letter.

hierarchically equal to and above it accountable to RSJI. SOCR's role in this regard is more like the Ethics and Elections Commission (EEC). EEC is most effective as an unbiased third-party opining on the compliance of elected officials because the commissioners and Executive Director can issue a decision critical of or harmful to their employer without worrying about job security. In the same way, SOCR's RSJI staff could provide a more transparent and critical assessment of the state of institutional racism throughout the City if they were not concerned about their job safety.

However, independence itself will not resolve all RSJI challenges. If SOCR is moved further from the executive, it risks becoming an isolated entity perceived as the place to park all issues of race and social justice. In gaining the ability to assess and critique leadership, SOCR could lose the support and power of the leadership that once helped move RSJI forward. The executive could lose the sense of ownership of the work it once had. That loss could spread to budgeting and result in deprioritized funding for SOCR, which the legislative branch may not remedy if Council has competing priorities as well. Avoiding that outcome requires additional policy solutions. Accountability and a fixed funding commitment could ameliorate potential consequences of independence.

**C. Ancillary Functions: Monitoring for Compliance**

Independence can resolve the challenges SOCR faces in its auditing function. For SOCR to be unbiased and objective in its ability to report compliance and protect City residents' civil rights, it needs some degree of separation from the entity it is monitoring. Making SOCR more independent can provide that objectivity. Like the need for independence when conducting internal enforcement and in RSJI, objectivity in auditing would require that the leaders of the entities of which SOCR employees conduct monitoring are not in control of their jobs.

Independence is not the only potential policy solution. In the example of encampment removal monitoring, another option is for the City Auditor to conduct (or contract with an auditing entity with civil rights expertise to conduct) encampment removal monitoring. But even the City Auditor may not be the appropriate entity to conduct this work. In a political climate like the City's, where Seattle is in a homelessness state of emergency, the Mayor is acting on a rapid timeline and SOCR may be the only entity with expertise to concurrently audit. Monitoring can be interpreted as SOCR's mission to "…promote equal access to services within The City of Seattle and work to eliminate discrimination in housing, employment, and public accommodations for Seattle residents; [and] recommend policies to all departments and divisions of City government in matters affecting civil rights and equal opportunity to all…."

### III. **How to Achieve Independence**

#### A. **Indicators of Independence**[18]

If Council decides that independence is a policy solution to pursue, there are several ways to achieve it. Upon researching entity independence, it became clear that whether an entity is "independent" is rarely a binary determination.[19] Rather, there are specific indicia that can move an entity along a spectrum of independence, and the combination of those indicia will place an entity closer to, or farther from, complete executive control. Literature regarding independence at the federal level provides the closest comparison of the kind of indicia that signal independence in the City. Elements affecting an entity's level of independence fall within two arenas: (1) independence of decision-makers and (2) independence of policy decisions.[20]

The level of independence decision-makers have is dependent on six primary categories of entity design:  location, permanence, leadership structure, entity head, limitations on appointments, and employee protection. Indicia for each of these major factors relevant to the City can point to distance from executive control or a closer relationship to the executive. These indicia are provided in Table 1 with a description of how they affect independence. It excludes indicia only relevant at the federal level and those the City's Charter renders irrelevant.

The level of independence of policy decisions is dependent on two primary factors: (1) insulation from political review and (2) policymaking authority. Presence of indicia for both major factors relevant to the City indicate more policy independence from the executive branch. These indicia are provided in Table 2, along with a description of how they affect independence. Again, it excludes indicia only relevant at the federal level and those the City's Charter renders irrelevant.

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[18] Note: because this section is focused on distance from the executive branch rather than any other branch, it is assumed that the appointing authority is the executive, unless otherwise noted. Because this section discusses commissions, offices, and other forms of departments, the term "entity" describes them all generally.

[19] *See* Kirti Datla and Richard L. Revesz, "Deconstructing Independent Agencies (and Executive Agencies)," Working Paper, New York University Public Law and Legal Theory, August 1, 2012, *available at* http://lsr.nellco.org/cgi/viewcontent.cgi?article=1351&context=nyu_plltwp.

[20] This model is based on work from Jennifer L. Selin, "What Makes an Agency Independent?" Working Paper, Vanderbilt University Center for the Study of Democratic Institutions (August 2013) *available at* http://www.vanderbilt.edu/csdi/research/CSDI_WP_08-2013.pdf. That analysis creates a weighted model to score each executive department. This memo does not; it simply determines if an entity possesses the indicia. *See also* Marshall J. Breger and Gary J. Edles, Independent Agencies in the United States: Law, Structure, and Politics. Oxford University Press (2015).

### B. Independence in SOCR

This section will assess how the indicia described in Section III.A apply to SOCR and compare a selection of executive and non-executive entities to SOCR to place SOCR on the spectrum of independence.[21] Tables 3 and 4 provide a side by side comparison of the indicia of independence for decision-makers and policy decisions, respectively, for SOCR, examples of select executive departments, non-executive entities, and non-City entities. The assessment is primarily based on legislative authority (charter and code provisions) and rules rather than an entity's practical exercise of independence. This section will then outline the ways in which Council could legislate to increase SOCR's independence.

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[21] A note regarding the inclusion of SPD, OIG, CPC and OPA in this document: the descriptions of authority are as approved in Council Bill 118969 and as if the consent decree no long requires court approval of SPD policies.

## Table 1: Indicia of Independence in Decision-Makers

Least to Most distance from the executive

| Category | Indicia | Relevance to Independence |
|---|---|---|
| **Factors correlating to more independence** | | |
| Leadership Structure | Staggered terms | Rather than concurrently ending terms. Prevent executive from replacing all previously appointed members with new members more responsive to the executive's preferences at once. Slows the pace of change to membership. |
| Leadership Structure | Quorum rules | Prescribe how many members must be present for certain discussions or votes. Prevents emergency meetings excluding members less responsive to the executive's preferences. Stronger when partisanship is relevant in appointing authority. |
| Leadership Structure | Fixed terms | Increases political risk for the executive to remove an appointed director/member before their official term is over. Raises questions if term of the appointment is ending early. Longer terms stronger, less motive for loyalty to executive. |
| Limitations on Appointments | Expertise | Qualifications limit the executive's ability to put a puppet in power, ensures some level of competency and ability is considered. Candidate is less likely to be loyal to the executive if chosen based on merits instead of loyalty. |
| Leadership Structure | Multiple members | Multiple members (commission or board) heading the entity rather than a single head takes decision making from one individual and spreads it out. Contributes to collaborative decision making, focus on effectiveness over efficiency. |
| Permanence | Entity legislatively established | Keeps the executive from abolishing an entity without the involvement of the legislative branch, which ideally serves as a check on the Executive's ability to consolidate power. |
| Limitations on Appointments | Conflict of interest | Ensure that the head is not using the position to benefit themselves or the executive or are responding to two sets of interests. |
| Employee Protection | No civil service protections | Exemption from civil service protection allows the director/member to be insulated from policy changes that the executive may try to accomplish through personnel revisions, or to avoid scrutiny that direct firing would invite. |
| Leadership Structure | Removal for cause | Contributes to the ability of the director/ member to function without fear of being fired at the executive's discretion. Range in definition of "for cause" from strong to weak protection can change level of independence. |
| **Factors correlating to less independence** | | |
| Leadership Structure | Removal unspecified = at will | Absence of explicit for cause removal can be interpreted to mean the director/member serves at will, which makes the director/member is more likely to acquiesce to the will of the executive. |
| Permanence | Entity legislatively permitted | If the entity is not established by legislation, legislation is not required to abolish it, leaving its existence completely at the executive's discretion. More likely to follow the executive's lead than risk elimination. |
| Location | Within another entity | If the entity at issue is within another organizational entity, it is subject to a layer of executive control in addition to that already inherent in its existence. Less in control of its own function when an instrument of another entity's functions. |
| Location | In the cabinet | Membership of an entity in the cabinet/within the executive branch decreases space between entity and executive leader. |

*Table 2: Indicia of Independence in Policy Decisions*

More distance from the executive →

| Category | Indicia | Relevance to Independence |
|---|---|---|
| **Factors correlating to more independence** | | |
| Insulation from political influence | Legislative communication can bypass executive offices | Allows the entity to decide what form proposed legislation will take and ultimately shapes policy without executive input. |
| Insulation from political influence | Budget communication can bypass executive offices | Allows advocacy to the legislative branch for resource appropriations the entity needs to conduct both its basic functions and the policy priorities it determines are inherent to its mission, rather than priorities driven by political concerns. |
| Insulation from political influence | Inspector General oversight | Can subject the entity to review of its functions by an objective third party, especially when the entity decides issues about its own employees, which could reflect badly on the executive. Increases transparency and decreases political influence. Legislative branch can get information. |
| Policymaking Authority | Administrative law judge | The appointment of a judge to oversee adjudication adds a party with quasi-judicial authority who is hired and removed through a personnel department and whose removal must go through an independent board. |
| Insulation from political influence | Rulemaking can bypass executive offices | Rules shielded from political influences that might affect a rule's content or application. Stronger indicia if entities use rulemaking to establish policy separately from legislation. |
| Insulation from political influence | Funding outside appropriations process | Less subject to the indirect policy control used to fund some priorities and not others. Allows for full funding even when the executive does not want it. |
| Insulation from political influence | Advisory committee consultation required | Creates some accountability to parties outside of the executive, which increases transparency and allows for more open flow of information. Provides a check on the ability of the executive to control all information and decision making. Legislative branch can get information. |
| Policymaking Authority | Adjudicatory authority | Allows a neutral party within the entity to determine whether a person has been deprived of a right by the department. Can makes policy without passing legislation or making rules. |
| Insulation from political influence | Outside approval of policy | Can be relatively weak indication of insulation, especially if the entities providing external review are also controlled by the executive, but if not, less executive control. Legislative branch can get information. |

*Table 3: Assessment of Indicia of Independence in Decision-Makers*

| Category | Indicia | SOCR | Select Executive Departments | Select Independent City Entities | Non-City Entities |
|---|---|---|---|---|---|
| *Factors correlating to more independence* | | | | | |
| Leadership Structure | Staggered terms | No | None | All | WAHRC |
| Leadership Structure | Quorum rules | No | None | EEC | WAHRC |
| Leadership Structure | Fixed terms | No | 12: 4 year terms | All | All |
| Limitations on Appointments | Expertise[1] | No | 2 - SFD, SPD | Library, CPC | KCDPD, KCO |
| Leadership Structure | Multiple members | No | None | All | WAHRC |
| Permanence | Department legislatively established | Yes | Most | All | All |
| Limitations on Appointments | Conflict of interest | No | None | EEC, CPC | All |
| Employee Protection | No civil service protections[2] | Yes | None | All | KCDPD, KCO |
| Leadership Structure | Removal for cause | No | 2 - Parks, SDHR | EEC, CPC | All |
| *Factors correlating to less independence* | | | | | |
| Leadership Structure | Removal unspecified | Yes | 19 | Library | None |
| Permanence | Entity legislatively permitted | No | OPI, OFM | None | None |
| Location | Within another entity | No | OPI, OFM | None | None |
| Location | In the cabinet[3] | Yes | All | None | None |

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[1] The indicium regarding expertise leans towards independence across the City because the City Charter requires that "[a]ll officers appointed by the Mayor shall be persons with proven administrative ability, and especially fitted by education, training or experience to perform the duties of such offices…." See Charter Article 19 Section 2. Thus, this indicium refers to any qualifications beyond that.

[2] Civil service exemption applies to all "executive" job classifications, which is the class for department heads.

[3] The current administration considers all executive departments as cabinet departments.

**Table 4: Assessment of Indicia of Independence in Policy Decisions**

| Category | Indicia | SOCR | Select Executive Departments | Select Independent City Entities | Non-City Entities |
|---|---|---|---|---|---|
| *Factors correlating to more independence* | | | | | |
| Insulation from political influence | Legislative communication can bypass executive offices | No | None | All | KCDPD, KCO |
| Insulation from political influence | Budget communication bypass executive offices | No | None | All | All |
| Insulation from political influence | Inspector General oversight | No | SPD only | None | None |
| Policymaking Authority | Administrative law judge | No | None | None | WAHRC |
| Insulation from political influence | Rulemaking can bypass executive offices | Yes | All if RM authority | All if RM authority | All if RM authority |
| Insulation from political influence | Funding outside appropriations process | No | None | None | None |
| Insulation from political influence | Advisory committee consultation required | Yes | SPD, SDCI | None | None |
| Policymaking Authority | Adjudicatory authority | Yes | FAS, SDCI, OLS | EEC | WAHRC |
| Insulation from political influence | Outside approval of policy | No | SDCI | None | None |

SOCR has a minimal degree of independence like many other executive departments, but not the least. Offices that are not established by legislation such as the Office of Policy and Innovation (OPI) within the Mayor's Office exhibit no indicia of independence. The Mayor has a high level of control over leadership, though departmental permanence, Director exemption from the civil service, and existence external to another department give all major departments some flexibility. The Mayor also has a high degree of control over policymaking. Though rulemaking does not require executive approval, it is not a large part of SOCR's policy. As such it is a weaker indicator of independence and SOCR's requirement to consult with the Human Rights Commission in rulemaking is not as strong of an independence indicium.

SOCR has much less independence than EEC, the Library or CPC. The differences in form reflect the difference in purpose for each. EEC is to administer the City's Code of Ethics, the Election Campaign Code and administer whistleblower protections.[1] It requires independence because it enforces these code provisions specifically against elected officials, which in Seattle include the Mayor, the Council, and the City Attorney. Arguably, the need for independence outweighs the nature of the enforcement as an executive function. The Library is required by state law to have trustees selecting a Librarian and administering its budget. The form of the CPC changed to provide independent community oversight and ensure public confidence in SPD through accountability.[2] The only indicia SOCR shares with these three entities in indicia regarding independence of the decision-maker is that all are legislatively established. Otherwise, these three entities are headed by multi-member commissions rather than a single head, with fixed and staggered terms. The EEC also has quorum rules, while the Library and CPC both outline qualifications for their heads. Both EEC and the CPC commissioners are subject to removal for cause by any appointing authority or Council. Regarding independence in policy decisions, all three entities can communicate to Council about legislation and budgeting. However, none have funding outside of the executive's control, so none are as independent as they could be.

The forms of the King County Department of Public Defense, (KCDPD), the King County Office of the Ombudsman (KCO), and the Washington State Commission on Human Rights (WAHRC) reflect their need for distance from the executive branch by exhibiting several indicia of independence. SOCR has less independence than these entities. As the County employee heading a department representing individuals against whom the County is prosecuting cases, independence is central to KCDPD. KCO's mission is to investigate complaints about administrative agencies in the executive branch, making independence from those integral as well. WAHRC, like SOCR, investigates complaints of discrimination pursuant to the Washington Law Against Discrimination (WLAD). Legislation established of these departments and none are structurally within in any other entity. All three have many more indicia of independence than SOCR. Though KCDPD and KCO are also headed by a single entity, unlike SOCR, they have fixed terms, can only be removed for cause, and are subject to conflict of interest provisions. WAHRC

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[1] SMC 3.70.010
[2] CB 118969, Section 9.

is a multi-member commission with staggered terms and quorum rules. It is the only entity with adjudicatory authority and the ability to request an administrative law judge be appointed.

To most effectively increase SOCR's independence from the executive, Council has a variety of choices. Within leadership structure, if Council wants to retain a single head of the department but still provide for independence, it could create a fixed term with a longer length than the four years standard to most executive departments. It could also create more qualifications for the Director position. Lastly, Council could change the ability of the executive to remove the position at will, and move to for cause removal. Council could achieve even more distance from the executive by changing the leadership structure to a multi-member entity similar to a commission. That commission would be empowered to choose an executive director. The commissioners and/or the director could be subject to fixed term lengths with staggered terms. Council could also legislate quorum rules. Within policy decisions, Council could allow SOCR to recommend legislation to Council directly, advocate for funding directly, or provide SOCR with a source of funding completely exempt from the executive's control. It could also make policy or rulemaking subject to the approval of a commission or another outside entity. Given the primary challenges to SOCR appear to stem from the conflict between their position as an executive department and their role in critiquing and monitoring the executive department in different ways, addressing the indicia regarding the decision-maker appears to be the more effective route to independence.

## IV. Next Steps

Councilmembers have a variety of options moving forward:

1. Retain SOCR's structure.
2. Direct Central Staff to draft legislation addressing challenges and policy solutions that need to be addressed immediately.
3. Add to the executive RET on accountability to consider independence.
4. Direct Central Staff to conduct further research into issues of interest.

Central Staff is available for further briefing and discussion on this issue.


**Attachments:**

    A. February 2017 Letter to the Mayor
    B. 2015 SOCR RSJI Report


cc:      Kirstan Arestad, Central Staff Director
          Dan Eder, Central Staff Deputy Director

**DATE:** February 13, 2017

**To:** Honorable Mayor Edward Murray - City of Seattle
Susan, Coskey – Director – Seattle Department of Human Resources
Patricia Lally – Director – Seattle Office for Civil Rights


**From:** City of Seattle Affinity and Employee Groups – African American, Asian Pacific Islander, HOLA, CANOES, SEqual, COSBC, CLBEA, ARWA, SPU RSJI Change Team and City Wide RSJI Change Team Leads, RSJI Affiliates

**RE:** **Racially charged behavior in the work place**


Dear Honorable Mayor Murray and Department Directors: Susan Coskey and Patricia Lally,


Thank you for designating The City of Seattle a Sanctuary City and for your accompanying message regarding no tolerance for hate towards Immigrant, Refugee & Muslim communities.  Please remember that Trump's politics and his now emboldened supporters are harming other groups as well, including Black, Native, Asian, Latino and LGBTQ communities. Historically these groups have been subject to harassment ranging from micro-aggressions, openly racial and homophobic hostility, verbal abuse and threatening behavior.

City government has not been immune to this increase in hate and we would like to make you aware it is happening right now within city departments and offices.

During the presidential campaign and since the election of Donald Trump, some city employees have been emboldened to reveal their racial antipathy more openly towards employees of color and LGBTQ employees.  Often, affected employees who report these issues to supervisors or management see little or no action prohibiting the behavior, and sometimes endure retaliation for reporting it.

This is clearly unacceptable behavior, and not in line with our city's core values. There are references to racial equity and social justice published in literature and shared throughout our city, yet city employees are subjected to racial harassment by their fellow employees.

This behavior, and the additional injury of managerial inaction, is an offense to the values we claim to hold dear.  When supervisors or managers neglect to address racially charged behavior, it continues. This inaction signals that hateful and aggressive behavior *is* acceptable, so it continues… and escalates.

The situation can be dangerous for employees throughout the city; from those who are working in close quarters day after day in SMT, city hall and beyond, to those doing physical work as field crews in this emotionally toxic environment. Unchallenged, this can lead to diminished work capacity and work quality, and as a result could even be a safety hazard for the Seattle communities we serve. For the employee, negative impacts on health, both physical and mental, and ultimately higher potential for increased mortality rates are well documented due to exposure to this type of continued stress

Action is needed to address this workplace behavior immediately. We are asking that you address this issue in a way that includes all employees. immigrant, refugee, Muslim communities, _and_ all other non-white groups.  We are also asking that the following actions be taken:

- Publish a strong message from the Mayor's Office, SOCR, SDHR & all other City departments that the City of Seattle is committed to the Race and Social Justice Initiative, that we take pride in the diversity of our employees, and that diversity makes us stronger. That discriminatory behavior will not be tolerated.
- Hire an outside RSJ consultant to assess and evaluate the experience of employees of color in the workplace (such as experience with racial aggressions).
- Develop explicit city policy, with the help of City of Seattle employee affinity groups and RSJI Change Teams, on what constitutes a hate crime and racially aggressive behavior.  Make it clear such behavior will not be tolerated and any employee engaged in such behavior, or any supervisor or manager not _appropriately investigating_ and _resolving_ such issues will be disciplined and/or terminated.
- Amend the City's Anti-Harassment Policy to include language specific to racial aggression in the workplace as well as specific consequences of this behavior.
- Require that mandatory RSJI Anti-Racial Aggression centered training be conducted in every department with a direct focus on eliminating this behavior.
- Ensure that employees who are the target of this unwanted behavior will have an effective and responsive method to report it and get immediate and appropriate action to end it.

We welcome a discussion with your office on next steps, or to cite examples of the behavior we expect you will address. We believe you know this behavior is unacceptable, but you may not have been aware of its recent resurgence right under our roof. Now that you are, we look forward to supporting you and your office as we take steps _together_ to bring our city one step closer to racial equity.

We would like to hear back from you within the next week to talk about next steps.  Natalie Hunter will be the main point of contact:  natalie.hunter@seattle.gov, 684-0632.

Thanks for taking the time to consider this request.


Sincerely,


City of Seattle Affinity and Employee Groups – African American, Asian Pacific Islander, HOLA, CANOES, SEqual, COSBC, CLBEA, ARWA, SPU RSJI Change Team and City Wide RSJI Change Team Leads, RSJI Affiliates

# **RACE** AND SOCIAL JUSTICE INITIATIVE

SEATTLE OFFICE FOR CIVIL RIGHTS

The Race and Social Justice Initiative (RSJI) is a citywide effort to end institutionalized racism and race-based disparities in City government. To accomplish this mighty endeavor, we have added team members, and connected with more RSJI advocates inside City government and in our community.  We are excited about this work – we know we must be targeted in our approach and prioritize to address the greatest need.

# MEET THE TEAM



| | | |
|---|---|---|
| **1** | Senait Brown | Community Coordinator |
| **2** | Scott Winn | Policy & Development Lead |
| **3** | Diana Falchuk | Strategic Advisor |
| **4** | Patricia Lally | Director |
| **5** | Tamar Zere | Strategic Advisor |

| 6 | **Casey Connelly** | Trainer |
| 7 | **Teddy McGlynn-Wright** | Strategic Advisor |
| 8 | **Caedmon Magboo Cahill** | Criminal Justice Strategic Advisor |
| 9 | **Kyana Wheeler** | Strategic Development Specialist |

# WHAT WE'VE BEEN UP TO

## RACIAL EQUITY TOOLKIT

RSJI has always been about transformative, systemic change. One of our greatest tools to bring about this systemic change is disrupting inequitable decision-making processes. This cannot be accomplished without applying the Racial Equity Toolkit (RET). As all of our City departments begin to apply the RET to policy, projects, programs, services, procedures and capital improvements – we will begin to see the requisite transformation. Because we know that racism and resources are indelibly interconnected.

In 2015, Mayor Murray mandated that each department apply four RET's per calendar year.  Since that time, the RSJI team has conducted dozens of RET trainings, department-specific RET seminars, technical advice and department-driven RETs.

Institutionalizing the Racial Equity Toolkit has become our most pressing priority because we know that the impacts of racial inequities cannot be assessed or addressed without interrupting the color blind ways departments make decisions.

## TRAININGS

Trainings:  Since 2015, RSJI has rolled out **Implicit Bias**, the **Racial Equity Toolkit** and **Leading with Race for Structural Transformation** trainings.  In addition to Cornerstone, at the request of Department Directors, we are providing customized trainings for entire departments.  Our RSJI team has **NEVER** conducted as many trainings as it has this past year.

For the first time ever, RSJI conducted a training for all City Council members, legislative aides and central staff.  We concluded with four additional RET trainings.

We also continue to provide trainings for our community and institutional partners across King County, such as:  Washington State Departments, UW Law School, UW Evans School, and Leadership Tomorrow, to name a few.

## TURNING COMMITMENT TO ACTION

SOCR began a training partnership the Office of Arts & Culture to help Seattle arts groups turn their commitment to racial equity into actions for real change. Participating organizations – including the Pacific Northwest Ballet, Seattle Art Museum and a host of smaller arts organizations – used the training to develop plans to create racial equity within their own organizations, as well as with other artists, their audiences and partners.

## CHANGE TEAM SUPPORT

The internal change agents are the City's most valuable resource. We have enhanced our support and resources to folks carrying racial justice work in their departments, by providing more direct services, including technical assistance, training and facilitation.

## NATIONAL SPEAKER SERIES

The RSJI Speaker Series brings thoughtful, provocative and powerful speakers from across the country to Seattle to speak on the racial equity issues of today.

## RESTORATIVE JUSTICE

RSJI worked with community leaders to advocate for Restorative Justice at the Seattle School District. This effort culminated on November 12 as we welcomed **Fania Davis**, co-founder and Executive Director of Restorative Justice for Oakland Youth, to speak on restorative approaches that engage families, communities, and systems to end violence and incarceration.

## INDIGENOUS PEOPLES' DAY

The City of Seattle celebrated the second annual Indigenous Peoples' Day on October 12 with an appearance by **Winona LaDuke**, Native American activist, environmentalist and author. Indigenous Peoples' Day recognizes that Seattle is built upon the homelands and villages of the Indigenous Peoples of this region and honors the many contributions that Native American communities have made to our community.

## BLACK LIVES MATTER

Our Human Rights Day event focused on Black Lives Matter and featured **Kimberle Crenshaw**; a critical race theory scholar, who spoke about the intersection of race and gender. This event brought 800 people to Seattle's Town Hall.

## COMMUNITY ENGAGEMENT

Our community engagement model has undergone a tremendous shift as we reimagine and center communities most impacted in our racial justice practice. What does it mean to be accountable to communities of color? How do communities inform and guide our work? How do institutions minimize harm and maximize benefits for communities of color?

As we expand our outreach and engagement efforts, we are striving to align our racial justice efforts with community organizations who are organizing and working towards transformation and liberation.

These organizations include: Youth Undoing Institutional Racism, Ending the Industrial Complex, The Village of Hope, El Centro de la Raza and many other organizations representing Chinatown/International District, Southeast Seattle and the Central District.  We continue to fund the Racial Equity Fund supporting organizations (primarily people of color led organizations) who are working to dismantle institutional barriers in our community.


## CRIMINAL JUSTICE REFORM

In 2015, Office for Civil Rights conducted a Racial Equity Toolkit on the King County Youth facility. The RET coupled with intense and unwavering community organizing created the pathway for the City's Zero Youth Detention and Re-entry resolution.  We have a fully dedicated staff member bringing together: community leaders, City Departments, Municipal Court, City Attorney's Office and King County to begin the challenging work of addressing the glaring racial disparity and contradictions of our criminal justice system.

# WHERE WE'RE HEADED

In addition to the programming, training and projects that RSJI has been working on and developing over the years, we will pursue new and enriching endeavors in 2017.

## CORE TEAM V

We are excited to roll out RSJI Core Team V.  In addition to learning from past Core Team members, we are refreshing the curriculum and providing more resources to draw race experts to the table.  This Core Team will learn from racial justice thought leaders and delve into a year-long practicum designed to enhance their racial equity analysis.

## RACIAL EQUITY LAB

As we continue to look for ways to institutionalize the practices and principles of RSJI, the Mayor has approved our newest endeavor:  The Race & Social Justice Initiative's Equity Lab will enable the City of Seattle to bring together key RSJI policy and project leaders to connect with one another; foster innovation and creativity in racial equity work; develop programmatic linkages across significant RSJ actions; and take advantage of promising practices.

## NEW TRAININGS

In 2017 we will roll out a new training on White Privilege and Building White Allyship.

To learn more about RSJI and our incredible team, please visit seattle.gov/rsji.