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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to civilian and community oversight of the police; creating a subpoena process for the Office of Police Accountability and Office of Inspector General for Public Safety while ensuring due process for individuals who are the subject of the subpoena; and adding new Sections 3.29.126 and 3.29.245 to the Seattle Municipal Code.

..body

WHEREAS, The City of Seattle requires a strong independent civilian oversight system to ensure constitutional policing and a police department that has the public trust, confidence, respect, and support of the community; and

WHEREAS, the City reaffirms its intention to build a strong civilian-led police accountability system with authority to independently review and investigate individual police misconduct cases, as well as to conduct departmental audits and reviews that critically evaluate the effectiveness of the Seattle Police Department (SPD) in delivering constitutional policing; and

WHEREAS, The City of Seattle is a first-class city in the state of Washington pursuant to chapter 35.22 RCW and has the legal authority to issue administrative subpoenas; and

WHEREAS, subpoenas are crucial information-gathering mechanisms for investigations into police misconduct in the event of an inability to obtain information from witnesses or department staff due to lack of cooperation from the individual or department, or due to a need to obtain information from a third party on matters related to the investigation; and

WHEREAS, subpoenas are crucial information-gathering mechanisms for audits and reviews of matters of systemic issues of public concern, in the case of an uncooperative witness or

1 other barriers to obtaining relevant information from the individual, department, or third
2 parties; and

3 WHEREAS, critical to police accountability is the willingness of complainants and individuals
4 to come forward and provide information in an investigation with a full understanding of
5 their rights and without the chilling effect of the information later being used against
6 them or having government engage in a fishing expedition for information that may
7 compromise an individual's privacy, civil liberty, and due process rights when they are
8 the subject of a government subpoena; and

9 WHEREAS, the City desires to strengthen and empower its civilian police oversight entities
10 investigatory authority to gain access to information needed for thorough and fair
11 investigations and police accountability, while also protecting the public's right to
12 individual privacy, civil liberty, and due process rights when they are the subject of a
13 government subpoena; and

14 WHEREAS, nothing in this ordinance shall be construed to weaken constitutional protections,
15 specifically Fourth and Fifth Amendment requirements and those protections afforded by
16 Article 1, Section 7 of the Washington State Constitution that pertain to information that
17 requires a search warrant based on probable cause and judicial review. In the event that
18 any criminal investigation or prosecution is initiated, either subsequent or parallel, to an
19 OPA or OIG investigation, all evidence obtained via subpoena remains subject to
20 constitutional or criminal procedure requirements for a search warrant or other judicially
21 authorized search or seizure prior to use in any criminal proceeding against the individual
22 subject of the subpoena; and

1 WHEREAS, on May 22, 2017, the City Council unanimously passed the landmark Ordinance
2 125315 (Accountability Ordinance) establishing and enhancing a robust, civilian-led, and
3 independent system of community oversight of the police department; by expanding the
4 independence and oversight of the Office of Police Accountability (OPA), making
5 permanent the Community Police Commission, and creating a new Office of Inspector
6 General (OIG); and

7 WHEREAS, subsection 3.29.125.E in the Accountability Ordinance authorizes the Office of
8 Police Accountability (~~OPA~~) to issue subpoenas during its investigation if evidence or
9 testimony material to the investigation is not provided voluntarily to OPA; and

10 WHEREAS, subsection 3.29.240.K ~~of~~ in the Accountability Ordinance provides the Office
11 of Inspector General for Public Safety (~~OIG~~) parallel subpoena power; and

12 WHEREAS, the purpose of this ordinance is to ensure the police oversight system is as strong as
13 originally intended by confirming and making explicit the authority of the OPA and OIG
14 to issue administrative subpoenas and create a clear process for exercise of such authority
15 that respects the constitutional due process rights of individuals who are subject to these
16 subpoenas; NOW, THEREFORE,

17 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

18 Section 1. A new Section 3.29.126 is added to the Seattle Municipal Code as follows:

19 **3.29.126 Office of Police Accountability and Office of Inspector General – Subpoena**
20 **authority**

21 A. The OPA Director or the Inspector General may issue a subpoena under subsection
22 3.29.125.E or subsection 3.29.240.K, respectively, or when the Inspector General is performing

1 duties under its authority to act in lieu of the OPA Director pursuant to subsection 3.29.240.D.
2 This authority is subject to any collective bargaining agreement limitations.

3 B. If the subject of the subpoena fails to comply with the subpoena issued, then the OPA
4 Director or Inspector General may refer the matter to the City Attorney to seek a court order
5 enforcing the subpoena in a court of competent jurisdiction.

6 Section 2. A new Section 3.29.245 is added to the Seattle Municipal Code as follows:

7 **3.29.245 Notice of due process protections for individuals and complainants who are the**
8 **subject of the subpoena**

9 When issuing a subpoena pursuant to Section 3.29.126, the issuing agency shall include a written
10 notice containing the following information attached to the subpoena, with a copy sent to the
11 individual whose information is the subject of the subpoena if the individual is not the recipient
12 of the subpoena:

13 A. The purpose of the subpoena and the basis for seeking the information requested under
14 the subpoena;

15 B. A statement acknowledging explaining the opportunity and process to contest the
16 subpoena in a court of competent jurisdiction;

17 C. A statement acknowledging that a person who provides oral or documentary
18 information requested by the director subpoena shall be accorded the same privileges and
19 immunities as are extended to witnesses in the courts of this state; and

20 D. A statement acknowledging that ~~the~~ evidence provided in response to the subpoena
21 that would otherwise require a search warrant or other judicially authorized search or seizure
22 shall not be used against the subject in a separate criminal proceeding against the individual
23 without a search proper warrant or other judicially authorized search or seizure court order.

1 Section 3. This ordinance shall take effect and be in force on whichever is the later of: the
2 date of court approval in *United States of America v. City of Seattle, 12-cv-1282 (JLR)*; or 30
3 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten
4 days after presentation, it shall take effect as provided by Seattle Municipal Code Section
5 1.04.020.

6 Passed by the City Council the _____ day of _____, 2020,
7 and signed by me in open session in authentication of its passage this _____ day of
8 _____, 2020.

9 _____
10 President _____ of the City Council

11 Approved by me this _____ day of _____, 2020.

12 _____
13 Jenny A. Durkan, Mayor

14 Filed by me this _____ day of _____, 2020.

15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)