



Legislation Details (With Text)

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Type: Ordinance (Ord) **Status:** Passed
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On agenda: 1/4/2021
Final Action: 1/8/2021 **Ord. No.** Ord 126264

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.

Sponsors: Lisa Herbold

Indexes:

Attachments: 1. Summary and Fiscal Note, 2. Central Staff Memo (added; 12/8/20), 3. Proposed Substitute 1, 4. Signed Ordinance 126264, 5. Affidavit of Publication

Date	Ver.	Action By	Action	Result
1/8/2021	2	City Clerk	attested by City Clerk	
1/7/2021	2	Mayor	returned	
1/7/2021	2	Mayor	Signed	
1/7/2021	2	City Clerk	submitted for Mayor's signature	
1/4/2021	1	City Council	passed	Pass
12/17/2020	1	Public Safety and Human Services Committee	pass as amended	Pass
12/8/2020	1	Public Safety and Human Services Committee	discussed	
12/7/2020	1	City Council	referred	
12/1/2020	1	Council President's Office	sent for review	
11/23/2020	1	City Clerk	sent for review	
11/23/2020	1	Mayor	Mayor's leg transmitted to Council	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

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.

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

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

WHEREAS, the City desires to strengthen and empower its civilian police oversight entities investigatory authority to gain access to information needed for thorough and fair investigations and police accountability, while also protecting the public's right to individual privacy, civil liberty, and due

process rights when they are the subject of a government subpoena; and

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

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

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

WHEREAS, subsection 3.29.240.K in the Accountability Ordinance provides the Office of Inspector General for Public Safety parallel subpoena power; and

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

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

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

3.29.126 Office of Police Accountability and Office of Inspector General - Subpoena authority

A. The OPA Director or the Inspector General may issue a subpoena under subsection 3.29.125.E or subsection 3.29.240.K respectively, or when the Inspector General is performing duties under its authority to act in lieu of the OPA Director pursuant to subsection 3.29.240.D. This authority is subject to any collective bargaining agreement limitations.

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

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

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

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

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

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

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

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

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

Passed by the City Council the _____ day of _____, 2021, and signed by me in open session in authentication of its passage this _____ day of _____, 2021.

President _____ of the City Council

Approved by me this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)