



**Office of the Compliance Officer and Community Liaison (COCL)**

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Transmitted by E-mail to:

The United States Department of Justice  
The City of Portland

Re: **COCL Petition for Amendments to Settlement Agreement**

Dear U.S. Department of Justice and City of Portland:

The Compliance Officer and Community Liaison (COCL) issues this statement as a formal position on the current operations of the Community Oversight and Advisory Board (COAB) and its relationship to the COCL. Per the Settlement Agreement, “The Parties may jointly stipulate to make changes, modifications, and amendments to this Agreement” (Par. 187) and “where the City agrees with DOJ’s recommendations, the Parties shall stipulate to modify the Agreement accordingly” (Par. 175). We issue this statement to request a joint amendment to the Settlement Agreement by the Parties regarding the COCL’s relationship to the COAB. In this statement, we document issues that have led us to our current position and provide a suggested plan of action for going forward.

**Proposal for Separation**

The current COAB structure is not working as intended. As we will further detail below, we believe the extent of damage done to this point prohibits restoration of the relationship between COCL and COAB. As the result of nearly two years of ambiguity, disrespect, and willful undermining of the COCL’s authority to run the COAB, we are requesting the Settlement Agreement be amended to separate the COCL from the COAB. Also, this separation will allow the COCL, assuming adequate funding, to conduct a more comprehensive compliance assessment without distraction.

## **Confusion in the Operation of COAB**

From the beginning of COCL's relationship with the COAB, there has been confusion as to the independence of the COAB. The Settlement Agreement authorizes COAB to "independently assess the implementation of this Agreement" (Par. 141). On numerous occasions, the COCL, DOJ, and City have attempted to clarify the roles and responsibilities of the COAB to the board. In March and April of 2015, the COCL and DOJ issued separate statements attempting to clarify the roles and responsibilities for COAB operation. DOJ and the City have made several presentations at COAB meetings, informing COAB of Settlement Agreement paragraphs which outline COAB authority. However, these efforts have often been interpreted as COCL attempting to "control" the COAB, resulting in a reduction in COCL's perceived legitimacy with this body.

Despite the efforts of all involved, confusion has continued to linger due to the vague language of the Settlement Agreement. Many members of the COAB point to the letter of the Agreement while refusing to consider its intent as detailed in statements and presentations from COCL, DOJ, and the City. Although the Settlement Agreement is clear that "The COCL will chair the COAB, preside over COAB meetings, take and count votes, and perform such other activities as are necessary for the efficient operation of the COAB." (Par. 144), most often cited is Par. 141 and subsection (a): "The COAB shall be authorized to: (a) independently assess the implementation of this Agreement." The term "independently assess" has not been qualified to date and is therefore a point of persistent ambiguity. Such ambiguity has been interpreted by members of the public and some members of the COAB as evidence COAB should operate independently from the COCL. For instance, in the July 4, 2016 "Open Letter" supported by nearly all members of the COAB, the author states the COAB has an "interest in self-governance and independence from the...COCL." Such independence from the COCL is not contemplated by the Settlement Agreement and we believe results from a lack of clear delineation of COAB roles.

There has also been confusion regarding the COCL's ability to manage the COAB. While we did not select members of the COAB, nor were we involved in designing the process to select them, we are nonetheless responsible for the functioning of the COAB. COCL only has conditional authority to remove members for "misconduct" (Par. 144), and thus far we have been limited in our ability to remove members who actively work against the efficient functioning of the COAB. This has been particularly problematic given ambiguity around the appropriate definition of misconduct. Our ability to manage meeting disruptions and resolve confusion about independence has been constrained by a lack of clarity regarding who exactly is actually in charge. In the past, actions that we have felt were necessary for the "efficient operation of the COAB" (Par. 143) have required clearance by the City and DOJ. The Settlement Agreement is clear that the COCL does not even have the ability to remove someone from the COAB on our own, as we must consult with DOJ prior to removal (Par. 144).

Additionally, other instances of confusion in the process have ultimately been blamed on COCL, further straining our relationships with COAB members. For instance, there have been considerable delays in providing feedback to the COAB on their recommendations related to policy and the "48-hour rule." COCL has taken the brunt of COAB frustration for not receiving feedback, even though we have not been the source of such delays.

## Recent Disruptions and COAB Violations

As has been well-documented in media and social network sites, meetings in the past few months have been subjected to repeated disruptions, in-fighting and early adjournments. We have attempted to continue the business of the COAB by holding one executive committee meeting via phone call-in and video conferencing. While successful in allowing this body to operate without interruption, this also has the unfortunate side effect of having some community members feel excluded by forcing them to participate through intermediate channels. In the future, we encourage the Parties to explore a range of options for community engagement in light of the continued disruptions and incivility from a small group of individuals at public meetings. With current technologies, there are many electronic possibilities that allow input from community members who cannot, or prefer not to, attend public meetings. Arguably, these approaches are more democratic and offer a much larger definition of “community” but will take time to become accepted.

Most recently, there have been actions on the part of COAB members that have displayed a blatant disregard for our authority to chair the COAB. On June 27, 2016, as several COAB member sought to hold their own emergency meeting, COCL authored a letter informing members of the COAB that any quorum to discuss COAB business without an approved agenda and presence of the COAB Chair would be violation of the Settlement Agreement, COAB by-laws, and Public Meetings Law. In defiance of the Settlement Agreement and public meetings law, on July 4, 2016, members of the COAB issued an “Open Letter” as well as a “List of issues for the COAB to consider regarding the operation of the COAB and the COCL.” A quorum of COAB members reviewed the document and provided their support to the “Open Letter.” This was done without providing the community an opportunity to give testimony and lacked the degree of transparency strongly encouraged by both COCL and COAB.

Several COAB members have also continued to violate their own “Guidelines for Maintaining Common Ground,” leading to a number of instances where members of the COAB and/or community have felt disrespected, threatened, and unsafe. Specifically, examples of recent problematic conduct in light of COAB’s “Guidelines for Maintaining Common Ground” include the following:

1. Personal attacks, name-calling, and violating people’s personal space: Various community members as well as COAB members have resorted to name-calling when expressing frustration and disagreement with others. For example, individuals involved in this process, including the COAB Chair, COCL, Subcommittee members, police advisors, and the public have been called names such as “fascists,” “Nazi’s,” “pigs,”—and other names inappropriate for print, and have been allowed to physically surround or get into the personal space of COAB members or leaders to intimidate them.
2. Overt Disrespect for Diverse Perspectives: Paragraph 142 of the Settlement Agreement calls for fifteen voting members of the COAB and five police officers from the Portland Police Bureau to serve as advisors to COAB. Although they are authorized by the Agreement to participate, the police advisors have experienced overt hostility and disrespect at COAB and sub-committee meetings. We would expect COAB members to encourage and model respectful listening, even towards police officers. Furthermore, policing is a complex matter and the COAB members with limited knowledge of law enforcement organizations could benefit significantly by listening to, and asking questions of, the police advisors. While we

share the view that police reforms are needed, the views of the officers have not been received and considered in a way that facilitates the development of such reforms.

3. Refusal to Support the COAB Chair: As all involved in this work know, the issues we are discussing have a profound impact on the community and often result in strong and conflicting opinions from diverse populations. Given the potential for conflict, it is particularly important to abide by the established processes. This includes respecting the Chair's efforts to move through an agenda and to maintain order. This has not occurred. Former Chair Kathleen Saadat's efforts to keep the meeting on track were often met with resistance and outright defiance. Her efforts to maintain order in a meeting – and protect individuals who were being personally attacked – have similarly been ignored. For example, at the June meeting, Chair Saadat instructed all members to leave the room in response to personal attacks. Some members refused to do so, which sent the message that the attacks were acceptable. On top of this, there have been instances of insubordination from some members of the COAB, openly criticizing the Chair as she was attempting to maintain order. This defiance sent the message that if a COAB member will not abide by the authority of the Chair to run an orderly meeting, there is no requirement of the audience to abide either.

### **Reasons for Separation of COCL and COAB**

Managing the problems associated with the COAB, as articulated above, has consumed the vast majority of the COCL's time, including both the Portland and Chicago offices. Investigating and responding to complaints (against each other and by community members against them) is one example of time-consuming work that has nothing whatsoever to do with assessing compliance. One consequence of this dysfunction is the reduced capacity for COCL to be able to evaluate PPB's and the City's compliance with the Settlement Agreement. Resources to perform all the expected functions of the COCL are already stretched thin. We believe that any further reductions in the quality and quantity of our compliance assessments as a result of COAB issues would be a disservice to the people of Portland. The Portland community deserves an in-depth analysis of the level of compliance by the PPB and the City, which the COCL has done, but with repeated interruptions because of these dual responsibilities.

The persistent issue of the independence of the COAB is another reason for requesting this separation. As describe earlier, since the inception of the COAB, various COAB members and members of the community have argued that the COAB should be completely independent from the COCL in evaluating compliance with the Settlement Agreement. In response, members of COCL, DOJ, and the City have informed such petitioners that issues of data sharing, information redaction, and confidentiality would render such a petition impossible. While this was understood by a number of COAB members, others have maintained that such complete investigatory powers are desired. The priority of independence in the eyes of some members of COAB, despite the above issues, has undermined the current relationship between COCL and COAB. Thus, while we do not believe COAB should be an independent monitor due to the above logistical considerations and due to considerable redundancy with the work of the COCL and DOJ, we do believe this body should be independent from the COCL so that any concerns about COCL control are eliminated.

Furthermore, in past reports, we have refrained from assessing the work of the COAB that is required by the Settlement Agreement. Due to the Agreement's direction that we chair the COAB, we have

maintained that for us to evaluate the work of the COAB would be a conflict of interest. Thus, we have been unable to “make recommendations to the City regarding measures necessary to ensure full and timely implementation of [the] Agreement” (Par. 161) as they relate to the responsibilities of the COAB. By separating the COCL from the COAB, we will be able to assess whether the COAB’s responsibilities have been met and whether this has resulted in an improved relationship between the community and the police.

### **Details of Separation Proposal**

As noted above, we believe the extent of damage done to this point prohibits restoration of the relationship between COCL and COAB as currently defined in the Settlement Agreement. As the result of nearly two years of ambiguity, disrespect, and willful undermining of the COCL’s authority to run the COAB, we are requesting the Settlement Agreement be amended to separate the COCL from the COAB.

As for a plan of separation, we are suggesting a two-step process to address the deficiencies of the COAB. These steps include (1) a hiatus in COAB activity until the Parties, with community input, can reach an agreement on the future operations and function of the COAB and (2) amending the Settlement Agreement to modify the relationship between the COCL and COAB. For each, we provide a plan of action for the consideration of the Parties.

As long as some COAB members willingly violate the Settlement Agreement, Public Meetings Law, and its own approved by-laws, the board will not be a legitimate mechanism of community engagement. Thus any action taken by the COAB, as currently operating, will be questioned by the community and all stakeholders as to whether this body reflects the beliefs and opinions of the Portland community and is acting in a fair and just manner on behalf of the entire community.

We are requesting that the responsibilities of the COAB, including the development of the CEO Plan and the Par. 152 meetings with the Chief, Commissioner, Commanders, Neighborhood Response Teams, and Officer of Neighborhood Involvement Crime Prevention, be delayed until the COAB’s role has been better defined. In the interim, some members of the COAB may want to continue their planned work on community engagement through focus groups with COCL assistance, but otherwise, we do not see public meetings and agenda setting for the full COAB as the way to proceed at this point. We understand that delaying such crucial activities of the COAB ultimately delays the ability of the community to interact with PPB and provide necessary input. However, we have been consistent in our belief that the quality of work is far more important than its expediency.

During this hiatus, we believe the Parties and various stakeholders should convene to redesign the COAB with respect to its mission and operation. This hiatus will also provide opportunity for improving the system of selecting, training, replacing, and removing COAB members. For all things related to the COAB, there have been repeated calls for more clarity and direction. These calls have come from COCL, the community, and the COAB itself. We believe that a hiatus provides a necessary pause so that these considerations might be discussed without new issues continually emerging.

Until such considerations can be addressed, we will also be suspending our search for a COAB chair to replace Kathleen Saadat. Given the current uncertainty regarding the direction of the COAB and COCL’s relationship to the board, we do not feel it wise to expend resources on a potentially inconsequential

search. Upon the agreement of the Parties and other stakeholders, we will reconsider whether this is a necessary endeavor.

In order to limit the length of the COAB's hiatus, we request the Settlement Agreement be amended as soon as possible. For the consideration of the Parties, we offer the following suggested changes to the Agreement to reflect the separation of the COCL and COAB. These changes include language regarding the preparation of semi-annual reports by the COCL, while keeping quarterly presentations to the COAB. (This change was supported by the COAB and the Parties as the preferred approach). We have identified the particular Section and Paragraph where we believe changes are required. Where words are *italicized*, this indicates new language to either be inserted or to replace previous language of the Agreement.

### **SECTION IX. COMMUNITY ENGAGEMENT AND CREATION OF COMMUNITY OVERSIGHT AND ADVISORY BOARD**

**Par. 142:** "...fifteen (15) voting members *and* five (5) advisory members (removing the phrase "and the COCL").

**Par. 142(b):** "The COAB's membership will come from a reasonably broad spectrum of the community, such as: areas of expertise, advocacy experience, community involvement, profession, education, race, ethnicity, gender, gender identity, sexual orientation, national origin, age, religion, mental or physical disability and geographic identification. COAB members, including Advisory Members, must live, work, worship, or attend school in the City of Portland. *In addition to the above considerations, COAB members, including Advisory Members, must have the following qualifications:*

- i. No actual or perceived conflict of interest with the City of Portland;*
- ii. A demonstrated willingness to work collaboratively with members of the community, PPB, and other members of the COAB;*
- iii. An appreciation of individuals with differing opinions and backgrounds; and*
- iv. A demonstrated willingness to adhere to the requirements of the Settlement Agreement, Public Meetings Law, and COAB bylaws and guidelines for maintaining common ground.*

**Par. 154:** "COAB shall meet as needed to accomplish their objectives as set forth in this Agreement. All COAB meetings shall be open to the public. In addition, COAB shall attend *semi-annual* meetings with the COCL as provided in Par. 163. To the extent that COAB meetings are subject to the Oregon Public Meetings Law, or similar regulatory or statutory requirements, the City shall be responsible to give advice necessary to *the COAB* to ensure compliance with those laws and agrees to represent COAB in any challenges regarding compliance with those laws.

**Par. 155:** "The City shall provide COAB members with appropriate training necessary to *understand their roles and responsibilities under this Agreement as well as* to comply with requirements of City and State law.

## **X. AGREEMENT IMPLEMENTATION AND ENFORCEMENT**

**Par. 162:** The COCL shall prepare *semi-annual*, written, public reports detailing PPB's compliance with, and implementation of, each substantive provision of this Agreement.

**Par. 163:** *"The COCL shall hold open town hall meetings on a semi-annual basis...The COAB shall ensure that the time and location of these semi-annual town hall meetings are well publicized...These semi-annual meetings shall facilitate the sharing of information on the Agreement and its implementation..."*

### **NEW PARAGRAPHS TO BE ADDED**

*In addition to the COCL's semi-annual town hall meetings as provided in Par. 163, the COCL shall meet with the COAB on a quarterly basis to present updates to PPB's compliance with, and implementation of, this Agreement. During such meetings, the COAB and community may ask questions related to the work of the COCL and the COCL shall be responsible for providing responses to questions and recommendations within 30 days.*

*In order to facilitate the work of the COAB, the COAB may request access to PPB and City staff, employees, facilities, and documents that the COAB deems reasonably necessary to carry out its duties. In weighing the reasonableness of COAB's request, the City and PPB may consider attorney-client privilege, interference with daily operations, required resources, matters of confidentiality, Oregon Public Records Law, and other considerations deemed important by the City and PPB. Should a request by the COAB for access to staff, employees, facilities, or documents be denied by the City or PPB, the COAB shall have the ability to appeal the denial to DOJ. The DOJ shall make a final determination on the reasonableness of the COAB's request as well as the reasonableness of the City/PPB's denial.*

*When the COAB makes formal recommendations to the City or DOJ, the COAB can expect timely responses to these recommendations.*