188546

Moore-Love, Karla

From: Roger Hardesty <rdh@hardspace.info>
Sent: Tuesday, August 08, 2017 2:32 PM
To: Commissioner Eudaly
Cc: City Auditor, Mary Hull Caballero; Commissioner Fish; Commissioner Fritz; Commissioner Saltzman; ted@tedwheeler.com; Auditor, IPR Mail; Moore-Love, Karla; community.portland@usdoj.gov; 'Geissler, Jonas (CRT)'; david.knight@usdoj.gov; bill.williams@usdoj.gov; Seth.Wayne@usdoj.gov; Jaclyn.Menditch@usdoj.gov; adrian.brown@usdoj.gov; Michael_Simon@ord.uscourts.gov; copwatch@portlandcopwatch.org; Jo Ann Hardesty; Brian.Buehler@usdoj.gov; chair@albinaministerialcoalition.org; tomsteenson@comcast.net; info@mentalhealthportland.org; mdjaiona@aracnet.com; ashlee.albies@gmail.com
Subject: Agenda Items 892-894, PCCEP & Employer Responsibility in Policing
Attachments: HardestyPCCEPandPleaDeal2.pdf

Please find attached, HardestyPCCEPandPleaDeal2.pdf. I reproduce the communication here, in the body of this email.

Best,
Roger Hardesty
Portland, OR

8 August 2017

Commissioner Eudaly, Mayor, Commissioners ~

On Agenda Item 892 (Second Reading of 871) 'Post Deadly Force Procedures,' and your statement: "I've attempted to respond to concerns by community members before this hearing." I refer you to my email of 21 July: 'Resolving Deadly Force Investigation Procedures, Portland Oregon,' which did not receive the favor of an auto-reply. I also refer you to Thursday's oral testimony by Lindsey Burrows, Portland Chapter, National Lawyers Guild.

In my 21 July submission I offered evidence from DoJ investigators and the City's own consultants, the OIR group. National best practices call for officers to promptly report use of force ... not making distinction as Portland does, as to whether force was lethal. As an employer, they suggest immediacy and "end of shift" language ... not the passage of hours. Long ago, City consultants in the PARC group debunked PPA's original premise, that officers need more time to recoup from trauma than civilians. The other national best practice is to promptly remove the officer from the scene, and to interview in a controlled space. They describe who should be excluded from the proceeding and who should lead it. Burrows testified interviews should happen as quickly as possible, and that IPR should lead it, I believe. Dan Handleman of Portland Copwatch says placing IPR in lead investigative role will create the wall between criminal and administrative investigations and protect officers' right to avoid self-incrimination in criminal cases. So 892 is fused with Agenda Item 894 'Amend Independent Police Review Code' (Second Reading of 873).

On Agenda Item 893 (Second Reading of 872) 'Gutting Community Participation in Settlement Agreement Oversight:' you should realize by the *Oregonian's* Editorial Board pronouncement, that your amendment package failed to push against "Wheeler's central premise: That the city should ditch public oversight of the settlement's implementation." Frankly, #5, having PCCEP agendas "published on the City website within 30 days after the meeting date" perpetuates City failures under SA Sect. IX, where police policy did not go online in a timely manner, it did not flow to a COAB agenda, and was never exposed to town halls.

Vote 'No' on item 893. Do not "repeal and replace," as per testimony by Jason Renaud, Mental Health Association of Portland. No public business in off-the-record conclave. Empower COAB. Call for a deliberative and transparent process which heeds community demands that *someone* take responsibility for advising on how to make Portland police culture less lethal, and bring officers into compliance with their constitutional oaths.

The consummate failure in City failure to comply with community engagement provisions in the plea deal was not that Fritz screwed up the selection process; it was not due to the fact that perpetrators failed to screen out justice advocates. But, given your attention to how the Mayor will pick five (as many as eleven) cronies, I ask, "Why were none in this potential pool willing to testify on the record, in favor of a clandestine PCCEP?" We never heard the merits of the case from civilian partisans he'll consider for appointment ... after all the soft language in your amendments is observed.

My favorite moment in Thursday's hearing was your revelation that last-minute memo from Kathleen Saadat, *did* provoke your response. Portrayed in the Mayor's ordinance (42) as "an extremely well-respected and talented leader," Saadat does not support COAB disestablishment. I heard gasps go up, at testimony pretending to parties' diligence, in running plea deal abdication past community members. The citizen member of PPB's Behavioral Health Unit Advisory Committee specifically refuted this hogwash. Among the small band invited to feed into COAB dissection, no one I know made recommendations which could logically lead to PCCEP. The fact that Wheeler did not have Saadat in his pocket should reveal to you that mere simulation of public involvement in police accountability proceeds apace in Council.

It is imperative to note that – when it came time to fix terms for a Settlement Agreement in 2012 – justice advocates, deeply engaged in a complex and time-consuming process for a considerable timespan, had *already* identified City obstruction in civic engagement. We'd by then been fed through fake input processes, and designed-to-fail initiative. We'd already been asked to "give it time to work" as one failed body was exchanged for another. And we know, across this timespan, that police culture did not change. Innocents die; the psyche of Black male youth and wider community continues to be impaired by shame and detain practices far removed from paper policy and command staff purview. Militarized police stand staunchly apart from community-based policing. Whole swathes of police misconduct go unchecked by IPR.

Thursday's hearing provides a case study for need to reform ongoing pattern and practice of City subterfuge and ineptitude in development of police policy. Consider how difficult it was to accommodate the special needs of the one uninvited civilian. Compare to plea deal provisions to reach out and engage this victim class. In 2012 it was decided to let the community build out the mechanism it wants: it is not now time to provide this Mayor with an echo chamber. COAB needs the resources to provide ADA services, to reach into underserved community the City persistently disenfranchises from participation.

Skip over months-long, backroom, coming-to-consensus informing the Wheeler proposal. Witness the document flood. Concurrent release hundreds of pages of legislation. [Sixty-two pages for 871. Exhibit 4 *alone*, for Item 872, at 70+ pages, was longer than the 2012 plea deal you seek to avoid. Few realize PPB Directive 635.10 Crowd Management/Crowd Control (102 pages) also trundles into enactment, also calls for police accountability advocates' attention. (It incorporates none of the changes recommended after analysis by Portland Copwatch, Empower Portland and opaque community 'input.')] Perpetrators *planned* to prevent cogent engagement on all four issues.

It's abject failure in governance to expect three disparate legislative items to receive simultaneous testimony, let alone when confined to 180 seconds. Compare to town halls, as described in your plea deal: at one, the DA and perpetrators make their case on a specific issue; at another, the NLG or subject matter experts on national best practices. Imagine a Community Liaison then tasked with facilitating a third town hall, intent on drafting items of public concern to set before COAB, who would – in turn – research, opine, and have their report put before Council. That's what democracy looks like.

When you thanked "everyone" for participating, I'm sure you included the one third to one quarter of signed-up participants who fatigued out of Thursday's ordeal. In the City's hands, the process becomes the direct opposite of effective community engagement. Fritz, a continual proponent of delay, used COCL manipulation of an initial town hall – given to a police agenda, before COAB had been seated – to make certain that no one should expect PCCEP to tell us how to engage with police ... for nine months. For all we know, Wheeler offered the pair of you built-in concessions, to give appearance of mutual endeavor. Reject PCCEP; Commissioners are Agreement signatories, it's not wise politically, to allow Mayoral appointments report compliance only to him. How did 'community engagement' lead to strong-man governance?

When AMAC realized COCL expected *not* to give their contractually required quarterly report, prior to annual status conference in 2016, the community-based organization worked with DoJ investigators to engender considerable public turnout and get that plea deal provision met. The community has capacity to carry out this work: it requires the City to end obstructionism, and for Council to empower public oversight of actual police reform mechanisms.

On a final note; I have no idea what is expected to happen at the second reading tomorrow. I'm unable to counsel on whether you will proffer further amendment, or whether Fish was playing coy ... feigning to consider changes to Item 892. The way the perpetrators have rolled this out, it's impossible to discern whether opportunity for civic engagement exists ... prior to fighting PCCEP in judicial review.

Hold your own hearings, Commissioner. Determine which COAB fixes will check unconstitutional practice, balance out cops' lethal powers. Burrows testimony, above, lasts 5 minutes: do not go forward with PCCEP, choose community-based oversight and public transparency. Demand "end of shift report," do not wait until a killer cop has completed criminal appeals (or for the DA to exonerate). IPR should have subpoena power and lead officer investigation; cops should no longer be exonerated by fellow law enforcement officers ... in Internal Affairs or the DA's office.

Best,

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Best,

Roger David Hardesty
rdh@hardspace.info

Moore-Love, Karla

From: Philip Wolfe <philipjames73@hotmail.com>
Sent: Tuesday, August 08, 2017 8:31 PM
To: Philip Wolfe
Cc: Wheeler, Mayor; Commissioner Eudaly; Commissioner Fish; Commissioner Fritz; Moore-Love, Karla; Commissioner Saltzman
Subject: My testimony for tomorrow and concerns regarding last Thursday session
Attachments: Roger's testimony.pdf

Dear Mayor and Commissioners,

First of all before I go there, I wish to address an issue I encountered last Thursday which makes this a formal complaint with Karla's office.

Interpreters weren't qualified, at least, not for me. I asked them which agency the were assigned to. Passport and Anderson. I was shocked because they are not the most reliable agencies. Anderson is based in Salem. I would like to once again, have a meeting and train how this should be handled when it comes to getting interpreters. There are several agencies but it doesn't necessarily mean all of them are reliable. During my testimony, I had to watch the interpreters because I couldn't trust them being able to convey my message accurately. This disrupt my thought process when I testified. This is taking out my voice. For this to go smoothly, I need to be informed at least a week in advance so that interpreters can be arranged ahead of time and if trouble shall arise as time nears, we still would have time to rectify this. Evidently the office who arranged interpreters for us needs training, no offense. I appreciate the effort.

Second, I was told that the sign sheet is for people who weren't invited to testify though people with disabilities and children comes first. In that case, I had to wait before 12 people finish testifying then my turn. I am a person with a disability, why wasn't I placed first? I had to wait for 2 hours due to the "invited" or privileged people to testify, they can talk as much as they want. Tracy, DA attorney rambled for good half hour or so, yet we are limited to 3 minutes?

Third, I took the liberty to attach Roger Hardesty's testimony. I fully am with him on his testimony.

Fourth, based on my observation when the "privileged" folks did their testimonies, mostly the DA, City and Police, all of you looked up straight to them with respect. I appreciate Chloe's questions. But when community testified, I noticed the men looked down without looking straight at them. This is not respectful because this is not acknowledging us. You just went on with the motions person after person without questioning, or even a hello? " Yes I hear you... or I feel you... " stuff like that. Nothing. This confirms why the community has no trust in the City and this must be resolved ASAP since we got a new Chief of Police coming this October. This is an opportunity to restore trust if you listened to us.

Fifth, like everybody explained and it is recorded that DOJ found the city not in compliance but why weren't they being held accountable? Why didn't the City fix the problem? Why attempt to gut COAB in trash and create a new one when you could focus on COAB and fix it? Defib COAB. Restore. Grow. Your proposal is just a band aid totally dismissing COAB. With that said, I am urging you to WITHDRAW your proposal and work on COAB.

Philip J. Wolfe

57.

Agenda Item 871-873 TESTIMONY 3:10 PM TIME CERTAIN

188546

POST DEADLY FORCE PROCEDURES/DOJ SETTLEMENT AGREEMENT/INDEPENDENT POLICE REVIEW CODE CHANGE

IF YOU WISH TO **SPEAK** TO CITY COUNCIL, **PRINT** YOUR **NAME.**

Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
✓ 1	JO ANN HARDESTY	NAACP PORTLAND.	
✓ 2	DAN HANDELMAN	PORTLAND COPWATCH	
✓ 3	AJ MENDOZA	BASIC RIGHTS OREGON	
✓ 4	JAN FRIEDMAN	DISABILITY RIGHTS OREGON	
✓ 5	JASON RENAUD	MENTAL HEALTH ASSOCIATION OF PORTLAND	
✓ 6	LINDSEY BURROWS	NATIONAL LAWYERS GUILD	Lindsey.burrows@gmail.co
✓ 7	BARBARA BISCHINSKI	PORTLAND COPWATCH	
✓ 8	CAROL LANDSMAN	PORTLAND COPWATCH	
✓ 9	PEGGY ZEBROSKI	PORTLAND COPWATCH	
✓ 10	MR WG BARNETT.	PORTLAND COPWATCH	

Date 08-03-2017

Agenda Item 871-873 TESTIMONY 3:10 PM TIME CERTAIN

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IF YOU WISH TO **SPEAK** TO CITY COUNCIL, **PRINT** YOUR **NAME.**

	Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
✓	11	Brandie Dieterle DeLa Hoz	HRC	
	12 NO	Lighthouse	—	—
✓	13	PHILIP J. WOLFE	NW Naito Parkway	philipjames73@HOTMAIL.com
✓	14	Joe Rowe	North Portland	ojoe22@gmail.com
✓	15	Rev. Bill Sinkford	First Unitarian Church	
✓	16	Isabel Sheridan		iasheridan44@gmail.com
✓	17	Jennifer Nickolaus	97206	
✓	18	THOMAS ETIENNE	97202	thomas.etienne@protonmail.com
✓	19	SARAH IANNARONE	97236	
✓	20	Tara Parrish	97206	

Date 08-03-2017

Agenda Item 871-873 TESTIMONY 3:10 PM TIME CERTAIN

188546

POST DEADLY FORCE PROCEDURES/DOJ SETTLEMENT AGREEMENT/INDEPENDENT POLICE REVIEW CODE CHANGE

IF YOU WISH TO **SPEAK** TO CITY COUNCIL, **PRINT** YOUR NAME.

Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
✓ 21	Lisa Wright	1010 NE Farling St Portland OR 97212	
22	~~Brian King~~	1603 SW Custer Dr Portland OR 97219	
23	ADAM MURRAY MILLON	804 NE	
✓ 24	Linda		
✓ 25	Desiree Hellegers	4632 NE 16th Ave Pdx, OR 97211	
✓ 26	Laura Moulton	5131 NE Going St. Pdx OR 97218 &	
27 not speaking	~~Georgie Wier~~	2533 SE 38th Ave Portland, OR 97202	
28 removed	~~Mimi Hates Chloe German~~		
29	Oscar Guerra-Vera	Unite Oregon	oscar@uniteoregon.org
✓ 30	Martha Bakhaum		mmbakhaum@gmail.com

Date 08-03-2017

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IF YOU WISH TO **SPEAK** TO CITY COUNCIL, **PRINT** YOUR **NAME.**

Number	Name (please print)	Address & Zip Code (optional)	Email (optional)
✓ 31	Ethan HARRISON	1902 NE 17th AVE, 97212	ethanharrison4@gmail.com
32	~~A.S. Mendoza~~	~~1530 to~~ 310 SW 4th Ave Suite 300 Portland OR	~~ajs@basicrights.org~~
33	~~Kris Ramsey~~		
NO 34	ANNE COLEMAN		
35	~~Serena Cruz~~	Portland 97210	
NO 36	Danny Robbins		
37			
38			
39			
40			

Date 08-03-2017

188546

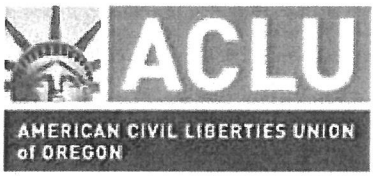
Moore-Love, Karla

From: Kimberly McCullough <KMcCullough@aclu-or.org>
Sent: Thursday, August 03, 2017 3:22 PM
To: Council Clerk – Testimony
Cc: Commissioner Saltzman; Wheeler, Mayor; Commissioner Fritz; Commissioner Fish; Commissioner Eudaly; Severe, Constantin; City Auditor, Mary Hull Caballero
Subject: 8/3/17 ACLU of Oregon Testimony re Item No. 871
Attachments: 8-3-17 ACLU of Oregon Testimony re Item No. 871.pdf

Please find the attached testimony of the ACLU of Oregon we wish to submit concerning Item No. 871 on this afternoon's agenda.

Thank you!

Kimberly McCullough
Pronouns: she/her/hers and they/them/their
Policy Director
ACLU of Oregon
P.O. Box 40585, Portland, OR 97240
▪ o 503.227.6928 ▪ m 503.810.6939
▪ kmccullough@aclu-or.org
www.aclu-or.org



Testimony of Kimberly McCullough, Policy Director
Concerning Portland City Council Item No. 871
August 3, 2017

Mayor Wheeler and Council Members,

The American Civil Liberties Union of Oregon[1] appreciates your consideration of our testimony concerning Item No. 871, an ordinance which would adopt new Post Deadly Force Procedures for Portland Police Bureau and authorize legal proceedings to determine whether requiring officers to provide statements in connection with an administrative deadly force investigation would preclude criminal prosecution.

We submit this testimony to express concern about this ordinance as drafted, and to urge you to either reconsider its adoption altogether or amend the ordinance before moving forward. We make this suggestion while appreciating the gravity of the tension presented when the City considers the constitutional, civil and public rights at stake when police officers use deadly force against members of the public they are sworn to serve.

On the one hand, we are longstanding and fierce advocates for the protections provided by the Fifth Amendment of the United States Constitution and Article I, section 12 of the Oregon Constitution, both for members of the public and law enforcement. It was because of this fact that we submitted an *amicus curiae* brief in *State v. Soriano,* 68 Or App 642 (1984) supporting the rights of a defendant held in contempt for refusing to testify in criminal proceedings.

On the other hand, a prompt administrative investigation into deadly force incidents is crucial for police accountability. Already this year, the City of Portland has seen multiple instances of deadly or serious harm at the hands of police officers, including the taking of the lives of two young men of color, Quanice Hayes and Terrell Johnson. The losses of those lives are tragedies for both their families and for our community. The public should not have to endure these tragedies without adequate investigatory procedures and full accountability if and when misconduct has occurred.

We believe, however, that these competing concerns can be adequately addressed by simply keeping administrative and criminal investigations wholly separate. Portland's Independent Police Review of the Portland City Auditor's Office has already provided

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[1] The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 23,000 members in the City of Portland and over 44,000 members in the State of Oregon.

helpful legal analysis to this body outlining how separate investigations may occur without violating constitutional rights, and the National Lawyers Guild is submitting a separate memo with similar analysis and suggestions. We urge the City to carefully review these memos and pass an ordinance allowing for separate, but concurrent investigations as they suggest.[2]

It is a standard best practice for employers to implement internal policies and processes by which to ensure their employees are conducting themselves in their jobs appropriately. It is also a standard best practice to investigate employees, including collecting statements from them, when it is believed that internal policies may have been breached. The same is true when a potential broken rule results in the loss of life of another at the hands of a police officer.

Such investigations allow the employer to improve their policies and change their procedures to prevent future harm. And, if need be, such investigations allow the employer to fairly train, discipline or remove employees when harm could have been avoided and/or misconduct occurred.

The City of Portland and Portland Police Bureau (PPB) must be able to conduct an internal assessment of its employees and officers. The public needs a police bureau committed to ongoing improvement, transparency and the protection of civilian lives—even when those civilians are suspected of criminal action. When an officer causes harm to the public, prompt and independent scrutiny of personnel and policy concerns must occur to ensure future harm can be avoided and necessary changes are made.

Police officers are professionals. Professionals of all types—lawyers, doctors, engineers—have professional standards and employment policies that must be followed. Additionally, employees of all types must answer to their employer when they fail in their duties. Insulating police officers from professional standards or significantly delaying employer scrutiny only serves to promote public harm and distrust in the system. Police officers who breach PPB policies or standards should not be given special treatment that the rest of the hard-working public does not enjoy.

We were dismayed to read the Multnomah County District Attorney's (DA's) assertion that criminal investigations may not be kept independent from the police bureau's internal investigation given the close relationship between the two agencies. While we disagree

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[2] Because we generally agree with both of these carefully-crafted memos, we will not provide additional constitutional analysis in this testimony beyond stating that (a) *Soriano* is clearly distinguishable from the facts and circumstances related to fully separated criminal and administrative investigations into deadly force by law enforcement, and (b) we agree with the court in *State v. Beugli*, 126 Or App 290, 294 (1994), that use and derivative use immunity—not transactional immunity—is the proper remedy when the right against self-incrimination is violated, absent a legislative grant of further immunity.

with the DA office's legal analysis, it was more troubling for us to see an elected office willing to create roadblocks rather than offer solutions to rebuild the public's trust in our law enforcement bodies.

It is the DA's responsibility to vigorously advocate for the public in cases of potential criminal misconduct by law enforcement. Rather than pushing for a less-accountable system, we hope that the DA's office will instead work with the City and PPB to ensure complete separation of administrative and criminal investigations. And if an officer claims transactional immunity when a truly independent criminal investigation has occurred, we hope that the DA will oppose such a claim in court.

In conclusion, the ACLU of Oregon believes that the PPB personnel investigation and any criminal investigation can occur separately, and simultaneously, without infringing upon a police officer's constitutional rights.

We urge you to reconsider or amend this ordinance, and not delay in adopting policy to allow for separate internal investigations to move forward with prompt collection of involved officers' statements. Rather than waiting for a court to give a green light, this policy should take effect as soon as possible. Failing to do so further risks the community's faith in its elected leaders' commitment to police accountability and breaks promises made to the public about the removal of the 48-hour rule.

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From: Kelly Iverson <kelly.e.iverson@gmail.com>
Sent: Thursday, August 03, 2017 12:32 PM
To: Wheeler, Mayor
Cc: Commissioner Eudaly; Commissioner Fish; Commissioner Fritz; Commissioner Saltzman; Moore-Love, Karla; community.portland@usdoj.gov
Subject: Item 872

I am a Portland resident. I am very concerned about police brutality and murders in my neighborhood and city.

The Portland Police department should have, at minimum, community oversight.

Kelly Iverson

BASIC RIGHTS OREGON

To: **Portland City Council**
From: **A.J. Mendoza, Racial Justice & Alliance Building Trainer, Basic Rights Oregon**
Date: **August 3, 2017**
Re: **Portland Police Accountability**

Mayor Wheeler and the Portland City Council,

I am A.J. Mendoza, Racial Justice Organizer at Basic Rights Oregon, the state's largest LGBTQ policy and advocacy organization.

The LGBTQ community knows well what it's like to be the target of police raids, violence, abuse and profiling, which is why we continue to stand with this coalition on this issue of policy accountability and transparency.

The mistrust and fear our collective communities have about our criminal justice system is based on real experiences and a long history of misconduct from a system in desperate need of reform.

This mistrust will not disappear until we deliver an open and transparent process around police accountability.

We recognize that this process can be painful and uncomfortable—this is democracy at work. The process of openness, transparency and inclusion will go a long way toward building the trust the community needs in our criminal justice system.

On behalf of Basic Rights Oregon, we join our partners in asking the City Council to:

- Open membership to the Citizen Review Committee to members of the community, in order to increase transparency and community trust. We would also like to see it expanded to a membership of 11-15 to better reflect the diversity of the community.
- We would also like to see the proposed 48-hour rule shortened to 24 hours. It's vital that officer testimony is collected as soon as possible following the use of deadly force by police. It is a national best practice to conduct administrative and criminal investigations at the same time. We would like the Department of Justice to stick by the agreement they made to the community.

We appreciate the work that has been done towards progress. Those who call Portland home deserve better.

Thank you for the opportunity to testify today.

188546

COMMENTS on New 48 Hour Rule, DOJ Amendments/New COAB, and IPR

August 2/3, 2017

Mayor Wheeler and members of Council

Portland Copwatch has numerous concerns about the three items on today's agenda.

We're equally disturbed about the content and the process that was used to propose changes to the Deadly Force policy, the Settlement Agreement, and the Independent Police Review (IPR). The City should not cheat the community out of the time needed for a meaningful dialogue about these crucial policies in order to meet deadlines for training officers and reporting to Judge Simon. If the City would drop its writ to the Ninth Circuit and concede the Judge can call extra conference hearings, he could rule on changes being proposed in early 2018 rather than trying to rush things through for November.

Substantively, regarding item 871, it is good Mayor Wheeler is stepping up to challenge the DA's interpretation of a Supreme Court Case regarding compelling officer testimony after police shootings. However, the politically brave thing to do would be to require compelling officer testimony right away and then let a legal challenge play out, not write a draft policy and ask the court to weigh in. Receiving an opinion could take years or may not happen. Moreover, the draft says compelled interviews have to happen "within 48 hours" and the community's call has been for that to happen within 24 hours. There are numerous other issues with the Force and Deadly Force Directives which suggest Council should not allow these policies to go into place. The Police Association contract needs to be revised to allow IPR to conduct independent investigations of deadly force cases, including the ability to compel officer testimony. This would create a strong "firewall" between the criminal and administrative investigations.

Item 872 covers changes to the Agreement and the replacement for the Community Oversight Advisory Board (COAB). The Portland Commission on Community Engaged Policing (PCCEP) reminds us of a Monty Python sketch where a pet shop owner tries to replace a man's parrot with a slug, and the man is told it doesn't talk so he yells "well, it's hardly a replacement then, is it?" The first order of business for COAB was to "independently assess the implementation of the Agreement." That clause is struck from the new Agreement. Then PCCEP is allowed to host forums by the Compliance Officer to take community input, but the guidelines do not suggest PCCEP can comment on implementation.

Moreover, having PCCEP meet behind closed doors will generate the opposite result of what the City is seeking. Instead of building trust with the Bureau, it will create mistrust and contempt. The Behavioral Health Unit Advisory Committee (BHUAC) already meets behind closed doors, as does the Police Review Board (PRB). If you want to build relationships, stop cutting the community out of important discussions.

It is outrageous that the City put its interpretation of why COAB failed into the cover ordinance. The worst offending part in paragraph 46 says "criminal behavior" became a regular feature of COAB meetings. Seriously? By the City's own admission, one key issue was failure to give adequate training to COAB. But it was poor facilitation by both Justice De Muniz and Kathleen Saadat that helped lead to the devolvement of COAB, which will not be fixed by the new structure. Also, the main focus of PCCEP is on channeling "community engagement" information to and from the Bureau, which sounds like creating a civilian public relations arm of the police.

PCW made dozens of recommendations for amendments before the Agreement was finalized by Council in 2012, at the Fairness Hearing in 2014, and last November at DOJ's request. Very few of our issues is being addressed today. While in the legal sense, this Agreement is between the US DOJ and the City, both entities are created by and responsive to the people. Therefore all the closed-door discussions might be informative, but the discussion we're starting now should lead to a more meaningful and trust-building Agreement than what is on the table.

Regarding item 873, we have some concern that IPR being able to propose findings when they conduct an investigation will create an argument that Citizen Review Committee (CRC) appeals have to be deferential to the Bureau's finding since another set of eyes has been on the case. We counter that IPR already has the right to "controvert" a commander's findings and send a case to the PRB. The focus should be on bringing PRB meetings out from behind closed doors and integrating those hearings with CRC, which would create more transparency in our "byzantine" system. One more point on oversight—if officers elect to skip PRB hearings citing new paragraph 131h, the cases should still be reported in the semi-annual reports for transparency's sake.

(continued)

Portland Copwatch
503-236-3065

DETAILS PART 1— PROCESS CONCERNS

Portland Copwatch is concerned that the City sought to fix COAB a year ago by suspending that Board's activities for two months. Rather than come up with a plan, the City let COAB dwindle from 15 members to 5, finally drowning it in the bathtub in January. The cover ordinance indicates that the City, PPA, DOJ and AMA Coalition were involved in discussions from late 2016 to early 2017 on replacing COAB, but then the City used confidential mediation sessions in the Ninth Circuit to continue those discussions without the Coalition— per paragraph 59. Paragraphs 58 and 62 show the AMAC asked to be included but was denied to do so until July 14, just two weeks before this plan was released. That is not enough time to digest and debate such an important matter, especially when the members of the AMA Coalition allowed into those mediations weren't allowed to share information with the community, and that includes a member of Copwatch who couldn't ask for feedback from the rest of the group.

It is not clear why the City believes using a confidential legal process is a good way to create a community-based panel charged with advising the Bureau on how to effectively engage the community.

It's frustrating that these agenda items were put forward after PCW and our allies asked the Bureau in early July for more time to review the Force and Deadly Force Directives, since 40 substantial pages were released on a holiday weekend with a two week deadline. Chief Marshman told us the Bureau and DOJ had spent nine months working out the details, including their discussion with the District Attorney about compelled testimony. Yet the DA's memo from late March suggesting the City delay compelled interviews, and the IPR Director's June memo telling the City that was poor policy were not released until after we and the Coalition uncovered the "new 48-hour rule" in the Deadly Force policy.

There needs to be more transparency, more open dialogue, and more time given for people who aren't paid to review these documents.

DETAILS PART 2— THE NEW 48 HOUR RULE

The DOJ came to town promising us a better, more accountable Bureau. The City rushed through a revised contract with the Police Association last October, even though the contract did not expire until June. Mayor Wheeler, as incoming Police Commissioner, should have been allowed to negotiate that contract to fit his vision of the Bureau. PCW and others were strongly opposed to the contract because the PPA had insisted the 48 hour rule was crucial for their officers, based on fake science. They tried to block COAB from recommending removal of the rule from the contract. So when they so easily gave it up for a multi-million dollar raise, it was clear they had something up their sleeve. That something is the focus on transactional immunity and delaying the administrative investigation until the end of the Grand Jury process.

This is yet another example of the City and the DOJ not fulfilling their promise to the community.

Let's look at this situation in historical context. Over and over families eagerly anticipate the justice system will hold officers accountable for the deaths of their loved ones, and over and over they are disappointed as the Multnomah DA has not indicted an officer for killing someone for 48 years. The PPA's attorney said to us, during discussions on creating IPR in the year 2000, that if IPR compels officers to testify in deadly force we would have to give up the ability to prosecute, and we don't want that, do we? These promises are like Lucy holding out the football for Charlie Brown over and over and saying she won't pull it out of the way when he goes to kick it. And here we in the community are lying on our backs again as the football has been pulled away once more.

We say, compel officers to testify to Internal Affairs. If they admit to wrongdoing (or refuse to testify), they will be fired. If it turns out somewhere down the line that an officer should have been indicted, we will have a huge outcry from the family and the community and can revisit the policy.

DETAILS PART 3— CHANGES TO THE SETTLEMENT AGREEMENT

The proposed changes to the Settlement Agreement include one good item: the Citizen Review Committee (CRC) will have 90 days to hold appeal hearings, not 21 days, and their time will not be counted against the Bureau's efforts to close cases in 180 days. CRC, the community, and even Council members raised this concern in 2012.

But there are also problems with the proposed changes. New paragraph 69c codifies deferring to the DA under Oregon law about compelling officer testimony. It changes rules for writing reports, including officers' reports and After-Action reports, based on the new Directive. We are concerned that if the City really wants to find an alternative to the DA's plan (cover ordinance paragraphs 75-76), the revised Agreement will make that difficult.

(continued)

The changes also create and limit the PCCEP to replace the Community Oversight Advisory Board, including:

Creating the cumbersome new name about "Community Engaged Policing" and removing the word "Oversight";

Cutting out the existing Agreement's description of a diverse membership (old paragraph 142b);

Assuming the new board will be selected, trained and seated to meaningfully advise a new community survey within four months of the Agreement being amended (paragraph 146); and

Removing the requirement that all meetings be open to the public (see paragraph 151).

Some of the major issues PCW asked the DOJ and City to address, but are not contemplated here are:

Defining de-escalation as calming a situation down using verbal and physical tactics. The Bureau incorporates that definition but also seems to think threatening someone with a Taser is de-escalation, or moving from using a Taser to using pepper spray. The first example is a threat, the second is an abatement of force (paragraph 67);

Explaining what "avoiding a higher level of force" means, since the force continuum has been dropped (paragraphs 68 and 74);

Closing loopholes to use Tasers in situations which do not present an immediate threat, as required by the Ninth Circuit. Loopholes exist for tasing handcuffed subjects (68-g), using multiple Tasers on one person (68-d) or using the stun gun without a warning (68-b). These are all reflected in the new Force Directive, horrifying, and apparently constitutionally unsound.

DETAILS PART 4— THE PCCEP

PCW remains opposed to creating a body to replace COAB which has no ability to review and make recommendations about the implementation of the Agreement. PCCEP is envisioned to exist after the City is in full compliance. But even then, someone will need to examine policies and practices to ensure there is no backsliding, only movement to go beyond the Agreement.

Also, the Mayor is picking all the members, meaning there is no community involvement and the rest of Council will no longer be engaged in police reform.

Furthermore, there will only be 5-9 members who are being asked to tackle big subjects like racial justice and use of force. They will need more volunteer power. Plus, such a small group cannot reflect Portland's diversity.

There are some parameters in the Agreement and PCCEP document that could be beneficial, though each positive step has shortcomings. Agreement paragraph 142 says the AMA Coalition has to be consulted if the structure is to be modified, though the DOJ still has final approval.

Stop data that was previously shared with the (defunct) Community Police Relations Committee (CPRC) will be shared with PCCEP (paragraph 148), but they are not being asked to help develop enhanced data collection as COAB was (paragraph 149).

The COCL will move back from semi-annual compliance reports to quarterly reports, but they do not have to cover all aspects of the Agreement. Even though the revised paragraph 159 doesn't say so, the cover ordinance (paragraph 80) indicates all aspects have to be reviewed over the course of a year. Also the COCL does not have to give its reports to PCCEP as they did with COAB (also Agreement paragraph 159).

The COCL's town halls to present their quarterly reports will be created in consultation with PCCEP, but the Commission is not expected to make comments on the reports (paragraphs 160-161). They are merely being given an option to host the COCL quarterly meetings. Since the COCL has no connection to this community and it should not be incumbent on the AMA Coalition to hold these forums, this should be required.

If PCCEP holds quarterly town halls as one of the two meetings in every third month, this means they will hold 20 private meetings and 4 public meetings per year.

(continued)

DETAILS PART 5— THE OVERSIGHT SYSTEM

PCW does not have strong feelings about IPR being allowed to propose recommended findings when they conduct "independent" misconduct investigations. We repeat that this should not affect CRC's ability to review cases and make proposed findings under the current or a future standard of review. For the Agreement's requirement for "meaningful independent investigations" to take place, IPR has to be given the power to compel officer testimony, rather than having police Internal Affairs order officers to answer IPR's questions.

The new ordinance will allow the officer's supervisor to return cases to IPR or IA for further investigation, which the PRB and CRC can already do. This could cause more delays, even though the goal is to streamline the complaint process.

With all the ideas the Auditor failed to put forward to Council, IPR is sneaking in a new code change to re-brand dismissals as "administrative closures." Perhaps this is to indicate that sometimes IPR conducts preliminary investigations before dismissing cases, but it seems like PR.

Changes to the Agreement could also improve the oversight system, such as:

Taking out paragraph 61, which limits CRC to the deferential "reasonable person" standard. Removal would allow the City to change that standard more easily to "preponderance of the evidence."

Striking the provision in paragraph 43 prohibiting appeals of deadly force cases to CRC;

Requiring Police Review Board civilian members to hold semi-annual meetings to share their thoughts about the process and go over PRB reports (add to paragraph 131); and

Allow the civilian complainant, or a representative for a person killed by police, to attend PRB hearings.

Finally, at the April hearing on IPR, Council promised to hold a work session on further changes. That has not happened yet. As the only group to have members attend every CRC meeting ever, PCW would like to be included in such a session.

CONCLUSION

In conclusion, PCW has only scratched the surface of the issues in today's ordinances. We ask City Council to delay implementation of the Force and Deadly Force Directives— which are not effective until August 19 according to the Bureau— and delay the vote until a full, transparent dialogue has happened. The DOJ and PPA should be at the table at this public hearing so the community can hear their feedback.

PORTLAND COPWATCH
PO Box 42456 Portland, OR 97242 (503) 236-3065
Incident Report Line (503) 321-5120 copwatch@portlandcopwatch.org www.portlandcopwatch.org

188546

ROD UNDERHILL, District Attorney for Multnomah County
1021 SW Fourth Avenue • Room 600 • Portland, OR 97204-1193
Phone: 503 988-3162 • Fax: 503 988-3643 • www.mcda.us

Multnomah County District Attorney Rod Underhill's Statement
To Portland City Council on August 3, 2017

Good afternoon. My name is Rod Underhill and I am the Multnomah County District Attorney. Thank you for inviting me to speak with you today. First, I want to make it very clear, my office has, as a standing practice, taken every case in which an officer's use of physical force results in a death to a Multnomah County Grand Jury to determine whether the officer's actions were criminal or not. My office will continue this practice without interruption after today.

If the grand jury returns an indictment, I believe that, legally and ethically, we can, and we will, make our best efforts to argue the legal viability of that indictment. If a motion to dismiss is filed, we will make every appropriate argument available.

As your District Attorney, a primary goal of mine has been for our citizens to have confidence in their public safety system. Confidence in the public safety system includes, among other things, faith in a fair and thorough criminal investigation while providing individuals with the protections found in the U.S. and Oregon Constitutions.

Confidence in our system is enhanced when we have responsible transparency. This is a significant part of why I refer all officer involved use of force - where a death occurs - to a grand jury of citizens selected by the court.

Further, I have then obtained permission from the court to transcribe and release the testimony of the witnesses that came before the grand jury. This practice is among the most transparent in the country. I believe this has increased the community's confidence in their public safety system. I have a deep concern that if a grand jury does return a "true bill" and an indictment is issued for homicide against an officer, the indictment will be at substantial risk of being challenged and, quite possibly, dismissed.

I assert that if an indictment for homicide were dismissed by the court, public confidence in our criminal justice system will be seriously undermined. In its simplest terms—we need to get this right.

Because one of my primary duties as your District Attorney is to prosecute the perpetrators of criminal acts, I believe that I owe it to our community to let them know when a policy or practice by one of our criminal justice system partners may impact or inhibit my performance of that duty.

I have informed the city, the federal government, and others, of the potential ramifications of some of the proposed changes to the Portland Police Bureau's use of force policy. Notably, the belief of the need for the criminal investigation to precede the compelling of

a statement from an involved officer. That is not to say that the administrative investigation cannot occur concurrently with the criminal investigation. I am telling you that there are substantial legal risks to the investigative action of compelling the statement of an involved officer. This is just one, albeit significant, of the many aspects of a thorough investigation.

This is not a new position of the District Attorney's Office. My office's track record on this is clear, and has been for years. My concern regarding my office's ability to prosecute an indicted individual stems from our reading of a string of Oregon cases, the analysis of which is supported by the Oregon Department of Justice.

The cases include federal (*Garrity v. New Jersey*) and state. Notably, the 1984 Oregon Supreme Court case of *State v. Soriano. Soriano* states that when a person is compelled by external factors to choose between making a statement that may place them in legal jeopardy and some other result – like losing their employment - three things may occur with regard to the statement:

(1) the statement may not be used as evidence in a criminal case (use immunity);

(2) any evidence that was obtained as a result of the receipt of that statement may not be used in a criminal case (derivative use immunity); or

(3) a criminal case may not be brought against the person (transactional immunity).

State v. Soriano, is the leading Oregon case, and the court settles on (3) and says that the state may only legally compel a statement from a person asserting his or her right to remain silent with a promise of transactional immunity. The Court in *Soriano* further commented that it is not possible for the State to erect a wall between the compelled statement and the criminal investigation.

Since the Soriano decision, the Oregon appellate courts have revisited the issue in a handful of cases. My office produced a memorandum explaining our analysis in which we wrote that "[t]he breadth of consequences for not providing full transactional immunity is what remains unclear. Certainly, the consequence is use and derivative use immunity. However, it is also possible transactional immunity may be required in certain circumstances."

I acknowledge today, and we wrote in our memorandum, that the case law since Soriano, is not completely clear on this point. I am here to point out that I believe that the risk that a court may determine that transactional immunity will result from the compulsion of a statement from an involved officer is substantial. In other words, the risk of dismissal of a grand jury's indictment is real. I understand that reasonable legal analysts could reach a different opinion.

It is critical that the legal analysis surrounding the issue of administrative-side, compelled statements of involved officers be accurate. As I said earlier, we need to get this right. This council must possess the best legal analysis possible.

To that end, I continue to completely support the City of Portland's efforts to attempt to seek guidance from Oregon's courts.

Particularly, I support the city's efforts to have our courts review the constitutional implications of the city's administrative practices surrounding the issue of compelling statements from involved officers. Oregon Revised Statutes, Chapter 33, provides for "validation" actions and I support the city continuing to explore that option. Everyone will benefit from the clarity a reviewing court will offer. I encourage you to act with a strong sense of urgency. The sooner the better.

Moore-Love, Karla

From: DJ T <djttttt@gmail.com>
Sent: Thursday, August 03, 2017 8:46 AM
To: Wheeler, Mayor; Commissioner Eudaly; Commissioner Fish; Commissioner Fritz; Commissioner Saltzman
Cc: Moore-Love, Karla
Subject: support Exhibit B for more equitable police oversight

I support Exhibit B as a 'least worst' option for police oversight. Portland communities need more accountability from those sworn to serve and protect, not less.

Thank you,
Derrick Travers
97218

188546

Moore-Love, Karla

From: Alfred Noble <houston@livingprooffarm.com>
Sent: Wednesday, August 02, 2017 11:21 PM
To: Moore-Love, Karla
Subject: Portland Police Oversight

Dear Council Clerk Moore-Love,

I have sent this email to Mayor Wheeler, Commissioner Eudaly, Councilman Fish, and Commissioners Fritz and Saltzman. I am sending it to you as well for reference.

It is imperative to pay close attention to the police force in a large city such as Portland, particularly since Portland has a higher than average population of POC. For years the police of Portland have had little oversight in how they handle important community issues, such as de-escalation tactics and the treatment of protestors of both sides. I need not remind you that the Portland Police Bureau worked together with right-wing militia members to arrest and detain left-wing protestors, which is at best grossly unprofessional and at worse evidence of political bias in a supposedly non-partisan group.

I am writing you this email to ask you not to support recent amendments that eliminate what little power of oversight exists for the PPB and instead install a group that is simply a PR liason between the police and the community, with no power whatsoever to sanction the PPB. Such amendments leave it to the police themselves to monitor their own wrongdoing; if they decided that they needed to cover up wrongdoing from some of their officers, it would be trivial to do so. This is grossly irresponsible.

The lack of transparency alone should set off warning lights. I believe Mitch McConnell's healthcare bills speak for themselves: legislature cooked up behind closed doors is largely done if the contents erode the powers and rights of the governed.

Thank you very much for your time.

Sincerely,
Alfred Houston Noble IV

236 N Killingsworth St, Apt. B304
Portland, OR 97217

188546

Moore-Love, Karla

From: Kristen Chambers <kristen@ktp-law.com>
Sent: Wednesday, August 02, 2017 5:23 PM
To: Wheeler, Ted; Fritz, Amanda; Commissioner Fish; Saltzman, Dan; Eudaly, Chloe; Moore-Love, Karla
Cc: ashlee@albiesstark.com; Hull Caballero, Mary; Severe, Constantin
Subject: AMAC statement on Police Post Deadly Force Procedures Ordinance
Attachments: AMAC position on deadly force directive plan.pdf

Mayor Wheeler and City Commissioners,

On behalf of the AMAC, I am sending you the attached AMAC statement on the proposed ordinance regarding compelling officer testimony in administrative investigations of deadly force.

Kristen Chambers
KIRKLIN THOMPSON & POPE LLP
1000 S.W. Broadway, Suite 1616, Portland, OR 97205
(TEL) 503-222-1640 (FAX) 503-227-5251 kristen@ktp-law.com www.ktp-law.com

Statement of AMA Coalition for Justice and Police Reform
August 2, 2017

The AMA Coalition for Justice and Police Reform (AMAC) calls on the City of Portland to modify its plan regarding compelling testimony in deadly force incidents.

The AMAC commends Mayor Wheeler for his efforts in putting forth a proposal, known as Exhibit B, which requires police officers who use deadly force to be interviewed, and for seeking judicial clarification of the District Attorney's legal opinion. However, the AMAC strongly believes the City should not adopt the proposed ordinance that will go before City Council for a vote tomorrow.

First, AMAC firmly recommends the City change Exhibit B so that officer testimony is compelled within 24 hours. Prompt statements from officers who use deadly force are critical to the integrity of the administrative investigation, which in turn is critical to police accountability. The City has already bargained with the PPA to get rid of the 48 hour waiting period for officers—the same principles require a shortened window here as well.

Second, the proposed ordinance requires the City to implement the deadly force policy, known as Exhibit C, for the foreseeable future. This policy, which delays compelled testimony of officers until after the criminal investigation is complete, is unacceptable, and should not be implemented.

Third, the dangers of implementing Exhibit C while awaiting a court ruling far outweigh the risks in immediately implementing a policy substantially similar to Exhibit B. The District Attorney has confirmed that he will continue to investigate officer deadly force cases and submit them to grand jury. Based on the case analysis put forth in the National Lawyers Guild August 2, 2017 memo to the City on this subject, transactional immunity would not apply to officers compelled to testify. Therefore, so long as the City takes measures to build a strict wall between the administrative and criminal investigations—preferably via IPR or Oregon DOJ or another independent agency administering one of the investigations—there will be no barrier to prosecution.

Fourth, even if the DA's legal analysis is correct, a hypothetical future indictment of an officer during the time period that the City awaits a court ruling is far less likely than an administrative investigation of an officer's use of deadly force.

For the above reasons, the AMAC advocates for the City's immediate implementation of Exhibit B (with the 24 hour modification), prompt pursuit of a court's opinion regarding the District Attorney's legal concerns, and enhanced efforts to have administrative and criminal investigations completely separate.

Moore-Love, Karla

From:	Lindsey Burrows <lindsey@oconnorweber.com>
Sent:	Wednesday, August 02, 2017 5:19 PM
To:	Wheeler, Mayor; Commissioner Fritz; Commissioner Fish; Commissioner Saltzman; Commissioner Eudaly; Moore-Love, Karla
Cc:	City Auditor, Mary Hull Caballero; Severe, Constantin; rod.underhill@mcda.us; Timothy.Sylwester@doj.state.or.us; benjamin.gutman@doj.state.or.us
Subject:	NLG memo on compelled officer testimony
Attachments:	NLG Compelled Officer Testimony Memo 8.2.17.pdf

Dear Mayor Wheeler and Commissioners Fritz, Fish, Saltzman, and Eudaly:

Attached, please find the Portland Chapter of the National Lawyers Guild (NLG)'s memorandum in response to the City's proposal on compelled officer testimony.

Thank you for your attention, and please feel free to contact the NLG at portlandchapter@nlg.org if you have questions about this memo. We will also have a representative at the hearing tomorrow to give testimony and answer any questions.

Respectfully,

Lindsey Burrows

Lindsey Burrows
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(503) 226-0923

NATIONAL LAWYERS GUILD
PORTLAND, OREGON CHAPTER

3519 NE 15TH AVE #155
PORTLAND, OREGON 97212

MEMORANDUM

DATE: AUGUST 2, 2017

TO: PORTLAND CITY COUNCIL

FROM: PORTLAND CHAPTER OF THE NATIONAL LAWYERS GUILD

ENDORSED BY: AMA COALITION FOR JUSTICE AND POLICE REFORM
OREGON JUSTICE RESOURCE CENTER
NAACP PORTLAND BRANCH

CC: PORTLAND CITY AUDITOR
IPR DIRECTOR
MULTNOMAH COUNTY DISTRICT ATTORNEY
OREGON DEPARTMENT OF JUSTICE

RE: RESPONSE TO THE CITY'S COMPELLED OFFICER TESTIMONY PROPOSAL

I. INTRODUCTION

The City of Portland is currently shaping its policy regarding compelled statements from officers involved in deadly force incidents. The public has a strong interest in obtaining prompt interviews of police officers who use deadly force. At the same time, there is a risk that compelling an officer to respond to questions about a deadly force incident in violation of the officer's right against self-incrimination could jeopardize a criminal prosecution of the officer, if adequate safeguards are not in place.

Mayor Wheeler's current proposal for handling this issue, as described below, does not appropriately balance these competing concerns. The proposal is founded on an inaccurate assessment of Oregon law. In addition, the proposal requires an inadequate policy to remain in operation while the City attempts to obtain a court opinion on a policy that does not go far enough to hold officers accountable.[1]

As this memo demonstrates, Oregon law clearly supports immediate implementation of a directive that compels officers who have used deadly force to provide a statement within 24 hours. The National Lawyers Guild (NLG) urges the City to take this course, starting with policies and procedures that ensure separate administrative and criminal investigations, with a plan to transfer the administrative investigation piece to the Independent Police Review (IPR) as soon as possible.

II. BACKGROUND

When an officer is involved in a deadly force incident, two investigations take place. Detectives from the Portland Police Bureau (PPB) homicide division conduct a criminal investigation, while members of the PPB's Professional Standards Division (Internal Affairs/IA) conduct an administrative review to determine if the officer should be subject to workplace discipline. As to the latter investigation, when and how the City may compel an officer to answer questions about the use of deadly force has been a subject of controversy for many years.

In June 2011, the U.S. Department of Justice (DOJ) commenced an investigation into whether the PPB engaged in civil rights violations relating to officers' use of force. At the time of the DOJ investigation, the Portland Police Association's (PPA) collective bargaining agreement with the City provided that, in an employment discipline investigation, an officer must receive 48 hours of advance notice before being required to submit to an interview or write a report, so long as the delay did not jeopardize the investigation.[2] Police practices experts and police accountability advocates roundly criticized this provision, known as the "48-hour rule."[3]

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[1] The arguments in this memo are not intended to apply to procedures for obtaining statements from suspects who are not police officers. Police officers are permitted to do things that members of the public are not. Because officers are authorized to use force on behalf of the government and may therefore violate the constitutional rights of others, they need to be held to standard of accountability that factors in their special responsibilities.

[2] Labor Agreement Between the Portland Police Association and the City of Portland, July 1, 2010 - June 30, 2013, at p. 33.

[3] *See* Constantine Severe, Director of Independent Police Review, Memorandum to Mayor Ted Wheeler and Police Chief Michael Marshmen, June 9, 2017, at p. 2, 4 (noting this opposition).

In 2012, the DOJ issued the findings of its investigation, which concluded that the PPB had engaged in a pattern or practice of using excessive force on individuals with actual or perceived mental illness.[4] The DOJ's findings letter also found that the PPB's supervisory review of officers' use of force was "insufficient to identify and correct patterns of excessive force in a timely fashion."[5] The DOJ noted that "Multnomah County District Attorney previously requested that PPB not conduct IA investigations of officer-involved shootings until after the completion of the DA's investigation and/or criminal prosecution."[6]

The DOJ, however, recommended that "PPB should make clear in its policy that administrative and criminal investigation shall run concurrently."[7] It further stated that "PPB should also clearly set forth in policy that though IA may use criminal investigation material in appropriate circumstances, all administrative interviews compelling statements, if any, of the subject officer and all information flowing from those interviews must be bifurcated from the criminal investigation in order to avoid contamination of the evidentiary record in the criminal case."[8] The DOJ also took issue with the 48-hour rule, because it delayed statements from officers and their completion of use of force reports and thereby defeated "contemporary, accurate data collection" regarding use of force incidents.[9]

Near the end of 2012, the DOJ filed a complaint against the City of Portland, which, consistent with the DOJ's findings, alleged that the PPB had engaged in a pattern or practice of using excessive force on individuals with actual or perceived mental illness, in violation of the Fourth Amendment to the U.S. Constitution. At the same time, the City and the DOJ asked the Court to approve the parties' Proposed Settlement Agreement. The Settlement Agreement requires that the PPB review its policies for compelled statements from officers and submit them to the DOJ for review and approval.[10]

Despite this provision in the Settlement Agreement, the 48-hour rule remained part of the City's collective bargaining agreement with the PPA until 2016. In February 2016, the DOJ publicly opposed the rule and took the position that officers' routine completion of use-of-force reports or discussion of the use of force with department officials did not implicate their rights

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[4] Thomas E. Perez, Assistant Attorney General, Civil Rights Division, Findings Letter to Mayor Sam Adams, Sept. 12, 2012.
[5] *Id.* at 22.
[6] Id. at 30.
[7] *Id.* at 31.
[8] *Id.*
[9] *Id.*
[10] *United States v. City of Portland*, No. 12-cv-2265, Settlement Agreement Pursuant to Federal Rule of Civil Procedure 41(a)(2), at ¶ 124.

against self-incrimination.[11] The Multnomah County District Attorney's Office was involved in the "ongoing conversations on this topic."[12] Finally, in September 2016, the City, under then-Mayor Hales, reached a new collective bargaining agreement with the PPA, agreeing to police pay raises projected to cost $6.8 million a year in exchange, in part, for the elimination of the 48-hour rule.[13]

In March 2017, however, the Multnomah County District Attorney's office authored a memo, in line with its position articulated in 2012, taking the position that if the City compelled an officer who has used deadly force to complete an administrative interview, there is a high risk that it would confer "transactional immunity" to the officer. (hereinafter "DA's memo"). See Exhibit A to the City's proposed ordinance, attached. Transactional immunity means the officer would be completely immunized from criminal prosecution for the incident. This memo recently became public, after the PPB announced its proposed Directive 1010.10, Deadly Force and In-Custody Death Reporting and Investigation Procedures, and the Albina Ministerial Alliance Coalition for Justice and Police Reform issued a press release with concerns about the directive.[14]

The new Directive 1010.10 provides that the PPB shall not compel statements from officers who have used deadly force until **after the DA has concluded the criminal investigation**, except in exceptional circumstances where information is immediately necessary to protect life or otherwise ensure the safety of the public. A homicide detective may ask the officer involved to give a voluntary statement, but the officer has the right to refuse. Additionally, the officer is not required to complete a written report of the incident.

In sum, under the new policy, officers who have used deadly force can choose to remain entirely silent, including by refusing to write a police report, until after they are cleared of all criminal charges, without negative consequence. Thus, instead of the 48-hour rule, officers who use deadly force now have a much longer time--potentially weeks or months[15]--before they are required to answer questions about the incident.

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[11] Maxine Bernstein, "Feds want Portland police who use deadly force to file an account immediately," The Oregonian, Feb. 2, 2016, *available at:* http://www.oregonlive.com/portland/index.ssf/2016/02/federal_justice_officials_pres.html.

[12] *Id.*

[13] Brad Schmidt, "Portland police union reaches tentative deal on pay hikes, end of 48-hour rule," The Oregonian, Sept. 13, 2016, *available at:* http://www.oregonlive.com/portland/index.ssf/2016/09/portland_police_union_reaches.html.

[14] "PPB to Create 'New 48-Hour Rule' for Officer Involved Shootings" *available at* http://media.oregonlive.com/portland_impact/other/AMACoalitionreleaseJuly2017.pdf.

[15] *See* Constantine Severe, Director of Independent Police Review, Memorandum to Mayor Ted Wheeler and Police Chief Michael Marshmen, June 9, 2017, at p. 4 (noting that the DA's proposal creates a "de facto 40-day rule.").

Despite public opposition to the new rule, Mayor Wheeler has not delayed its implementation. Instead, he introduced an ordinance to address the issue, a copy of which is attached to this memo. The proposed ordinance is two-fold. First, it sets forth a proposed alternative Directive 1010.10 (Exhibit B, attached), which requires an administrative interview of officers who use deadly force within 48 hours of the incident and directs the City Attorney to seek a court ruling to clarify whether the City may adopt that policy without immunizing the involved officers from criminal prosecution. Second, the ordinance provides that while the City awaits that ruling—which could take years or not be allowed at all[16]—the original proposed Directive 1010.10 (Exhibit C, attached), which permits officers to wait until the criminal investigation is over before providing a statement or being interviewed by administrative investigators, will remain in place.

III. ANALYSIS OF THE DA'S MEMO: The Oregon Constitution does not grant transactional immunity to police officers who are the subject of parallel internal and criminal investigations.

Contrary to the DA's memo, Oregon law is clear on the issue of officer immunity--it is derivative use immunity, not transactional immunity that applies when an officer is compelled to speak.

Article I, section 12,[17] of the Oregon Constitution, like the Fifth Amendment[18] to the United States Constitution, protects Oregonians from self-incrimination. The DA's memo asks the City to make a troubling choice in the name of the Oregon Constitution: either forfeit immediate and complete investigations into a police officer's use of deadly force *or* forfeit a subsequent prosecution of any police officer who complies with that investigation.

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[16] It is questionable whether a court will have jurisdiction to hear the City's case in the first place. Oregon has "a strong precedent against advisory opinions. Mere difference of opinion as to the constitutionality of an act does not afford ground for invoking a judicial declaration having the effect of adjudication." *Gortmaker v. Seaton*, 252 Or 440, 444, 450 P2d 547, 549 (1969) (citation omitted0. *See also TVKO v. Howland*, 335 Or 527, 534, 73 P3d 905, 908 (2003) ("[C]ourts cannot issue declaratory judgments in a vacuum; they must resolve an actual or justiciable controversy."); *Eacret v. Holmes*, 215 Or 121, 125, 333 P2d 741 (1958) ("There is no case for declaratory relief where the plaintiff seeks merely to vindicate a public right to have the laws of the state properly enforced and administered.") (citations and quotations omitted); *Morgan v. Sisters Sch. Dist. No. 6*, 353 Or 189, 195, 301 P3d 419, 423 (2013) (for a declaratory judgment, "there must be some injury or other impact upon a legally recognized interest beyond an abstract interest in the correct application or the validity of a law") (citation and quotations omitted); ORS 33.710(4) requires a justiciable controversy.

[17] Article I, section 12, provides that "No person shall * * * be compelled in any criminal prosecution to testify against himself."

[18] The Fifth Amendment provides that "No person * * * shall be compelled in any criminal case to be a witness against himself."

That ultimatum is unnecessary. Rather, an internal investigation that compels testimony may proceed contemporaneously with a criminal investigation. The only limitation on the criminal investigation is that, if the internal investigation compels the officer to speak, the compelled testimony and the evidence derived from it must be excluded from the criminal trial. The Oregon Constitution does provide *some* limits on the criminal prosecution but it does not, as the DA's memo threatens, forestall it.

A. The District Attorney's interpretation of Article I, section 12, conflicts with binding case law from the Court of Appeals and the Oregon Department of Justice's previous position on the issue in the Court of Appeals.

The Oregon Court of Appeals has squarely rejected the idea that Article I, section 12, of the Oregon Constitution grants a police officer transactional immunity when he is compelled to testify as part of an internal investigation.[19] In *State v. Beugli*, the criminal defendant was an Oregon State Police Trooper accused of a series of crimes, including sexual abuse in the second degree, official misconduct, and harassment. The charges arose out of complaints that the Trooper had inappropriately touched multiple women. The Oregon State Police initiated an internal investigation into the complaints. Internal investigators interviewed the Trooper multiple times pursuant to the internal investigation. During each interview, the investigators advised the Trooper that he was required to answer questions and submit a report about the alleged sexual contact. The Trooper complied.

While the internal investigation was underway, the Oregon State Police initiated a parallel criminal investigation. The criminal investigatory team was given the names of the women who had reported that the Trooper assaulted them, but it was not provided the statements or reports that the Trooper created during the internal investigation.

Four months after the criminal investigation began, the Marion County District Attorney filed an information charging the Trooper with multiple crimes. The Trooper moved to dismiss the information, arguing that he was entitled to full transactional immunity because he was compelled to make statements during the internal investigation. The trial court agreed with the Trooper and dismissed the indictment, concluding that transactional immunity was required.

The Oregon Department of Justice (ODOJ), represented by a now-Supreme Court Justice, appealed. The ODOJ acknowledged that the Trooper was compelled to testify during the internal investigation. But, the ODOJ argued, the remedy for that violation was simply the

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[19] *State v. Beugli*, 126 Or App 290, 868 P2d 766, *rev den*, 320 Or 131 (1994). Former Oregon Supreme Court Chief Justice Paul De Muniz authored *Beugli* when he was on the Oregon Court of Appeals.

exclusion of the compelled statements and any evidence derived from it in the criminal case; transactional immunity was not required.

The Court of Appeals agreed with the ODOJ. Specifically, the court held that Article I, section 12, does not and cannot affirmatively grant transactional immunity. Transactional immunity could be guaranteed by statute or contract (say, during plea negotiations with the DA's office), but never by Article I, section 12. The court wrote:[20]

> The right to transactional immunity arises only when the legislature has granted it as a substitute for the right against self-incrimination guaranteed by Article I, section 12, of the Oregon Constitution. In the absence of a legislative decision to grant immunity, the remedy for unconstitutionally compelled testimony is suppression of that testimony and any evidence derived from it.

Because the Trooper was not promised or contractually guaranteed transactional immunity in exchange for his testimony, transactional immunity was not available. Instead, the presumptive Article I, section 12, remedy applied—the compelled statements and the evidence derived from them were excluded from the criminal prosecution.

Other cases from the Oregon Court of Appeals interpreting *State v. Soriano* are consistent with *Beugli*. For example, in *Graf*, the Court of Appeals explained that, under Article I, section 12, a "[d]efendant's constitutional right is the right not to be compelled to testify against himself, not a right to immunity."[21] Similarly, in *State v. White*,[22] the Court of Appeals concluded that, under *Soriano*, "The authority to immunize a witness derives solely from statute[,]" not from Article I, section 12. And, in 2015, the court reaffirmed that "Article I, section 12, protects only the right to not to be compelled to testify against oneself; it does not, in itself, confer transactional immunity whenever that testimony is given."[23]

The Oregon Court of Appeals has clearly stated that derivative use immunity, not transactional immunity, is required when an internal investigation compels officer testimony. The City should not, in the name of the Oregon Constitution, sacrifice the public's need for a timely and independent investigation into police use of deadly force.

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[20] *Beugli*, 126 Or App at 294 (citations omitted).
[21] 114 Or App at 282.
[22] 96 Or App 713, 773 P2d 824, *rev den*, 308 Or 382 (1989).
[23] *Oatney v. Premo*, 275 Or App 185, 369 P3d 387 (2015), *rev den*, 359 Or 847 (2016).

B. The District Attorney's interpretation of *Soriano* is incorrect.

The DA's argument that Article I, section 12, conveys transactional immunity to a police officer when an internal investigation compels his testimony relies on the Supreme Court's 1984 decision in *Soriano*. As a preliminary matter, it is worth noting that the position in the DA's memo is solely based on that 1984 case; there are no more-recent cases supporting such a position, and, in fact, all of the Oregon appellate cases interpreting *Soriano* have rejected the DA's position.

The underlying case in *Soriano* was a contempt case. The defendants were subpoenaed to testify at a Klamath County Grand Jury hearing. They invoked their rights under the 5th Amendment and Article I, section 12, not to testify. The trial court nevertheless ordered them to testify, and granted them derivative use immunity under two, now amended, Oregon statutes.[24] The defendants still refused to testify, and the trial court held them in contempt.

The defendants appealed, arguing that the Oregon statutes limiting the available immunity to derivative use immunity, rather than transactional immunity, violated Article I, section 12. The Oregon Court of Appeals agreed, and the Oregon Supreme Court adopted the decision of the Court of Appeals as its own.

In so concluding, the court relied on the United States Supreme Court's admonition that "It is quite clear that *legislation* cannot abridge a constitutional privilege, and that it cannot replace or supply one[.]"[25] That reliance was appropriate, since the question in *Soriano* was whether an immunity *statute* must grant transactional immunity in order to support a contempt conviction. That is, the question in *Soriano* was *not* whether Article I, section 12, of the Oregon Constitution requires transactional immunity whenever a person's right against self-incrimination is violated.

The answer to the latter question—the proper remedy for an Article I, section 12, violation—has been resolved and reaffirmed in numerous cases in the Oregon appellate courts. In *State v. Vondehn*,[26] the Oregon Supreme Court rejected the state's argument that something *less* than derivative use is required to remedy an Article I, section 12, violation. Rather, there, the Supreme Court definitely stated that, when the state violates a person's rights under Article I, section 12, "[t]hat constitutional violation requires suppression of both the answers that [the] defendant gave in response to, and the [physical evidence] that the police identified and seized as

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[24] *Former* ORS 136.617 (1984) and *former* ORS 136.619 (1984).

[25] *Soriano*, 68 Or App at 662 (quoting *Counselman v. Hitchcock*, 142 US 547, 585, 12 S Ct 195, 35 L Ed 1110 (1892) (emphasis added)).

[26] 348 Or 462, 476, 236 P3d 691 (2010).

a result of, that interrogation."[27] The remedy for an Article I, section 12, violation is the exclusion of the compelled statements and any evidence derived from those statements from the defendant's criminal trial.

Finally, the DA's memo makes much of the court's statement in *Soriano* that it is "unrealistic to give a dog a bone and to expect him not to chew on it."[28] That statement in *Soriano* was actually a quotation from an earlier Oregon case, *State ex rel Johnson v. Woodrich.* [29]In *Woodrich*, the prosecutor in a criminal case compelled testimony via a psychiatrist that the prosecutor hired. And in *Soriano*, the prosecutor attempted to compel testimony during a Grand Jury. Thus, the court used the analogy to explain that the prosecutor could not fairly "unsee" evidence that its own team compelled.

But in the scenario at issue here, the prosecutor is not the same entity compelling the testimony; the internal investigator, not the prosecutor, has the "bone." Correctly structured, there would be no evidence for the prosecutor to "unsee." That is, if the dog does not have a bone, there is no risk that he will chew on it. To the extent that the DA's memo offers the metaphor to persuade the City, its reliance on it is—at best—unavailing.

This analysis reveals that the Mayor's proposal to seek permission from a court before implementing its proposed Directive 1010.10 (Exhibit B, attached, which requires officers to submit to administrative interviews before any criminal investigation is over) is unnecessary and will unreasonably delay implementation of a critical police accountability policy. The City has a choice of routes it can legally pursue to maintain the integrity of the administrative and criminal investigations, which are explored in the next section.

IV. PROPOSED SOLUTIONS: Separate investigations are the standard and should be implemented.

The City has options in structuring a policy that maintains the integrity of both the administrative and the criminal investigations. The City could 1) grant IPR the authority to conduct independent investigations of deadly force incidents; or 2) wall-off IA investigations from the PPB criminal investigation or use an outside agency to conduct the criminal investigation.

Both of these options are intended to create a barrier between the administrative and criminal investigations so they run concurrently and do not contaminate the other. As explained

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[27] *See also State v. Delong*, 357 Or 365, 371-72, 350 P3d 433 (2015) (explaining *Vondehn*).
[28] 68 Or App at 665.
[29] 279 Or 31, 566 P2d 859 (1977).

above, the rule in Oregon is derivative use immunity; when an officer is compelled to testify in an administrative proceeding, the prosecutor cannot use the compelled statements or any evidence obtained as result of the compelled statements in the criminal prosecution. In other words, the criminal investigation must be entirely independent from the administrative investigation. This is not an uncommon arrangement—federal law provides derivative use immunity for officers who give compelled statements upon threat of termination.[30]

The seminal case establishing the rule of immunity for compelled testimony was *Garrity v. New Jersey*.[31] That case held that "protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of [termination]."[32] Later cases clarified the rule.[33] From these cases evolved what is now known as a "*Garrity* Warning." A *Garrity* Warning advises officers of their rights when they are compelled to speak and the consequences of any voluntary statement. Based on this long-standing legal standard, many law enforcement agencies have developed practical ways to facilitate successful parallel investigations, as explained below.

A. Have IPR conduct the parallel administrative investigation.

It is the NLG's position that investigations of PPB deadly force incidents should be conducted by IPR. This would serve the dual purposes of walling off the administrative investigation from the criminal investigation and increasing public trust in police accountability. The perceived barriers to giving IPR this authority that have been raised in the past are surmountable and do not outweigh its value and benefits.

One such perceived barrier is that IPR does not have authority to compel officer testimony. This is not true. The City can require the Police Commissioner or Chief to administer the *Garrity* warning and instruct the officer to answer all IPR's questions under threat of

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[30] *Garrity v. New Jersey*, 385 US 493, 87 S Ct 616, 17 L Ed 2d 562 (1967); *Kastigar v. United States*, 406 US 441, 92 S Ct 1653, 32 L Ed 2d 212 (1972).

[31] 385 US 493, 87 S Ct 616, 17 L Ed 2d 562 (1967).

[32] *Id.* at 500.

[33] *See, e.g., Gardner v. Broderick,* 392 US 273, 278, 88 S Ct 1913, 20 L Ed 2d 1082 (1968) (holding that public employees may be compelled to answer questions directly related to the performance of their official duties, but they cannot be terminated for refusing to waive their right to immunity); *Uniformed Sanitation Men Ass'n, Inc. v. Comm'r of Sanitation,* 392 US 280, 283, 88 S Ct 1917, 20 L Ed 2d 1089 (1968) (holding that public employees cannot be terminated from their employment for refusing to voluntarily answer questions after being told that their responses could be used against them in subsequent proceedings); *Kastigar*, 406 US at 461 (holding that use and derivative use immunity, not transactional immunity, applies when testimony is compelled).

termination.[34] This is precisely how the City of Minneapolis handles this situation.[35] Moreover, Portland's City Code already provides:[36]

> A Bureau employee shall attend investigative interviews conducted by IPR, cooperate with and answer questions asked by IPR during an administrative investigation of a member conducted by IPR. If an employee refuses to attend an investigative interview after being notified to do so by IPR or refuses to answer a question or questions asked by IPR during an investigative interview, the Police Chief or Police Commissioner shall direct the employee to attend the interview and answer the question or questions asked.

Another perceived barrier is the fact that IA has more resources, expertise, and investigators than IPR. This barrier can be overcome by diverting funds from (and sharing certain resources, like training from experienced investigators, between) Internal Affairs to IPR.

The NLG recognizes that this course of action will require changes to City Code, a potential minor change to the PPA collective bargaining agreement, and a restructuring of the City's funding and resources for investigations of police misconduct. Considering the reality that some of these changes will take time, the NLG proposes the City implement the protocol in the next section until these changes can be made.

B. Have the Portland Police Bureau or an outside agency continue to conduct the parallel administrative investigation independently of the criminal investigation.

As the DOJ recommended five years ago in its Findings Letter,[37] a criminal prosecution of an officer can be successful where an administrative investigation is already underway, so long as the criminal investigation is not contaminated by compelled statements obtained during the administrative investigation. To accomplish this, the IA administrative interviews

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[34]The NLG has argued that IPR can administer *Garrity* warnings, since IPR is involved in officer discipline. IPR is a voting member of the Police Review board, and the Auditor recommends the Board's citizen member. Portland City Code 3.20.140. IPR also has authority to controvert findings or proposed discipline and compel review by the Police Review Board. Portland City Code 3.20.140; 3.21.070. The NLG maintains this argument, but recommends here that the the Chief/Commissioner administer the warning because it is a more likely approach for the City to presently adopt.

[35] *See* Minneapolis Civilian Police Review Authority Administrative Rule 7(D), *available at* http://www.ci.minneapolis.mn.us/news/news_20030924crarules ("A 'Notice to Give Garrity Warning' shall be sent by the Manager to the chief requesting him/her to order the Officer(s) to cooperate with the investigation. With this order to cooperate, the chief shall give a *Garrity* Warning.)

[36] Portland City Code 3.21.220.

[37] DOJ Findings Letter at 31.

compelling statements of an officer and all information flowing from those interviews should be bifurcated from the criminal investigation.

Adequate protections are already in place, since parallel criminal and administrative investigations are standard practice for local, state, and federal governments. For example, as the DA's memo notes,

> the criminal investigative team must now be segregated from the internal administrative investigation team and no information that the internal administrative investigation team collects much reach any personnel that will have contact with the criminal investigation team. For example, the involved agency's Police Chief should not know the nature or content of the compelled statements since the Police Chief would have contact with the criminal investigation team. It is important to note that this is already the current practice of police shooting investigations in Multnomah County.[38]

And the Use of Force Directive currently provides that, "all personnel involved in the administrative review shall keep information garnered from the Professional Standards Division interview strictly confidential, nor permitting disclosure of any such information or its fruits to the criminal investigation."[39] Further, a current directive also requires "involved and witness members not to discuss the incident,"[40] which reduces the risk that compelled statements will contaminate the concurrent criminal investigation.

Other municipalities have pursued two general models of bifurcated investigations. In some cities, bifurcated investigations are successfully accomplished within the police agency, and, in others, the city utilizes an outside agency.

One example of the former is Eugene, Oregon's system. While the investigators for the criminal investigation are employed by the bureau, Eugene's policy provides that no administratively coerced statements will be provided to the criminal investigators.[41] It appears that the City of Portland's current policies are consistent with this model.

One example of the latter is the protocol in Wisconsin. The Wisconsin DOJ leads criminal investigations of officer-involved deaths and then presents findings to the DA.[42] Thus,

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[38] DA's memo at 4.
[39] PPB Directive 1010.10, Policy Para. 3.
[40] PPB Directive 1010.10.2.3.1.2.
[41] Eugene, Oregon Police Department, Policy No. 810.4.2(d), Use of Deadly Force Incident Criminal Investigation, Criminal Investigation Procedure (2014).
[42] Amari L. Hammonds, Katherine Kaiser Moy, Rachel R. Suhr & Cameron Vanderwall, Stanford Criminal Justice Ctr., At Arm's Length: Improving Criminal Investigations of Police Shootings 19 (2016).

no investigators employed by the same agency as the involved officer are part of the criminal investigation. This allows the criminal investigation to proceed without any concern that it will be contaminated by compelled statements or evidence obtained through them.

Ultimately, it is important to recognize that parallel criminal and administrative investigations occur regularly at all levels of government. While an outside agency creates a clearer and stronger barrier between the two investigations, properly separated internal investigations can maintain the integrity of the criminal investigation.

V. CONCLUSION

As explained above, transactional immunity is *not* required by Oregon law. It would be a disservice to the public and a threat to justice if the City waits for a court opinion on this issue before implementing a policy to hold officers administratively accountable. While the NLG does not believe that a court ruling on transactional immunity is necessary, it understands the City's desire to feel confident in its approach.

Therefore, while the City is awaiting a ruling from the court, it should immediately implement a directive similar to proposed 1010.10 (Exhibit B) but with the requirement that officers give a statement or undergo an administrative interview within 24 hours, which is more time than it already requires of witness officers.[43] As the DOJ pointed out in 2012, delaying officer statements defeats "contemporary, accurate data collection." It also provides the opportunity for officers to prepare coached statements after consulting with their attorney and union representative. Neither of these serve the interests of accountability and justice. We urge the City to be rid of the 48-hour rule for good!

Compelling the officer's statement in the context of a bifurcated, parallel investigation is clearly permissible under Oregon law, and outweighs the risks (and potential benefits) of approaches that attempt not to do so. The NLG recommends the City take this course, starting with policies and procedures that ensure separate administrative and criminal investigations, with a plan to transfer the administrative investigation piece to IPR as soon as possible.

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[43] *See* PPB Directive 1010.10.1.2.5.

Moore-Love, Karla

From: Kirsten Adkerson <kirstenadkerson@gmail.com>
Sent: Wednesday, August 02, 2017 4:58 PM
To: Wheeler, Mayor
Cc: Moore-Love, Karla
Subject: Transparency and Justice

Hello,
I am writing you today demanding that you put a stop to removing the public's voice from the systems that are supposed to serve and protect. **I object to any amendments that remove the public from Portland Police's oversight.**
I for years have worked with victims of crime, and in no way does this support them in being safe and having access to justice. Victims of domestic violence will not call the police if they think it is a literal death sentence to the one hurting them. They will not call the police if they think that they may end up being the ones shot or arrested. People will not call the police if they need help with a family member having a mental health crisis if they think that that family member will be tortured or killed because they did not follow police directions. Neighbors will not call the police if they suspect a burglary if they think that their neighbor will be shot by accident.
Portland Police must be safe and serve all communities, not just white rich communities who want safe spaces from homeless people. Portland Police must serve the homeless, poor folks, trans folks, black and latin@ folks, immigrant folks, undocumented folks. By serving everyone with respect and safety everyone is safer.
If you have a true commitment to earning the public's trust and respect you must listen to their voices and act upon them rather than silencing them. The community is giving you the tools to become what is needed, take heed.

Thank you for your time,
Kirsten Adkerson

188546

Moore-Love, Karla

From: Benjamin Kerensa <bkerensa@gmail.com>
Sent: Tuesday, August 01, 2017 1:00 PM
To: Moore-Love, Karla
Cc: Council Clerk – Testimony
Subject: Written Testimony for Aug 2 and Aug 3 City Council Meeting Agendas
Attachments: Letter for Aug 2 Agenda Items.pdf; Letter Aug 3 Agenda Items.pdf

Hello Karla,

Please find attached written testimony for Aug 2 and Aug 3 City Council Meeting Agendas.

--
Benjamin Kerensa

188546

BENJAMIN KERENSA

August 1st, 2017

RE: Agenda Items 871, 872, 873 for August 3, 2017

Dear Portland City Council,

Agenda Item 871

I am disappointed that Mayor Ted Wheeler has not been transparent and forthcoming with the community surrounding the 48-hour notice, which he received notice on earlier this year, but was not disclosed until just recently. While Mayor Wheeler is now trying to push back, the reality is he let the public down by not letting the public know about this issue sooner. I definitely support reform on interviewing offers after use of force and think the delays the District Attorney Office are advising are not in the public's best interest.

Agenda Item 872

I strongly oppose this proposed amendment to the settlement with the DOJ and I share the concerns of the NAACP that this proposal coming from the Mayor would replace the COAB with an essentially pretend oversight body, that the City Council would be removed from the picture, and the Mayor would hand select members of the new body and reports would go to him alone. As we have seen with the Mayor's pretend public process for selecting a new Chief, he cannot be trusted alone to serve the public's interest around police reform. In that process, he put only one community member on the committee to select the next chief and put multiple business lobbyists and multiple police officers putting businesses and policies interests before the general public. We must start getting police reform right and I would implore City Council to reject this proposal from the Mayor and open up some City Council work sessions to come up with a better proposal or fix some of the issues with COAB and go back to that model.

Agenda Item 873

I support this change. It is a good first step but this also calls into question how fair the findings are for investigations currently complete or that will soon be completed. As an example, the October 12th, 2016 protest, January 20th, 2017 protest and June 4th, 2017 protest will likely all only have findings from a police commander, which is not a very independent police investigation at all.

In reality, police commanders and the police chief should never be the ultimate decider on investigations. We should rely on neutral third party IPR staff or other members of the public to make findings. The fact that our police force basically gets to decide when misconduct occurs and doesn't, really means we do not have independent investigations at all.

We have police giving fellow officers passes most of the time and when those findings are appealed, often the CRC overturns those findings which shows police supervisors are giving a lot of passes in their findings.

Again, this is a first step but I would implore a lot more changes at IPR before the end of the year to make investigations more thorough and fair. I would also repeat my call for modification of the City Code to allow appeal of Director Dismissals as I believe that process is entirely unfair and allows one person, the Director, to make mistakes and offers complainants no remedy to an erroneous dismissal.

Sincerely,

Benjamin Kerensa

188546

Moore-Love, Karla

From: Hull Caballero, Mary
Sent: Monday, July 31, 2017 10:01 AM
To: Council Clerk – Testimony
Subject: FW: NEWS: AMA Coalition Calls for City to Slow Down, Involve Community and Preserve Accountability

FYI

-----Original Message-----
From: AMA Coalition c/o Portland Copwatch [mailto:justice@portlandcopwatch.org]
Sent: Saturday, July 29, 2017 3:41 PM
To: News Media <newsmedia@portlandcopwatch.org>
Cc: Commissioner Fritz <amanda@portlandoregon.gov>; Commissioner Eudaly <chloe@portlandoregon.gov>; Commissioner Saltzman <dan@portlandoregon.gov>; Commissioner Fish <nick@portlandoregon.gov>; Wheeler, Mayor <MayorWheeler@portlandoregon.gov>; Hull Caballero, Mary <Mary.HullCaballero@portlandoregon.gov>
Subject: NEWS: AMA Coalition Calls for City to Slow Down, Involve Community and Preserve Accountability

Albina Ministerial Alliance Coalition for Justice and Police Reform
c/o Maranatha Church
503-288-7242

Media contact: Dr. T. Allen Bethel, AMA Coalition 503-288-7242
Dr. LeRoy Haynes, Jr, AMA Coalition 503-288-7242

NEWS ITEM For Immediate Release

July 29, 2017

AMA Coalition Calls for City to Slow Down, Involve Community and Preserve Accountability

The Albina Ministerial Alliance (AMA) Coalition for Justice and Police Reform is calling for its affiliated groups, members, and the broader community to come to the City Council hearing scheduled for Thursday, August 3 at 3 PM regarding the US Department of Justice (DOJ) Settlement Agreement. The Coalition calls upon the City to slow down the process to ensure the community is involved both in the changes being proposed to the Agreement and in the formation of a replacement for the Community Oversight Advisory Board (COAB).

As noted in documents posted by the City for hearing, the AMAC asked to participate in the mediation sessions during which the City and the DOJ hammered out most of the details in the proposed changes to the Agreement, and the creation of the new "Portland Commission on Community Engaged Policing (PCCEP)." However, the other parties only invited the AMAC in on July 14 for one round of talks. And while some of the Coalition's concerns were incorporated into the new documents, they do not go far enough.

In addition to not having provided the materials to the community with enough lead time, the Council has only set aside 90 minutes to discuss four complex and important issues. The AMAC hopes the City will allow for a lengthier, more meaningful discussion.

SETTLEMENT AGREEMENT AND NEW COMMUNITY BOARD (item 872)

AMAC supports one important change, which allows the Citizen Review Committee, an all-volunteer body, a full 90 days to hold appeal hearings on misconduct cases instead of the 21 originally outlined in the Agreement (Paragraph 121).

But AMAC cannot support the PCCEP Plan the City currently proposes. Even though COAB was not as effective as it could be, it played a pivotal role in helping bring about transparency and reform. It is of great concern to AMAC that a small, non-public, Mayor-appointed, and Mayor-controlled membership will not effectively reach the community for input, recommendations, or advice. The AMAC strongly opposes the proposed changes to the Settlement Agreement (Paragraphs 141 and 142) and PCCEP outline which remove the community's independent oversight of the agreement.

AMAC is deeply concerned that the City's proposal will keep the PCCEP mostly behind closed doors (Paragraph 151). This will reduce transparency and increase community distrust.

Also, a board of only 5-9 members cannot adequately reflect the diversity of the city-- or take on the tasks assigned to the PCCEP. AMAC suggests a membership of 11-15.

AMAC is alarmed by the addition of proposed Paragraph 69(c) to the Settlement Agreement, allowing police officers to delay writing their reports after deadly force incidents. This weakens the Settlement Agreement's requirement to simultaneously investigate shootings criminally and administratively (Paragraph 122), and threatens accountability.

NEW FORTY-EIGHT HOUR RULE (item 871)

Regarding the Mayor's proposal to request court review of the Deadly Force Directive guiding investigations into police shootings, the AMAC believes the City should move forward with the alternative Directive which allows compelled officer testimony shortly after the incidents, but to shorten the timeline from "within 48 hours" to "within 24 hours." It is a national best practice to conduct administrative and criminal investigations at the same time, and that is what the DOJ Agreement promised the community.

CHANGES TO IPR (item 872)

The AMAC is seeing the proposal from the Independent Police Review (IPR) regarding making proposed findings to its investigations for the first time and needs more time to consider the implications. The first concern that comes to mind is that having IPR propose findings might negatively affect the community's ongoing call to change the CRC's standard of review to something less deferential than the current "reasonable person"
standard.

The City's current proposal imagines gaining community trust and engagement in a vacuum, as if it were possible to accomplish this without transparency and accountability. The City of Portland will only see an increase in community engagement and trust when it truly starts wanting to include the community and be responsive to the community's concerns.

For information contact Dr. T. Allen Bethel or Dr. LeRoy Hayes, Jr., co-chairs of the Albina Ministerial Alliance Coalition for Justice and Police Reform, at 503-288-7242.