

IMPACT STATEMENT

Legislation title: *Adopt Revised Post Deadly Force Procedures for Police Bureau Including Requirement for Prompt Compelled Statements By Involved Officers; Authorize and Direct City Attorney to Pursue Legal Proceedings to Validate that Requiring Compelled Statements Will Not Preclude Ability to Criminally Prosecute. (Ordinance)

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Presenter name: Tracy Reeve, City Attorney's Office

Purpose of proposed legislation and background information:

The City of Portland's Settlement Agreement with the United States Department of Justice required the City to review and revise the Portland Police Bureau's (PPB) policies concerning use of force. This ordinance is being considered concurrently with another ordinance to approve related amendments to the Settlement Agreement, which address among other things the investigative procedures following an officer's deadly use of force (PPB Directive 1010.10). With the Mayor as Police Commissioner, City Council is ultimately responsible for ensuring that PPB adopts and adheres to policies that meet constitutional requirements and respond to community values.

In November 2016, City Council ratified the renegotiated Portland Police Association labor agreement. This eliminated the long-contested "48-hour rule," which provided for a 48-hour notice requirement in most circumstances before PPB could compel the interview of an officer involved in a deadly use of force incident. Council determined that this policy ran contrary to national best practices. It was City Council's intent to secure prompt and timely administrative investigations to determine whether officers' use of deadly force complied with policy and training. The Multnomah County District Attorney subsequently interpreted the law to be that compelling an officer's statement in an administrative investigation ran a high risk of affording the officer transactional immunity from criminal prosecution. Recognizing that this is an unsettled area of case law, the City has closely examined the DA's position and the applicable case law, and has concluded that it can protect both the City's compelling interests in a prompt administrative investigation (including a prompt compelled statement from the involved officer) and an officer's constitutional right against self-incrimination. This Ordinance directs the Portland Police Bureau to implement a new Directive 1010.10 (attached to the Ordinance as Exhibit B) that serves both of these interests.

Financial and budgetary impacts:

The policy change is not expected to have a financial or budgetary impact.

Community impacts and community involvement:

This legislation directly touches upon issues of police accountability within the Portland community. The procedures surrounding administrative investigations are inherently matters of public interest. Historically, on both national and local levels, the prosecution of officer involved in deadly use of force incidents is rare (and convictions even rarer). Thus, while the importance of criminal investigations cannot be understated or overlooked, the importance of administrative investigations is that much more pronounced as the public has found that administrative investigations are often the only meaningful opportunity to hold officers accountable for wrongful uses of deadly force.

While many segments of the Portland community support the constitutional rights of officers, there has been much consternation about the effects of implementing a policy that adheres to the District Attorney's interpretation of the law by precluding prompt compelled interviews. Implementing a new Directive 1010.10 that allows for concurrent administrative and criminal investigations serves the community's interests in prompt administrative investigations, including compelled officer statements, and the safeguards to be afforded to officers protects their rights against self-incrimination in the criminal proceeding.

Budgetary Impact Worksheet**Does this action change appropriations?**

- ☐ YES: Please complete the information below.
☒ NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

8/24/2017
945 Motions.

Item 945

Saltzman #1:

Motion to remove the word compelled from the definition of Public Safety

Statement in Exhibit B, Policy 1010.10: Moved by Saltzman and seconded by Fish.
(Y-5)

Saltzman #2:

**Motion to insert the word “physically” before “incapacitated” in Procedure
Section 2.2.5.1:** Moved by Saltzman and seconded by Fish. (Y-5)

Council voted on
945 as amended. Y-5