

POLICE REVIEW BOARD COMPOSITION & EFFECTIVE DATE

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ Don Handelman	Portland Copwatch	
✓ Cmdr. Dave Benson		



The League of Women Voters of Portland

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City Council Testimony

June 23, 2010

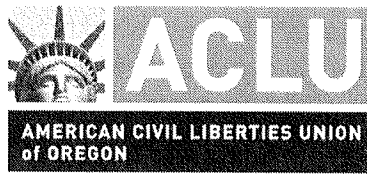
Clarify composition of Police Review Board and applicability of code provisions (Previous Agenda 908; amend Code Section 3.20.140 and amend Ordinance No. 183657)

The League of Women Voters of Portland urges council to consult with the Citizen Review Committee (CRC) and the Police Oversight Stakeholder Committee before making any substantive changes to the make up of the new Police Review Board. We do not have any objection to the housekeeping portion of the ordinance that sunsets the existing review boards on September 1st. Altering the make up of the new Police Review Board in use of force cases, however, should not be done without soliciting the opinions of the CRC and Stakeholder Committee.

The Independent Police Review Division (IPR) is proposing that the involved officer's supervising commander be a voting member of the review board in use of force cases. The Police Assessment Resource Center (PARC), the agency contracted by the city to evaluate closed cases of shootings and deaths in custody, in its 2003 and 2006 reports specifically recommended that the supervising commander serve as a non-voting member of the board reviewing use of force cases. They point out that since that commander is the individual responsible for formulating the findings in the case, there is an inherent conflict of interest when the commanding supervisor is a voting member of the board.

In light of the conflict between the outside expert's recommendations and the IPR proposal, this issue deserves careful consideration by the CRC and the Stakeholder Committee. The CRC's PARC work group reviewed in detail many of the consultant's recommendations, but did not devote any attention to this one. In other words, it has not had the full public airing it deserves.

CRC members have extensive experience reviewing misconduct cases and three of them serve or have served on the existing review boards. Before making a decision on this proposal, IPR and City Council should seek their advice knowing it is based on firsthand experience. Further, council charged the Stakeholder Committee with reviewing the IPR ordinance and recommending additional changes. We urge you to respect the role of that committee and direct IPR to discuss the proposed changes with the committee before bringing them to City Council.



June 18, 2010

Mayor Sam Adams
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman

Re. Portland City Council Agenda Item 908: Police Review Board

Dear Mayor Adams and Commissioners:

The ACLU of Oregon joins the concerns expressed by Police Oversight Stakeholder Committee members Portland Copwatch, the Portland National Lawyers Guild, the League of Women Voters of Portland and JoAnn Bowman about the proposed changes to the Police Review Board ordinance.

In their June 14, 2010 letter, our fellow Committee members expressed objection to the procedure in which the proposed change is being made as well as to the substance of that proposed change. We agree and urge Council not move forward on the amendments to the ordinance other than to change the effective date.

We want to emphasize our concern about the process and how this action may have the unintended consequences of undermining the work of the Committee. Many individuals and organizations testified on the ordinances related to IPR and the Police Review Board. We appreciated the fact that a stakeholder workgroup was created to review the recent changes and to make further recommendations within a 90-day period.

The ACLU of Oregon was pleased that John Campbell was selected to create a forum where the stakeholder groups could come together in one room and work collaboratively on these issues. As was recognized at the last Committee meeting, engaging in this process in this manner has required a level of trust and participation by all participants that had not previously occurred.

That trust, which is necessary for this Committee to do its work, is at risk when separate actions are being taken on these same ordinances by some members of the Committee without either notification or involvement of the rest of the Committee. To find out about a Council hearing to amend one of the ordinances from another Committee member, rather than to have the issue brought forward by the proponents, undermines that trust. Indeed, this is particularly troubling when the Committee met the day before one member was notified. That leaves some of us to wonder why we were not notified or given an opportunity to discuss the proposed changes prior

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June 18, 2010

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to the change being presented to Council. Not only would that have honored all of those who are engaged in the Committee work but it also would have allowed some of the Committee members to share their view that at least some of the proposed changes to the ordinance are not "housekeeping" in nature.

The ACLU of Oregon cannot urge more strongly that Council delay any action other than to make the date change. Instead, the composition of the Police Review Board should be added to the discussions of the Stakeholder Committee. To do otherwise, undermines the trust that is essential to the Committee's work and puts the current consensus-building process at risk.

Very truly yours,

Andrea Meyer

Andrea Meyer

Legislative Director/Counsel

cc: LaVonne Griffin-Valade
Mary Beth Baptista
John Campbell
Members of the Police Oversight Stakeholder Committee

**Continuing concerns about process and substance of
Police Review Board ordinance (Agenda Item 908/963)**

To Commissioner Leonard, Mayor Adams, Commissioners Fritz, Fish and Saltzman:

Last week, we testified before you and co-signed a letter with other members of the Independent Police Review Division (IPR) Stakeholder Committee about the process and substance of the changes being proposed to the City's Police Review Board (PRB). We appreciate the second chance to testify to this issue, but are worried that the replacement ordinance before you further codifies the substantive problem rather than setting it aside for further discussion. Since that time we have learned that both the Bureau's Budget Advisory Group and the ACLU of Oregon have also urged you not to make the proposed change to the PRB structure. The introduction of this measure, bypassing the Stakeholder Committee, is causing serious concerns that the group was called together to merely be window dressing for the changes already made to IPR on March 31. The people on that committee believe strongly that we were asked to proposed improvements and further changes to the IPR and PRB ordinances.

As we testified last week, we have no problem if the Council wants to approve putting the PRB in place on September 1. However, we continue to object to the proposal allowing an officer's supervisor to vote on the PRB in cases of excessive and deadly force.

We fail to see how a supervisor is being "held accountable for their vote" if he or she may have already proposed to find an officer's actions within Bureau policy before getting to the table. If the other members of the PRB recommend a "Sustained" finding, and the officer's commander disagrees, the recommendation forwarded to the Chief will still be for a Sustained finding—yet the commander is on record as disagreeing.

Both the Chief of Police and IPR Director Baptista claim this increases accountability, but people in the community see it as just more of the same behind closed doors maneuvering.

We did not agree with every recommendation that was made by the Police Assessment Resource Center, but we should note that the City paid PARC over \$300,000 and the Bureau has adopted the majority of their recommendations in one way or another. Why would Council choose to reject the advice of these experts that the Commander should not be given a "second bite at the apple" in use of force cases?

The IPR Director showed her willingness to play fast and loose with the facts, and to discount public participation, by claiming that the public had a chance to weigh in on the PRB's structure through the Citizen Review Committee's work group on PARC. However, her predecessor, when setting up the PARC work group, deliberately pushed the CRC members to work only on the recommendations made in 2005 and 2006. The recommendation in question was made in 2003, and mentioned only briefly in the 2006 report. I was the only member of the public attended nearly every PARC work group meeting and I do not recall whether this issue came up for discussion, though Portland Copwatch did express support for the recommendation in our analysis of the 2006 report (<http://www.portlandcopwatch.org/parc2006analysis.html>), which IPR, CRC and City Council all received.

The IPR's own 2009 Annual Report, which you will be receiving next week, states that proposed findings by an officer's commander can be challenged ("controverted") by the IPR Director, the Internal Affairs Division Captain or an Assistant Chief before heading to the Performance/Use of Force/Police Review boards. Isn't this an argument as to why the officer's commander should not be a voting member of those boards?

Another point we raised in the letter was that community has asked to change the makeup of the PRB by adding more civilians. Why would the Council go ahead and start rearranging who the members of this group are without considering this recommendation at the same time?

We heard some reasons given last week, perhaps the true reason was one mentioned by Portland Police Commanding Officers Association representative Dave Benson: That their "union" believes making a commander who is not the supervisor of the officer under scrutiny take part in this committee "may be a subject of bargaining." If that is the case, then the ordinance should be written in the same way as the IPR ordinance, saying that another commander shall be the voting member "unless it is prohibited by a collective bargaining agreement." It seems absurd, however, for an advisory panel like the PRB to be considered subject to bargaining. The final decision on discipline is still up to the Chief of Police and the Police Commissioner.

We mentioned in the letter that the current ordinance provides for different make-ups in the board membership for performance and use of force cases, so it should be simple for the Council to compromise, if they still wish to go ahead with this change, and make the officer's commander a voting member only for performance cases.

Bottom line: Please do not vote on the substantive change to the Police Review Board without engaging citizen input.

—Dan Handelman
Portland Copwatch

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Date: Mon, 14 Jun 2010 10:07:21 From: Portland Copwatch <copwatch@portlandcopwatch.org>
 To: Portland City Council --Comm. Randy Leonard <randy@ci.portland.or.us>,
 Comm. Dan Saltzman <dsaltzman@ci.portland.or.us>, Commissioner Amanda Fritz <amanda@ci.portland.or.us>,
 Commissioner Nick Fish <Nick@ci.portland.or.us>, Mayor Sam Adams <samadams@ci.portland.or.us>
 Cc: John H. Campbell <John@cdri.com>, LaVonne Griffin-Valade <lavonne.griffin-valade@ci.portland.or.us>
 Subject: **Concerns: process and substance of Police Review Board ordinance (Agenda Item 908)**

To Commissioner Leonard, Mayor Adams, Commissioners Fritz, Fish and Saltzman, Auditor Griffin Valade and Mr. Campbell:

We are writing with serious concerns about the process and substance of the proposed changes to the Police Review Board ordinance on the agenda for Wednesday. On Friday, Portland Copwatch received a "heads-up" contact from Independent Police Review Director Mary Beth Baptista that there would be a "housekeeping" change to the Ordinance passed on March 31.

While it is true that the provision to sunset the existing "Performance Review Board/Use of Force Review Board" structure on Sept. 1 is a housekeeping item, the Director is also proposing a substantive change that should at the very least have been discussed at the "Stakeholder" Committee.

The change being proposed is to remove the provision that a commander who is NOT the supervisor of the involved officer being investigated have a voting role on the board, to instead make the officer's commander a voting board member.

Director Baptista claims this change is supported by the Bureau as a way to hold the Supervisor accountable for supervising his/her own officers.

However, the Police Assessment Resource Center (PARC), in its 2003 report (recommendation 6.7) and repeated on pages 32-33 of their 2006 report, said this was a bad idea and gives the officer's Commander "two bites at the apple." (We've pasted in the content of those pages below.)

In a footnote in the 2003 report, PARC seems to qualify their concern, stating in essence that when a Use of Force Board meets, it is inappropriate for the involved Commander to participate, while a "Performance Board" might include that Commander. While we're not convinced this is a good idea, since the Commander already had a "vote" in making the first recommendation to "sustain" a finding against his subordinate, it would at least be better than the IPR's proposal to give the Commander a vote in Use of Force cases.

Since the current ordinance provides for different make-ups in the board membership for performance and use of force cases, it seems that this would be a better way to go if the ordinance is to be modified at all.

On the other hand, the Council directed that a Stakeholder group be convened to review the recent changes and to make recommendations for further changes. Since several important recommendations have been made, including adding to the number of civilians on the review board and ensuring a definition of what materials will be presented, it seems out of process to offer any substantive change at this time.

In short,

- If Council needs to pass the sunset clause to allow change-over to a new system, we do not have an objection to that
- Council should not make any substantive change without allowing discussion in the community before it is made
- If you choose to bypass the Stakeholder group, please at least leave in the provision that a commander other than the supervisor of the officer in question is the voting member in use of force-cases.
- If you are going to make changes to the Police Review Board ordinance, please add the community recommendations that have been submitted.

Thank you for your consideration of this matter.

--Dan Handelman

Portland Copwatch

JoAnn Bowman

appointee of Commissioner Leonard

J. Ashlee Albies & Mark Kramer

Portland National Lawyers Guild

Debbie Aiona

League of Women Voters of Portland

 2006 PARC Report pages 32-33 (44-45 of pdf)

C. Follow-Up on Previous Recommendations

Recommendation 6.7: The PPB should revise Section 1010.1044 to make the unit commander a non-voting member of the Review Level Committee when it reviews officer involved shootings, other deadly force cases, and in-custody death incidents.

This recommendation has not been implemented. Despite making a number of structural improvements in the executive review of officer-involved shootings and other deadly force incidents, the PPB, in formulating the Force Board, chose to leave the involved member's unit commander as a voting member of the board. Doing so creates an inherent conflict of interest and gives the unit commander two bites at the apple. At the time of our original report, participants in the former review process described the role the unit commander played as acting like the lawyer for the officer. That has not changed.⁴⁵ During one of the initial meetings of the Force Board, one unit commander so harshly and repeatedly attacked one of the presenters that other members of the board stated they were intimidated from making any comment or asking any question that might seem critical of the involved officer.⁴⁶

By making the unit commander a voting member of the Force Board, the commander plays multiple roles, magnifying his or her influence. In all cases the unit commander drafts an after action report that reviews and critiques the incident. By voting on the Force Board, the unit commander in effect is given the opportunity to review his or her prior review. Moreover, in a certain percentage of deadly force incidents the unit commander is involved in making one or more decisions during the incident itself. Not only do unit commanders play a role in the deliberations and vote like all the other board members, but they shape the presentation to the board on which they participate. If evidence of policy violations is raised by the Internal Affairs' administrative investigation, the unit commander is required to make recommendations (known as findings) of the conclusions the board should reach on those issues. It will be a rare case where a unit commander fails to follow his or her prior recommendations. All of these circumstances demonstrate the inappropriateness of the unit commander being a voting member of the Force Board.

When the PPB revamped its executive review procedures, its principal model for the new Use of Force Review Board was the Phoenix Police Department's Use-of-Force Review Board. The procedures in Phoenix, however, provide as follows: "Individuals in the affected employee's chain of command will not be selected to participate in the review board."⁴⁷ Phoenix, as well as most other police departments nationally with such boards, recognizes that it is inappropriate for a commander whose prior work is being reviewed to be one of the reviewers. Indeed, the Phoenix PD set forth a specific provision of what should happen if the board and the unit commander disagree in their recommendations.⁴⁸ We continue to recommend that the PPB eliminate the structural conflict of interest created by including the unit commander on the Force Board.

⁴⁵ The way in which the unit commander advocates for his/her officer is not unique to the PPB. For instance, we have seen commanders play the same role at numerous boards, including the force review board, at the Los Angeles County Sheriff's Department. The difference in Los Angeles County is that the unit commander participates in the meeting but does not have a vote.

⁴⁶ The difficulty that a unit commander has in objectively reviewing his officer's actions is also illustrated by the outcome at the Review Level Committee on one of the cases we reviewed this year. All three Assistant Chiefs found that the officer had acted out of policy and recommended serious discipline. The unit commander, however, voted to find that the officer had acted within policy.

⁴⁷ Phoenix PD Operations Order 3.18(8)(B)(2), reproduced at page 231 of the Appendix to the 2003 PARC Report. The Phoenix force board is composed of an assistant chief, a commander, a peer of the employee, and three citizens.

⁴⁸ Phoenix PD Operations Order 3.18(7)(B)(1)(b), reproduced at page 230 of the Appendix to the 2003 PARC Report.

2003 PARC Report pages 144-145 (pdf pages 155-156)

While the unit commander of the involved member should continue to attend the Review Level Committee, and participate in the discussion, the unit commander should become a non-voting, rather than a voting member of the committee. The unit commander drafts the after action report, looking at the incident from the perspective of the manager of the unit involved. That allows the unit commander to take the lead in setting the agenda of topics that will be considered in the review process.¹⁵¹ Among other things, the unit commander is supposed to make conclusions about whether the incident was within policy and is also supposed to make recommendations as to policy, procedure and training. Since part of the role of the Review Level Committee is to review the unit commander's after action report and the actions of members of that unit, it is inadvisable for the manager whose unit's activities are under review to be given a vote on the review panel. Including the commander whose unit's actions are under review is structurally flawed and cannot help but give the appearance of a process that is inequitable.

Recommendation 6.7: The PPB should revise Section 1010.10 to make the unit commander a non-voting member of the Review Level Committee when it reviews officer-involved shootings, other deadly force cases, and in-custody death incidents.¹⁵²

¹⁵¹ One senior officer characterized some unit commanders' presentations as acting like a lawyer for the officer.

¹⁵² The Review Level Committee also considers disciplinary matters that have been investigated by Internal Affairs. Since the unit commander is playing a fundamentally different role in such cases -- a role that does not present the same inherent conflicts of interest -- there remain good reasons for allowing the unit commander to remain a voting member of the committee on such cases. We thus limit this recommendation to the types of cases that are the subject of this study, as well as other deadly force cases, which raise the same considerations.