

REPORT ON COMMUNITY RECOMMENDATIONS RE PORTLAND POLICE BUREAU  
AND AUDITOR'S INDEPENDENT POLICE REVIEW DIVISION

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

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# The League of Women Voters of Portland

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## **Independent Police Review Division Ordinance City Council Testimony December 14, 2011**

The League of Women Voters of Portland appreciates the time and attention Council, and especially the Mayor, have devoted to considering Independent Police Review Division (IPR) ordinance changes. It is disappointing, however, that some of the significant amendments supported by the Citizen Review Committee (CRC), long-time observers of the system and the community have not yet been incorporated.

The Mayor's recommended changes would benefit from some refinement.

- Amendment 3 clarifies that CRC may hear new information at an appeals hearing, but that the information would trigger additional investigation. In cases where an undisputed fact is presented, additional investigation is unnecessary and a waste of time. Revise the proposed language so that if IPR and CRC agree no additional investigation is needed to confirm the new information, CRC will make its recommended findings based on the evidence and conclude the hearing. If Council is unwilling to take that step, you should not amend this section of the ordinance. Doing so would create a fundamental change in the CRC's powers and unjustifiably weaken its authority.
- Amendment 4 should include language making available to Council all new information presented at a CRC appeal hearing including such items as documents and photographs. Council should not have its access limited solely to new information captured by the audiotapes as the proposed language states.

There are other minor amendments needed to clear up historically problematic provisions:

- The ordinance should state that the CRC chair or a designated representative is required to approve the written notification of the CRC's recommended findings the IPR Director sends to the Bureau. (3.21.160.A)

- The Auditor's proposed language does not clearly state that the CRC will present its recommended findings when an appeal goes before Council. Add the following: The Committee shall present its recommendations before Council. (3.21.160.C)

Other significant recommendations for ordinance changes continue to merit your consideration. The standard of review, staff support for the CRC, the need for a conference committee, what types of cases IPR should conduct independently, recategorization of allegations and others are based on recommendations by participants or close observers of the system. We urge you to address these items now while the ordinance is under review. It may be years before another opportunity presents itself.

Finally, in an email to Portland Copwatch and the League, the Mayor committed to drafting a work plan for further improvements to the Police Bureau once the Department of Justice investigation is complete. The work plan should also include non-ordinance related IPR and CRC policies.

PRESS RELEASE  
12/14/11

For Immediate Release  
Contact:  
Marcia J. Meyers  
503-665-3957  
marciajmeyers@yahoo.com

**A MOTHER CALLS FOR COMPLETE TRANSFORMATION OF POLICE SYSTEM,  
THREE AND A HALF YEARS AFTER HER DAUGHTER  
IS ASSAULTED BY PORTLAND POLICE**

**"This is about a system that is based on power and fear rather than on dignity and respect."**

***Marcia Meyers, Coppock's mother***

PORTLAND, OR December 14, 2011 Today at 3pm Portland City Council will again take public testimony about police accountability. Marcia Meyers will be testifying about her daughter's experience with the Portland Police and calling for major changes including the adoption of all the recommendations by the citizen committees.

**A MAX RIDE TURNS INTO A NIGHTMARE**

In April 2008 Lisa Coppock got on the MAX in Gresham without a ticket. She boarded, planning to pay the appropriate officials and explain that the ticket machine was broken. When Lisa was confronted by two police officers, she explained her situation and held out her money. One of the officers then asked her to get off the MAX. Lisa asked him "Why?" Feeling a huge amount of rage emanating from the officer in response to her simple question, Lisa ran. Both officers pursued her off the train. The same officer who looked and felt so angry on the train threw her to the ground and slammed her head the pavement. Lisa was then arrested and taken to the hospital, where she received stitches for her head wound. After that she was taken to jail and charged with: theft of services (a \$2.50 MAX ticket), disobeying an officer of the law, and resisting arrest.

**OFFICER CHRIS HUMPHREYS**

Later Coppock found out that the angry officer who chased her was Chris Humphreys. This is the same officer who was involved in:

- the 2003 Chaz Miller case, where Humphreys dragged the wrong man from a truck and beat him with a baton, resulting in an out-of-court settlement with costs to the city totaling over \$133,000.
- the death of James Chasse in 2008, leading to a \$1.6 million settlement against the City of Portland.
- the bean bag shooting of a twelve year old girl near the MAX late November 2009

**HEROIC WOMAN STANDS UP TO THE SYSTEM**

Ordinarily, a case like Lisa Coppock's would have been dropped quickly. Instead it dragged out for nearly two years. After dozens of court appearances stretching over two years, Lisa stood her ground. She never conceded to the system that charged her, but had no consequences for Police Officer Chris Humphreys. All charges against Coppock were finally dismissed in March 2010. Because of the emotional abuse and stress of being in court 22 times and reliving the horrific experience, Lisa Coppock was compromised to such an extent that she was incapacitated. Coppock was committed to the state mental hospital against her will and forcibly medicated for a year.

Before April 2008 Lisa Coppock was an independent working woman She is now living with her mother, healing form mental, emotional and spiritual trauma of the last 3.5 years. Chris Humphreys has never been charged in this case and as far as we know still works as for PPB.

CASE HAS LARGER MEANING FOR THE COMMUNITY

Lisa and her mother, Marcia Meyers, want to share Lisa's story with the community at large. They are also working with others to improve police accountability.

This is not just about Lisa's case," says Meyers. "Albina Ministerial Alliance Coalition for Justice and Police Reform, Portland Copwatch and now Occupy Portland are shining a light on an oppressive system that has many of us living in fear. Right now it is a fear based system of power and control that uses brutality and intimidation. Lisa and I want to use what we have learned in the last three and half years to help change this system to one that is more compassionate and humane. We want our police to be the trusted peacekeepers that we teach our children they are. To that end, City Council should adopt ALL the citizen recommendations for changes immediately.

Let's work together!

Contact:

Marcia Meyers

503-665-3957

marciajmeyers@yahoo.com

Link

Here is Oregonian columnist Anna Griffin's column about the case:

[http://www.oregonlive.com/news/oregonian/anna\\_griffin/index.ssf/2010/03/portland\\_officer\\_christopher\\_h.html](http://www.oregonlive.com/news/oregonian/anna_griffin/index.ssf/2010/03/portland_officer_christopher_h.html)

###

November 23, 2009

*This letter was written over two years ago and hand delivered to the Mayor and all the city commissioners*

Dear Commissioner Saltzman:

I am writing to commend your action of putting Officer Chris Humphreys on leave while his use of extreme force is investigated. As a mother, grandmother and teacher as well as the founder of the activist organization, The Real Wealth of Portland, I applaud your concern both for the safety of the citizens of Portland as well as for the very negative example Officer Humphreys' behavior sets for our city, it's citizens and especially for our children.

Three years ago last September when James Chasse was killed by our 'peace keepers' I was interview briefly by a local TV News Channel and appeared on the evening news expressing my concern, again as a mother, grandmother and teacher, that what we teach our children about respect and non violence, as well as the role of our police-people as our friends and supporters, is too often not the reality they encounter on the streets of our city. The fact that our community "peacekeepers" so often resort of the authority of their physical size and weapons has nothing to do with respect and peace but rather with power, control and fear. Thank you for finally saying enough as far as this particular officer and his prevalence to violence.

Your actions are even more meaningful to me in that a year and a half ago (April 2008) My beautiful 27 year old, acutely sensitive daughter was accosted by Humphreys at a Max station. Lisa has no prior record and her "crime" was not having a ticket on the MAX - and then running from Humphreys and his partner when they demanded her ticket. Lisa said that the ticket machine wasn't working and that when the MAX came she jumped on. Also, that when the police approached her she held out her money to them but that she then felt such a huge amount of rage emanating from one of them (Humphreys) that she became frightened and ran.

Responding to her very accurate sense of Humphreys resulted in her being chased, thrown to the ground and having her head smashed into the pavement (resulting in several stitches) by Humphreys. It also resulted in the continued traumatizing of a very sensitive young woman, first by our police force, and then by our court and mental health system.

My daughter's case still has not been resolved so the traumatizing continues. When her court ordered attorney suggested to the prosecutor that her case should be dismissed as is typical in this type of case - three misdemeanors, no record and not a threat to anyone - he was told it wouldn't happen because it would "compromise" the up coming James Chasse Civil Case.

Commissioner Saltzman, up until you took Humphreys off the street last week not only was my daughter's emotional and mental state being compromised but we, the citizens of Portland, were all being compromised to protect an archaic system that is based on power and control rather than the peace, justice and respect that we teach our children and that we hope for the world.

Please know that I am not a chicken little or an ambulance chaser. I am a 64 year old retired teacher who works full time as an activist both locally and nationally. My main issue is economic justice - which of course involves all systemic injustice - and my home base is the Unitarian Church - again both locally and nationally.

I sincerely appreciate this opportunity to share my gratitude for your recent actions as well as my concern for a model of policing that too often criminalizes and pathologies rather than looks at the aspects of a system that protect a traditional, patriarchal, self perpetuating model - one that often preys on the most vulnerable of our society - people of color, youth and women.

Most sincerely,

Marcia Meyers  
1895 N.W. 5<sup>th</sup>  
Gresham, OR 97030

503-665-3957

# PORTLAND COPWATCH

a project of Peace and Justice Works

PO Box 42456

Portland, OR 97242

(503) 236-3065

Incident Report Line (503) 321-5120

[copwatch@portlandcopwatch.org](mailto:copwatch@portlandcopwatch.org)

[www.portlandcopwatch.org](http://www.portlandcopwatch.org)

## Testimony on police accountability issues

Fourth hearing, December 14, 2011

Dan Handelman, Portland Copwatch

Mayor Adams and Commissioners:

We have been following IPR since before its creation, and the first time we ever heard the assertion that CRC's role is "to review the process, not the evidence," was when Commissioner Fish stated that in Council chambers two weeks ago. That assertion did not come up in the original testimony on the ordinance, it is not stated in orientations for new CRC members, and it was never used at Stakeholder group meetings to argue against proposed changes to the system. The ordinance creating IPR states the City should respond to complaints so "*services are improved and trust in government is restored,*" and stresses that the system be "*perceived as fair by participants and the community.*"

It is difficult for us to understand, then, why Council, the Auditor and the City Attorney are reluctant to make some basic, common-sense changes to the IPR structure.

Most urgently, the Mayor's proposal will restrict the CRC and take away some of the only power they have. In a system that people already feel is designed with too much police involvement to be "Independent," taking away CRC's power will lead to more community mistrust at a time the City needs to build confidence in its police and oversight system.

The Mayor's changes do not respond to the calls to change the standard of review, which trace back to the 2008 Luna Firebaugh report. Rather, they would forbid CRC from considering new information presented during appeals hearings when deciding whether an officer violated policy, instead forcing the board to send the case back to Internal Affairs for more investigation. Currently, CRC uses its discretion whether to use new information to formulate a proposed finding, send a case back for more investigation, or accept the original finding.

In 2002, an officer admitted to an act of misconduct at a CRC hearing, saying she probably did not call the appellant "ignorant" but probably called her "stupid." At other times, CRC's recommendations have simply been to add a "debriefing" to non-Sustained findings. In some cases, the new information has led CRC to support the original findings. The Mayor's proposal is far too restrictive. Why would any citizen complainant want to bring their police misconduct appeal to a supposedly independent body so powerless that it would always be forced to return the case to the same agency that harmed them in the first place?

The Mayor's own nominee, CRC Chair Jamie Troy, came to this body asking to give CRC a standard of review that is less deferential to the police. He was relating a unanimous opinion from the Committee itself. When the next batch of CRC members is sworn in, there will be four former or current lawyers. Yet the City keeps insisting that CRC does not have the capability to weigh the evidence in these administrative hearings.

The City's attitude is reflective of something the Auditor told us when we tried to find common ground on the Stakeholder recommendations: "If we said no, the answer is no." This is not how elected officials should be responding to community members.

As a historical note, at the request of the Auditor and IPR Director in June 2003, Council took away CRC's ability to select its new members, one of several such power struggles that led to the resignation of five members that August.

It appears Council is being fed faulty information from people who, for some reason, have an interest in keeping the CRC from achieving its full potential. For example, Deputy City Attorney Woboril believes CRC members spend only half an hour reviewing files prior to appeals hearings; that is not our understanding, since most CRC members listen to all of the recorded interviews, in addition to reading transcripts and case summaries at Internal Affairs. We may be among the CRC's harshest critics, but we are also their biggest fans.

Portland Copwatch has put forward a number of compromise ideas that nobody has expressed credible opposition for:

- Fixing the Mayor’s new proposed language by stating that CRC can consider undisputed information when deciding whether a finding is supported by the evidence;\*
- Creating a mechanism for CRC to complete a hearing if Internal Affairs refuses to do further investigation, something which happened just last year;
- Fixing the Mayor’s language about the scope of Council appeals so they can look at documents relating to CRC’s hearings; not just listen to recordings;\*\*
- Adding as many as two non-voting members of CRC, who can participate in work groups and fill mid-term vacancies;
- Allowing CRC to make recommendations to the Auditor;
- Requiring the Director to get approval before sending a letter reflecting CRC’s decisions to the Bureau;
- Clarifying that a presentation from CRC is an undisputed part of a City Council hearing;
- Codifying the practice IPR plans to adopt administratively that serious use of force cases not be sent to mediation;
- Ensuring that CRC is adequately staffed;
- Allowing CRC to comment on draft Bureau policies;

and several other items based on the Stakeholder report we’ve testified about repeatedly over the past several weeks.

The Citizens’ Law Enforcement Review Board in San Diego County has 11 volunteer members, which their staff of four (five less than IPR) does not find “unwieldy”; the City of San Diego’s review body has 23 volunteer members, with 12 more brought on for training. The County board votes on proposed recommendations based on the preponderance of the evidence about misconduct allegations. The Director there works at the will of the Board, who hires and can fire him. It is amazing how many Stakeholder recommendations are being rejected arbitrarily when, with one phone call, we can find two review bodies with some of the very attributes we’re asking for in Portland.

Last year, the changes made to the ordinance were deliberately made to IPR and not to CRC to allow CRC to ask for its own changes. Several of their recommendations are being ignored. We urge Council to see the growing discontent among people who initially had a very good relationship with the Bureau, and see that as a sign that people want community members deciding what is appropriate police behavior, not the police themselves.

Also, the Mayor has not made any changes to the Bureau policy document co-authored with the Chief that includes arguments to use more force than is acceptable to the community, among other things. We hope that further discussion on that report will be delayed until after the IPR ordinance debate has concluded.

\* Our proposed change:

When the Committee’s review process develops new information, the Committee may consider the new information when determining if additional investigation is warranted, but ++where the new information requires further investigation++ the Committee may not incorporate the new information in the evidentiary record the Committee considers when determining if a finding is supported by the evidence.

\*\* The Mayor’s proposed change:

In reviewing the investigation, the Council may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, [and] any documents accumulated during the investigation, ++the recording of the Committee’s case file review and appeal hearing, the Committee’s Case File Review Worksheet,++ and may listen to the tape recordings of the witnesses produced by IPR and IAD.

We suggest replacing the words “the recording” with “documentation”, so it would read, “documentation of the Committee’s case file review and appeal hearing”.



National Lawyers Guild  
Portland, Oregon Chapter  
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Portland OR 97214-5246  
E: portlandchapter@nlg.org

December 14, 2011

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## MEMORANDUM

To: Mayor Sam Adams <sam.adams@portlandoregon.gov>  
Cc: Portland City Council -- Comm. Dan Saltzman <dan@portlandoregon.gov>,  
Commissioner Amanda Fritz <amanda@portlandoregon.gov>,  
Commissioner Nick Fish <Nick@portlandoregon.gov>,  
Comm. Randy Leonard <randy@portlandoregon.gov>,  
Mary-Beth Baptista <mary-beth.baptista@portlandoregon.gov>,  
LaVonne Griffin-Valade <lavonne.griffin-valade@portlandoregon.gov>,  
Chief Mike Reese <Chief.Reese@portlandoregon.gov>,

FROM: Portland Chapter National Lawyers Guild

- Ashlee Albies, Attorney, Co-Chair
- Mark Kramer, Attorney

DATE: December 14, 2011

RE: Proposed Amendments to IPR Ordinance -  
City Council Hearing December 14, 2011

## INTRODUCTION

The Portland Chapter of the National Lawyers' Guild has been working on improving oversight of the Portland Police for more than the past two decades. In 2000, we joined with 17 other stakeholders as part of the Mayor Katz Work Group. After several months of study and debate, this Work Group (by a majority vote of 12-6) ultimately recommended the establishment of a civilian review board with subpoena power and the power to recommend (not impose) discipline for demonstrated police misconduct. We were also members of the 2010 Stakeholder group which issued 41 recommendations. The majority report of the Mayor Katz Work Group was discarded by Mayor Katz and from its ashes arose the dysfunctional PIAC system. That

was replaced by Internal Police Review (IPR) which was a modest improvement but riddled with serious issues as well.

The Stakeholder group, we were promised, was the process by which IPR could be substantially improved to meet community objectives. The NLG has always and will always promote a system which provides effective, credible, and transparent review of police misconduct.

Unfortunately, again as was our experience with the Mayor Katz Work Group, the recommendations of the Stakeholder group have been largely ignored.

Below we address the specific issues before Counsel, but Mr. Mayor and Counsel, we urge you to delay any formal vote until their can be further discussion of the Stakeholder, AMA and CRC recommendations. In addition, while the current amendments to the IPR ordinance are being rushed, other pending changes to PPB policy related to use of force, including pending policy changes would allow more force than is acceptable to the community. The NLG has recently written you Mr. Mayor reminding your of the prior report of the Northwest Center for Constitutional Rights recommending restrictions on the use of force (specifically no pepper spray and no horse patrols) when addressing non-violent free speech activities.

In short, the current piecemeal process should be delayed in favor of a process in which all proposed changes sought by the Stakeholders, AMA, and CRC changes are handled in one package.

### **DISCUSSION - CURRENT ISSUES**

Notwithstanding our deep disappointment about the process and our concern that it is far from a credible, transparent and effective reform process, we do have practical concerns about the limited issues currently before Counsel.

#### **Standard of Review Issue.**

There has been much discussion about the CRC standard of review. We continue to believe that a "preponderance of the evidence" standard is a practical and understandable standard and preferable to the "reasonable person" standard in current practice. We wish to

make it clear that the preponderance of the evidence standard proposed goes directly to the current charge of the CRC to review investigations that have previously been done and are being challenged by complainant. While we would prefer the IPR/CRC to be an independent fact-finding process, we understand that as currently structured, it is and will remain a “review the reviewers” process. However, in determining whether an investigation finding being challenged should be upheld, returned for further investigation, or rejected, a preponderance of the evidence standard would be more effective.

We understand the review board in San Diego, Albuquerque, NM, Charlotte, NC, Cincinnati and Dayton, OH, among other bodies uses the “preponderance” standard in its “review the reviewer’s” role. This was also recognized as a more appropriate standard by consultant Eileen Luna-Firebaugh.

**2. AMENDMENT 3:**

**Allowing CRC to Hear New Information at Its Hearings/CRC to Present to Auditor as Well As Council**

In its current form, the Amendment 3 provides that the CRC may receive new information but may not incorporate the information “*where the new information needs verification.*” This clause should be deleted. The CRC should maintain its discretion to determine whether the new information received requires verification, and if so whether that verification can be obtained at the hearing or otherwise. There is no reason to second guess the CRC in this information gathering function as the committee will, at the time of the hearing, be intimately familiar with the case.

We are pleased that the CRC will be formally allowed to present findings, policy changes, etc to Council. This authority should be expanded to present to the Auditor as well.

**3. AMENDMENT 4: Expanded Council Review of the Proceedings Below.**

In its current iteration, Amendment 4 would permit Council to review the CRC proceedings below. The scope of that review should be expanded to include all information that was a part of the prior proceedings including a written transcript, exhibits, tape recordings, the report of IAD and the report of IPR. As written, it is too narrow.

\*\*\*\*\*

In summary, the changes proposed do not address what the community has deemed crucial for the oversight system..

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✓ Cameron Whitten

Date 12-08-11

✓ Todd Herman

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Page 2 of 3

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✓ Teresa Roberts	6137 SW 18 <sup>th</sup> # 40 97239	
✓ Sally Joughin	2715 SE 34 <sup>th</sup> Ave 97202	Stakeholder Committee
✓ Raya Cooper	6818 SE 52nd	
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Norton Deb Horton	10425 SW 43rd Ave 97219	



- Legacy Emanuel Hospital and Health Center
- Legacy Good Samaritan Hospital and Medical Center
- Legacy Meridian Park Hospital and Health Center
- Legacy Mount Hood Medical Center
- Legacy Salmon Creek Hospital
- Legacy Visiting Nurse Association
- Legacy Clinics, LLC
- Legacy Laboratory Services

Date: 12/5/11 Sent by: Lily  
 Medical Record No: 7000047245  
 Account No: 501101923  
 Account Balance: \$ 22,127.20  
 Return By: 2/26/11

## Financial Statement

Dear Patient:

It is the policy of Legacy to assist those patients who demonstrate a financial need consistent with our guidelines in dealing with unexpected medical costs. So that we can better evaluate what assistance we may be able to render, please complete the following and return within 20 days in the envelope provided. **Please include PROOF OF INCOME (if checked):**

- Pay stub - last 3 months received
- Tax returns and W-2's - last years
- Social Security Award Letters
- Last Two Bank Statements of Checking/Savings Account
- Other: hardship letter from patient, letter of testation from friends that you are staying with.

Without the above requested information, this financial statement cannot be reviewed. After review of the financial statement, we will be in contact with you regarding our determination.

Sincerely,

Financial Service Representative  
 503-413-4048 (Oregon), 360-487-4048 (Washington) or Toll-Free 1-800-495-7076

Please return to: Legacy Patient Business Services  
 P.O. Box 4037 Portland, OR 97208-4037

Name of Patient: Justin Bridges

Address: \_\_\_\_\_

(If P.O. Box, please include street address) City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone No: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Home # Work # Message #

Birth date: \_\_\_\_\_ Social Security No: \_\_\_\_\_

Responsible Person: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Home # Work #

List all persons living in the household:

Name	Birth date	Relationship	Social Security #	Employer/Retired

**INCOME & ASSETS**

(Use yearly gross totals)

**EXPENSES AND LIABILITIES**

INCOME:		Yours	Spouse/other	Other Expenses	Monthly Payment	Balance
Wages:				Rent:		
Social Security Benefits:				Food:		
Unemployment Benefits:				Utilities/heat:		
Public Assistance:				Bank Cards:		
Child Support:						
Other:						
Interest:						
<b>ASSETS:</b>						
Savings, IRA's:				Other Credit:		
Stocks, Bonds, Cash:				Medical Expenses:		
Cash Value Life Insurance:						
<b>REAL ESTATE:</b>						
Primary Home Value:						
Monthly Payment:				Insurance:		
Other Property:				Auto:		
Primary Auto value/year				Medical:		
Monthly Payment:				Life:		
Second Auto Value:						
Total:				Proposed Monthly Payment: \$		
				Payment Date:		

I certify that the above information is true and correct to the best of my knowledge. All information is subject to verification and I will provide requested documentation. I authorize you to obtain a credit report for that purpose.

Signed: <input checked="" type="checkbox"/>	Date: <input checked="" type="checkbox"/>
Signed:	Date:

Other records that the Department of Social and Health Services has on the applicant, including public assistance files, may be inspected to verify eligibility.

Alimony/child support/maintenance payment income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

**FOR OFFICE USE ONLY:**

Approved Assistance: <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Full <input type="checkbox"/> Partial \$ _____	Over Income: <input type="checkbox"/> No <input type="checkbox"/> Yes
Payment Arrangements: \$ _____ per month	Incomplete _____
Received by: _____ Date: _____	Approved By: _____ Date: _____

finstate.doc/ww



December 8, 2011

Mayor Sam Adams  
Commissioner Nick Fish  
Commissioner Amanda Fritz  
Commissioner Randy Leonard  
Commissioner Dan Saltzman  
1221 SW 4th Avenue  
Portland, OR 97204

Dear Mayor Adams & Commissioners:

Thank you again for the opportunity to introduce myself at your November 30 hearing and for your consideration of my testimony regarding improvements to Portland's police oversight system.

I wanted to write today to follow-up on that testimony, to provide some clarifying details and some additional information regarding approaches in other states to the standard of review issue.

Dayton, Ohio has adopted a system that seems to most closely reflect the recommended approach from the Stakeholders, at least as that approach relates to the standard of review. An informational document describing Dayton's Citizens' Appeal Board appeal process states:

The Board will, with the assistance of the Legal Advisor assigned to the appeal, review the Police Department's investigation of the citizen's complaint and the information provided on the Board form. The Board will also hear testimony from the appellant. If the Board determines that additional investigation is needed, it may request these efforts from the Police Department's Internal Affairs Bureau. The City Commission has given the Board the authority to subpoena witnesses to incidents being appealed. The Board then, using the preponderance of the evidence standard, will discuss and determine whether it sustains or does not sustain the Police Department's investigation findings. This decision is forwarded to the City Manager in report form, which is a matter of public record.<sup>1</sup>  
[underlines added]

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<sup>1</sup>Citizens' Appeal Board Information Document

<<http://www.cityofdayton.org/departments/police/Pages/Citizens'%20Appeal%20Board%20Information.pdf>>

The process adopted in Albuquerque, New Mexico allows for their Independent Review Office of the Police Oversight Commission to use the preponderance of the evidence standard for initial findings and, thereafter, the Police Oversight Commission may "adopt or change the findings and recommendations of the IRO and may make further recommendations to the Chief."<sup>2</sup>

Finally, I cited the examples of Rochester, New York and San Francisco, California in my November 30 testimony and want to take this opportunity to clarify that these jurisdictions employ the preponderance of the evidence standard, but only at the initial fact finding stage of review.<sup>3</sup>

Thank you again for your consideration of my comments and those of other Stakeholder Group participants.

Sincerely,

*Becky Straus*

Becky Straus  
Legislative Director

cc: Mary-Beth Baptista, IPR Director

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<sup>2</sup> 2010 Annual Report. Independent Review Office of the Police Oversight Commission.  
<<http://www.cabq.gov/iro/documents/2010%20Annual%20Report..pdf>>

<sup>3</sup> Citizen Review of Police: Approaches & Implementation. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. <<https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>>



December 8, 2011

**Re: Jan Friedman, with Disability Rights Oregon (DRO), 's Specific Comments  
on Report of Recommendations Regarding the Portland Police Bureau**

- Regarding IPR—I PR is not independent and this thwarts oversight of the PPB.

***Section I B: "Ensure that IPR investigations include specified more serious complaints"***

Response is, in part, that "Per City Code, IPR is involved in every administrative investigation. The *decision* for IPR to conduct independent investigations rests with the IPR Director and the City Auditor."

**DRO's CONCERN:** IPR has discretion to conduct independent investigation **or not.**

- In a meeting with the Portland City Auditor and a Coalition of Concerned Citizens and Advocate on February 19, 2010, Mary Beth Baptista (MBB) indicated that IPR does not have the structure or budget to do its own independent investigation.
- Further MB indicated that IPR had not disagreed with an investigation completed by IAD (case decision) to that date. MBB emphasized that IAD does high quality work and they're not the problem.

***Section I C: "Ensure that IPR has, and exercises, the power to conduct or participate in investigations (from time zero) of specified serious incidents."***

Response is "Agree; current practice". Also, states IPR Director *decides how much involvement IPR will have in the case.*

DRO's CONCERN: There needs to be more delving into what power for independent primary investigations IPR exercises. Given that doing any sort of independent investigation is discretionary for IPR and, on my last check, which meant no primary investigations were completed by IPR. My concern is that IPR does not have much involvement in any actual investigation. IPR does not have the structure, the budget, or the resources to do independent investigations.

***Section 1D. Ensure that IPR has the authority to compel officer testimony and directly interview police officers in administrative investigations.***

Response includes that IPR staff routinely ask questions of officers while sitting in on interviews.

DRO's CONCERN: This is not the same; IPR is a secondary player to IAD & interjecting questions. IPR needs to be able to compel testimony not in the context of police reviewing police.

***Section 1E. Ensure investigations conducted by IPR or IA and reviews by CRC can proceed in a manner that is consistently and objectively independent.***

Part of the response is that the PPB regularly provides information to IPR investigators. This does not connote objectivity or independence because if IPR is given the information by IPR, but could have accessed much more information as the primary investigator, then not objective. IAD chooses what to look at as well as what to turn over to IPR.

DRO's CONCERN: My understanding is that IA is composed of primarily if not all retired police. This creates a cultural bias—police culture.

***1.1 Ask every complainant if they would prefer to have IPR or Internal Affairs investigate their complaint and document the response.***

Part of the response states, "The current model provides IPR with oversight of administrative investigations and allows for cases to be handled using the investigative resources of Internal Affairs while ensuring an objective outcome through the IPR review process."

DRO's CONCERN: If the investigative resources of IA are used in each and every instance and IPR is solely a secondary investigator, then it lacks independence. I have completed 1 primary investigation of a man with MI who died at SRCI. As the primary investigator, I found an entirely different set of facts than was handed to me by DOC. Specifically, I found many problems and concerns with DOC that the DOC report did not reveal.

- Regarding CRC—grant them an appropriate amount of authority so that CRC can help promote positive change in the PPB.

**II. B Give CRC the authority/permission to make policy recommendations directly to PPB.**

If CRC is restricted to whether or not, for example, PPB's use of Tasers comes within PPB's PAP's, then not effective as an agent for change.

- Regarding PRB—make sure it's working for the community as well as police.

**III.B Add Another citizen member to the PRB for use-of-force cases.**

Part of the response after disagree is, "The current structure of the PRB for use-of-force cases is working."

DRO's CONCERN: Who is it working for? From DRO's perspective, it is not working for people with disabilities in our community.

- Support the AMA Coalition's Community Requests for Change.

**AMA 1.6 If used at all, a less lethal ("Beanbag") shotgun should not be used for compliance, and not used from less than 10 feet.**

In response, after Disagree, it's stated that ". . .the trend in law enforcement use-of-force policy has been away from rigid, mechanical models and toward the more holistic model of the objective reasonableness standard."

DRO's CONCERN: However, this is not responsive to the fact that if a citizen is merely not complying with a police order, they should not be shot by of a Taser

or Beanbag shotgun. This should be set out in policy so police can use their de-escalation techniques they are trained to use.

***AMA 1.10 Reconcile the Bureau's training on use of force with the de-escalation taught to all officers CIT training, so that policy are more likely to talk and less likely to cause injury.***

I support mandatory CIT training and DRO has been part of CIT AB since PPB began CIT.

DRO's CONCERN: However, the concern is that in the 40 hours of CIT training, no scenario presents a person with a disability as well as a potential consideration of use of force. The scenarios are in a vacuum—solely focusing on how to interact with pwd but not on how to make RA in police tactics.

If I'm not clear on training, may be because I haven't been able to look at actual CIT training materials aside from scenarios, after much urging. I believe Liesbeth is doing good work, but AB needs more info in order to impact policy changes.

***AMA 1.11 Use of Tasers shall be limited as outlined by PARC in its 2009 report: limited to one discharge cycle by one officer, then a reassessment, then use d no more than threes times total. This includes not having multiple officers use Tasers simultaneously.***

The response as to PPB needing to be flexible in evolving situations does not make sense.

DRO's CONCERN: The Police Executive Research Forum (PERF) and US DOJ, Office of Community Oriented Policing Services have Taser guidelines submitted in 2011, including:

- Tasers should be used only against people who are exhibiting active aggression or who are actively resisting in a manner that, in the officer's judgment, is likely to result in injuries to themselves or others. Tasers should not be used against a passive person;
- A warning should be given to the person with whom police are interacting, unless doing so would place any person at risk.
- There should be 1 standard cycle (5 seconds) and then evaluate the situation to see if subsequent cycles are necessary. Any subsequent cycles should be independently justifiable, and the risks should be

weighed against other force options. Exposure to the Taser for longer than 15 seconds may increase the risk of death or serious injury.

- All people who have been exposed to Taser application should receive a medical evaluation by emergency medical responders in the field or at a medical facility. People who have been exposed to prolonged application (i.e., more than 15 seconds total) should be transported to an emergency department for evaluation.

The fact that someone may need to violate stopping at a red light in extraordinary circumstances, does not mean there should not be any traffic regulation around stopping for red lights.

The US DOJ is here to investigate the PPB. The right and prudent step to take is to comply with US DOJ's current guidelines for Taser use.

***AMA 4.3 Establish an independent prosecutor for all cases of possible police criminal conduct to avoid the inherent conflict of interest within the Multnomah County District Attorney's Office.***

Response includes the fact that Grand Jury proceedings are recorded and made public accomplishes this same objective.

DRO's CONCERN: The problem is that the DA has discretion over whether or not a case goes to the Grand Jury. An independent prosecutor may choose to put cases through the CJ system that were not put through the CJ system by the Mult. Co DA's office. The public does not hear about these cases.

***AMA 5.4 Create and enforce strict policies for when officers interact with individuals with disabilities.***

The response focuses on the Safer PDX Project that is ½ way through. Bob J , Dir. Of DRO, is participating in this project.

DRO's CONCERN: This project has 1 ½ more years, we need strict policies currently. This project is focusing on how to reduce interaction btw officers and PWD but does not relate to the needed PAP for officers who do interact w/ PWD. One facet of this is ensuring that the ADA is complied with.

***AMA 10.4 Invite an outside study including diverse members of the community and implement a plan for changing the culture of the Portland PB that leads to "us vs. them" thinking and the "blue wall of silence".***

DRO's CONCERN: From my 12 years on PPB CIT AB, participate with PPB—specifically Liesbeth G & member of Training Division. This is helpful, but concerned that our AB ideas are not given adequate consideration. So citizen participation but we have not had much impact. This is not due to the AB's lack of commitment or efforts.



# The League of Women Voters of Portland

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## **Independent Police Review Division Ordinance City Council Testimony December 8, 2011**

The League appreciates the attention Council is devoting to consideration of improvements to our police oversight system. The system provides much more than a vehicle for managing Police Bureau employees and their actions. It offers an avenue for individuals who feel they have been harmed by the police to have their complaint addressed. It also promotes transparency, community understanding of the Bureau and the Independent Police Review Division (IPR) and incorporates public participation and oversight through the Citizen Review Committee (CRC). For the system to be truly effective and the CRC's role well defined, the ordinance must be clearly written and responsive to the community.

Following are comments and clarifications on several of the proposals under consideration.

### **Standard of Review**

The Auditor's proposed code language states that the CRC can challenge Bureau findings and recommend different findings if it determines the Bureau-recommended findings are not supported by the evidence. The CRC reaches its determination by considering the investigative file, information presented at the appeal hearing and any additional investigation. City staff members state that the CRC's job is solely to evaluate the investigation and process. We have observed over the years, however, that the CRC reviews the information gathered by IPR and IA and the applicable Bureau policies and then determines if the Bureau's findings are appropriate. If they are not it recommends different findings as required by the ordinance.

Regardless of the standard of review, the CRC has the ability to recommend different findings if it determines the evidence does not support the Bureau-recommended findings. Changing the standard of review would improve the process by giving CRC the ability, after weighing the evidence, to determine whether it is more likely than not that the officer was out of policy and whether it should recommend a different finding to the Bureau.

### **Recategorizing Allegations**

It is essential to have accurately formulated allegations when investigating a misconduct complaint. The allegations need to reflect the officer's actions and

relate to specific Bureau policies. When allegations are missed at the front end it can lead to the need for additional investigation several years later. This can be difficult to do because memories fade and witnesses cannot be located.

In the interest of facilitating quality investigations CRC should be given the opportunity within a brief window of time to review proposed allegations at the front end and recommend recategorizing or adding allegations. This might prevent the need for further investigation if the case goes to appeal and brings in an extra set of eyes.

Furthermore, there have been times when it has been necessary to recategorize allegations so that an appeal hearing can reach a satisfactory conclusion. For example, in one case two officers were part of a single allegation; the finding was appropriate for one, but not the other. The ordinance should state that CRC has the authority to recommend recategorization or new allegations at the appeal hearing. This might lead to additional investigation in some cases, but would offer an important tool in ensuring accuracy and due process.

### **Conference Committee**

The Conference Committee is the extra step added by the first IPR director giving the Bureau an additional opportunity to discuss with the CRC a disagreement over a recommendation for a changed finding. Remember that Bureau representatives are present at the hearings and are able to share their concerns at that time.

Some believe the conference committee is an important step because Council time and resources should be protected from an inordinate number of appeals. Keep in mind that CRC has not held an appeal hearing in over a year and in the 10-year history of IPR only one case has come before Council. It is hard to believe you would be swamped with appeals if the conference committee were eliminated. Furthermore, it is extremely important for Council hear a case from time to time. It would promote transparency and give you and the public the opportunity to get a closer look at police actions, policies, management and investigations and see how the IPR and IA work together to investigate and resolve cases.

### **Conclusion**

The League's views on a number of other issues are outlined in our November 15 letter. Once the ordinance changes are settled, we urge you to focus on the other policy issues related to the IPR, CRC and Bureau.

Finally, some food for thought:

In a recent article, former Seattle Police Chief Norm Stamper described his vision for reforming public safety agencies in this country. "Such an effort would include plans to flatten hierarchies; create a true citizen review board with investigative and subpoena powers; and ensure community participation in all operations, including policy-making, program development, priority-setting and crisis management. In short, cops and citizens would forge an authentic partnership in policing the city." (The Nation, Nov. 28, 2011)

**PORTLAND COPWATCH**  
A PROJECT OF POLICE AND JUSTICE WORKS  
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Email: [copwatch@portlandcopwatch.org](mailto:copwatch@portlandcopwatch.org) [www.portlandcopwatch.org](http://www.portlandcopwatch.org)

To: Mayor Sam Adams, Police Chief Mike Reese, Auditor Lavonne Griffin Valade  
cc: Independent Police Review Division (IPR), Citizen Review Committee (CRC), City Council, members of the press and the public

**Comparing the Auditor's proposed ordinance changes to those of the Stakeholder report by Dan Handelman, Portland Copwatch (PCW) November 30, 2011**

This document includes a stand-alone list of the seven (7) ordinance changes (previously six) being proposed to the Independent Police Review Division code (Chapter 3.21), analyzes those changes, and points out at least eleven (11) other ordinance changes proposed just in the Stakeholder report, plus one regarding the Police Review Board.

**CHANGE 1: CRC members' terms lengthened. (II C)**

3.21.080(B)(2): Each serve a term of [~~two~~] **three** years, subject to reappointment by Council.

Comment: This change is identical to that proposed by the Stakeholder report. PCW supports it.

**CHANGE 2: CRC can recommend policies to the Bureau. (II B)**

3.21.090 (A) (3)

Recommend policy changes. To [~~help the Director identify specific~~] **+evaluate complaint and other information and investigative practices to make policy recommendations to the Chief of Police and the Director to prevent and rectify**+ patterns of problems. [~~and to participate in the development of policy recommendations~~].

Comment: Though the Auditor's language is appropriately more clear about to whom the recommendations will be made (although CRC also makes recommendations to City Council *and the Auditor*, which should be added to the list), the Stakeholders' recommendation for modifying the ordinance language was much simpler:

3.21.090: To [~~help the Director~~] identify specific patterns of problems and to [~~participate in the~~] develop [~~ment of~~] policy recommendations.

PCW recommends combining the two and adding City Council *and the Auditor* to the list of recipients.

**CHANGE 3: Replacing "Reviews and Supplementary Investigations" with "Case File Review" (administrative)**

3.21.150

[Reviews and Supplementary Investigations] **+Case File Review.**

**A. When a timely appeal has been submitted to and accepted by the Director, the Director and the Committee chair will schedule a case file review meeting before the Committee to assess the completeness and readiness of the investigation for an appeal hearing.**

B. As a result of the case file review, IPR or IAD may conduct additional investigation [~~A complaint resulting in an investigation may be reviewed or supplemented with additional investigative work as a result of an appeal. The IPR will act~~] in accordance with applicable provisions of the collective bargaining agreements covering Bureau personnel **+per 3.20.120+**. [~~when it participates in an IAD investigation, or when it initiates an investigation. The Director shall conduct a preliminary review of IAD's investigation and may conduct an investigation to supplement IAD work. The Director shall decide:~~

A. If no further investigation and consideration of evidence is warranted the director shall inform the complainant or member of the basis for the decision and the opportunity for a hearing before the committee or;

B. If additional investigation and consideration of evidence is warranted, the Director shall request IAD reconsider its efforts and results. The Director shall review the additional work of IAD and may conduct supplemental investigation. The Director shall schedule the appeal for a hearing before the Committee.]

Comment: This is an administrative fix to make the ordinance better reflect current practices. It is of some concern that language in this section as originally written authorized IPR to conduct supplemental investigation if IAD's investigation was inadequate and that language is being cut out. However, the addition of the new change clarifying CRC's ability to send cases back for more investigation relieves some of this concern.

**CHANGES 4 and 5 (new): Administrative fixes to appeals section, including the current practice "Conference Committee" (administrative), and clarifies CRC ability to recommend further investigation at appeal (II J-partial)**

3.21.160 Hearing Appeals.

A. **+An Appeal+ [h]Hearing[s may] +shall+ be conducted [either at the following points:] +after a majority vote of the Committee to hold such a hearing at the case file review or other meeting of the full Committee.+**

1. **[When a complainant or member appeals the finding] +At the Appeal Hearing+ the Committee shall decide +by majority vote+:**

**+a. To recommend further investigation by IAD or IPR; or+**

**[a]+b+. If the finding is supported by the evidence. +In a case where the majority of the voting members of the Committee affirms that the Bureau's recommended findings are supported by the evidence,+ [F] the Director shall [inform the complainant, member, IAD and the Chief of the Committee's decision and] close the complaint; +or+**

**[b].+c+. If the finding is not supported by the evidence. [The Committee shall inform the complainant, member, IAD and the Chief of what finding should have been made. The Director shall schedule a hearing before Council for final disposition. The Committee shall select one of its members to represent the Committee's viewpoint before Council.] +In a case where a majority of the voting members of the Committee challenges one or more of the Bureau's recommended findings by determining that one or more of the findings is not supported by the evidence, and recommends a different finding, the Director shall formally advise the Bureau in writing of the Committee recommendation.**

**(1) If the Bureau accepts the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall close the case.**

**(2) If the Bureau does not accept the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall schedule the case for a conference hearing.**

**(a) At the conference hearing, if the Committee, by a majority vote, is able to reach an agreement with the Bureau on the recommended findings, the Director shall close the case.**

**b) If, by majority vote, the Committee can not reach an agreement with the Bureau on the recommended findings, the Committee shall vote whether to present the appeal to City Council.+**

Comments:

—The changes in the heading of A and subsection 1 were sorely needed and welcome.

—The addition of the new subsection a, which was proposed between the first and second hearings, is welcome, though it should also address CRC's ability to re-categorize complaints for investigation or as part of their decision making process. From the Stakeholder report, a footnote shows that Portland Copwatch recommended this language:

3.21.160A(1)(b) If the finding is not supported by the evidence,. The Committee shall inform the complainant, member, IAD and the Chief of what finding should have been made, **++send the case back for further investigation by IPR or IAD, and/or send back the case to reclassify allegations.++**

This solution is clearer than the Auditor's proposal, as the finding should not have been made if there was not enough evidence to make the finding. Therefore, a request for more evidence is part of the "not supported by the evidence" finding—regardless of whether the standard of review is changed or not.

*\*Note: Council also needs to address the situation in which CRC requests investigation but IPR and IA refuse to agree.*  
—The change in the subsection now marked (c) takes away the CRC's responsibility to report their findings and gives it to the Director. If it is to remain, there must be a directive for CRC Chair or designee to sign off on any communication about the CRC's recommendations.

—The addition of the “conference committee” in subsections 2(a) and (b) needlessly lengthens and delays the process originally designed in the ordinance wherein the City Council would settle a disagreement between CRC and the Bureau. No community member asked for this change to the ordinance and Council should not support it.

#### **CHANGE 6: Slightly clarifies CRC's role in Council appeal (II E-partial)**

**+(c) If, by majority vote, the Committee decides to present the appeal to City Council, the Director and the Committee Chair will schedule an appeal hearing before City Council. The Committee shall appoint one of its members to present its recommended findings during the appeal to City Council.+**

Comment: The Stakeholder recommendation made the process much clearer by adding a sentence to the paragraph describing Council appeals.

3.21.160C: *(add)* **+The Committee shall present its recommendations before Council.+**  
Council should add that language as well.

#### **CHANGE 7: Fixes typographical error (administrative)**

3.21.160 (D)3. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and other evidence. The power to compel the attendance and testimony of witnesses in accordance with City Code Section 3.2L160 **+C+ [D].3.** shall not be delegated by the Council to the Committee.

#### **OTHER NEEDED CHANGES**

In addition to incorporating the above concerns into the Auditor's proposal, the following other specific code changes were proposed in the Stakeholder report.

#### **NEEDED CHANGE 1: Ensure IPR can review shootings and deaths in custody cases (I B)**

Portland Copwatch proposed this language in a footnote:

3.21.020 (L) Review of closed investigations. (add at end) **++This provision does not exclude the IPR from conducting investigations into such cases.++**

3.21.120 Handling Complaints.

(B) (1) Complaint Type I: (add at end) **++This may include officer involved shootings and deaths in custody.++**

(B) (2) Complaint Type II: (add at end) **++This may include any incident involving the discharge of a firearm or less lethal weapon.++**

(B) (3) Complaint Type III: (add at end) **++This may include officer involved shootings and deaths in custody.++**

Comment: It is also crucial that Council remove the provision in the Portland Police Association contract which states: 62.1.3 “The parties recognize that IPR has no authority or responsibility relating to” chapter 61 sections 6-9, which include Deadly Force Incidents (8) and Criminal Investigations (9).

Council should include a pledge to change this part of the contract, as well as the part that limits who may question officers being investigated (61.2.2.4) in a resolution as part of the police accountability efforts.

#### **NEEDED CHANGE 2: Give the Auditor greater ability to hire outside counsel (I F)**

3.21.0700

The Auditor may [~~work through the City Attorney's Office to~~] hire outside legal counsel to support the purpose and duties of IPR when **+the Auditor determines+** [~~the Auditor and the City Attorney agree~~] that outside legal advice is necessary or advisable.

[NOTE: In addition, if it is determined that the above change cannot occur without a Charter change, then such a change should be supported to enable it.]

Comment: It is unclear why the Auditor did not include this change in her proposed ordinance, as she supports this recommendation. Council should include support for the Auditor, directed to the Charter Commission, in a resolution.

### **NEEDED CHANGE 3: Prohibit mediation for serious use-of-force cases (I K)**

3.21.120A: (add to end) **+No use-of-force complaint that results in hospitalization shall be eligible for mediation.+**

Comment: While the Director and Auditor say this will be incorporated into policies, it should be written into the ordinance. Otherwise it will be too easy to change in the future.

### **NEEDED CHANGE 4: Change the standard of review (II A)**

We suggest

3.21.020S: "Supported by the evidence" A finding regarding a complaint is supported by the evidence when [~~a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.~~] **+the findings are supported by a preponderance of the evidence.+**

Comment: The City Attorney has said there may be other, less deferential standards of review that could be applied to the CRC. PCW is open to discussing other ideas, but agrees with those in the community who believe that our citizen review board should be able to determine on their own whether an officer has violated policy. PCW has an entire document on the preponderance of evidence which we sent to Council in April 2011.

### **NEEDED CHANGE 5: Fix the catch-22 that CRC can hear new evidence but not compel testimony, while Council can compel testimony but not hear new evidence (II F & G)**

3.21.090A (new): **+Compel testimony: At appeal hearings CRC shall have the power to compel officers and other witnesses to testify regarding the incidents under review.+**

or

3.21.160C Remove the sentence fragment and sentence "~~...in the record. No new evidence may be introduced in the hearing.~~"

Comment: Portland Copwatch believes that if option 1 is used, the CRC also needs to be given power to recommend discipline, as proposed in a footnote:

3.21.090(A)++(9): **Recommend discipline: To recommend that discipline should occur for complaints with sustained findings that are more than minor complaints.++**

### **NEEDED CHANGE 6: Increase size of the CRC (II H) \*NOTE: See added page 6\***

3.21.080A: The Committee shall consist of **+eleven+** [~~nine~~] citizens...

The CRC expressed no opinion on this item at the time of the Stakeholder report. Their objection to enlarging the group, that each person would have less time to talk at meetings, is not reasonable. Increasing the size will allow them to better manage the many work group obligations they have, as well as increase diversity.

### **NEEDED CHANGE 7: Expand CRC authority to hear appeals (II K)**

Portland Copwatch proposed this language in a footnote:

3.21.140: add "**This provision includes third party complainants in cases in which the subject of the alleged misconduct has not objected to the third party complaint or cannot file his/her own complaint. IPR shall also provide avenues for review in cases that are dismissed or handled as minor complaints.**"

### **NEEDED CHANGE 8: Provide dedicated staff for CRC (II L)**

3.21.090A(new): **+Direct committee staff. To direct a staff person assigned to the committee to provide staff support for the powers and duties outlined in this chapter.+**

Comment: In discussions since the Stakeholder committee, Portland Copwatch is willing to support this language instead:  
3.21.050: (add to end): **IPR shall provide adequate staff for the Citizen Review Committee to carry out its powers and duties as outlined in this Chapter.**

**NEEDED CHANGE 9: Ensure that IPR reports on certain data (VI A)**

3.21.070B: Report on complaint **+and related+** activities. IPR shall track and report on the disposition of complaints to the public, IAD, the Chief, and the Council and monitor and report measures of activity and performance of IAD and IPR. IPR will also monitor [~~and~~] track **+and report to the same parties regarding+** trends relating **+to Bureau member interactions with the public as documented by other available data sources such as Employee Information System (ore equivalent), police stop data,** member history and complaint type and frequency, consistency and adequacy of discipline imposed. In performing these duties, IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.

Comment: PCW supports this language.

**NEEDED CHANGE 10: Create guidelines for IPR independent investigations (I C, I G)**

PCW suggests the following language:

add to 3.21.070D: **IPR shall investigate or participate in cases involving the rank of Captain or higher. The Citizen Review Committee shall create guidelines for the categories of such high-impact cases for IPR to invoke its power of independent investigation.**

Comment: The Stakeholder report includes a list of high-impact cases that may not be appropriate to include in the ordinance. PCW believes it is more likely the IPR will gain community trust (Stakeholder I A) if they follow through with a true independent investigation.

**NEEDED CHANGE 11: Create processes for CRC to review allegations at front end (II I) and to comment on draft policies (V A)**

PCW suggests the following language:

add to section 3.21.090: **Other powers: The Committee shall have the authority to comment on incoming complaints to assist the Director in formulating allegations, should they decide to exercise that authority. The Chair of the Committee shall also be presented with drafts of Bureau policies prior to their adoption for the opportunity to comment.**

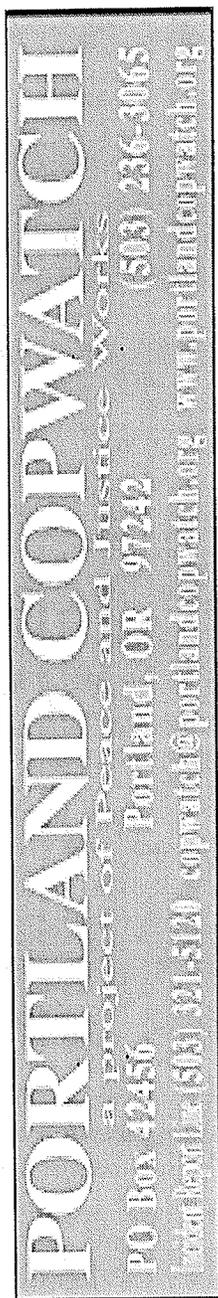
Comment: The Stakeholder report suggests coming up with a timeline in which the CRC must review the complaints so as to keep the process moving, and suggests that the Bureau share policies in draft form. PCW supports these ideas.

**POLICE REVIEW BOARD NEEDED CHANGE: Add more civilian members in use of force cases (IV B)**

3.20.140(C)(2): .....However, when the incident to be reviewed by the board involves the following use of force incidents, [~~one~~] **+two+** addition citizen member~~s~~ and one addition peer member shall serve on the Board, for a total of [~~seven~~] **+eight+** voting members. A quorum of [~~six~~] **+seven+** voting members, including [~~two~~] **+three+** citizen members, and the RU manager or designee, and four Advisory members is required to be present to make recommendations to the Chief.

Comment: The IPR staff should not be counted as community members on the board since they are City employees. PCW supports this change.

*(minor changes made after council hearing indicated in italics)*



To: Mayor Sam Adams, City Council, Auditor Lavonne Griffin Valade

cc: Independent Police Review Division (IPR), Citizen Review Committee (CRC),  
members of the press and the public

**re: Comparing the Auditor's proposed ordinance changes to those of the Stakeholder report  
Dan Handelman, Portland Copwatch (PCW) December 7, 2011**

**Modification to NEEDED CHANGE 6: Increase the size of the CRC (II H)**

On December 6, Portland Copwatch, recalling earlier discussions with IPR and CRC, recommended the following substitute to the Stakeholder recommendation to expand the CRC to eleven members:

3.21.080A:

The Committee shall consist of nine citizens **+and as many as two community members serving as non-voting participants in CRC. These two participants will be trained and certified along with CRC members, attend meetings, serve on Work Groups, and fill vacancies in CRC terms should one occur before a term expires.+**

Comments: The idea to add two "alternate" CRC members is based on the fact that on average, from 2002-2010, two CRC members have resigned or otherwise left their position early. We feel that this is a good compromise position between those who feel CRC should remain at 9 members and those of us who want to see more diversity with 11. We used the term "and as many as two" so that if one or both alternates move up to the CRC, they do not have to be replaced until the next round of recruiting. It also does not obligate the City to fill those two seats. We used the terms "trained and certified" to indicate that the non-voting members should be given the same access to IAD files as the full members, which will help spread out the CRC's work load in policy review and other audits.

We hope that the Council and Auditor will support this addition to the ordinance.

dan handelman  
portland copwatch

# PORTLAND COPWATCH

a project of Peace and Justice Works

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Portland, OR 97242

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## **Testimony on police accountability issues**

**Third hearing, December 8, 2011**

**Dan Handelman, Portland Copwatch**

Mayor Adams and Members of Council:

I am testifying to you today for the third time on these matters, in part because I have the distinction of being the person who has attended the most CRC meetings on the planet.

We want to see the best system possible that helps create a police bureau free from brutality, corruption and racism. It's rather disturbing that our motivations for suggesting changes that were agreed upon by as many as 18 community members are constantly being questioned.

I want to start by thanking the Mayor and Deputy City Attorney Woboril for sitting down to talk with me and with Debbie Aiona of the League of Women Voters last night to go over many of the proposed changes. Here are some "big picture" observations I have from that discussion, as well as some details about the changes.

### **WAIT AND SEE ON CRC—NOT ACCEPTABLE**

On some of the proposed changes, we were told that the changes made in March, 2010 would make them unnecessary, and we should wait to see how things work. That is not an acceptable situation. The Independent Police Review Division (IPR) Director, Auditor and Commissioner Leonard instituted those changes last year mostly without public input, with the promise that they were not addressing issues around the Citizen Review Committee (CRC) at that time so that there could be community discussion on those issues at a later date.

Some of the motivation for change had to do with former Police Chief Rosie Sizer. Some of what we're being asked to acknowledge is the changes to IPR thanks to Director Baptista. However, we always should be looking at the institutions we're looking to change, not just the personalities who happen to be tied to them at any given time. Chief Reese and Director Baptista will not always be in their jobs.

We also are being told that the CRC is not capable of making informed decisions about whether officers violated policy based on a preponderance of the evidence, nor can they make specific recommendations about what allegations should be investigated. However, every day, ordinary citizens on juries make decisions about whether people should be punished for committing crimes and grand juries decide what charges to levy against suspects—far more serious than the outcome of these administrative hearings. The CRC is trained in police policy. They review investigations for auditing purposes. They hold public forums to gather community concerns. They are certainly qualified to be making such decisions, probably more so than the members of the Police Review Board (PRB) who are pulled from a pool one or two at a time and have no public meetings.

An example of how we are told IPR is doing better is that there has been an uptick in Sustained findings on use of force. True, that number went from 0 to 3 in 2010, but presumably one of those three was the result of the CRC's recommendation regarding a Taser use case, which IPR and the Bureau did not choose to Sustain. Therefore any suggestion of rewriting CRC's directive to judge whether "the findings are supported by the evidence" from the ordinance are misguided. What's more, the fact that the current and proposed ordinance both call for CRC to recommend changed findings—the old language is much preferable, as it tells CRC to inform various parties "what finding should have been made." I think this is another answer to Commissioner Fish's question from last week about whether CRC is supposed to be reviewing the evidence or the process.

### **LEGAL TERMS VERSUS COMMON UNDERSTANDINGS OF WORDS**

Our discussion allowed the City Attorney to explain some of the City's reluctance to accept proposals has to do with the difference between how community members use certain words or phrases, and what those phrases mean to lawyers.

## **1-STANDARD OF REVIEW**

The CRC's standard of review, as we have been reminded many times, is the "reasonable person" standard, meaning they have to defer to the Bureau's Commander if a "reasonable person" could look at the evidence and come to the same finding.

What the IPR ordinance actually says is that the CRC needs to decide whether the findings are "supported by the evidence." Apparently this phrase, in legal circles, is an indication that this is an appeals body and that they are not able to come to a new finding by looking at the evidence. We disagree, since appeals courts can hear cases "de novo," or from scratch, in certain instances.

What we're arguing is to re-define "supported by the evidence" to mean that CRC will determine whether the finding is accurate based on a "preponderance of the evidence." We are saying that making that change still leaves in place CRC's proposed findings as recommendations, and the final decision in the hands of the Chief and Police Commissioner.

What the City seems to be saying is that if CRC uses the preponderance standard, that makes their decision making powers equal to those of the IPR Director, who is able to "controvert" (or challenge) findings from the Bureau if she disagrees with them. When that happens, the internal PRB has to meet to hash out the differences between IPR and the Bureau. Mr. Woboril complained again that CRC does not have the expertise to make such a decision, and that their contradicting the Bureau in such a public way would put City Council in a bad position should a case be appealed to them.

This attitude shows contempt for the CRC members, which we find troubling. It also calls into question the several dozen hearings CRC has held in its 10 year existence, and especially the handful of cases in which they recommended "Sustained" findings that the Bureau accepted. Finally, concerns about holding public hearings is a mockery of this system, which claims to be about transparency. If the concern is the officers' identities, from day one the CRC has offered that Bureau members may be identified as Officer A and Officer B, as is frequently the case.

## **2-HEARING NEW EVIDENCE/INFORMATION AT APPEALS**

The Stakeholder report pointed out that CRC can take any witness statements in written or oral form at their hearings, while City Council must review "the evidence in the record." We've been describing this as "hearing new evidence." Apparently, the legal definition of the term "evidence" is what is tripping us up. The Mayor and City Attorney seemed to be in agreement that the CRC is able to hear new "information" at the appeals hearings. Woboril made it clear he supports the IPR Director's concern that CRC should not be basing a decision to propose new findings on information at a CRC hearing.

The Stakeholders proposed that either CRC should be able to compel testimony (to fill out the new "evidence"/information they were getting, if IA and IPR had not done an adequate job) or else Council should be allowed to hear new "evidence"/information, since they are explicitly given the power to compel testimony.

Because there seems to be no disagreement that a person can say anything he/she wants before CRC, yet said information is not clearly permitted to be presented to Council by the current ordinance. So, we recommended inserting language that in addition to reviewing information in the case file, Council may review the record of the CRC hearing. We did not hear objections from the City on this idea.

It may not solve all of our concerns—the Council's subpoena power would still then be limited to asking people to say on record what they have already told IA, IPR or CRC. It also might raise new issues for the City, which, we suggest, could put a "fail-safe" into the ordinance that allows CRC to make decisions based on new information under limited circumstances, but otherwise, they would be required to send it back for more investigation.

## **3-RECOMMENDING POLICY CHANGES**

The City seemed very concerned that if the ordinance were to allow CRC to make recommendations to City Council or to the Auditor, rather than just to the IPR Director and the Chief, their meetings would be more subject to public meetings laws than they are now. Yet almost all of CRC's existing Work Groups involve less than a quorum, meaning the meetings are open to the public only by CRC's good graces. Apparently, someone believed we were trying to create a back door way to look at classified Internal Affairs files by forcing certain meetings to be public. We want to avoid a situation in which CRC is rebuked for presenting recommendations to our elected officials because it is not in the ordinance.

## **RE-CATEGORIZING ALLEGATIONS**

Council should codify CRC's ability to propose that the Bureau and IPR re-categorize allegations. This has happened numerous times in the past, but it seems to vary from Director to Director whether CRC has that power to recommend. We strongly urge that CRC members be given a limited window to review case files before they are sent for investigation to recommend allegation changes if necessary. This will save time and effort if those cases end up going to appeal at the tail end.

## **CONFERENCE COMMITTEE**

The Conference Committee is a process for when CRC recommends a changed finding and the Bureau disagrees with them, allowing them to come back and argue their case. We've heard many times how people don't want a system where someone gets "a second bite at the apple." It seems that the Conference Committee, which currently exists in policies but not the ordinance, does just that. The ordinance was framed to carry over the idea from PIIAC (the previous review structure) that City Council as a whole would act as sort of a Police Commission. Instead of just the one Police Commissioner ruling on an officer's actions, all five members have to take responsibility. This idea, which was voted into place by the citizens of Portland and predates the existence of Portland Copwatch by 10 years and the Stakeholder group by 18 years, should be honored.

The City seems to want to leave this extra step in, to allow CRC to gather more information before "using Council resources" to hold an appeals hearing. City Council, sitting as PIIAC, must have heard at least 8 or 9 cases from 1992-2001, and yet they've heard exactly one since the IPR was instituted in 2002. The Mayor suggested that because the Council members are not experts in police policy, as they are not experts in, say, how much bacteria can be in piles of leaves when they hold hearings on that sort of thing, they would rather not sit in judgment of police. We say, our elected officials should occasionally take responsibility to look at the way the police behave and the way the oversight system is functioning. It would certainly make discussions about changes to the ordinance a lot clearer. Moreover, Council receives expert testimony from the Bureau, IPR and CRC to assist them in their decision-making.

## **SHOOTINGS AND DEATHS**

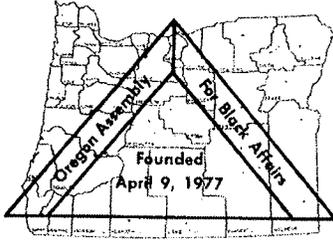
Apparently, the City's reluctance to put in phrases explicitly allowing the current IPR practice of sitting in on shootings and deaths investigations comes from their fear that we are asking for CRC to become involved in those cases. As I noted to the Mayor and the City Attorney, there is nothing in the ordinance that says prevents CRC from hearing an appeal if a person is shot by police, lives, and files a complaint. Regardless, we're asking for the language to be inserted because so long as those cases are not explicitly part of the ordinance, the Bureau is really only allowing IPR to sit in by its good graces. We also appreciate that Mr. Woboril said he would check on the section of the PPA contract which seems to deny IPR authority in shootings cases.

## **PURPOSE OF CRC**

Getting back to the really big picture here, both Director Baptista and Mr. Woboril implied that Mark Kramer of the National Lawyers Guild had said in his testimony that he thinks CRC should be a fact-finding body which is able to discipline officers directly. The transcript shows that he said the Mayor's Work Group in 2000 recommended "an independent police review body, citizen led, citizen staffed, independent investigators, with subpoena power and the power to recommend but not impose discipline." Even if Mr. Kramer had suggested such a body, that is not a reason to shut down discussion on making more changes to the current system to make it the best it can be.



Submitted  
by  
Jimmy Tardy  
12-08-11  
for Laurie L.  
Schuman



## Oregon Assembly For Black Affairs

P. O. Box 12485  
Salem, Oregon 97309

<http://www.oaba.us/>  
oaba@peak.org

December 8, 2011

**TO:** Mayor Sam Adams  
City Commissioner Amanda Fritz  
City Commissioner Dan Saltzman  
City Commissioner Randy Leonard  
City Commissioner Nick Fish  
City Auditor LaVonne Griffin

**SUBJECT: Plank V of the 2010 OBPC Platform & Resolution Addressing the Portland Police & the Portland Black Community**

The Oregon Assembly for Black Affairs (OABA) recognizes that it is the duty of Portland Mayor and the Portland City Council to provide safety and protection for ALL the people of Portland. Also OABA recognizes that Portland Police is ONE of the instruments for you to accomplish this duty. OABA knows that police accountability will be difficult if there are no effective Portland Codes and State laws holding police officers responsible for their wrongdoings. It is OABA understanding that the Portland City Council is and has been holding hearings on Portland police accountability and that you will be taking a vote to accept the "Report on Recommendations Regarding the Portland Police Bureau". There can be no real police accountability in Portland if the Mayor and Portland City Council are not willing to hold police officers accountable for their wrongdoings.

On April 16-18, 2010, the Oregon Black Political Convention (OBPC) met at the Crowne Plaza Portland Convention Center, 1441 NE 2nd Avenue, Portland, OR 97232, and the delegates to this Convention adopted the 2010 Oregon Black Political Convention Platform and Resolutions. Among its planks in the platform, the 2010 OBPC adopted **Plank V** that deals with Portland Police and Portland Black Community. Below is Plank V with resolutions that were adopted.

### **V. PORTLAND POLICE & PORTLAND BLACK COMMUNITY**

The Oregon Black Political Convention (OBPC) recognizes that it is the role of the Portland police to serve and protect ALL people in Portland. The police are to keep order, enforce laws, and protect citizens and their property. Portland police officers take an oath of office to uphold the U.S. Constitution, the Oregon Constitution and the Portland City Charter and Codes; and police officers have a duty and obligation to protect the public, including Black people, from police brutality. The Oregon Black Political Convention believes that it is the district attorney's responsibility to present all the facts to the grand jury in cases where police officers are accused of using UNNECESSARY deadly or near deadly force against members of Portland Black Community. **THEREFORE:**

1. The Oregon Black Political Convention supports police units that are culturally competent, and are there to serve and protect all people.
2. The Oregon Black Political Convention urges the Oregon Legislature and the Portland City Council to hold police officers to high standards of telling the truth and accurately documenting all incidents involving the use of deadly or near deadly force UNNECESSARY.

Portland City Council and City Auditor

December 8, 2011

Page 2 of 2

3. The Oregon Black Political Convention (OBPC) urges the Portland City Council to require that ALL its police officers involved in a deadly or near deadly force incident to file deadly or near deadly force incident reports immediately (within 24 hours) after such an incident.
4. The Oregon Black Political Convention (OBPC) urges the Portland City Council to pass city legislation that provide accountability and sanctions for violating the city law on the use of deadly or near deadly force.
5. The Oregon Black Political Convention urges the Multnomah County District Attorney to uphold the law and prosecute police officers who violate their oath of office and commit crimes using UNECESSARY deadly or near deadly force against members of Portland Black Community.
6. The Oregon Black Political Convention (OBPC) urges the Oregon Legislative Assembly to pass legislation that requires a special prosecutor to be appointed to prosecute police officers where UNECESSARY deadly or near deadly force has been used in violation of state laws and city codes.
7. The Oregon Black Political Convention (OBPC) supports the Portland City Council ordinance that gives the Independent Police Review (IRP) more oversight control of the investigation of police action, and OBPC urges the Portland City Council to pass ordinances that will provide sanctions for violating city codes and regulations.
8. The Oregon Black Political Convention urges Portland Mayor and the Portland City Council not to abdicate their sworn duty to uphold federal, state and city laws.
9. The Oregon Black Political Convention urges Portland Mayor and the Portland City Council to assure that all police union contracts entered into are in accordance with city, state and federal laws.
10. The Oregon Black Political Convention urges the Portland Mayor and Portland City Council to re-create an ordinance which supports a residency requirement for all new police hires.
11. The Oregon Black Political Convention strongly recommends the Portland Mayor, Portland City Council and Portland Police Bureau ensure that all union contracts are in compliance with federal, state and local laws and do not confer any immunities or privileges in violation of those laws.

OABA requests that you, as Portland City Council and Portland City Auditor, make this document part of the record of the hearing that you are holding today concerning the Portland Police and Portland citizens.

Sincerely,

*Calvin O. L. Henry*

Calvin O. L. Henry, Ph.D.  
OABA President

Cc: OABA Board of Directors  
AMA President T. Allen Bethel  
OABA ECD Chair Teresa Raiford  
Portland NAACP President L. C. Oddie  
Portland NAACP Vice President LeVerne Stroud

REPORT ON COMMUNITY RECOMMENDATIONS RE PORTLAND POLICE BUREAU  
AND AUDITOR'S INDEPENDENT POLICE REVIEW DIVISION

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

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ DAN HANDERMAN	PORTLAND COPWATCH	
✓ Debbie Aiona	League of Women Voters	
✓ Sylvia Zingales	NAMI Mutual	
✓ Jim Kahon	2835 SE Lambert St	
✓ Moses Wrosen	10227 N Merum St	
✓ Becky Straus	ACLU of Oregon	bstraus@aclu-or.org
✓ Thomas R. Tilton	4657 NE Killingsworth #35-97218	thomasr.tilton@gmail.com
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✓ Mark Kramer	Natl Lawyers Guild 97204	markokramer-associates.com
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REPORT ON COMMUNITY RECOMMENDATIONS RE PORTLAND POLICE BUREAU  
AND AUDITOR'S INDEPENDENT POLICE REVIEW DIVISION

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

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30 November 2011

REMARKS TO THE CITY COUNCIL OF PORTLAND ON QUALITY ASSURANCE FOR  
THE PORTLAND POLICE BUREAU.

I am a resident of Portland and a policy analyst by profession. I have done policy analysis and research on public safety, and was the director of research quality for six years at the European offices of the RAND Corporation. I currently serve on the Advisory Board of the PPB Crisis Intervention Training unit and on the Steering Committee of Safer PDX. I was a member of the stakeholder group convened last year by Commissioner Leonard that produced the recommendations that are presently under consideration, and my position on all of those recommendations is stated in the documentation of the group's work.

While the immediate topic of today's council session is the Independent Police Review Department and its Citizen Review Committee, the larger topic is police accountability. Police accountability has two major components: external oversight and internal quality assurance (QA). The external oversight in Portland is well-structured, including the IPR and CRC, police audits by the City Auditor, close oversight by elected officials, and engagement by committed community stakeholders. The discussion about how best to implement and link these components of external oversight is productive.

What appears to be missing is QA. QA is an objective, evidence-based, systemic, blame-free approach to continuous quality improvement of an organization, and is by definition internal. External oversight is thus not a substitute for QA; nor is the Internal Affairs Department QA—its primary mission is determining blame of individual officers. If, in the course of a CRC or IAD investigation, policy and procedural issues are brought to light, so much the better, but that is not their main purpose.

QA is, in the context of a police force, a method for identifying systemic deficiencies in police policies and procedures—especially those deficiencies that could have or have had serious consequences for the citizens served by the police. The most important feature of QA is the collection and analysis of meaningful, valid, and comprehensive data that looks for any systemic deficiencies in the policies and processes that are used to achieve PPB objectives—especially in regard to interactions with citizens. To be meaningful, valid, and as complete as possible, these data must be collected in a blame-free atmosphere, where the goal is not to give demerits or worse to misbehaving PPB members but to track system functioning. QA data comes not only from reports of negative events, but from “near misses” and successes as well, plus open self-reports of such events and anonymous reports by officers. Looking at the good and bad is essential to QA—not to calculate percentages of times when things went well, but instead to identify what caused things to actually go bad or come close to going bad.

In summary I believe that QA—an objective, evidence-based, blame-free approach to continuous quality improvement—needs to be designed and implemented within the Portland Police Bureau in a timely but deliberate manner.



# The League of Women Voters of Portland

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## **City Council Testimony Independent Police Review Division Ordinance Portland Police Bureau Policies November 30, 2011**

This is the first real opportunity the public has had to advocate for much-needed improvements to our oversight system since its creation 10 years ago. The League believes more time is needed to carefully consider the numerous IPR and Police Bureau related recommendations that are on the table. The process also would be improved by grouping the recommendations into more manageable subsets, for example, by considering IPR improvements and Police Bureau policies separately. Furthermore, Commissioner Leonard who organized and presided over the Stakeholder Group will be unable to participate in the scheduled Council sessions.

The Auditor's proposed changes to the IPR ordinance are a step forward in clarifying ambiguities, enshrining current practices, and adding improvements. Increasing CRC members' terms, establishing CRC authority to make policy recommendations directly to the Bureau and recommend further investigation in appeals are positive changes.

Other needed improvements include:

Change the definition of "supported by the evidence" so that the reasonable person standard is replaced with a more suitable alternative. This issue was covered in detail at the last hearing and is CRC's top priority. The City Attorney and CRC should work together to resolve this.

CRC members are carefully selected, well trained, and take their responsibilities seriously. They deserve sufficient staff support to carry out their duties. In the Staff and Delegation section (3.21.050) add a provision requiring IPR to provide the CRC with the staff needed to carry out its functions as defined by the ordinance.

Appeal hearings benefit both the complainant and public. It is essential that the provisions governing their conduct are logical and clear. There are several items that merit your attention.

In addition to giving CRC the authority to recommend further investigation (3.21.160[A][1][a]), the ability to reclassify allegations also should be added. There have been times when allegations were not an accurate reflection of the case or the related police policies and questions have arisen about whether or not CRC had the authority to recommend reclassification.

In section 3.21.160[A][1][b] the proposed language states, when the CRC “challenges one or more of the Bureau’s recommended findings ... and recommends a different finding, the Director shall formally advise the Bureau in writing of the Committee recommendation.” This should be revised to include that the CRC must approve the written notification to ensure its accuracy.

The first IPR director instituted the conference committee (3.21.160[A][1][b][i][a]) without consulting the CRC or the public. Before adding this to the code, the need for this step in the process should be thoroughly discussed.

When an appeal does go to City Council, CRC should take the lead in presenting its recommended findings since it is the body challenging them. Clarify the language by adding, “The Committee shall present its recommendations before Council,” as recommended by the Stakeholder Group (3.21.160[A][1][b][i][c]).

Finally, there are a number of other issues that do not belong in the code but should be addressed in a Council resolution. Several examples include greater public involvement in development of police policies, a mechanism for a CRC public review of cases that have not been appealed but illustrate questionable police responses or policy issues, returning to the appropriate findings in misconduct cases, making police reports available to complainants, the identification of types of cases appropriate for independent IPR investigations, and changes to the collective bargaining agreements to accommodate true civilian oversight.

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a project of Peace and Justice Works

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## **Testimony on police accountability issues Second hearing, November 30, 2011 Dan Handelman, Portland Copwatch**

Mayor Adams and Commissioners:

At the November 16 hearing, Portland Copwatch (PCW) outlined broad concerns about the Mayor/Chief and Auditor's 90 pages of documents on police accountability issues. Because of the limited time to review so much information, today we are focusing on the specifics of the ordinance and recommending that Council propose a resolution to supplement the existing documents you are considering. We strongly support the idea of delaying your vote past the December 8 proposed date to ensure that Commissioner Leonard, who oversaw the Police Oversight Stakeholder group, can take place in this important discussion and vote.

We have prepared a stand-alone list of the seven (7) ordinance changes (previously six) being proposed to the Independent Police Review Division code (Chapter 3.21), analyzing those changes, and pointing out at least eleven (11) other ordinance changes proposed just in the Stakeholder report, plus one regarding the Police Review Board.

Portland Copwatch has some specific concerns about the Auditor's proposed language, while we generally support the administrative changes. Specifically, we are opposed to the addition of the "conference committee" into 3.21.060 A subsections 2(a) and (b), as it needlessly lengthens and delays the process originally designed in the ordinance wherein the City Council would settle a disagreement between CRC and the Bureau. No community member asked for this change to the ordinance and Council should not support it.

The addition of the new subsection 3.21.060(A)(1)(a), which was proposed between the first and second is unnecessary, but if it remains it should also address CRC's ability to re-categorize complaints for investigation or as part of their decision making process. In the Stakeholder report PCW recommended a simpler fix by adding language to the existing subsection (b), allowing CRC to "send the case back for further investigation by IPR or IAD, and/or send back the case to reclassify allegations." A request for more evidence is part of the "not supported by the evidence" finding—regardless of whether the standard of review is changed or not.

The change in the section now marked 3.21.060(A)(1)(c) takes away the CRC's responsibility to report their findings and gives it to the Director. If it is to remain, there must be a directive for CRC Chair or designee to sign off on any communication about the CRC's recommendations.

The universally supported change to allow CRC to make policy recommendations could be tightened up, but at the very least it should be added that CRC may make policy recommendations directly to the Auditor and City Council as well as the Chief and IPR Director.

While the Auditor has taken a step toward clarifying CRC's role at City Council hearings, the Stakeholder group identified clearer language and a better place that should also be added. A new sentence in the section on Council Hearings ( 3.21.160C) should state: "The Committee shall present its recommendations before Council."

PCW supports the change to lengthen CRC members' terms.

We have also identified 11 other items related to the Stakeholder report that should be added to the ordinance. The most illustrative of the need to make more changes is the needed fix listed as II F and II G: The conundrum that CRC may hear new evidence at their hearings but not compel testimony, while Council can compel testimony but not hear new evidence. While we would prefer that CRC be given power to compel, it would also be acceptable to delete the language specifying that Council may only review what is already in the record (3.21.160 C). As we mentioned last time, the IPR Director explicitly stated that she disagrees with the City Attorney's interpretation of the City Code that CRC can hear new evidence. The fact that the language is so ambiguous on its face is enough reason to make more changes than proposed by the Auditor.

As you heard from many quarters last time, Council should also change the CRC's standard of review. In April, 2011, we sent Council an extensive document supporting changing the finding to "preponderance of the evidence." The City Attorney has said there may be other, less deferential standards of review that could be applied to the CRC. PCW is open to discussing other ideas, but agrees with those in the community who believe that our citizen review board should be able to determine on their own whether an officer has violated policy.

In addition, PCW recommends:

- Ensuring IPR can review shootings and death in custody cases (I B)
  - Give the Auditor greater ability to hire outside counsel (I F), which the Auditor herself supports
  - Prohibit mediation for serious use-of-force cases (I K)
  - Increase size of the CRC (II H)
  - Expand CRC authority to hear appeals (II K)
  - Provide that CRC have sufficient staffing (II L)
  - Ensure that IPR reports on certain data (VI A)
  - Give guidance for the circumstances where IPR will conduct independent investigations (I C, I G)
- and
- Create a process for CRC to review allegations at front end (II I) and to comment on draft policies (V A)

We also support changing the Police Review Board ordinance to allow for one more community member when they hear use of force cases. The IPR staff should not be considered voices of the community, as they are paid City employees.

PCW also urges the Council to create a separate resolution outlining certain city policies which would help enact other recommendations and build community trust.

To guarantee IPR can conduct independent investigations by compelling officer testimony (I D), Council should pledge to change the part of the collective bargaining agreement which limits who may question officers being investigated (61.2.2.4).

To ensure that IPR can investigate and review shootings and deaths incidents (I B) without fear of triggering grievances, Council should pledge to remove the provision in the Portland Police Association contract which states: 62.1.3 "The parties recognize that IPR has no authority or responsibility relating to" chapter 61 sections 6-9, which include Deadly Force Incidents (8) and Criminal Investigations (9).

Any such resolution should also, at minimum:

- Encourage the Charter Commission to make it easier for the Auditor to hire independent counsel (I F);
  - Direct the Bureau to return to the nationally recognized four dispositions for complaints instead of the current three (3A);
  - Direct the Bureau and IPR to add the additional notations of Communication and Equipment to the list of concerns raised in an investigation which do not imply officer misconduct; they only added Policy, Training, and Supervisory issues while the Stakeholder group was still discussing the matter (3B);
  - Direct the Bureau to refer to low level concerns as "non-disciplinary complaints" instead of "Service Improvement Opportunities" (3 C);
  - Direct the Bureau to open task forces involving police policy that include IPR and CRC to public observation, which is also supported by the Auditor (3 H);
  - Find a way to create an interagency agreement so that certain documents can be made more readily available to complainants and the public (3 E and 3 F)
- and
- Instruct the IPR to conduct a survey of complainants up front about whether they prefer IPR or IA investigators, and whether they prefer a full investigation or a Non-Disciplinary Complaint (1 I and 3 D).

Thank you  
dan handelman  
portland copwatch

To: Mayor Sam Adams, Police Chief Mike Reese, Auditor Lavonne Griffin Valade  
cc: Independent Police Review Division (IPR), Citizen Review Committee (CRC), City Council, members of the press and the public

**Comparing the Auditor's proposed ordinance changes to those of the Stakeholder report by Dan Handelman, Portland Copwatch (PCW) November 30, 2011**

This document includes a stand-alone list of the seven (7) ordinance changes (previously six) being proposed to the Independent Police Review Division code (Chapter 3.21), analyzes those changes, and points out at least eleven (11) other ordinance changes proposed just in the Stakeholder report, plus one regarding the Police Review Board.

**CHANGE 1: CRC members' terms lengthened. (II C)**

3.21.080(B)(2): Each serve a term of [two] three years, subject to reappointment by Council.

Comment: This change is identical to that proposed by the Stakeholder report. PCW supports it.

**CHANGE 2: CRC can recommend policies to the Bureau. (II B)**

3.21.090 (A) (3)

Recommend policy changes. To [help the Director identify specific] +evaluate complaint and other information and investigative practices to make policy recommendations to the Chief of Police and the Director to prevent and rectify+ patterns of problems. [and to participate in the development of policy recommendations].

Comment: Though the Auditor's language is appropriately more clear about to whom the recommendations will be made (although CRC also makes recommendations to City Council, which should be added to the list), the Stakeholders' recommendation for modifying the ordinance language was much simpler:

3.21.090: To [help the Director] identify specific patterns of problems and to [participate in the] develop [ment of] policy recommendations.

PCW recommends combining the two and adding City Council to the list of recipients.

**CHANGE 3: Replacing "Reviews and Supplementary Investigations" with "Case File Review" (administrative)**

3.21.150

[Reviews and Supplementary Investigations] +Case File Review.

A. When a timely appeal has been submitted to and accepted by the Director, the Director and the Committee chair will schedule a case file review meeting before the Committee to assess the completeness and readiness of the investigation for an appeal hearing.

B. As a result of the case file review, IPR or IAD may conduct additional investigation [A complaint resulting in an investigation may be reviewed or supplemented with additional investigative work as a result of an appeal. The IPR will act ] in accordance with applicable provisions of the collective bargaining agreements covering Bureau personnel +per 3.20.120+. [when it participates in an IAD investigation, or when it initiates an investigation. The Director shall conduct a preliminary review of IAD's investigation and may conduct an investigation to supplement IAD work. The Director shall decide:

A. If no further investigation and consideration of evidence is warranted the director shall inform the complainant or member of the basis for the decision and the opportunity for a hearing before the committee or,

B. If additional investigation and consideration of evidence is warranted, the Director shall request IAD reconsider its efforts and results. The Director shall review the additional work of IAD and may conduct supplemental investigation. The Director shall schedule the appeal for a hearing before the Committee.]

Comment: This is an administrative fix to make the ordinance better reflect current practices. It is of some concern that language in this section as originally written authorized IPR to conduct supplemental investigation if IAD's investigation was inadequate and that language is being cut out. However, the addition of the new change clarifying CRC's ability to send cases back for more investigation relieves some of this concern.

**CHANGES 4 and 5 (new): Administrative fixes to appeals section, including the current practice "Conference Committee" (administrative), and clarifies CRC ability to recommend further investigation at appeal (II J-partial)**

3.21.160 Hearing Appeals.

A. +An Appeal+ [h]Hearing[s may] +shall+ be conducted [either at the following points:] +after a majority vote of the Committee to hold such a hearing at the case file review or other meeting of the full Committee.+

1. [When a complainant or member appeals the finding] +At the Appeal Hearing+ the Committee shall decide +by majority vote+:

+a. To recommend further investigation by IAD or IPR; or+

a)+b+. If the finding is supported by the evidence. +In a case where the majority of the voting members of the Committee affirms that the Bureau's recommended findings are supported by the evidence,+ [T] the Director shall [inform the complainant, member, IAD and the Chief of the Committee's decision and] close the complaint; +or+

[b].+c+. If the finding is not supported by the evidence. [The Committee shall inform the complainant, member, IAD and the Chief of what finding should have been made. The Director shall schedule a hearing before Council for final disposition. The Committee shall select one of its members to represent the Committee's viewpoint before Council.] +In a case where a majority of the voting members of the Committee challenges one or more of the Bureau's recommended findings by determining that one or more of the findings is not supported by the evidence, and recommends a different finding, the Director shall formally advise the Bureau in writing of the Committee recommendation.

(1) If the Bureau accepts the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall close the case.

(2) If the Bureau does not accept the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall schedule the case for a conference hearing.

(a) At the conference hearing, if the Committee, by a majority vote, is able to reach an agreement with the Bureau on the recommended findings, the Director shall close the case.

b) If, by majority vote, the Committee can not reach an agreement with the Bureau on the recommended findings, the Committee shall vote whether to present the appeal to City Council.+

Comments:

—The changes in the heading of A and subsection 1 were sorely needed and welcome.

—The addition of the new subsection a, which was proposed between the first and second hearings, is welcome, though it should also address CRC's ability to re-categorize complaints for investigation or as part of their decision making process. From the Stakeholder report, a footnote shows that Portland Copwatch recommended this language:

3.21.160A(1)(b) If the finding is not supported by the evidence,. The Committee shall inform the complainant, member, IAD and the Chief of what finding should have been made, ++send the case back for further investigation by IPR or IAD, and/or send back the case to reclassify allegations.++

This solution is clearer than the Auditor's proposal, as the finding should not have been made if there was not enough evidence to make the finding. Therefore, a request for more evidence is part of the "not supported by the evidence" finding—regardless of whether the standard of review is changed or not.

—The change in the subsection now marked (c) takes away the CRC's responsibility to report their findings and gives it to the Director. If it is to remain, there must be a directive for CRC Chair or designee to sign off on any communication about the CRC's recommendations.

—The addition of the “conference committee” in subsections 2(a) and (b) needlessly lengthens and delays the process originally designed in the ordinance wherein the City Council would settle a disagreement between CRC and the Bureau. No community member asked for this change to the ordinance and Council should not support it.

#### **CHANGE 6: Slightly clarifies CRC’s role in Council appeal (II E-partial)**

+ (c) If, by majority vote, the Committee decides to present the appeal to City Council, the Director and the Committee Chair will schedule an appeal hearing before City Council. The Committee shall appoint one of its members to present its recommended findings during the appeal to City Council. +

Comment: The Stakeholder recommendation made the process much clearer by adding a sentence to the paragraph describing Council appeals.

3.21.160C: (add +The Committee shall present its recommendations before Council.+  
Council should add that language as well.

#### **CHANGE 7: Fixes typographical error (administrative)**

3.21.160 (D)3. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and other evidence. The power to compel the attendance and testimony of witnesses in accordance with City Code Section 3.2L160 +C+ [D].3. shall not be delegated by the Council to the Committee.

#### **OTHER NEEDED CHANGES**

In addition to incorporating the above concerns into the Auditor’s proposal, the following other specific code changes were proposed in the Stakeholder report.

#### **NEEDED CHANGE 1: Ensure IPR can review shootings and deaths in custody cases (I B)**

Portland Copwatch proposed this language in a footnote:

3.21.020 (L) Review of closed investigations. (add at end) ++This provision does not exclude the IPR from conducting investigations into such cases. ++

3.21.120 Handling Complaints.

(B) (1) Complaint Type I: (add at end) ++This may include officer involved shootings and deaths in custody. ++

(B) (2) Complaint Type II: (add at end) ++This may include any incident involving the discharge of a firearm or less lethal weapon. ++

(B) (3) Complaint Type III: (add at end) ++This may include officer involved shootings and deaths in custody. ++

Comment: It is also crucial that Council remove the provision in the Portland Police Association contract which states: 62.1.3 “The parties recognize that IPR has no authority or responsibility relating to” chapter 61 sections 6-9, which include Deadly Force Incidents (8) and Criminal Investigations (9).

Council should include a pledge to change this part of the contract, as well as the part that limits who may question officers being investigated (61.2.2.4) in a resolution as part of the police accountability efforts.

#### **NEEDED CHANGE 2: Give the Auditor greater ability to hire outside counsel (I F)**

3.21.0700

The Auditor may [work through the City Attorney’s Office to] hire outside legal counsel to support the purpose and duties of IPR when +the Auditor determines+ [the Auditor and the City Attorney agree] that outside legal advice is necessary or advisable.

[NOTE: In addition, if it is determined that the above change cannot occur without a Charter change, then such a change should be supported to enable it.]

Comment: It is unclear why the Auditor did not include this change in her proposed ordinance, as she supports this recommendation. Council should include support for the Auditor, directed to the Charter Commission, in a resolution.

### **NEEDED CHANGE 3: Prohibit mediation for serious use-of-force cases (I K)**

3.21.120A: (add to end) +No use-of-force complaint that results in hospitalization shall be eligible for mediation.+

Comment: While the Director and Auditor say this will be incorporated into policies, it should be written into the ordinance. Otherwise it will be too easy to change in the future.

### **NEEDED CHANGE 4: Change the standard of review (II A)**

We suggest

3.21.020S: "Supported by the evidence" A finding regarding a complaint is supported by the evidence when [a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.] +the findings are supported by a preponderance of the evidence.+

Comment: The City Attorney has said there may be other, less deferential standards of review that could be applied to the CRC. PCW is open to discussing other ideas, but agrees with those in the community who believe that our citizen review board should be able to determine on their own whether an officer has violated policy. PCW has an entire document on the preponderance of evidence which we sent to Council in April 2011.

### **NEEDED CHANGE 5: Fix the catch-22 that CRC can hear new evidence but not compel testimony, while Council can compel testimony but not hear new evidence (II F & G)**

3.21.090A (new): +Compel testimony: At appeal hearings CRC shall have the power to compel officers and other witnesses to testify regarding the incidents under review.+

or

3.21.160C Remove the sentence fragment and sentence "...in the record. No new evidence may be introduced in the hearing."

Comment: Portland Copwatch believes that if option 1 is used, the CRC also needs to be given power to recommend discipline, as proposed in a footnote:

3.21.090(A)++(9): Recommend discipline: To recommend that discipline should occur for complaints with sustained findings that are more than minor complaints.++

### **NEEDED CHANGE 6: Increase size of the CRC (II H)**

3.21.080A: The Committee shall consist of +eleven+ [nine] citizens...

The CRC expressed no opinion on this item at the time of the Stakeholder report. Their objection to enlarging the group, that each person would have less time to talk at meetings, is not reasonable. Increasing the size will allow them to better manage the many work group obligations they have, as well as increase diversity.

### **NEEDED CHANGE 7: Expand CRC authority to hear appeals (II K)**

Portland Copwatch proposed this language in a footnote:

3.21.140: add "This provision includes third party complainants in cases in which the subject of the alleged misconduct has not objected to the third party complaint or cannot file his/her own complaint. IPR shall also provide avenues for review in cases that are dismissed or handled as minor complaints."

### **NEEDED CHANGE 8: Provide dedicated staff for CRC (II L)**

3.21.090A(new): +Direct committee staff. To direct a staff person assigned to the committee to provide staff support for the powers and duties outlined in this chapter.+

Comment: In discussions since the Stakeholder committee, Portland Copwatch is willing to support this language instead:  
3.21.050: (add to end): IPR shall provide adequate staff for the Citizen Review Committee to carry out its powers and duties as outlined in this Chapter.

**NEEDED CHANGE 9: Ensure that IPR reports on certain data (VI A)**

3.21.070B: Report on complaint +and related+ activities. IPR shall track and report on the disposition of complaints to the public, IAD, the Chief, and the Council and monitor and report measures of activity and performance of IAD and IPR. IPR will also monitor [and] track +and report to the same parties regarding+ trends relating +to Bureau member interactions with the public as documented by other available data sources such as Employee Information System (ore equivalent), police stop data,+ member history and complaint type and frequency, consistency and adequacy of discipline imposed. In performing these duties, IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.

Comment: PCW supports this language.

**NEEDED CHANGE 10: Create guidelines for IPR independent investigations (I C, I G)**

PCW suggests the following language:

add to 3.21.070D: IPR shall investigate or participate in cases involving the rank of Captain or higher. The Citizen Review Committee shall create guidelines for the categories of such high-impact cases for IPR to invoke its power of independent investigation.

Comment: The Stakeholder report includes a list of high-impact cases that may not be appropriate to include in the ordinance. PCW believes it is more likely the IPR will gain community trust (Stakeholder I A) if they follow through with a true independent investigation.

**NEEDED CHANGE 11: Create processes for CRC to review allegations at front end (II I) and to comment on draft policies (V A)**

PCW suggests the following language:

add to section 3.21.090: Other powers: The Committee shall have the authority to comment on incoming complaints to assist the Director in formulating allegations, should they decide to exercise that authority. The Chair of the Committee shall also be presented with drafts of Bureau policies prior to their adoption for the opportunity to comment.

Comment: The Stakeholder report suggests coming up with a timeline in which the CRC must review the complaints so as to keep the process moving, and suggests that the Bureau share policies in draft form. PCW supports these ideas.

**POLICE REVIEW BOARD NEEDED CHANGE: Add more civilian members in use of force cases (IV B)**

3.20.140(C)(2): .....However, when the incident to be reviewed by the board involves the following use of force incidents, [one] +two+ addition citizen member+s+ and one addition peer member shall serve on the Board, for a total of [seven] +eight+ voting members. A quorum of [six] +seven+ voting members, including [two] +three+ citizen members, and the RU manager or désignee, and four Advisory members is required to be present to make recommendations to the Chief.

Comment: The IPR staff should not be counted as community members on the board since they are City employees. PCW supports this change.

REPORT ON COMMUNITY RECOMMENDATIONS RE PORTLAND POLICE BUREAU  
AND AUDITOR'S INDEPENDENT POLICE REVIEW DIVISION

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

NAME (print)

ADDRESS AND ZIP CODE

Email

✓ DAN HANDELMAN	PORTLAND COPWATCH	
✓ DR LEROY HAYNES	ALBINA MINISTERIAL ALLIANCE	
✓ PEBBIE ALONA	LEAGUE OF WOMEN VOTERS	
✓ ASHLEY ALBIES	NATIONAL LAWYERS GUILD	
✓ DAVID FIDANQUE	ACLU OF OREGON	
✓ Elmira Rodriguez	Occupy Portland	
✓ Moses WROSEN	EVERY DAY PEOPLE / Occupy PDX	
✓ Alisa Kerwood Alisa Kerwood	Portland Gresham	
✓ Sally Joughin	Stakeholder committee	
✓ Suzanne Hayden	200 SW market	

~~Jim Linkous~~

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REPORT ON COMMUNITY RECOMMENDATIONS RE PORTLAND POLICE BUREAU  
AND AUDITOR'S INDEPENDENT POLICE REVIEW DIVISION

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

NAME (print)

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Email

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✓ Sylvia Zingerser		ariela@hevanet.com
✓ TJ Browning	Portland 97214	
✓ Eric Rothman		
✓ Edith Gillis		

## Jim Linkous

**Subject:** PPB-City Council Training Center Talkin

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### Quick Introduction

Jim Linkous, RVP and GM of Viawest

I Serve on the Executive Board of Directors of the Citizen Crime Commission which is dedicated to Public Safety  
And I serve on the Executive Board of the Software Association of Oregon  
which represents 450 of Oregon's Top High Tech Businesses

My relationship with the PPB began with the tragic death of my close friend Portland Police Officer Mark Zylawly  
"Z-Man", who served the City of Portland for 17 years in North Portland...

I recently participated as a student in the PPB Community Academy

Which significantly heighten my awareness of the need for High Quality Training for our Police Officers.

### COMMUNITY ACADEMY

As I participated we were instructed in various disciplines, such as shooting, defensive tactics  
and less lethal options.

But what brought it home was my experience in the training scenarios

We approached a women in mental crisis with a knife to her throat as well as a domestic violence situation

Even though we knew it was just a simulation, my eyes were opened to the many types unpredictable,

potentially Life Threatening situations that Law Enforcement Professionals may encounter every day

It was valuable to work through them, debrief afterwards and

then realize that it's imperative officers have the best possible training...

### "WHY BUILD A DEDICATED PPB TRAINING CENTER?"

Because today the PPB Does not have a Training Facility *is require ongoing training*  
400,000 citizen contacts annually

The largest agency in Oregon--30 out of 18,0000 in American and THEY DON'T HAVE A TRAINING FACILITY

Mention the Officer to 1,000 citizen ratio and that lowest number of officers in the country

as compared to other major cities

### WHY does the business community recommend building a dedicated facility

To support our Public Safety Professionals in Making Portland a SAFE Environment to live, work and visit

Training is critical to Officer and Community Safety

Efficiencies and Cost reductions

Reduce the number of legitimate Lawsuits

### In closing, I recently heard Mike Stradley, a dedicated public servant who recently retired from PPB

Officer Stradley is a highly decorated Portland Police Office with Portland and a 20 year member of the SERT

"When he began his career with the PPB is 1980s The City of Portland was about ready to build a training center

And today we are still about ready to build a Portland Police Training Facility...

Crime has definitely changed in the past 25 years and so has the training....

Thank you for your Consideration and your LEADERSHIP in supporting those that serve....



Testimony of Suzanne Hayden  
Executive Director Citizens Crime Commission  
Wednesday November 16, 2011  
Portland City Council

Good Afternoon Mayor Adams, City Council members. I am Suzanne Hayden, Executive Director of the Citizens Crime Commission and a long time Portland resident. I would like to thank the organizations and individuals who have engaged in this important discussion involving public safety. I would like to limit my comments and offer support today for one of the specific recommendations in the report. That is support for scenario based training capabilities for the Police Bureau and in particular in support of the required political, community and financial dedication for a regional training facility(#9) I. have worked with police officers my entire professional career as a Multnomah County Prosecutor and over the years District Attorneys including myself have participated in training with Portland Police officers in multiple locations, including camp Rilea in Warrenton, on the coast, Camp Kuratly in Barton, the Clackamas county Sheriff's facility, the Justice Center, Camp Withycomb, and two school buildings that were no longer in use, just to name a few. The logistical nightmare and inefficient use of resources pose a serious concern.

However, until I attended the community academy, I was not fully aware of the negative impact on the actual quality of training such far flung and inadequate locations have on our men and women in the bureau.

During the academy we participated in scenario training at Camp Withycomb which is no longer available to use. Scenario training approximates the real life situations our police officers encounter everyday. Effective scenario training requires officers to use all the training disciplines, driving, Crisis Intervention Techniques, defensive tactics, and firearms. Portland Police Bureau, the largest police agency in the state with the most population density and highest calls for service, has no dedicated location where they are able to simultaneously and effectively use all these disciplines. As we are all aware, when encounters between the police and citizens end badly, the number one focus is on failures in tactics or training. We as a community need to support public safety and these dedicated men and women with the necessary resources and facilities to provide this critical training.

Thank you for your leadership in this matter.

# PORTLAND COPWATCH

a project of Peace and Justice Works

PO Box 42456

Portland, OR 97242

(503) 236-3065

Incident Report Line (503) 321-5120 copwatch@portlandcopwatch.org

www.portlandcopwatch.org

## Testimony on the “Report on Recommendations Regarding the Portland Police Bureau” and proposed changes to the Independent Police Review Division by Dan Handelman, Portland Copwatch, November 16, 2011

Mayor Adams and Council

Portland Copwatch (PCW) has analyzed of many of the Mayor, Chief and Auditor’s responses to over 100 recommendations about changing the police oversight system and 51 proposals for improving police policies. Some of the community demands date back to 2001 and earlier. Amazingly, even though there are over 150 recommendations for changes and improvements, the Auditor’s proposal contains only six changes to the IPR ordinance, only three of which are based on community concerns.

The Mayor and Chief claim to agree with 35 of 51 of the policy recommendations (69 percent), though as with the police oversight issues, they misinterpret or fail to address parts of the recommendations. The major theme of disagreement is the Police Bureau’s insistence that they need “flexibility” to use various kinds of force, including multiple Taser cycles, unleashing police dogs simultaneously with other force options, and firing “beanbag” guns from less than ten feet.

Here’s an analogy: While many people oppose the existence of pornography, society has agreed to tolerate a certain amount of it, so long as it does not involve children. What community members are asking is that we don’t want any police violence, but if they are going to use it, there have to be limits.

The City insists that the IPR and CRC were, in the Mayor’s words, “established ... to increase the transparency and fairness of the Bureau’s complaint-handling and discipline processes, not to supplant those processes or relieve the Bureau of the responsibility of holding its own members accountable.”

We believe the civilian oversight system was set up to supplement the Bureau’s processes, not merely to increase transparency and/or review Internal Affairs investigations. People do not trust a system where police investigate other police. No matter how good it might be, it is fundamentally never going to gain community trust until the system is fixed.

### STAKEHOLDER REPORT

Regarding the “Police Oversight Stakeholder Group,” which met from May to September 2010 under the auspices of Commissioner Randy Leonard (and included the Auditor, IPR Director, and Chief), the Mayor and Chief disagreed with 19 of 41 recommendations (46%) and “agreed” with just 14 (34%). The Auditor disagreed with 13 recommendations (32%) while agreeing with 16 (or 39%).

Among the most significant disagreements is over the **CRC’s standard of review**. The City insists that the deferential “reasonable person” standard, which calls on CRC to support the Bureau commander even if they disagree with their findings, must remain in place and that using “**preponderance of the evidence**” would “muddle lines of accountability.” However, changing the standard to judge whether or not CRC believes an officer was within policy does not take away the Commissioner and Chief’s final decision making on the finding and any disciplinary action.

Also, the Auditor’s proposed changes do not fix a “catch-22” currently built into the system. The current code allows CRC to hear new evidence at its appeal hearings, but not compel testimony, then allows City Council to compel testimony but not hear new evidence. The IPR Director has stated that she disagrees with the City Attorney about the meaning of the language giving CRC power to hear new evidence. Council should take the chance to clarify this issue (by which we mean, explicitly state CRC’s right to hear new evidence), and to **either give CRC power to compel testimony or to give Council the ability to hear new evidence**.

PCW strongly **objects to the insertion of the “conference committee”** into the appeals process. Adding the unnecessary step of having the Bureau come back to CRC when they disagree with a proposed finding adds to the length of a process that already takes two to four years. It also takes away from the strength of the IPR ordinance giving City Council the final say on these misconduct cases.

In short, Council should also:

- Pledge to **change collective bargaining agreements to allow IPR to compel officer testimony** so they can conduct independent investigations and gain community trust;
- Support the Auditor’s efforts for independent legal counsel** to avoid conflicts of interest with the City Attorney;
- Broaden the ability of complainants to file appeals with the CRC** (since CRC is just now holding its first hearing in one and a half years);
- Direct the Bureau to adopt the national standard **four categories of findings** and a **meaningful term for non-disciplinary complaints**;
- Take further steps to increase the transparency of the process with regard to **accessing documents** and **allowing public attendance at meetings on Bureau policies**;
- Increase the size of CRC** to encourage more diversity of race, gender and ethnicity; and
- Direct IPR to **take surveys from complainants** to better understand what they want from the oversight system.

There are other issues we have addressed in our full written testimony.

When IPR was created in 2001, the public was told it would be assessed one year later; that assessment finally came in January, 2008. Then, Commissioner Leonard, Auditor Griffin Valade and IPR Director Baptista made changes to the IPR ordinance behind closed doors that were passed in March, 2010. The Stakeholder group was created to ensure that changes to the CRC, and further changes to IPR, would have community input.

To say the least, it is disappointing after a four-month process by the Stakeholder group, 10 years waiting for improvements to the IPR and CRC, input from the Albina Ministerial Alliance Coalition for Justice and Police Reform, multiple reports from the CRC itself, and one year waiting to enact the Stakeholders’ 41 suggestions for change, that only six changes are being proposed to the IPR ordinance.

## BUREAU POLICIES

As to Bureau policies, we strongly urge that Council

- impose restrictions on unreasonable uses of force** such as multiple Taser cycles (especially simultaneous application from multiple officers) and releasing police dogs, using Tasers, shotguns or batons on mortally wounded subjects;
  - support the idea of an **independent prosecutor for police shootings and deadly force cases**, as there has never been an indictment for an officer’s on-duty use of force;
  - encourage the use of an independent medical examiner** to conduct autopsies after police shootings, to avoid the apparent bias of the state Medical Examiner’s office;
  - have the Police Review Board examine all cases where an injured suspect is transported to the hospital**, not only when they are admitted into the hospital;
  - directly involve community members in forming training protocols**;
- and, in light of recent events, re-examine the concept that an officer’s mere presence is a low level of force, so therefore **the appearance of officers in riot gear, on horseback, with batons, and threatening the use of chemical agents should not be referred to as “peaceful” or “restrained.”**

Again, there are multiple other issues we have addressed in our longer document.

We urge Council to take more time and do more work rather than accepting this detailed but inadequate report and adopting the Auditor’s minimal proposed ordinance changes.

Thank you for your time  
Dan Handelman  
Portland Copwatch

To: Mayor Sam Adams, Police Chief Mike Reese, Auditor Lavonne Griffin Valade  
cc: Independent Police Review Division (IPR), Citizen Review Committee (CRC), City Council, members of the press and the public  
re: **Proposals for Portland Police Bureau and IPR/CRC**  
November 9, 2011

Late last week, Mayor Sam Adams and Police Chief Mike Reese released a 44-page document responding to at least four sets of recommendations to improve the Police Bureau and the city's oversight system (the Independent Police Review Division, or IPR).  
<http://www.portlandonline.com/shared/cfm/image.cfm?id=372686>  
On Monday, Portland City Auditor Lavonne Griffin Valade released her own 45-page response to most of the same reports, as well as draft language to change the IPR ordinance, particularly parts revolving around the 9-member Citizen Review Committee (CRC).  
<http://www.portlandonline.com/auditor/index.cfm?c=44653&a=372942>

Amazingly, even though there are over 150 recommendations for changes and improvements, the Auditor's proposal contains only six changes to the ordinance, only three of which are based on community concerns. Below is an analysis from Portland Copwatch (PCW) of many of the City's positions, mainly focusing on the IPR/CRC structure questions; a further analysis regarding Bureau policies will be contained in a separate document.

## OVERVIEW

There seem to be a few fundamental issues that caused the City officials to disagree with recommendations:

—The Police Bureau insists that they need “flexibility” to use various kinds of force, including multiple Taser cycles, unleashing police dogs simultaneously with other force options, and firing “beanbag” guns from less than ten feet. Here's an analogy: While many people oppose the existence of pornography, society has agreed to tolerate a certain amount of it, so long as it does not involve children. What the community is asking is that we don't want any police violence, but if they are going to use it, there have to be limits.

—The City insists that the IPR and CRC were, in the Mayor's words, “established in an effort to increase the transparency and fairness of the Police Bureau's complaint-handling and discipline processes, not to supplant those processes or relieve the Police Bureau of the responsibility of holding its own members accountable.” We believe that the civilian oversight system was set up to supplement the Bureau's processes, not merely to increase transparency and/or review Internal Investigations. People do not trust a system where police investigate other police, no matter how good it might be, it is fundamentally never going to gain community trust until the system is fixed.

—In many instances, the disagreements come because the City officials use faulty logic; in others, they seem to have missed the point of the recommendations, perhaps purposefully.

By the numbers, the Mayor and Chief reviewed 103 recommendations and “agreed” with 56, partially agreed with 10, disagreed with 28 (27%) and did not respond to 9 (9%). More significantly, regarding the “Police Oversight Stakeholder Group,” which met from May to September 2010 under the auspices of Commissioner Randy Leonard (and included the Auditor, IPR Director, and Chief), the Mayor and Chief disagreed with 19 of 41 recommendations (46%) and “agreed” with just 14 (34%). (Quotes are used because in many cases, the agreement is not supported by the explanation given, indicating again a misreading of the recommendations.)

The Auditor looked at 115 recommendations and agreed with 29 (25%) while saying that 37 were done or in progress (34%), disagreed with 26 (22%) and did not respond or deferred to the Bureau in 13 (11%). Her rate of agreement with the Stakeholders is only slightly better than the Mayor and Chief, with 16 of 41 or 39% agreement while disagreeing with 13 (32%).

These proposals will be discussed at City Council on Wednesday, November 16 at City Council at 2 PM. It is extremely troublesome that the City is expecting members of the public to digest and respond to this information in 12 days (Mayor/Chief) or less (9 days for the Auditor). Surely we hope that people will not be limited to three minutes of testimony to respond to over 150 recommendations.

## **CHANGES TO THE IPR AND CRC**

Because the Chief, Mayor and Auditor are addressing the IPR and CRC prior to the Council hearing, we begin our analysis on the recommendations around Portland's civilian review system.

Broadly speaking, CRC's tagline is "community oversight of the Portland Police Bureau," not "community oversight of the IPR and Internal Affairs." People enter service into CRC believing they are participating in civilian oversight of the police. The community comes to CRC expecting that. But the Auditor, City Attorney, Mayor and Chief seem to think that the CRC is and should be relegated to quality of service review for the City's internal investigations.

### **\*CRC's Standard of Review\***

Because of the support for true civilian oversight and other reasons, CRC, the Stakeholder group (recommendation 2A), the expert review done by Eileen Luna-Firebaugh in 2008, and the Albina Ministerial Alliance all recommended that the CRC's standard of review— when they determine whether a Bureau finding is "supported by the evidence," should not be the current very deferential "reasonable person standard," but rather, the "preponderance of the evidence."

The City's pushback on this is that it would create two systems that "muddle lines of accountability." Their perspective is that CRC reviews the quality of investigations. However, that is what their predecessor, the Police Internal Investigations Auditing Committee (PIIAC) was limited to doing. The affected public, engaged in efforts to get a true civilian review board on the ballot in 2000 and 2002, wanted to see that limited mandate changed.

We should note that when PCW sent its top 10 priorities from the Stakeholder report to Council, the change in standard of review was our #2 priority; it was the CRC's #1 priority; it was the Albina Ministerial Alliance Coalition for Justice and Police Reform (AMA Coalition)'s #4 priority. A detailed analysis on this issue was written by PCW and supported by various organizations and individuals from the Stakeholder group and sent to Council in April 2011:  
[http://www.portlandcopwatch.org/preponderance\\_analysis\\_0411.pdf](http://www.portlandcopwatch.org/preponderance_analysis_0411.pdf)

### **\*Hearing and Compelling New Evidence at Appeals Hearings\***

Another, similar issue is whether CRC should be able to compel officer testimony when they hear appeals of misconduct complaints, or else Council should be able to hear new evidence (2F, 2G). The current ordinance is very clear: If the CRC proposes a changed finding and the case goes to City Council, Council may not hear new evidence (3.21.160 C). However, that prohibition does not exist for CRC (3.21.160 B). Conversely, Council is allowed by ordinance to subpoena witnesses and compel testimony, but CRC is not (3.21.160 D3). Why retain a system that is so imbalanced? The City claims that CRC's appeals hearings are more like an appeals trial than a criminal trial, and giving them power to compel and hear new evidence would fundamentally change that system.

However, it has repeatedly been pointed out to the City that (a) this is an administrative process, and court analogies don't hold; (b) even if you do use a court analogy, ordinary citizens sit on juries all the time and decide people's fates in far more serious issues than most CRC appeals, and (c) whatever finding the CRC recommends based on its standard of review remains a recommendation to the Chief and the Police Commissioner— therefore changing that standard or the rules of evidence do not fundamentally change the disciplinary actions taken against the police officers.

Fixing the contradiction in the CRC/City Council hearing process was listed by the CRC as their #5 priority and the AMA Coalition as its #6 priority, and it has been an ongoing concern of PCW since the ordinance was written in 2001.

### **\*Independent Investigations\***

Despite the City's repeated claim that IPR was set up solely to monitor the Bureau's Internal Affairs (IA) process, the 2001 ordinance included a provision for IPR to conduct independent investigations. That provision was strengthened in March 2010, allowing IPR to ask questions directly to officers, rather than relying on IA to do so, except "when a collective bargaining agreement is applicable." The community has asked for IPR to have the power to compel (1D). Council clearly needs to take the lead now so that the 2013 agreements with the Portland Police Association (PPA) and the Portland Police Commanding Officers Association (PPCOA) allow IPR to conduct these interviews.

The argument against this from the Mayor and Chief (and IPR) is twofold: One, that "this has not been an issue, as IPR staff routinely asks questions of officers while sitting in on interviews." However, the City should not wait for the problem to arise of IA and the officers refusing to cooperate with IPR before making such interviews possible.

The second argument is that changing the process “would be a mandatory subject for bargaining with the Bureau’s labor unions.” The City here shows its lack of courage in going up against the PPA. A detailed paper researched by a Lewis and Clark law student shows that case law finds that issue “permissive” meaning the City and the “union” may bargain around the question, but is not necessarily mandatory.

Furthermore, the Stakeholder report (1B), the CRC’s Structure Review Committee, and the Luna Firebaugh report all recommended that the IPR set standards for what kind of investigations will be done by IPR. The Mayor and Chief “partially agree” with the idea of IPR investigating more serious complaints, opining that IPR’s review of IA investigations of all kinds is sufficient, though they acknowledge IPR can choose to investigate. They respond similarly to the recommendation that IPR conduct independent investigations when high-ranking Bureau officials are accused of misconduct (1G). The Auditor states that investigations should be decided on a case by case basis.

The community is frustrated and has shown amazing patience. PIIAC was put in place nearly 30 years ago; the IPR, 10 years ago. And yet we still have never seen an investigation done by civilians outside the Portland Police Bureau. It is time for IPR to set specific criteria and start investigating. This was PCW’s #1 priority (with IPR power to compel as #3) and the AMA Coalition’s #1 priority (with power to compel as #3) from the Stakeholder report.

#### **\*Dedicated Staff for CRC\***

The Auditor and IPR claim that IPR’s current staffing support for the CRC and its work groups is adequate. However, it became clear in January 2010 when IPR withheld staff support (and refused to show up for) a CRC public forum to hear community concerns that IPR may withhold such support on a whim. The Auditor claims she cannot have the civilians on the board directing the work of a staff person. We understand that the Portland Development Commission has a city staff person to support the administrative work of that group. Surely so long as a dedicated staff person were given guiding parameters (within the powers and duties of the ordinance, as suggested by the Stakeholder report #2L), Council should support such administrative help for the CRC. With 5-7 active work groups and the full committee meeting once a month, a single dedicated staff person would be more efficient than IPR’s cobbling together staff time as they do now.

This was listed as PCW’s #4 priority and the CRC’s #6 priority.

#### **\*Outside Counsel for Auditor, IPR, CRC\***

The Auditor supports changing the City Charter to allow outside legal counsel for times when the City Attorney would be in a conflict of interest advising both IPR/CRC and the Police Bureau. The Mayor and Chief defer to IPR. The City Council should firmly support this recommendation (1F), since the Auditor, while elected, has no vote or ability to change City ordinances or the Charter. The Charter Commission should consider outside counsel for IPR, the Human Rights Commission, and the Ombudsman.

The history of the conflict dates back to 2003, when CRC wanted to hear the case of Jose Santos Victor Mejia Poot, who in 2001 was beaten by police after being taken off a Tri-Met bus for being 20 cents short of fare. (Mr. Mejia was shot and killed by police two days later in a psychiatric hospital). When CRC wanted to hear the case, the City Attorney (along with the then-Auditor and IPR director) made several unfounded arguments against doing so, ultimately prevailing but setting in motion the eventual mass resignation of 5 of the 9 original CRC members.

This item is listed as PCW’s #5 priority and the AMA Coalition’s #3 priority.

#### **\*Improving CRC’s Oversight Functions\***

Several recommendations regarding the Citizen Review Committee would help clarify and strengthen the current process, and avoid debates that have arisen in the past about the limits of their powers and abilities.

For example, while it is a generally accepted practice that CRC may send cases back to IA or IPR for more investigation rather than making a finding, that ability is based on their conclusion that a finding is not supported by the evidence because there is not enough evidence to decide. The current ordinance and the changes proposed by the Auditor do not spell out that CRC has this power. Furthermore, IA has refused to conduct such investigation on at least one occasion, and CRC has no recourse without the power to compel (see above). This power should be explicitly added to the ordinance (2J).

CRC has, several times, received cases in which they determined that IA did not investigate allegations raised by the complaint. There has been considerable debate among IPR, CRC and the Bureau about whether CRC can create a new allegation at the time of a hearing. There are two remedies in the Stakeholder report to this problem:

1: That CRC be given a limited time period to review allegations before the preliminary investigation becomes a full investigation (2I). The Auditor, Mayor and Chief all state that doing this will make the process take too long. Perhaps they did not read the recommendation that the process must be "consistent with the benefits of a timely investigation (such as providing a limited time or opportunity to review)." The Auditor further states that such a review would be outside CRC's function, which she claims is to audit IPR and IA. The Mayor and Chief state that allowing this practice will "blur the lines" of accountability. Since CRC is able to hold hearings on the appropriate findings for allegations on the tail end, it would improve the process to have them help formulate the allegations at the front end when possible, to avoid timely re-investigation later.

2: That CRC be allowed to re-categorize allegations (2J). As noted above, the question of CRC asking to create new allegations or reformulate existing ones has been inconsistently applied. Again, the Auditor claims CRC should only audit, and not have this power; the Chief and Mayor seem to have missed the point of the recommendation by stating that the power is vested in IPR. In the current system, if the IPR makes a mistake, the CRC is supposed to wait a year and audit the case, but is not allowed to remedy the problem.

The stakeholder report also recommends that CRC be able to hear appeals if IPR dismisses a complaint, IA refuses to investigate (decline) (2J) or a person is not satisfied with a "Service Improvement Opportunity (SIO)" (2K). The Auditor states that IPR has an internal process for such circumstances, and repeats that CRC should only audit. The Mayor and Chief state that CRC's role is to review decisions made by IPR and PPB and make recommendations for improvement. CRC is already hearing appeals on fully investigated cases, a process which used to happen 3-8 times a year but is happening only once in 2011. By making the processes and policies leading to the officers' and supervisors' decisions public, CRC and the community would benefit from more appeals hearings, and broadening what kinds of cases can be appealed would accomplish that goal.

These ideas to improve CRC were listed as PCW's #6 and #7 priorities, based on our observation of these meetings for nearly 20 years.

#### **\*Use Meaningful Terms and Categorizations for Complaints\***

In 2007, the PPB and IPR Director unilaterally, with no public discussion, collapsed to possible findings in misconduct complaints into one. The former "Insufficient Evidence" and "Unfounded" (meaning, not supported by the evidence, or that 50%+ of the evidence says the incident did not happen as claimed) findings were turned into the single "Unproven" finding. The City officials refuse to return to the old findings because, they say, the outcome of either finding is that there is no discipline for the officer. This is despite the fact that the four findings are supported by:

—two unanimous decisions by the Stakeholder Group (3A);

—the Luna Firebaugh Report;

—PCW (listed as our #8 priority);

—the CRC (listed as their #7 priority),

and, as we understand it,

—the rank and file officers, because they prefer to know whether not enough information was present to prove the allegation or whether they were proven to have not performed the alleged behavior.

The Auditor deferred to the Chief and Mayor on this issue, which is surprising given that precise categorization should be a priority for an Auditor. The Chief and Mayor's push-back is that it takes too much time to decide whether a finding should be "Unfounded" or "Insufficient Evidence." Given that most investigations take upwards of a year, it is probably not adding tremendous amounts of time to make that finding; in addition, a few of the "Unproven" findings that have come to CRC have led to lengthy (and unnecessary if there were four categories) discussions about whether "Unproven" indicated one or the other of the two original meanings.

The Stakeholders also expanded on a long-time recommendation from the community reflected in the Luna-Firebaugh report to add "Policy Failure," "Training Failure," and "Supervisory Failure" as possible findings. The new proposal was to add "ratings" of Training, Communication, Management, Equipment, or Other Policy-Related issue to findings to clarify when the officer may not be at fault due to one or more of these other factors (3B). IPR and IA again went behind closed doors and created a cover sheet for investigative files with checkboxes for Policy, Training and Supervisory issues. While that is a step forward, it is not clear that CRC is able to review those cover sheets, comment on them, or make additional recommendations; the Bureau would also likely benefit from adding the other two new categories of "Communication" and "Equipment."

This recommendation was also a unanimous Stakeholder vote, and is supported by PCW despite the “ratings” not taking the place of other findings.

For less serious complaints, the IPR and PPB chose to re-name “Service Complaints” a few years ago as “Service Improvement Opportunities.” The Stakeholder group recommended changing this to “Non-Disciplinary Complaint,” since that is a more accurate (and, we would add, less belly-laugh inducing) name for such complaints (3C). However, the Mayor and Chief, defying logic and semantics, define SIOs as “complaints regarding cases which involve minor rule violations or in which the officer, even if the allegation is true, would not face disciplinary action... the current name for this process more accurately conveys its intent than ‘non-disciplinary complaint.’”

This recommendation was PCW’s #9 priority and continues to cause unintended giggling when the process is explained to people at trainings.

#### **\*Increase Transparency\***

A recommendation to make task forces “charged with policy review that includes members of IPR or the CRC be open to public observation” (3H) is supported by the Auditor, but slammed by the Chief and Mayor something that “will complicate the process and make change much slower.” They assert that these meetings often “take place informally.” What they seem to miss is that the outcomes of some of these meetings, including the Use of Force Task Force, lack credibility with the community because there was no opportunity for the public to witness or comment on the process before the final product was released. The Bureau and IPR would both build their trust and credibility by simply allowing observation, even without comment, at these meetings. (Clearly, the attending public could then contact the appropriate people outside the meetings with concerns, ideas, or points of clarification.) If the point of the IPR system is to improve transparency, rejecting this proposal only reinforces the perception that the PPB is not open to public input.

This was listed as PCW’s #10 priority, the AMA Coalition’s #7 priority, and was referred to in the CRC Structure Review report citing Luna-Firebaugh: “Transparency [is] the public’s right to know the public’s business.”

In addition, the Chief and Mayor reject the sensible recommendation that the Bureau share with CRC “drafts of Police Bureau policies that relate to Bureau member interactions with the public (or to the investigation of such interactions)” (5A). Again, twisting logic, they write that “IPR and CRC are responsible for reviewing Police Bureau policies and making recommendations when necessary,” yet refuse to include the civilian oversight bodies because it would “slow an important process.” As with the Task Forces, the Bureau can avoid community backlash if policies are discussed openly before they are adopted.

The City Officials all also miss the point about releasing more information to the complainants and the public: One recommendation, to make publicly available documents more accessible to complainants (3E), recognizes that many people are confused by City bureaucracy and cannot afford the \$10 or more fee to pay for their own police reports. The Auditor and the Bureau should find a way to make these documents easy to distribute to a person involved in the incident when the person is filing a complaint, and therefore is not necessarily entitled to legal counsel or discovery.

Similarly, the recommendation to make documents available to the public (3F) refers to innocuous items such as photographs of the scene, redacted versions of police reports, or other non-sensitive items which will help observers of CRC appeals hearings understand the substance of the cases. The fact that the Mayor, Chief and Auditor are not willing to do this, citing state laws, creates a sense of “circling the wagons” rather than seeking transparent solutions.

Another example is the Bureau’s reluctance to report on the reasons that investigations are taking so long. While they “partially agree” with the recommendation to do so (3G), they claim that releasing such information could compromise an investigation or reveal confidential information. Without concrete examples, this seems like a catch-all excuse to avoid explaining why so many cases take over a year to complete.

Similarly, the Chief and Mayor state that they disagree with the Auditor and the Stakeholder recommendation to explain why a final discipline decision would differ from that of the Police Review Board (PRB)’s recommendations (3J). They claim this could compromise public records laws and legal rights. However, the publication of the PRB’s first semi-annual report shows that such documents can be released without revealing the names of the involved officers, civilians, or even the Review Board members themselves. In addition, state law does exempt employee privacy rights when revealing the information has a compelling public interest, which, in the case of the Chief/Police Commissioner overturning the PRB, would exist.

### **\*Increase the Size of CRC\***

It should be noted that the Auditor, Mayor and Chief point to the CRC's rejection of the recommendation to expand CRC from 9 to 11 members (2H) as their reason to also reject it. Yet they openly reject about a dozen CRC recommendations... so they agree with CRC only when convenient. The purpose of that recommendation was twofold: One, each Council member currently gets to nominate CRC members, so with 9 people, 5 (a majority) could be political appointees; with 11 members, a majority would be 6. Two, a larger membership would encourage more diversity. There is currently only one woman on CRC, and no Latino has sat on the board for 6 years.

In addition, CRC has 5-7 active Work Groups which need a minimum of three members each. Currently this means each CRC member has to be part of at least two work groups, with some involved in three or more. The individual work load would be reduced by increasing CRC's size.

The Stakeholder Group vote on this was 14-1 with two abstaining and one "no opinion" vote—then-CRC Chair Michael Bigham.

As a side note, one reason the CRC argued against increasing their membership was that having more people would mean that each of the current members would have less time to talk at meetings, hardly a compelling reason to counterbalance the three listed here.

### **\*Find Out What the People Want\***

Glaring examples of the City Officials either not understanding or not wanting to understand the proposals are their identical responses to two suggestions that IPR conduct complainant surveys at two points in the process. One would ask whether they would prefer an Internal Affairs investigation or one done by IPR (1I), and the other whether they prefer a full investigation or non-disciplinary complaint (SIO) treatment (3D). The Stakeholder group was explicit that the complainant would not be making an actual choice, only filling out a survey, yet the Auditor, Chief and Mayor responded as though asking such questions would undermine the objectivity of IPR. While it is true that the outcome of such surveys probably would undermine the perceived objectivity of IPR—since most people would most likely not trust IA and many would want a full investigation—merely asking the question can't possibly harm IPR.

This recommendation is a very toned down recommendation from the Mayor's Work Group on PIIAC, which in 2000 suggested that the complainant be able to actively choose Internal Affairs or independent investigators.

### **\*More Clarification Needed\***

In addition to disagreements due to misunderstandings, the City Officials also agreed with some recommendations, but only addressed parts of them.

For example:

—The Mayor and Chief say they support IA, IPR and CRC being able to pursue cases of any kind, but did not address those two recommendations' explicit intent to not worry about civil litigation (Stakeholder 1E and 2D).

—When the recommendation calls for IPR to be involved in *or investigate* cases involving high ranking officers, they state that this is "current practice," meaning they clearly did not address the idea of IPR conducting such investigations (1G).

—Where the Stakeholders called to diversify the pool of investigators at IA and IPR, the Chief and Mayor respond to the notion of cultural diversity and note that one IA investigator is from outside Portland. However, the recommendation was to find investigators who were not former police officers as well (1H).

### **\*Proposed Changes: The Good, The Bad, The Ugly\***

PCW does support two of the six changes to the IPR ordinance being proposed by the Auditor:

—Extending CRC member terms to three years from the current two (Stakeholder 2C, CRC priority #3)

—Allowing CRC to make policy recommendations to the Bureau (and IPR) rather than needing to do so in conjunction with IPR (Stakeholder 2B, CRC priority #2, AMA Coalition priority #5).

We have minor concerns about:

—Adding the recently developed Case File Review into the ordinance (administrative fix to reflect current practice); that practice could change before Council revisits the ordinance again

—Cleaning up language about CRC holding hearings when a civilian files an appeal of Bureau findings (administrative fix to reflect current practice); fixing this section without addressing the other concerns about CRC powers is troubling.  
—Formalizing the IPR Director’s role informing the Bureau of the CRC’s proposed changed findings without allowing CRC to ensure accuracy  
—Slightly modifying vague language about a CRC member being chosen to “present its recommended findings” to Council. The Stakeholder recommendation (2E) to clearly insert CRC’s role in the paragraph about Council hearings (3.21.160 C) was intended to clarify that IPR and IAD should not detract from the CRC presentation, as those entities had their chance during the investigation to make their cases. The Auditor says she supports this recommendation (CRC priority #4) yet has not gone far enough in fixing the problem.

And PCW very strongly opposes:

—Adding the process of a “conference committee” when the Bureau refuses to accept the CRC’s proposed finding. So far as we know, nobody from the community asked to add this process to the ordinance; in fact, PCW has for years denounced the process because it undercuts the ordinance’s original intent to have all of City Council take responsibility for the case at that point.  
—Fixing a typographical error referencing Council’s ability to compel testimony— without fixing the problem pointed out above regarding the Catch-22 of compelled testimony vs. hearing new evidence.

## **POLICE REVIEW BOARD**

### **\*Conflict of Interest\***

There was a large disagreement and huge disappointment in June, 2010 when Council modified the Police Review Board structure while the Stakeholder group was still meeting. The change re-instituted the Commander of the officer under investigation as a voting member of the Police Review Board, even though the City had been admonished for that practice by the Police Assessment Resource Center (PARC). The Stakeholder report asks that the Commander be made a non-voting member of the PRB (4A). The Mayor and Chief’s response is that having the Commander vote promotes accountability, in that it “requires commanders to go on record [and] forces them to justify their recommendations in light of the facts of the case.” Since the Commander has already made a recommended finding before the Review Board hearing, he or she has already gone on record. If, then, the majority of the PRB votes in opposition to the Commander, we do not see how the Commander is held accountable in any way. This policy should be changed.

### **\*More Civilian Oversight\***

When the PRB meets to determine whether Use of Force cases are in or out of policy, seven people meet. Four members of the Bureau (the aforementioned Commander, who we recommend be replaced by an uninvolved party of the same rank; an Assistant Chief; and two peer officers), the IPR director, and two citizen board members. The Stakeholder committee proposed that one more civilian member be added (4B), since the IPR director is a city employee and therefore not representative of the community. The Mayor and Chief disagree and say the current structure is “working” and, with the IPR director, “creates an appropriate balance.”

## **POLICE BUREAU POLICIES**

### **\*Medical Treatment\***

One important CRC’s recommendation regarding officer conduct asked that PPB ensure medical aid is rendered “as soon as possible unless the circumstances clearly demonstrate that to do so would unreasonably endanger the officers or the medical personnel.” The City claims this is current practice, even though the actual directive still instructs officers to render aid when “tactically feasible or appropriate.”

That is just one of many examples where the City seems to not understand the purpose of the recommendations.

### **\*Conducting Interviews in a Timely Manner\***

One other item that the Mayor and Chief responded to inadequately concerns the AMA Coalition’s demand that officer interviews after shootings and deaths occur within 24 hours of the incident. The City contends that the PPA contract prohibits interviews within the first 48 hours. Yet, section 61.2.1.3 reads: “Whenever delay in conducting the interview will not jeopardize the successful accomplishment of the investigation or when criminal culpability is not at issue, advance notice shall be given the officer not less than 48 hours before the initial interview commences or written reports are required from the officer.” In other words, there is a specific exclusion for possible criminal activity such as in shootings cases.

This particular item is included because we believe the information contradicting the official line has been presented to the Mayor and Chief several times, yet they keep responding the same way.

## **CONCLUSION**

We hope that all the involved parties will consider these issues and make further changes to the Bureau responses and the IPR/CRC and PRB ordinances. We are concerned about the very short timeline being used to institute these policies after 11 months of waiting for a response to the Stakeholder report. We strongly encourage Council to postpone the hearing, and to allow for extended testimony on this matter, since it is difficult to even summarize the information contained in these 89 pages and 150+ recommendations in three minutes.

Thank you for your time

dan handelman  
Portland Copwatch

To: Mayor Sam Adams, Police Chief Mike Reese, Auditor Lavonne Griffin Valade

cc: Independent Police Review Division (IPR), Citizen Review Committee (CRC), City Council, members of the press and the public

re: **Proposals for Portland Police Bureau and IPR/CRC, Part 2: Bureau Policies**

November 11, 2011

## OVERVIEW

Yesterday, Portland Copwatch (PCW) released an 8-page analysis of many of the Mayor, Chief and Auditor's responses to over 100 recommendations about changing the police oversight system in Portland. This document analyzes many responses to the 50 or more additional recommendations by the Albina Ministerial Alliance Coalition for Justice and Police Reform (AMA Coalition) and Citizen Review Committee (CRC) regarding police policies. Some of the community demands date back to 2001 and earlier.

Again, the Mayor and Chief's document can be found on line here:  
<http://www.portlandonline.com/shared/cfm/image.cfm?id=372686>

The Mayor and Chief claim to agree with 35 of 51 of these recommendations (69%), though as noted below (and as with the police oversight issues) sometimes there are misinterpretations or parts of the recommendations that are not addressed. They say they partially agree with 6, disagreed with 6, and didn't address 5 (10%).

As noted in the previous analysis, the major theme of disagreement which causes concern is the Police Bureau's insistence that they need "flexibility" to use various kinds of force, including multiple Taser cycles, unleashing police dogs simultaneously with other force options, and firing "beanbag" guns from less than ten feet.

Also of concern is that the Mayor is claiming full credit (along with Commissioner Saltzman) for asking the Federal Department of Justice (DOJ) to conduct a pattern and practice review of the Bureau. In fact, that request was part of the AMA Coalition's five-point plan released in February, 2010, after the shooting of Aaron Campbell and three months before the DOJ was called in (<http://albinaministerialcoalition.org>). While there is a lot of talk of Community Policing, Community-Police Relations, public input, and transparency, the failure to note where the City is responding to community concerns is indicative of the mixed results on display in the "Report on Recommendations Regarding the Portland Police Bureau" ("the Report").

### \*Areas of Disagreement\*

The Report states that policies seeking to limit officers' use of force are too "rigid" and thus "inconsistent with the US Supreme Court's decision in *Graham v. Connor*." However, that decision is based on the reasonableness of an officer's actions considering the totality of the circumstances. Surely if an officer were to set off a nuclear weapon to end a bar fight, the question of the reasonableness of use of force would not be the focus so much as why would police use a nuclear weapon?

What the community demands seek are reasonable limitations on officer use of force so that no matter the circumstances, we can all agree that some kinds of force are not reasonable.

The City's claim that these demands are "inconsistent with case law" shows that they are unwilling to set reasonable limits on force:

—"If used at all, a less lethal ("Beanbag") shotgun should not be used for compliance, and not used from less than 10 feet." (AMA #1.6) In late 2009, a 12 year old girl was shot with a "beanbag" for failure to comply with commands, and was struck from less than 10 feet, something the manufacturer acknowledges can cause serious injury or even death if aimed at the torso or head. 19 months later, a man refusing to comply was deliberately shot with a "less lethal gun" that was accidentally loaded with live rounds.

—"If used at all, use of police dogs should be coordinated so as not to be used simultaneously with other uses of force." (AMA #1.7) Aaron Campbell's mortally wounded body was attacked by a police dog because the dog was unleashed at the same time Campbell was shot.

—“Use of Tasers shall be limited as outlined by PARC [the Police Assessment Resource Center] in its 2009 report: limited to one discharge cycle by one officer, then a reassessment, then used no more than three times total. This includes not having multiple officers use Tasers simultaneously.” (AMA #1.11) In 2004, James Jahar Perez’ mortally wounded body was jolted by a Taser constantly for over three minutes until the weapon malfunctioned from overheating. Prior to any gunfire, Keaton Otis was struck by three officers’ Tasers at the same time.\*

Similarly, the Mayor and Chief refuse to recommend changing the state statute, which says that an officer can use deadly force if he or she “reasonably believes” that his life or another’s is in danger. The AMA Coalition’s recommendation (#1.4) is to be sure that such a belief is objectively reasonable; the Report claims the City Attorney reads the Graham decision to say force must be objectively reasonable. This is a different issue from whether the officer “reasonably believes” serious injury or death is imminent, which is why the recommendation was made.

They also disagree with the idea of appointing “an independent prosecutor for all cases of possible police criminal conduct to avoid the inherent conflict of interest within the Multnomah County District Attorney’s office” (AMA #4.3). The claim here is that the recent practice of releasing grand jury transcripts make this unnecessary. We would argue that the transcripts convince us now more than ever that the District Attorney only brings in the witnesses and only asks the questions that will help support exonerating the police, with whom he must work every day to prosecute law-breakers.

The final disagreement is over the idea of requiring an independent autopsy for cases of police shooting deaths and deaths in custody (AMA #4.7), with the Report claiming there is no provision in state law for such a practice. Just because there is no provision for it does not prevent the City from passing an ordinance allowing an independent autopsy, which could either consist of a second autopsy done after the Medical Examiner (ME)’s or one done simultaneously. PCW has documented numerous incidents in which the ME’s report blatantly relieved the police of responsibility in civilian deaths.

\*To their credit, the Bureau notes in their response to the Taser recommendation that they are working on requirements for a supervisor to review all force incidents, which they have said will include coming on scene for anything more serious than a handcuffing situation.

### **\*Discouraging Replies\***

In 6 instances, the Mayor and Chief’s responses of agreement or partial agreement are so far off the mark that we wonder if they deliberately did not want to follow the community’s lead.

The first seems to contradict the above examples of disagreement. AMA Coalition demand #1.1 is for officers to use alternative, lower level uses of force before resorting to deadly force, unless there is gunfire present. The Mayor and Chief say they “agree in principle, but differ in approach... allowing the use of deadly force only when officers are confronted by gunfire limits the ability of police officers to protect the public. This is because of the myriad of ways individuals can present a community member or an officer with the threat of death or serious physical injury.” They again point to the flexibility issue. So in other words, it appears that they actually disagreed with the recommendation.

Another dismisses a community concern about the use of force against mortally wounded suspects (AMA #1.8). It states that it is rare that weapons are used on “downed subjects,” yet Jahar Perez, Aaron Campbell, Keaton Otis, and, notoriously, Willie Grigsby (who, as noted by the Oregonian, was “shot by bullets 13 times, hit 22 times with beanbags and Tasered four or five times”) were among the many who suffered this indignity. (And, we note, were all African American.)

While PCW does applaud the release of Grand Jury testimony, we find it alarming that the Report equates people reading those transcripts with the request for holding a public inquest in police shootings cases (AMA #4.2). As the Jahar Perez inquest proved, the community can learn a lot about police training and practices, and more of the nuances by hearing witnesses directly than reading hundreds of pages of transcripts.

Perhaps the most blatant mischaracterization of “agreement” is a response to the AMA Coalition demand for a culturally diverse panel of psychologists to administer tests to recruits (#9.1). The same white male psychologist has been single-handedly testing officers for over 10 years, and even though the job is open for bidding this year, to write that a culturally diverse panel is “current practice” is bizarre.

Additionally, when the Citizen Review Committee states that the Bureau should make it a policy for officers to have back-up or a supervisor present, if they are available, before “forcibly extract[ing] a subject from a vehicle” (CRC/PARC #2), the Mayor and Chief state that such a practice is “more appropriately done through training.” Obviously, the training would be reinforced if it were written in the policies.

In another recommendation (CRC/PARC #5), CRC recommends that the Police Review Board (PRB) conduct an annual review of all cases in which use of force resulted in transporting the subject to the hospital. The Report claims partial agreement, noting that they only review cases in which a person is actually admitted to the hospital, rather than examined and released. While it may be reasonable to limit the PRB's workload by avoiding review of cases with no injury at all, if a person receives outpatient treatment—but is not admitted to the hospital—there should be at least a cursory review of the incident.

### **\*Unanswered Questions\***

A few of the Mayor and Chief's answers failed to address the specific issue raised by the recommendation they responded to.

For example, the request for a city-wide ordinance against police brutality (AMA #1.3) was met with the response that "excessive force already violates Bureau Policy and state law (Assault and Official Misconduct)." However, the request was for a City ordinance, which can be narrower in scope than the state law, specifically about police brutality.

An ongoing and important demand to drug-test officers after shooting incidents (AMA #7.1) is met with a matter-of-fact explanation of current Bureau policies to randomly test officers, or to test based on "reasonable suspicion." Do the Mayor and Chief believe officers involved in shootings should be tested? We don't know from this document.

The request to support a state law opening up grand jury testimony for public scrutiny (AMA #4.4) states that they will "look into it" if such legislation is proposed. Since the current practice by the Multnomah County DA to release such transcripts is completely voluntary, and the City has shown its desire to make them public, it is confusing why the City would not pledge to support such legislation.

As to the community demand that the FBI be invited in to investigate any case involving possible civil rights violations (AMA #4.5), the Report here cites the Mayor calling in the DOJ, and suggests that "anyone can request an FBI review of a deadly force incident." There is no promise to do so in the cases recommended, nor is there a refusal to do so, only the statement that "The Chief of Police decides whether to request such a review on a case-by-case basis."

Oddly, when the AMA Coalition suggested that the city fund the highly touted (for over 20 years now) concept of Community Policing (AMA #10.2), the Mayor and Chief responded that Community Policing is an approach, not a problem, and that not a lot of money is available. Does this mean that they do not want to fund Community Policing? It is not clear. (PCW notes here, however, that our definition means that police respond to community concerns, not that they behave as two officers did in 1991 confronting veterans shining slides on a warship, stating "This is community policing— you're the community, and we're the police.")

### **\*Missing the Point?\***

While the Mayor and Chief assert that they agree or partially agree with many recommendations, in at least 10 instances, they seem to have missed the point of the demands.

One, which was highlighted in the Mayor's letter to the community announcing the Report, asks that "The Bureau must involve community members in developing police training and policy" (AMA #1.5). The point of this recommendation was to have an ongoing opportunity for the community to address current and new training and policy issues, perhaps with a specific training advisory board. Instead, the response just underscores the rolling, haphazard current system in which "Community groups, the community academy, advisory group feedback, the Citizen Review Committee, and City Council currently give input directly to the Chief."

When a demand was made that "Public statements by involved officers or representatives of the Bureau regarding shootings and deaths should be cleared through the Chief's office" (AMA #2.5), the response was that "It depends on the phase of the investigation" and that officers could talk once the investigation was over. It should have been obvious that this demand related to Officer Chris Burley, who was shot during the Keaton Otis incident, doing a news conference days after the grand jury found no criminal wrongdoing, but long before the administrative investigation was completed.

While the Bureau has apparently included Racial Profiling in its in-service training, a specific request to include unlearning racism training for all officers (AMA #5.1) was not addressed. Similarly, while the Mayor and Chief note that officers are prohibited from profiling and discrimination, they do not respond to the AMA's demand (#5.2) to discipline officers who are found to be profiling.

After Jack Collins, a homeless man who had a one-inch Xacto knife, was shot and killed by a Portland Police Officer, a demand was added to require officers participate in a "homeless immersion" (#5.3) to help end discrimination based on income/perceived income level. The Report talks about concepts taught in training, but not about having officers live on the street for 24 hours as homeless people (the "immersion").

When the AMA asked that an outside contractor be hired to study the police culture that leads to the "blue wall of silence," (#10.4) the Mayor and Chief claimed they are doing so as "current practice," talking about citizen participation in the oversight process as an example. The concept of an external review? Overlooked.

The Report also does not speak about reinforcing the concept of valuing human life described in the Use of Force policy (as requested in AMA #1.14), only that officers are "expected to be familiar with" the language.

In our previous analysis, we explained that the City missed the provision in the Portland Police Association contract that exempts shooting and death incidents from the need to wait 48 hours before interviewing officers (AMA #4.1), and has not corrected the directive on applying medical attention to close an existing loophole (CRC/PARC #3 & AMA #3.1).

### **\*And, Oh, Yeah, Some Good Stuff\***

Not everything in the report is in such grey areas. In many instances, progress is being made. Rather than list all of the remaining recommendations and responses, PCW would like to highlight a few, albeit with some caveats:

—Training around de-escalation and the requirement of an articulable plan (AMA #2.1); "The Bureau recently conducted In-service training regarding de-escalation. For situations requiring a multiple-officer response, Bureau members are trained to make a plan and have a leader responsible for coordinating the response."

—Using time as a factor to de-escalate (AMA #1.13) is listed as being a current practice; several media reports indicate that officers are also learning to "walk away" rather than escalate situations unnecessarily.

—The IPR Director or her designee have been called to the scene of shootings and deaths in custody since February of 2011 (AMA #4.6 & CRC/PARC #10).

—The PPB has been putting out more information to the public, though it remains variable how quickly it is released, and whether the incidents are discussed with "no distraction from the core issue of police excessive use of force by referencing mental health, homelessness or other unrelated issues," and we haven't seen equal time given to representatives of the families (AMA #8.1 & 8.2).

—Communication training was given to PPB rifle operators, which should diminish or end the lack of dialogue between negotiators and "snipers" as happened in the Aaron Campbell, Raymond Gwerder, and Paul Stewart cases (AMA # 2.3).

—Although the Chief and Mayor caution that "severe discipline" may not be administered, they agree that officers should not violate Bureau policy or take action to precipitate deadly force (AMA #1.2). While the fate of the appropriately-fired Officer Frashour hangs in the balance, PCW still believes that Officer Lewton, who set the shooting of Aaron Campbell in motion by firing a "beanbag" gun to gain compliance, should also have been fired.

We would add that the CRC's request for more scenario-based training (CRC/PARC #9) is not necessarily a signal that the community is asking for a new training facility to be built; since the Report clearly states such scenario-based training is currently underway (which we support), we hope it can continue whether or not such a huge project is initiated.

### **\*Conclusion\***

While the Police and IPR are making some improvements, we still have a long way to go to a Bureau free from corruption, brutality, and racism and a truly independent, civilian oversight system. We appreciate the time and energy taken by the city officials who created the Report (and the responses about the IPR/CRC changes), but hope that they, realizing how much work that is, will give community members more time to respond to their lengthy and complex publications.

We look forward to the opportunity to testify about the IPR changes and the Bureau policies on Wednesday, November 16, but hope that members of the public will be afforded more than three minutes to address 90 pages of information. We also hope that the promised second hearing on these matters will include more changes to the Mayor and Chief's Report and to the draft IPR Ordinance.

Thank you again for your time,

dan handelman  
Portland Copwatch