

Council Presentation on Proposed Changes to Sections 3.20.140 and 3.21 of the Portland City Code

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IPR Director



Independent Police Review Division

- Portland's civilian oversight of the Portland Police Bureau
- Created in 2001
- Part of City Auditor's Office
- 12 employees

IPR's Reason for Existence

- Portland City Code Sections 3.21.010 establishes the “independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to act on complaints against Police Bureau personnel for alleged misconduct, and recommend appropriate changes of Police Bureau policies and procedures toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the provision of community policing services.

Administrative Investigation

- Intake
- Investigation
- Recommended Findings by Officer's' Commander
- Police Review Board
- CRC Appeal
- Chief's Proposed Discipline
- Chief's/Police Commissioner Final Discipline

Portland's Officer Accountability System

- Ultimate decision on Findings and Discipline rest with Police Chief and Police Commissioner
- All prior Findings/Discipline decisions are recommendations

IPR Original Authority (2001)

- Community member complaints originate at IPR
- Creation of Citizen Review Committee (CRC)
- Professional IPR staff
- Authority to monitor Internal Affairs investigations and initiate independent investigations
- Ability to hire outside consultants to review OIS/ICD

IPR Reform Ordinance (2010)

- March 2010, new ordinance that expanded IPR powers and duties approved by City Council
- IPR able to open a complaint at its own discretion
- Increased IPR ability to monitor and review Bureau investigations
- Ability to controvert a commander's finding to Police Review Board

IPR Reform Ordinance (2010)

- IPR given subpoena power (does not apply to current PPB members)
- Creation of Police Review Board
 - Combined the former Performance Review Board and Use of Force Review Board
 - Board required to be facilitated by a professional facilitator who is not employed by the Bureau
 - IPR became a voting member, previously advisory

IPR Reform Ordinance (2010)

- Citizen member of Board, now recommended by City Auditor and approved by City Council
- PRB required to issue a Public Report at least twice a year

DOJ Settlement Agreement (2012)

- Ended a 15 month investigation by the United States Department of Justice that attempted to determine whether there were systemic violations of US Constitution or Federal law by PPB officers
- Motivated by a “significant increase” in police shootings of individuals, the majority of which involved community members with mental health issues

DOJ Settlement Agreement (2012)

- DOJ Findings letter stated that the City engages in a pattern or practice of unnecessary or unreasonable force during interactions with people who have or are perceived to have mental illness.
- DOJ wrote that that there was lack of timeliness
Portland's accountability system undercut its effectiveness and community's faith in the process.
- Said Portland had a "self defeating accountability system"

DOJ Settlement Agreement (2012)

- Approved by Council November 14, 2012
- Calls for changes to City of Portland's use of force policy, training, crisis intervention program, and officer accountability system
- Agreement between US DOJ and City, with a recent collaborative agreement with Albina Ministerial Alliance

Important lessons learned from DOJ experience

- Siloed officer accountability system untenable
- No such thing as PPB/IPR/BHR investigation
- There is only an Administrative Investigation conducted by the City
- No partial success

Settlement Agreement Provisions Which Require a Code Change

- 180 days for the City to conduct an administrative investigation
- IPR must have ability to conduct “meaningful independent investigations”
- Investigations of excessive force will be subject to full and complete investigations, unless there is clear and convincing evidence
- Expansion of CRC to 11 members
- Rotating pool of CRC members serve on Police Review Board (PRB)
- City must implement a discipline guideline

Post DOJ Agreement Action

- IPR has been able to expand its investigative staff to five full time investigators
- IA and IPR have worked on timelines for every part of an administrative investigation covered by DOJ agreement
- IPR is conducting more expansive initial investigations
 - Transcribing all witness interviews in full investigations, to prevent subsequent, redundant interviews

Purpose Behind Police Accountability Reforms

- Implement the Police Accountability portions of the Section VIII of DOJ settlement agreement
- Ensure that there is increased consistency and objectivity
- Increase transparency
- Provide additional, usable information to public

Section VIII Implementation Strategy

- Implement DOJ agreement's most critical mandated changes now.
- Implement several CRC related changes once agreement is made effective
 - Allows City staff to implement timeline related changes before putting burden on community volunteers
 - Allows IPR/CRC to strategize how best to meet new 21 day CRC timeline appeal and streamline appeal process

Independent Investigations

Section 128, DOJ Settlement Agreement requires “The City will...enable meaningful independent investigation by IPR, when IPR determines such investigation is necessary.”

- **3.21.070(P)** provides IPR with ability to compel Bureau employees to attend interviews, cooperate and answer questions during an administrative investigation

Independent Investigation

- DOJ requirement that IPR is able to conduct, “meaningful independent investigations.
- **3.21.120** – Clarifies IPR’s ability to conduct an independent investigation
- **3.21.020(O)** – expands the jurisdiction to include civilian supervisors of sworn PPB employees

Independent Investigations

- DOJ requirement that IPR is able to conduct, “meaningful independent investigations.”
- **3.21.120 B (5)** – IPR will receive notification from PPB prior to the termination by bureau of an investigation that has not been assigned for recommended findings

Current 3.21.120(C)(2)(b) Independent Investigation

When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, the Director shall notify the IAD commander that IPR has undertaken an investigation and the reason. The IAD commander shall appoint a liaison investigator from that office within two working days to arrange and participate in interviews. When members represented by a collective bargaining unit are being interviewed by IPR personnel, the IAD investigator may repeat the question and/or direct the member to answer the question.

When a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the Director shall ask the member the question directly and/or direct the member to answer the question.

Current Language

- Contradictory
- Creates ambiguity that is a potential risk to City if an IPR Investigation leads to discipline and a subsequent grievance
- Does not meet DOJ Settlement Agreement
- Undercuts the City's Charter right to have divisions within the City investigate possible employee misconduct through the use of compelled interviews.

Proposed 3.21.220 Bureau Witnesses

- A. IPR shall have the authority to compel a Bureau employee to attend interviews, cooperate and answer questions during an administrative investigation of a member. If an employee refuses to attend an investigative interview after being notified to do so by IPR or refuses to answer a question or questions asked by IPR during an investigative interview, the employee may be subject to discipline or discharge by the Police Chief or Police Commissioner following a separate administrative investigation regarding the employee's refusal to attend the investigative interview or refusal to answer a question or questions during the interview.

Proposed 3.21.220 Bureau Witnesses

- B. All IPR interviews of Bureau employees shall be conducted in conformance with legal and collective bargaining provisions.

Proposed 3.21.220 Bureau Witnesses

- C. Prior to being interviewed, a Bureau employee will be:
 - 1) Notified of the time, date, and location of the interview.
 - 2) Informed of the right to bring a union representative to the interview.
 - 3) Read a statement that informs the employee that they have the duty to cooperate during the interview, must answer all questions truthfully, and that failure to cooperate or engaging in untruthful behavior will be cause for a separate administrative investigation that may result in discipline or discharge imposed by the Police Chief or Police Commissioner.

Current Investigative Practice

- Involved and witness officers are compelled to attend interview by Internal Affairs
- IA Investigators are civilian, retired law enforcement
- IPR can conduct an investigation jointly with IA or do an independent investigation with PPB officers compelled by IA
- Bureau Human Resources conducts solely or jointly EEO investigations with IA/IPR
 - Can compel and directly question PPB officers.
 - BHR write their own findings

Collective Bargaining Agreements

- Review of Article 61 and 62 of the Labor Agreement between City and PPA shows no bar to IPR being able to directly question PPA covered officers.
- Vetted this issue with City Attorney's Office and they agreed that this was not a mandatory subject of bargaining.

Excessive Force Investigations

- **Section 129, DOJ Agreement**
- The City and PPB shall ensure that all allegations of use of excessive force are subject to full and completed IA investigations resulting in findings, unless there is clear and convincing evidence to IPR that the allegation has no basis in fact.
- **3.21.110 Intake**
- ...All allegations of use of excessive force shall be subject to a full and completed investigation resulting in findings, unless there is clear and convincing evidence to IPR that the allegation has no basis in fact.

180 day timeline

- **Section 121, DOJ Settlement Agreement.**
- PPB and the City shall complete all administrative investigations of officer misconduct within one-hundred eighty (180) days of receipt of a complaint of misconduct, or discovery of misconduct by other means. For the purposes of this provision, completion of administrative investigations includes all steps from intake of allegations through approval of recommended findings by the Chief, including appeals, if any, to CRC. Appeals to CRC shall be resolved within 21 days.
- **3.21.230 Timeline for Administrative Investigations**
- All administrative investigations shall be completed within 180 calendar days of receipt of complaint or initiation of investigation by either IPR or the Bureau. For the purpose of this section an investigation is complete when the Police Chief approves recommended findings, including appeals, if any, to CRC.
- If an administrative investigation exceeds 180 calendar days, then the Police Commissioner shall be provided an explanation as to why the administrative investigation exceeded 180 calendar days. This section should not be construed to prohibit City from completing an investigation or disciplinary process if investigation is not completed within 180 days.

Expansion of CRC to 11 members

- **Section 134, DOJ Agreement**
- The City shall expand the membership of the CRC to 11 members, representative of the many and diverse communities in Portland, who are neutral, unbiased, and capable of making objective decisions. The quorum of CRC members necessary to act may remain at its existing level.
- **3.21.080 (A) Citizen Review Committee**
- The Committee shall consist of eleven citizens. Five members shall constitute a quorum of the Committee. Decisions shall be made by a majority of Committee members present and constituting a quorum. However, adoption or amendment of rules of procedures or protocols requires an affirmative vote of six members.

CRC members serving on Police Review Board

- **Section 131a, DOJ Agreement**
- Currently, seven voting members of the PRB review use of force incidents, including two citizen members. When PRB reviews uses of force cases, one of the two citizen member slots shall be drawn from the Citizen Review Committee members.
- **3.21.080(b)(7)**
- [The Committee Members shall] Serve on the Police Review Board when the Board reviews use of force cases as defined in Chapter 3.20. Committee members shall serve on the Police Review Board on a rotating basis for no more than two terms of three years.

Discipline Guideline

- **Section 137, DOJ Settlement Agreement**
- City shall develop and implement a discipline guide to ensure that discipline for sustained allegations of misconduct is based on the nature of the allegation and defined, consistent, mitigating and aggravating factors and to provide discipline that is reasonably predictable and consistent.
- **3.20.140(B)(3)**
- The Board shall make recommendations as to discipline based on discipline guidelines. The guidelines shall be developed by the Bureau in consultation with IPR.

Investigative Findings

- **Section VIII, Officer Accountability**
- PPB and the City shall ensure that... that all investigative findings are supported by a preponderance of the evidence and documented in writing
- Fair and consistent disciplinary system
- Portland Police Bureau Learning, May 2012 Audit
- Community Feedback
- **3.20.140(H)**
- In all cases where the Chief's proposed or final findings and/or discipline is different from that recommended by the Board, the Chief shall provide a written explanation to the Police Commissioner that includes the reasons for the Chief's findings of fact, and the factors used in the discipline determination.

Police Review Board Public Report

- Based on community feedback desiring a more consistent format from case to case
- Written by PRB facilitator
- Released twice a year

3.21.090 Public Reports

- The public reports shall include the following for each case brought before the Board:
 - a. Allegation(s) heard by the Board.
 - b. A factual summary of the case.
 - c. Summary of the Board's discussion.
 - d. Record of the Board's vote, including recommended findings and discipline.
 - e. Training and policy recommendations, including whether the recommendations were followed by the Chief.
 - f. The Chief's proposed and final discipline for the involved officer(s).

OIS/ICD Public Reports

- An opportunity to educate members of the public on the level of investigation that every OIS/ICD receives
- By the time that the Public Report is released, most details in the incident have been made public by city, grand jury
- **3.21.090 Public Reports**
- In cases of officer involved shootings and in custody deaths, the public reports shall contain the names of involved officer(s) and witnesses, unless confidentiality or non-disclosure is required by law, a court order, an administrative order or a collective bargaining agreement, or unless the Police Commissioner believes confidentiality is required or appropriate due to a collective bargaining agreement or by pending criminal or civil legal proceedings.

Questions?

