

INDEPENDENT POLICE REVIEW CODE AMENDMENTS

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✓ DOBBIE AIONA	LEAGUE OF WOMEN VOTERS	
✓ KRISTEN CHAMBERS	NATIONAL LAWYERS GUILD	
✓ BECKY STRAUS	ACLU	
✗ JO ANN HARRISBY	AMA COALITION	
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✓ BRIANA SWIFT	QDO Greenridge	
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✓ Bryan Parman	APCOA	
✓ Katie Braun	415 SE 105 Ave Portland, OR 97216	investments@comcast.net
✓ David Denecke	4640 SW Condor Ave	
Rochelle Silver	46088 SW 29 <sup>th</sup> Pl	
Jeri Williams	587 N. Rose Parks Way #3	sundvalwilliams@yahoo.com

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**NATIONAL LAWYERS GUILD  
PORTLAND, OREGON CHAPTER**



POST OFFICE BOX 40723  
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**MEMORANDUM**

To: Mayor Charlie Hales, [mayorhales@portlandoregon.gov](mailto:mayorhales@portlandoregon.gov)  
Cc: Commissioner Dan Saltzman, [dan@portlandoregon.gov](mailto:dan@portlandoregon.gov)  
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FROM: Portland Chapter National Lawyers Guild

DATE: October 23, 2013

RE: Proposed Amendments to IPR Ordinance -  
City Council Hearing on October 23, 2013

**INTRODUCTION**

The Portland Chapter of the National Lawyers Guild (NLG) has worked for over a decade to improve public oversight of the Portland Police Bureau. In 2000, we joined 17 other community stakeholders as part of the Mayor Katz Work Group, which led to the creation of the Independent Police Review Division (IPR) and the Citizen Review Committee (CRC). More recently, the NLG participated in the 2010 Stakeholder group, which issued 41 recommendations related to police oversight. Additionally, the NLG is a member of, and legal counsel for, the AMA Coalition for Justice and Police Reform, which has enhanced amicus status in the U.S. Department of Justice suit against the City of Portland for a pattern and practice of excessive force against people with mental illness or experiencing a mental health crisis. Finally, the NLG, in coordination with its law student chapter, advocates for individuals who have filed police misconduct complaints with IPR.

The NLG has consistently advocated for an oversight system that provides effective, credible, and transparent review of police misconduct. Despite these efforts, and the efforts of the



other community stakeholders testifying before City Council today, much remains to be done to achieve that goal. As the U.S. Department of Justice indicated in its September 2012 Findings Letter to the City, the current system is "self-defeating" and "byzantine" with layers of review that stand in the way of full investigation and corrective action. Thus, while we recognize the IPR reforms that are before City Council for a vote today are steps in the right direction, we maintain that they do not go far enough to address the fundamental flaws in the City's police oversight system.

We therefore urge the City to adopt the reforms discussed below, as well as those presented by our community partners working to improve police oversight in Portland. Our focus on these issues does not suggest they are the only changes we support; nor is it an exhaustive list of all of the reforms necessary to create an effective police oversight system. We support the recommendations of the AMA Coalition for Justice and Police Reform, Portland Copwatch, the League of Women Voters, the ACLU, and the other community groups who have testified today. We entreat the City to adopt the suggested reforms, and to envision additional ways to ensure that police oversight in Portland is credible, effective and fair.

#### **1. Allow the CRC to Consider New Evidence in Reaching Its Decision.**

In our experience working as advocates for complainants before the Citizen Review Committee (CRC), complainants frequently have new witnesses or information, or additional testimony, to bring to the CRC that was not included in the IPR or Internal Affairs investigation. The CRC should have the discretion to determine whether any new information presented at the hearing requires additional investigation for verification, and if appropriate, to incorporate the new evidence in its analysis of the complaint. At present, however, the CRC cannot consider the new evidence in reaching its conclusions. The Department of Justice's 2012 Findings Letter<sup>1</sup> explained the problem thus:

CRC can accept testimony and written statements, and consider the record. Paradoxically, even though CRC may consider any new evidence that develops in its hearing, it is prohibited from using this new evidence to find that the prior record

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<sup>1</sup> Findings Letter to Mayor Sam Adams, U.S. Dept. of Justice, Sept. 12, 2012, *available at*: [http://www.justice.gov/crt/about/spl/documents/ppb\\_findings\\_9-12-12.pdf](http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf)

does not support the finding from below. See PORTLAND CITY CODE § 3.21.160. This policy appears to be an effort to require CRC's remand of those complaints to IA for further development of the evidentiary record for an incident. However, the policy's direction to CRC asks them to opine on the propriety of a prior finding without consideration of all the evidence before them. This is untenable.

There is no reason to second-guess the CRC's decision regarding the reliability of new evidence presented at the hearing. The CRC will, at the time of the hearing, be intimately familiar with the case. Moreover, the current requirement that the CRC refer all new evidence for further investigation unnecessarily prolongs the review process. Thus, the CRC should have the power to consider the evidence presented at the hearing when reaching its recommendation on a complaint.

## **2. The CRC Should Employ a "Preponderance of the Evidence" Standard of Review.**

. The CRC Report on the Structure of IPR,<sup>2</sup> the community recommendations in the 2010 Police Oversight Stakeholder Committee Report,<sup>3</sup> the 2008 Luna-Firebaugh Report,<sup>4</sup> and the AMA Coalition for Police and Justice Reform's Community Demands,<sup>5</sup> have all called for the CRC standard of review should be changed from a "reasonable person" standard to a "preponderance of the evidence" standard. As noted in the preceding section, complainants and testify before the CRC and present other evidence, which makes it appear as if the CRC can consider that evidence in reaching its decision. The "reasonable person" standard, however, forecloses that option, as it limits the CRC to considering the evidence that the Bureau had before it when it made its finding. Complainants are thus left wondering why they were invited to

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<sup>2</sup> Citizen Review Committee, Report on the Structure of the Independent Police Review Division, June 2010, available at: <http://www.portlandonline.com/auditor/index.cfm?c=52681&a=291499>.

<sup>3</sup> Final Report, Police Oversight Stakeholder Committee, City of Portland, Sept. 21, 2010, available at: <http://lwvpdx.org/issues-and-advocacy/police-oversight/stakeholder-committee-report-2010>.

<sup>4</sup> Luna-Firebaugh, Eileen, Performance Review of the Independent Police Review Division, Jan. 23, 2008, available at: [http://lwvpdx.org/issues-and-advocacy/police-oversight/Report-IPR%202008%20Performance%20Review.pdf/at\\_download/file](http://lwvpdx.org/issues-and-advocacy/police-oversight/Report-IPR%202008%20Performance%20Review.pdf/at_download/file).

<sup>5</sup> AMA Coalition for Justice and Police Reform, Community Demands, Oct. 2010, available at: <http://www.albinaministerialcoalition.org/amademand2010.html>.

testify before the CRC if their testimony could not be considered.

A “preponderance of the evidence” standard is a practical and understandable standard and preferable to the “reasonable person” standard in current practice. Moreover, we understand that police review boards in San Diego, Albuquerque, Charlotte, Cincinnati and Dayton, and in other cities, use the “preponderance” standard. We therefore ask that the City adopt the "preponderance" standard as the CRC's standard of review.

**3. The Proposed 180-Day Timeline to Complete Investigations Should Not Result in a Loophole That Exonerates Officers.**

The proposed changes to IPR include a provision that requires that all administrative investigations and CRC review shall be completed within 180 calendar days of receipt of the complaint or initiation of investigation by either IPR or the Bureau. While we recognize the importance in addressing complaints in a timely manner, this hardly gives the CRC adequate time for a considered review, NLG students to provide assistance, and we are concerned that this proposed revision does not state any consequence for failure to meet the imposed deadline. Investigations of important or complex complaints could be halted if they fail to to meet the deadline, resulting in no accountability for misconduct that might have occurred.

**4. The CRC Should Have the Power to Direct Further Investigation, or to Direct Investigation of Allegations That Were Not Investigated Initially.**

This recommendation, like the others listed here, is not a new idea. The 2010 Police Oversight Stakeholders Report and the AMA Coalition for Police and Justice Reform's Community Demands also made this recommendation. Additionally, the Department of Justice Findings letter noted, "Portland's methodology of requiring CRC to only rely upon an IA record is frustrated by PPB's refusal to fill gaps CRC identifies in that record." In our work as advocates for IPR complainants, we have encountered situations where IPR did not include allegations in its investigation, or IPR or IA did not fully investigate a matter. Most recently, this happened in a case where IPR declined to investigate a disparate treatment allegation, despite the CRC's request that it do so. The NLG's letter regarding this incident is attached. We therefore urge you to amend

the CRC ordinance to allow the CRC to direct further investigation, or to direct an investigation of allegations that were not initially investigated by IPR or IA.

**5. The CRC and IPR Should Have Independent Counsel.**

As with the other issues raised here, the 2010 Police Oversight Stakeholders Report and the AMA Coalition for Police and Justice Reform's Community Demands have previously made this recommendation. Specifically, the Stakeholders Report unanimously recommended that Portland City Code 3.21.070.0 be revised to read that the Auditor may hire outside legal counsel to support the purpose and duties of IPR when the Auditor determines that outside legal advice is necessary or advisable. As advocates for individuals who have filed complaints with IPR, it is difficult to explain why the City Attorney's Office advises IPR when it is also the office charged with defending the City in police misconduct litigation. The City Attorney's role at CRC hearings is similarly problematic, and threatens the credibility of the CRC as an independent oversight body. Thus, we recommend that the City provide independent counsel to IPR and the CRC.

**6. The CRC Should Have the Power to Hear Appeals of PRB Findings in In-Custody Deaths and Officer-Related Deaths.**

In-custody deaths and officer-related deaths are the most serious incidents of potential police misconduct and therefore merit the highest degree of public oversight and accountability. At present, however, the Police Review Board reviews these incidents in closed meetings, with limited civilian participation. The Department of Justice Findings Letter indicated that, "There exists no apparent prohibition on CRC's consideration of officer accountability incidents involving in-custody deaths or officer-related deaths." Yet, in spite of this, IPR has decided that the CRC does not have the power to hear appeals in these cases.

We recognize that reviews of this kind will entail a substantial effort by CRC members, who are serving as volunteers. These appeals, however, are likely to be rare, because, in most instances where there are allegations of misconduct related to an in-custody death or officer-related death, the parties pursue the matter through formal judicial means rather than appeal to CRC. We have, however, encountered at least one instance where a community member sought



an appeal of an officer-related death before the CRC, and IPR denied the request. See the attached letter from an NLG member, Shauna Curphey, to IPR regarding its rejection of the appeal.

Police officers' use of deadly force demands public oversight and accountability. We therefore urge City Council to clarify that the CRC has the power to hear citizen appeals of Police Review Board findings in these important cases.

NATIONAL LAWYERS GUILD  
PORTLAND, OREGON CHAPTER



POST OFFICE BOX 40723  
PORTLAND, OREGON 97240-0723

May 30, 2013

Constantin Severe  
Independent Police Review Division  
1221 SW 4th Ave, Rm 320  
Portland, OR 97204

Re: Racial Profiling Concerns

Dear Mr. Severe:

We are writing on behalf of the Portland Chapter of the National Lawyers Guild to express concern about the Independent Police Review Division's (IPR) handling of two recent citizen complaints involving racial profiling.

The first case is that of Lisa Haynes. Ms. Haynes, an African American woman who stands four feet, nine inches tall, was stopped by Portland Police Bureau (PPB) officers because they believed she matched the description of a five feet, six inch Hispanic male reported to be rifling through mailboxes. Although the appropriateness of the stop—in light of the degree Ms. Haynes matched the suspect—was part of the initial Internal Affairs (IA) package sent for investigation, IA declined to investigate whether the stop and detention of Ms. Haynes involved racial profiling. As a result, the Citizen Review Committee (CRC) declined to review the racial profiling issue in Ms. Haynes' appeal.

The second case is that of Floyd McCorvey, an African American man. Mr. McCorvey was stopped by a police officer who inquired whether Mr. McCorvey was a pimp. The officer's question had no legitimate basis and strongly indicates it was based on Mr. McCorvey's race. Once again, IA did not consider racial profiling in its investigation of Mr. McCorvey's complaint. Moreover, although the CRC voted to request that IPR forward the disparate treatment allegation from this case to IA for further investigation, you have declined to do so.

People of color in Portland are stopped disproportionately by the police and treated disparately after they are stopped. The PPB's pedestrian stop data, released since 2006, show African Americans stopped at 3-4 times their representation in the population and the percentage of African Americans and Latinos who are searched after being stopped is over twice as high as the percentage of whites who are searched. Based on

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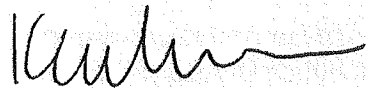
The NATIONAL LAWYERS GUILD is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers and jailhouse lawyers of America in an organization that shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests.

these statistics, PPB and the CRC have expressed their intentions to take action to reduce racial profiling. One of the CRC's many recommendations to IPR in its 2010 Disparate Treatment Complaints Report was to "not oversimplify or consolidate allegations within a complaint." p. 7. The CRC indicated that the credibility of both the CRC and IPR would be enhanced if "CRC and its workgroups . . . engage[d] in more regular, routine auditing of IPR case files, office policies/procedures, and case-handling decisions." p.8.

The cases of Ms. Haynes and Mr. McCorvey are two examples where allegations were oversimplified and obvious racial profiling issues not identified upon investigation. These cases are precisely the kind of cases that need IPR's critical attention and the CRC's oversight. We ask IPR to follow through on the CRC's recommendations to decrease racial profiling by sending the cases of Ms. Hayes and Mr. McCorvey back to IA for investigation of racial profiling.

For a Better World,

NATIONAL LAWYERS GUILD  
PORTLAND, OREGON CHAPTER



Kristen Chambers  
J. Ashlee Albies  
Shauna Curphey  
Briana Swift  
Policy Board Members  
National Lawyers Guild Portland, Oregon Chapter

cc: Jamie Troy, Chair, Citizen Review Committee

# Curphey & Badger P.A.

October 9, 2012

Mary-Beth Baptista  
Director, Independent Police Review Division  
1221 S.W. 4th Avenue, Room 320  
Portland, Oregon 97204

Dear Ms. Baptista:

Last month, your office denied a request from Fred Bryant, the father of Keaton Otis, to allow a civilian body to review the Portland Police Bureau's findings that no misconduct occurred when Keaton was shot 23 times by Portland police officers in May 2010. Despite contrary information in the recently released Department of Justice investigation and statements by the City Auditor, your office publicly admitted that it would not allow appeals of Police Review Board findings concerning officer-related deaths to the Citizen Review Committee.

As you know, the Police Review Board is a seven-member body that meets out of the public eye within the Police Bureau, consisting of four police employees, two citizen members, and an Independent Police Review (IPR) representative. The nine-member Citizen Review Committee, comprised of volunteer laypersons from the Portland community, hears appeals of Police Bureau findings regarding officer conduct at public hearings and makes recommendations to affirm or change the findings, or for more investigation.

Your response came more than six months after Fred Bryant's February 2012 request to appeal the Police Review Board findings concerning the May 2010 shooting death of his son. Moreover, the IPR's position contradicts the statement in the May 2012 City Auditor report, Portland Police Bureau Learning, which indicates that "[a] community member or officer involved in [a] case who disagrees with the [Police] Review Board's decision can appeal to the Citizen Review Committee [CRC]."<sup>1</sup> It also contradicts the U.S. Department of Justice statement, in its recent Letter of Finding regarding its investigation of the Portland Police Bureau, that "There exists

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<sup>1</sup> Portland Police Bureau Learning: Improvements Needed to Strengthen Existing Processes, Portland City Auditor, May 2012, available at: <http://www.portlandonline.com/auditor/index.cfm?c=53777&n=397351>.

#### ATTORNEYS

{ William E. Curphey, III, Managing Partner, licensed in FL, GA and OH  
Eric Badger, Partner, licensed in FL and GA  
Shanna Curphey, Associate, licensed in OR  
Anne Shannon Wendling, Of Counsel, licensed in OH }

no apparent prohibition on CRC's consideration of officer accountability incidents involving in-custody deaths or officer-related deaths."<sup>2</sup>

The IPR's position, while disappointing, is not surprising in light of the long history of IPR's reticence to vigorously carry out its police oversight duties. The U.S. Department of Justice noted that IPR declined 66 percent of the complaints it received in 2010.<sup>3</sup> Fred Bryant, who called IPR in the aftermath of his son's death, was presumably among the complaints that IPR declined.

In a February 2010 letter to your office, I asked that IPR allow Mr. Bryant to file an appeal to the Citizen Review Committee. I based this request on the fact that, in the wake of his son's death, Mr. Bryant attempted to initiate a complaint by calling IPR and, in violation of IPR's case handling guidelines, the IPR staff did not tell him how to do so. Thus, we simply asked to be treated as if he had filed a complaint and therefore be allowed to request an appeal.

Your office, however, claims that Mr. Bryant does not have the right to appeal to the Citizen Review Committee because only "Type I" and "Type III" cases are subject to appeal of Police Review Board findings. Under the Portland City Code, Type I cases involve complaints, such as Mr. Bryant's, regarding officer encounters with a community member.<sup>4</sup> The Code provides, "[A]ny complainant . . . who is dissatisfied with an investigation of alleged member misconduct that occurred during an encounter with a community member may request a review" and requires that IPR inform complainants of the right to appeal Police Review Board findings.<sup>5</sup> Thus, the IPR has apparently taken the convoluted position that because the Police Review Board merely reviews investigations of deadly force, those reviews are not "investigations into alleged officer misconduct" that are subject to appeal.

Your decision is in keeping with the Department of Justice investigation findings that described Portland's police oversight system as "layers of review [that] have provided escape valves inappropriately eviscerating full administrative investigation and corrective action for some complaints."<sup>6</sup> That is the situation here.

Moreover, you did not simply deny Mr. Bryant's appeal, you also stated that the IPR would not conduct any independent investigations into officer-related deaths. Your office relied on questionable reasoning to reach this conclusion. First, your letter stated that, in passing the 2002 ordinance that granted the IPR the power to review closed investigations of officer-involved shooting and deaths in custody, the "[City] Council's intent was to limit IPR and CRC's authority." That ordinance, however, states that the "Council directed the auditor to propose code for reviewing officer-involved shootings and deaths in police custody," which at least indicates that the City Council was amenable to granting the IPR and the CRC broader authority in this area.<sup>7</sup>

<sup>2</sup> Findings Letter to Mayor Sam Adams, U.S. Department of Justice, September 12, 2012, p. 34, available at: [http://www.justice.gov/cert/about/spj/documents/ppb\\_findings\\_9-12-12.pdf](http://www.justice.gov/cert/about/spj/documents/ppb_findings_9-12-12.pdf).

<sup>3</sup> *Id.* at p. 28.

<sup>4</sup> Portland City Code 3.21.120.B.1, available at: <http://www.portlandonline.com/auditor/index.cfm?c=28413&a=298309>.

<sup>5</sup> Portland City Code 3.21.140.A, available at: <http://www.portlandonline.com/auditor/index.cfm?c=28413&a=298310>; Portland City Code ; 3.21.120.G.5, available at: <http://www.portlandonline.com/auditor/index.cfm?c=28413&a=298309>.

<sup>6</sup> *Supra*, note 2, at p. 27.

<sup>7</sup> Portland City Ord. No. 176317, available at: <http://efiles.portlandoregon.gov/webdrawer/rec/2437320/>.

You further stated that the IPR cannot independently investigate officer-related deaths because the Portland Police Association contract states that the IPR lacks that authority. The Police Association contract, however states that, "IPR has no authority or responsibility" relating to Section 61.8 of the contract, which admittedly is entitled Deadly Force Incidents, but provides that officers involved in the use of deadly force have the right to counsel and union representation.<sup>8</sup> The contract is thus unclear with regard to whether the IPR has no authority to investigate deadly force incidents, or merely has no authority over officers' right to counsel and union representation during those investigations. The latter reading makes more sense in light of the fact that you (or your designee) serves as a voting member of the Police Review Board, the entity charged with review of officer-related deaths.<sup>9</sup> Your reliance on the language in the police union contract is therefore, at best, puzzling in light of the fact the City Code expressly grants the IPR responsibilities with regard to deadly force incidents.

Your letter's reliance on the Portland Police Bureau Directives is similarly disingenuous. The IPR states that the Portland Police Bureau Directives establishes that the Bureau shall investigate deadly force incidents. The ordinance that created the Police Review Board, however, instructs the Police Bureau to "revise its directives to the extent that the directives conflict with these code provisions."<sup>10</sup> Moreover, the Directives themselves state, "IPR may conduct its own investigation into allegations of police misconduct at the discretion of the IPR Director."<sup>11</sup> Thus, you have mistakenly relied on the Directives as a basis for your conclusion that the IPR cannot conduct an independent investigation into deadly force incidents.

As the foregoing discussion demonstrates, and the Department of Justice found in its investigation, the current Portland police oversight system is unnecessarily complex and shamefully unresponsive. It takes a highly determined individual, such as Mr. Bryant, just to see that a complaint receives an investigation, let alone an appeal before the Citizen's Review Committee. And while Mr. Bryant is heartened that the Department of Justice findings regarding excessive force may lead to reforms that will prevent future incidents like the one that resulted in his son's death, he will continue to assess his options to see that his case gets a full and fair review.

Sincerely,

  
Shauna Curphey

Cc: Fred Bryant  
Portland Copwatch

<sup>8</sup> Portland Police Association 2010-2013 Labor Agreement, pp. 36-36, available at: <http://www.portlandonline.com/cmf/index.cfm?c=27840&g=10857>.

<sup>9</sup> Portland City Code 3.20.140.C, *supra* note 5.

<sup>10</sup> Portland City Ordinance No. 183657, available at: <http://efiles.portlandoregon.gov/webdirectors/reg/3766848/>.

<sup>11</sup> Portland Police Bureau Policy Directives - 330.00 Role of the Independent Police Review Division, available at: <http://www.portlandonline.com/police/index.cfm?c=29867>.





## The League of Women Voters of Portland

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October 21, 2013

Dear Mayor Hales and Commissioners Fish, Fritz, Novick, and Saltzman:

### **RE: Independent Police Review Division Ordinance**

#### **INTRODUCTION**

The League of Women Voters of Portland generally supports the proposed amendments to the Independent Police Review Division (IPR) ordinance. They reflect a number of Department of Justice (DOJ) Settlement Agreement provisions related to the oversight system. However, the effort would have benefited from more community and Citizen Review Committee (CRC) involvement.

The League has been involved in police oversight in Portland for over 30 years. We monitor both the IPR and Citizen Review Committee (CRC). In 2010, when significant modifications to the system were proposed without any public participation, a Police Oversight Stakeholder Committee was formed to explore community-supported improvements. The League was part of this committee that issued a report containing 41 recommendations. Only a few have been implemented to date.

The League recommends that this process be slowed down so that the public's voice can be heard. The Stakeholder Committee should be reconvened to revisit its recommendations and advise the City Council on which of them should be incorporated into the code at this time.

The code changes proposed by IPR include a requirement that administrative investigations be completed within 180 days. The League has concerns outlined below about the impact this will have on the appeals process. In addition, Council needs to determine what the consequences will be if an investigation is not completed in 180 days. Will the city have to end the investigation without reaching a conclusion in the misconduct case? The Settlement Agreement (paragraph 123) states that if the time frame targets

cannot be met, a written review of the process and a plan to meet them shall be submitted to the DOJ. Perhaps the language from the agreement should be added to 3.21.230 to protect the city from unintended consequences. Furthermore, we need more clarity on how the union contract affects IPR's ability to compel officer testimony.

Thank you for the opportunity to share our comments with you. Following are specific recommendations for your consideration.

## RECOMMENDATIONS

### Citizen Review Committee Authority/Appeals Process

- **The time period for appeals to the CRC should start after the 180-day investigation. Twenty-one days as required by the Settlement Agreement is not enough time to complete the appeals process.**

The proposed code amendments include a provision (3.21.230) calling for all administrative investigations to be completed within 180 days, including the appeals process. As noted in the introduction, City Council should determine what the consequences are if the 180-day timeframe is not met.

The Settlement Agreement requires appeals to be completed within 21 days. We understand this will be incorporated into the city code sometime in the future. We appreciate the DOJ's desire to shorten the length of time it takes for a complaint to work itself through the appeals process, but 21 days is unrealistic. The city should exercise the provision outlined in the Settlement Agreement (paragraph 187) and seek a modification that would allow more time for appeals.

Complainants need time to decide whether or not they want to appeal and if they do, they need sufficient time to fill out the paperwork. The CRC is required to read the case file in city offices during the workday. The case files are sometimes quite lengthy and can take hours to review. The CRC convenes on separate occasions for a case file review, an appeal hearing, and sometimes a conference hearing with Police Bureau leadership. In rare instances, City Council must conduct a hearing.

Appellants are offered an Appeals Process Advisor (APA) and a law student advocate to assist them in presenting their case. Both the APA and advocate are volunteers, so arranging meetings can take time. If additional investigation is needed, this will lengthen the process.

As regular observers of the CRC, we have noted that even when appeals go on for months and the outcome does not go the appellants' way, they express gratitude and satisfaction because they felt they were heard and every aspect of their complaint was carefully examined. We understand the need for giving officers a timely

resolution of their misconduct cases, but it should not be at the expense of a thorough appeals process.

- **Give CRC the explicit authority to challenge IPR dismissals of allegations.**

In its letter of findings (p. 28), DOJ raised concerns about IPR's dismissal of cases based on a determination that "it is more likely than not that no misconduct occurred and additional research would not reach a different conclusion."

Furthermore, the IPR's 2012 Annual Report (p. 5) reveals that the number of cases dismissed by IPR for the "cannot prove misconduct" reason has grown in the last year. 2010 – 43 cases (18 percent), 2011 – 42 cases (16 percent), 2012 – 80 cases (25 percent).

In the recently closed McCorvey case, the CRC requested that the dismissed allegation of disparate treatment (racial profiling) be investigated, but IPR refused their request. The CRC's oversight through the appeals process is important for public confidence in our police accountability system. They need the authority to direct IPR or Internal Affairs to revisit aspects of the investigation when they believe there are significant unanswered questions about the case.

- **CRC authority to request additional investigation as envisioned in the Settlement Agreement (paragraph 136) should be added to the ordinance.**

On occasion the CRC finds that it needs additional information in order to reach a conclusion in an appeal. It should be made clear in the city code that they have the authority to ask for that information.

- **Add to the IPR ordinance the authority of CRC to reformulate or add allegations.**

At times the CRC finds that allegations do not accurately capture the complainant's concerns or the information in the investigative files. When this happens, CRC should have the ability to reformulate or add allegations. Clearly stated allegations that accurately represent Police Bureau policies that may have been violated are important for both the officer and the complainant.

- **Change CRC's "reasonable person" standard of review to something less deferential. Short of that, omit it from the Settlement Agreement so the CRC, city, and community can continue to explore other options.**

The current "reasonable person" standard of review has proven to be problematic throughout our oversight system's existence. The independent expert who reviewed the IPR, the Stakeholder Committee, and the CRC have all recommended changing it.

The CRC should be given a standard that allows them to weigh the evidence and challenge Police Bureau findings when they deem it appropriate. The CRC does not have the final word; if the Chief disagrees with the CRC he can request a conference hearing and City Council has the final say.

- **Survivors or family members involved in police shootings should be allowed to appeal their cases to the CRC.**

Individuals involved in shootings cases deserve full access to the city's oversight system, including an appeal to the CRC. While many of these cases end up in civil court, that is no substitute in terms of officer accountability for the full IPR/CRC process.

- **Give the auditor the authority to hire outside independent counsel when necessary.**

In order to avoid even the appearance of a conflict of interest, the Auditor should be given the authority to hire outside counsel. The City Attorney is charged with representing the interests of the city, which extends to protecting it from exposure when police officers are involved in misconduct. The City Attorney's office cannot be expected to protect the city at the same time it advises the IPR and the CRC on misconduct cases.

- **Amend the 2011 ordinance change to eliminate the need for CRC to send cases back to IPR if new information is revealed at an appeal hearing.**

On occasion new information emerges at an appeal hearing. Based on a 2011 revision to the code, even if all parties accept the new information as fact, the case must be sent back for more investigation. In light of the desire to shorten the time frame for appeals, this provision should be amended to bypass the requirement when appropriate.

### **IPR/Investigative Process**

- **IPR should conduct independent investigations of serious complaints of misconduct.**

Since its inception, the IPR has had the authority to conduct independent investigations, but it is only in the last year that it has embarked on its first, a case involving two Bureau members. Many in the community do not trust a system in which the police investigate other police. The Stakeholder Committee Report recommends that IPR conduct independent investigations in serious cases such as those involving use of force, shootings, deaths in custody, and physical injury requiring hospitalization. Confidence in the system likely will increase when IPR routinely investigates more cases of import to the public.

- **Return to nationally accepted findings: Sustained, insufficient evidence, exonerated, unfounded.**

In 2007, with no public input, the Bureau changed the possible findings to sustained, unproven, and exonerated. The DOJ points to the confusion over the current findings in misconduct cases in its letter of findings (p. 30), and points to the “unproven” finding as particularly problematic. This confusion should be addressed by returning to the nationally accepted findings.

- **Use additional ratings to indicate whether other issues were of concern in a case, such as policy, equipment, communication, training, and management.**

The Stakeholder Group and independent expert Eileen Luna-Firebaugh recommended applying additional ratings in misconduct cases to indicate whether policy, training, supervision, equipment, or communication issues were of concern in a case. It is not clear if this is currently part of the review process, but if it is not, it should be. Furthermore, a summary of the ratings should be included in the IPR’s Annual Report.

### **Police Review Board**

- **At a minimum, the involved civilian should be allowed to attend the Police Review Board hearing at which his/her case is being considered.**

The DOJ letter of findings (p. 33) said it was “curious” that a host of non-voting advisory members attend Police Review Board (PRB) hearings, but the complaining community member is not allowed to be present. In the spirit of making the system more accessible and accountable, complainants should have the right to attend the PRB hearing related to their case.

- **Reverse the provision in the ordinance allowing the officer’s commander a vote on the PRB.**

In spite of community concerns and contrary to the Police Assessment Resource Center recommendations in 2003 and 2006, the city made the involved officer’s supervising commander a voting member of the PRB in use of force cases. Since the commander is the individual responsible for formulating the findings in the case, there is an inherent conflict of interest when the supervisor is a voting member of the board.

### **Transparency/Public Involvement**

- **Report to the community on discipline outcomes by including the information in the IPR’s Annual Report.**

The IPR proposed changes to the public reporting of discipline outcomes are welcome. Requiring a summary of discipline outcomes in the IPR Annual Report would strengthen the recommendation.

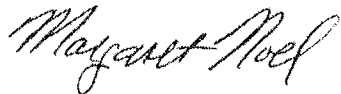
- **Require the Bureau to submit draft policy revisions to the CRC for comment.**

Providing drafts of Bureau policy changes to the CRC for review would provide another opportunity for thoughtful citizen involvement. CRC meetings are open to the public so interested community members also would have the opportunity to comment. When timeliness is an issue, consultation with the CRC chair would be an appropriate substitute.

- **Make records related to the case more easily available to the complainant.**

Currently, if a complainant wants a copy of his/her police record it is necessary to go to the Bureau and purchase a copy. Complainants who feel the police have harmed them may find this intimidating. It would make the system more user friendly if the IPR could provide a copy of the report and other publicly-available documents related to his/her case.

Yours truly,



Margaret Noel  
Co-president

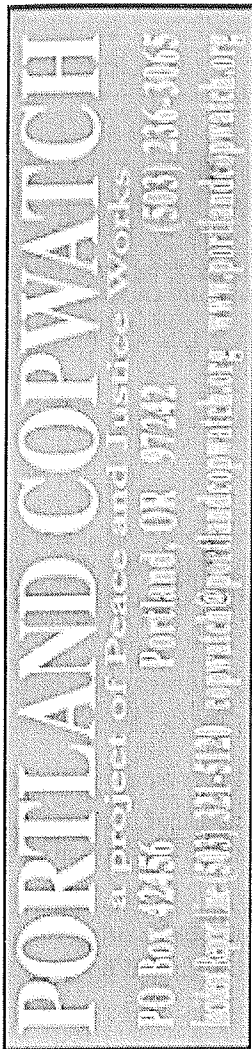


Kathleen Hersch  
Co-president



Debbie Aiona  
Action Chair





**Testimony of Portland Copwatch on Changes to the Independent Police  
Review Division and Police Review Board Ordinances  
for City Council Hearing Wednesday, October 23, 2013 2:10 PM  
(submitted October 22, 2013 and updated October 23)**

To Mayor Hales and Commissioners Fish, Fritz, Novick and Saltzman:

Portland Copwatch urges you not to vote on the proposed changes to the Independent Police Review Division (IPR) and Police Review Board (PRB) ordinances coming before you this week. While many of the proposed ideas are good first steps, they do not go far enough to ensure thorough, independent and transparent oversight of the police. It seems that the Department of Justice (DOJ) Agreement is being used to push these changes through, but they are being considered a ceiling rather than a floor. The changes only add power to the IPR professional staff, while delaying changes that would strengthen its Citizen Review Committee (CRC). IPR similarly pushed through a package of changes in early 2010 with virtually no public input, which led to the formation of an Oversight Stakeholders group. That group put out a report with 41 recommendations (\*1), only four of which were incorporated into the ordinance previously and only one more of which is being proposed this time (\*2).

Of greatest concern: the ordinance contains a disastrous flaw: language from the DOJ stating that all investigations \*shall\* be completed in 180 days— including any appeal to the CRC. First, the way the ordinance is written leaves it open for an officer whose case isn't completed by that time to declare him/herself innocent and walk away. Despite our raising this concern repeatedly, the proposed ordinance contains no "escape valve" such as a requirement that IPR report to the appropriate authority (which could be the DOJ, COCL, Police Commissioner, and/or Auditor) weekly why the case is taking longer than 180 days until the investigation is complete. (Similar reporting requirements are included in DOJ Agreement paragraphs 123 and 132.)

Furthermore, including appeals to CRC in the 180 day timeline ignores the existing protocols which include 30 days for a complainant to file an appeal (\*3) and as many as four hearings that might need to be held in that short time frame (\*4).

The other Stakeholder-recommended change, which is very significant, is language which appears on its face to allow IPR to compel PPB employees to testify directly to them without going through the Bureau's Internal Affairs division (\*5). However, it remains to be seen whether that provision can be implemented without changing two paragraphs in the Portland Police Association (PPA) contract (\*6) which appear to require officers under scrutiny to be investigated by a police officer in a police precinct. Moreover, we don't want to see this provision, so important to make the IPR be actually independent after all these years, used as infrequently as some of the existing provisions. The current law designates that City Council will be the final arbiter in appeals cases, yet only one appeal was ever heard at Council, in 2003. The only time IPR has ever invoked its right to conduct an independent investigation (which existed since 2001 but was strengthened in 2010) was earlier this year (2013) in a case involving Captain Kruger and a female subordinate, but no community member.

Meanwhile, there are many provisions, most of which were in the Stakeholder report, that are absent in these changes. We earlier wrote about how the CRC's standard of review when hearing an appeal (whether a "reasonable person" could come to the same finding) is too deferential and should be changed to "preponderance of the evidence" (\*7). Such a change would still leave CRC's proposed finding a recommendation, with two safeguards (decisions by the City Council and/or the Chief/Police Commissioner). It is disappointing that because the DOJ agreement locks in the limiting and confusing definition (\*8) we may be stuck with this standard, opposed by the Stakeholder group, the Luna-Firebaugh report, and the CRC itself.

There is also no provision to explicitly allow a person who wants to challenge the findings of a shooting or death in custody investigation to appeal to the CRC, while the DOJ Agreement goes so far as to exclude such an appeal (\*9). The City holds that such a person could sue, even though in reality that (a) takes a lot of resources and (b) at best causes the City to pay out money and/or change policies, but not to discipline the officer. Only this administrative process can lead to that conclusion.

(more)

The ordinance does provide for CRC members to rotate onto Police Review Board hearings, as required by DOJ. They will be rotating on as the second community member (with the existing PRB pool of 20 people filling the other seat) in use of force cases, but not on cases with proposed “sustained” findings that will lead to discipline (\*10). This is not necessarily a terrible idea yet is not going to take all the steps necessary to integrate our oversight system, especially since, due to confidentiality, CRC won’t be able to report back on what they hear regardless of what kind of PRB they attend. The PRB will also remain closed to the public, the media, and even the person affected by the incident in question, with only PRB members, PPB staff, and the officer involved attending.

We do support most of the changes being proposed but they should not be implemented as written, nor implemented without addressing other longstanding community concerns.

We support, in most cases with reservations noted:

—requiring the Chief to explain when his discipline differs from the recommendation of the Police Review Board; however the Stakeholder report wanted that explanation to be made public, something not indicated in the proposed ordinance (\*11);

—increasing the CRC to 11 members from 9, as it will mean that a majority can’t be political appointees; however, there is some confusion because the new quorum will be 5;.

—creating a discipline guide;

—investigating all uses of force, with the subjective caveat that they may not investigate if there is “clear and convincing evidence” not to (\*12). This gives IPR an “out” similar to their current ability to dismiss cases if they feel they are going to be “unable to prove misconduct” (\*13); and

—creating a template for Police Review Board reports (\*14), which only includes about half of the items that Portland Copwatch recommended in our July analysis of the last PRB report (\*15). We do appreciate, though, the proposed public nature of shootings and deaths reports.

We do not see the provision that the Director promised to make requiring the Bureau to notify IPR before dropping an investigation. He has indicated this will be introduced as an amendment—if that happens, it is just a further indicator that the ordinance is not ready to be voted on and Council should wait for a comprehensive package that has more community buy-in.

Here is a list of some other ideas that have been floating around, including ones from the 2010 Stakeholder report:

High Priority:

—IPR should investigate serious complaints of misconduct (and not leave those cases to Police Internal Affairs), including “shootings, deaths in custody, and physical injury requiring hospitalization; racial profiling, illegal searches, conflicts of interest, or other ‘high emotion in the community’ issues.”

—As noted above, change the CRC standard of review to “preponderance of the evidence” and empower CRC to direct IPR or IA to do more investigation

—The Auditor should be able to hire attorneys independent of the City; this issue was brought to light once again at Mr. McCorvey’s hearing when the City Attorneys sat silent while the Chief introduced new and irrelevant information at the “conference hearing”

—Fix the problematic change made to the ordinance in 2011 in which CRC can hear new evidence but not vote on it (\*16). If undisputed evidence surfaces, CRC should be able to vote without further delaying the process

—Empower CRC to send back new or declined allegations for investigation

—As noted above, open the PRB process to some or all civilians and allow appeals of PRB findings in shootings cases

—Also as noted above, do not include the CRC appeal process in the limited investigative timeline (IPR has said they would put this off until the Agreement is formally entered)

(more)

Medium Priority:

- Provide CRC its own staff person
- Make records more easily available to complainants and the public
- Report more on discipline, including what findings lead to what discipline, and whether “mitigation” changed the findings
- Stop letting the officer’s commander vote on the PRB
- Allow CRC to review the proposed allegations at intake
- Allow CRC to recommend whether discipline should happen

Lower Priority:

- Ask complainants whether, if they had the choice, they would prefer IPR or IA investigators
- Allow appeals of non-disciplinary complaints (and change the name from “Service Improvement Opportunities”!)
- Revert to the pre-2007 four categories of findings to separate out “insufficient evidence” from “unfounded”
- Use “ratings” that indicate other issues raised by the complaint such as equipment, policy, communication (or show us how such ratings are currently being used)
- Ask complainants if they prefer a full investigation or an informal “non-disciplinary complaint” process
- Force the Bureau to give CRC drafts of policies before they are finalized to allow input from CRC and the public

As you can see, there is far more work to be done to create a truly effective and trusted oversight system in Portland. Let us stop taking these half steps and take the time to make the IPR the best it can be.

Thank you as always for the opportunity to comment

dan handelman  
portland copwatch

\*1- [http://www.cdri.com/library/PoliceOversightStakeholderReport2010\\_V2.pdf](http://www.cdri.com/library/PoliceOversightStakeholderReport2010_V2.pdf)

\*2- adding two more members to the CRC to expand their number to 11 (sec. 3.21.808[A]).

\*3- sec. 3.21.140[B]

\*4- a Case File Review sec. 3.21.150), an Appeal Hearing (sec. 3.21.160[1]), a Conference Hearing (sec. 3.21.160[A][1][c][2]), and a City Council Appeal hearing (sec. 3.21.160[2])

\*5- sections 3.21.220, 3.21.070[P], 3.21.120[C] and [D]

\*6- sections 61.2.2.2 and 61.2.2.4)

\*7- [http://portlandcopwatch.org/preponderance\\_analysis\\_0411.pdf](http://portlandcopwatch.org/preponderance_analysis_0411.pdf)

\*8- hidden in the DOJ Agreement’s definitions, paragraph 61. The DOJ Agreement provides that it can be amended by a vote of City Council (paragraph 187) and this should be one of the first changes made.

\*9- also hidden in the DOJ Agreement’s definitions, paragraph 43

\*10- sec. 3.20.140[C][2]

\*11- sec. 3.20.140[H][4].

\*12- sec. 3.21.110[A]

\*13- sec. 3.21.120[C][4][g]

\*14- sec. 3.20.140[I]

\*15- [http://www.portlandcopwatch.org/prb\\_report\\_analysis\\_0713.pdf](http://www.portlandcopwatch.org/prb_report_analysis_0713.pdf)

\*16- sec. 3.21.160[B]

## **Independent Police Review and accommodation for persons with mental illness**

Testimony to Portland City Council

Jason Renaud

Mental Health Association of Portland

October 23, 2013

Speaking on behalf of supporters of the Mental Health Association of Portland, I support the changes proposed by the director of the Independent Police Review, and endorse the recommendations you have heard from Portland Copwatch. Civilian oversight of the police is a difficult and still maturing task – give your staff the tools to make the work meaningful to us.

We now know our police had a pattern and practice of harming persons with mental illness. Stipulated – policework in Portland is changing. But our blindness and denial indicates a diligent manager will find routine harm to the same group in surrounding bureaucracies, different – but routine, and harm.

It's common for persons with a diagnosis of mental illness to have unusual concerns and fears about police officers. The experience of mental illness expands and warps average thoughts and impulses. When symptoms are present, many people with mental illness avoid any engagement with police, or anyone associated with police.

In our experience a disproportionate number of persons with mental illness come in contact with police officers, and a disproportionate number have been harmed by officers. However, for people with mental illness, the citizen complaint process the IPR presents is daunting. The paperwork, investigations, lengthy waits, and public exposure are substantial barriers to participation.

Accommodation is needed as an add-on to the already successful IPR Citizen-Police Mediation Program, and there is a simple way to provide it.

Our suggestion is the IPR hire peer mediators who share common life experience with persons with mental illness. These peer mediators would be trained and supervised within the IPR to meet prospective complainants in the community, in clinics, in homes, and to start a conversation about how police review works, about how an IPR investigation is managed, and also to offer an alternative – a personal conversation with the identified officer.

If the alternative is selected, the peer worker can make an informal arrangement for the complainant and peer mediators to meet briefly with the identified officer and one of their supervisors. This meeting should not be in a police station, and the officers should be out of uniform. The officer should be coached to listen and respond minimally. The prospective complainant should be instructed the meeting will be short and not repeated.

The opportunity to speak, privately and face-to-face, is far more likely to result in meaningful and satisfying conflict resolution than a lengthy investigation and hearing.

We believe if the IPR is allowed and supported to implement a peer mediator-model, complaints to the IPR will decrease, and public trust of officers will increase.

Conflict is normal, and resolution needs to be simple, rapid, and accessible. Our task, as city stewards, is to make it so conflict resolution is available to all, including Portlanders with a psychiatric disability.



From: Barbara Ross <bross@exchangenet.net>  
Subject: **Fwd: Ordinance No. 175652**  
Date: October 23, 2013 10:32:50 AM PDT  
To: mayorhailes@portlandoregon.gov

To: Mayor Hales and Commissioners Fish, Fritz, Novick and Saltzman

Re: Testimony on changes to the proposed ordinance relating to the Independent Police Review Division and the Citizen Review Board Procedures

Thank you for the opportunity to testify. My name is Barbara Ross. The comments in this letter are from me as an individual and are not representing any organization. There are serious problems in the ordinance as proposed. There are internal inconsistencies as well as conflicts with the Department of Justice Agreement that will make it impossible to implement without more changes to the ordinance or the DOJ agreement or both.

Let's take the timeline for handling appeals from citizens to the CRC as an example. The DOJ agreement calls for appeals to be handled in 21 days. Section 3.21.140 of the ordinance gives the complainant 30 days to request a review. Once the appeal is submitted, Section 3.21.150.A requires the IPR Director and the CRC Chair to schedule a case file review before the committee.

Section 3.21.150. B allows for further investigation after the case file review. After the additional investigation is complete, the CRC holds a hearing on the appeal.(3.21.160) If their conclusion differs with the Bureau, the Bureau has to decide if they will accept the CRC's recommendation and if not, a conference hearing is scheduled. At this meeting the Bureau representatives and the CRC exchange the reasonings behind their differing conclusions.(3.21.160.A.1.c.2) The CRC then votes to accept the Bureau's conclusions or to stick with their earlier decision and send the appeal to the city council. ( I am told that this has only happened once in the last several years.)

Bare in mind that the CRC members are all volunteers, some working fulltime, who are required to read the entire case file at PPB offices during working hours. Members who have not read the file are not allowed to participate in the deliberations.

It is clear to the casual observer that the process as it stands is not going to fit into 21 days. According to the draft ordinance the entire investigation including the appeal is supposed to take only 180 days. I am aware that the League of Women Voters of Portland and Copwatch are also submitting detailed testimony on a number of technical issues that are of concern to them. These problems deserve careful consideration.



I would urge the city council to slow this process down, to look for better solutions, instead of approving an ordinance that has no chance of working as written. Portland should have an open, clear process that is fair to both the complainant and the officer involved and is consistent with the DOJ agreement.

So what exactly do I think should be done? Everyone agrees that the current investigations and appeal process is cumbersome and takes too long. Streamlining the CRC appeals will require the CRC leadership and the IPR to put their heads together and cooperate in working out a shortened time frame. This will be difficult, but the result must be both fair and workable. Here are some ideas that have been suggested as part of the solution.

1. Allow CRC members to review case files on the weekends or electronically.
2. Define the appeal period of 21 days as starting with the case review and ending with the CRC's decision. Define the other steps, the complainant's time to decide to appeal and the CRC members reading of the case files, as "preparation for the appeal".
3. Make investigations more thorough so that the need for additional investigation is increasingly unusual. (I believe that IPR and Internal Affairs are already working on this.)
4. Eliminate the conference hearing. If the Chief disagrees with the CRC decision, the matter goes directly to the city council.
5. Eliminate the requirement that the case be returned for more investigation if new evidence comes forward at the hearing.
6. Recognize that in spite of everyone's best efforts, on rare occasions it will be impossible to complete the process in 21 days. Outline what would happen if this occurs. For example, require a report from IPR to the Chief and the Mayor if the deadline is about to be passed.
7. Eliminate the 21 day requirement from the DOJ agreement. Paragraph 187 of the agreement says that the agreement can be modified by the city council with the DOJ's concurrence. We have been told that this is unlikely to happen.

Changing the way the CRC operates will not be easy. Setting meetings where the principals can be present will require extra effort. CRC members will need to be more flexible. It will require a lot of creative thinking and patient work to shorten the process. The goal should be to continue to be fair, open, and predictable. Thank you for this opportunity to testify.

Barbara Ross  
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503 281-0345  
[bross@exchangenet.net](mailto:bross@exchangenet.net)





October 22, 2013

Mayor Hales and members of the City Council,

For the record, my name is Kayse Jama, Executive Director of the Center for Intercultural Organizing (CIO), a statewide immigrant & refugee rights organization based in North Portland. Thank you for giving me the opportunity to speak to you today. The proposal in front of you is a good set of first steps toward true police reform in Portland, but they don't go far enough to make the Portland Police Bureau truly accountable to the community. Although CIO supports today's ordinance, we view this as the beginning of the discussion, not the end.

Our first concern is the process involved to propose this code changes. After a series of city-driven changes in 2010, an oversight work group was created, and made 41 recommendations to the City. Only a few of those have been pursued in full, including just one of today's code changes.

Second, the move to require investigations to be completed within 180 days is sound in theory, but the proposal contains no provision for a "safety valve" if an investigation takes longer for some reason; there's a significant chance that the policy as written would lead to Internal Affairs simply washing their hands of difficult or time-consuming investigations.

Most notable of the changes in today's package is one which would allow IPR staff to compel officers' testimony without going through PPB's Internal Affairs division. This is an important change which we enthusiastically support; we ask in addition that IPR commit to using this power to investigate high-profile cases.

We remain concerned that IPR's oversight and accountability arm, the Citizen Review Commission, lacks the ability to direct IPR or PPB's Internal Affairs to continue an investigation, a change suggested by the



community and the US Department of Justice in their recent settlement with the City. Expanding the CRC to 11 members is an important step, but those members should be empowered to fulfill their duties. Additionally, the City should work to ensure that the CRC's membership is truly diverse; it is not now representative of the changing face of Portland.

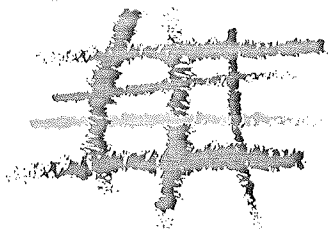
We're also troubled by changes which the City has not brought forward in this proposal. As many of our colleagues at Portland Copwatch and the Albina Ministerial Alliance have noted, the "reasonable person" standard of review which the CRC uses is problematic and confusing, and has prevented victims of police misconduct from obtaining a just result. Portland should adopt a "preponderance of evidence" standard at the CRC to provide for a more consistent appeals process, and encourage true civilian oversight of our police bureau.

In conclusion, as I said before, CIO supports the changes in front of you. We're glad to see the City take steps toward real reform and accountability in the Portland Police Bureau. At the same time, there's far more that we as a community can achieve - recommendations which were outlined years ago - not included as a part of these reforms. We must do more, and we must do it now, to truly promote justice for all. Thank you.

Kayse Jama

Executive Director

Center for Intercultural Organizing



DISABILITY RIGHTS OREGON

October 23, 2013

Mayor Charlie Hales and City Commissioners  
Portland City Hall  
1221 SW 4<sup>th</sup> Ave.  
Portland, OR 97204

Re: Auditor's Proposed Reforms to Police Accountability System

Dear Mayor Hales and Commissioners:

I am a staff attorney with Disability Rights Oregon (DRO). DRO is the federally-funded non-profit protection and advocacy agency for people with disabilities in our state. Moreover, we were a member of the Portland Police Bureau's Crisis Intervention Team Advisory Board from 1999 until it ended recently. We are a member of the Portland Police Bureau's Behavioral Health Unit Advisory Committee. In addition, we are a member of the Albina Ministerial Alliance. As such, we welcome a professional police review board that conducts investigations that are truly independent and thorough.

The auditor has proposed some reforms to the police accountability system. DRO supports the proposed changes while recognizing that more changes are needed. I will address a few of the proposed changes-- which all accord with the mission of the IPR is to improve police accountability to the public and to provide the opportunity for fair resolution of complaints against the police.

As you are aware, the US DOJ found that as to the Portland Police Bureau there was "reasonable cause to believe that there is a pattern or practice of unnecessary or excessive uses of force in certain encounters between police officers and persons with or perceived to have mental illness." Allegations of misconduct must be investigated with independence and thoroughness. The Independent Police Review (IPR) should serve to make police more accountable. To do so, the IPR must be independent of the Portland Police Bureau in its investigation—to avoid police investigating police. The IPR should be allowed to independently investigate incidents of alleged misconduct by Portland Police Bureau.

DRO supports IPR Code Change #1. In order to conduct an independent investigation, IPR must be able to directly question the Police Bureau employees and compel their testimony without going through the Portland Police Bureau's Internal Affairs Division. The police being questioned can be accompanied by his/her Union representative. This authority should be implemented without being thwarted by objections from the Portland Police Association. Additionally, the IPR should certainly use this power in high profile cases that are of concern to the community.

DRO supports the City implementation of a discipline guide as a tool for Portland Police Bureau Managers and the Portland Review Board. (Post-Investigation/ Police Review Board Code Changes #4). The discipline of Portland Police Officers should be fair and consistent. Having a discipline guideline that is implemented in each instance of misconduct would improve the fairness and consistency of discipline. This could be a tool that would account for past history of misconduct and severity of the misconduct in imposing discipline, similar to the sentencing guidelines used in criminal cases. It may have a positive spill over effect of making it more difficult for Portland Police Association arbitration sessions to drop or lighten up discipline against Portland Police Officers.

DRO supports Post Investigation/ Police Review Board Code Changes #1. The public should be provided at least a minimum amount of information from the Police Review Board, specifically what has been recommended is basic:

- a. Allegation(s) brought before the board
- b. A brief factual summary of the case
- c. A summary of the PRB discussion
- d. A record of the PRB vote, including recommended findings and discipline
- e. Training and policy recommendations
- f. In each case, both the proposed discipline by the chief and final discipline imposed.

This improves police accountability to the public. However, another change that would also be basic is to allow at least the complainant to be present to address the Police Review Board and answer questions as the aggrieved party.

DRO supports the 180 days to do an administrative investigation. Evidence is less likely to disappear or fade in this time frame. However, 180 days should not be a hard and fast deadline because it could be used by officers to escape accountability and to unnecessarily restrict the appeal process. There should be a weekly reporting requirement to the Police Commissioner or to the Auditor if the case exceeds the 180 day time line. This reporting should include an explanation for why the case is taking longer.

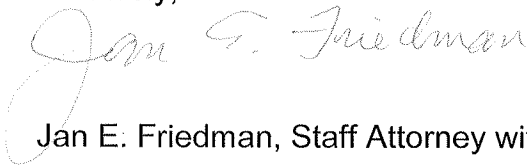
In addition to these reforms, the Citizen Review Committee should be able to direct IPR or the Internal Affairs Division to undertake further investigation. This is important to ensuring that investigations are thorough.

The Independent Police Review (IPR) has had the authority to conduct primary investigations, but to my understanding has rarely conducted one. Instead, PPB's IAD has conducted mostly all of the primary investigations into police misconduct. The problem with this set up is that the investigation is not independent, it is police investigating police. The proposed changes combined with the 3 additional IPR investigators may allow the IPR to conduct more full independent and thorough investigations.

The additional investigators should complete investigations from beginning to end. Otherwise, there will simply be more people working for the IPR who act only under the ultimate guidance of IAD. The "Independent" in IPR needs to have significance; otherwise IPR is more simply "PR". It is not a body that conducts independent primary investigations. Our citizens deserve truly independent investigations and monitoring. Independence in investigations and monitoring will help regain citizen's trust of the PPB.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jan E. Friedman". The signature is written in dark ink and is positioned above the printed name.

Jan E. Friedman, Staff Attorney with DRO

## TESTIMONY – POLICE ISSUES – City Council, October 23, 2013

In 2010, I represented the organization Oregon Action as a member of the Stakeholder Committee that was tasked with making positive recommendations for improvement to Portland Police oversight and policies. I spent hours educating myself and attending meetings, and even attended extra sub-committee meetings to help clarify language of our proposals for the larger group to discuss and approve. The 41 recommendations we ended up with were carefully thought out; our goal was to create better policies and processes. But after the disappointment of almost all of the Stakeholder recommendations being ignored, I decided to spend my time on other state and city issues.

So you might think that I am no longer qualified to testify on police matters. However, I definitely have not forgotten the main message: that Portland needs a strong, independent review board that is community-driven and not dependent on the Police Bureau to conduct investigations.

Several years before I moved to this city, I was already concerned about Portland Police. In 2002 my son, daughter-in-law and 3 of my grandchildren (one an infant) were pepper-sprayed by a Portland police officer during a peaceful demonstration. The City of Portland was subsequently sued by them and several other protesters. *But nothing happened to the officer who inappropriately sprayed them.*

I love my new city. I don't want anyone to be unjustly treated by a police officer who is ill-trained or has wrong attitudes or is following a flawed policy—especially if a death is the result. If injustice does occur and someone wants to challenge it, the investigative process must come from the community. Although the IPR is supposed to be able to initiate and conduct investigations, I am concerned about whether they will indeed use their authority and investigate allegations thoroughly.

I don't think City Council should approve changes that only partially accomplish goals, without doing everything needed to improve the system. Otherwise, you will think problems have been solved when they actually haven't been.

*Sally Joughin*

Sally Joughin  
2715 SE 34<sup>th</sup> Ave, Portland OR 97202



**Parsons, Susan**

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**From:** Griffin-Valade, LaVonne  
**Sent:** Wednesday, October 23, 2013 8:13 AM  
**To:** Moore-Love, Karla; Parsons, Susan  
**Subject:** FW: Independent Police Review and accommodation for persons with mental illness  
**Attachments:** Testimony to City Council 10.23.2013 by the Mental Health Association of Portland.pdf

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**From:** pdx97217@gmail.com [pdx97217@gmail.com] On Behalf Of Mental Health Association  
[info@mentalhealthportland.org]  
**Sent:** Tuesday, October 22, 2013 10:54 PM  
**To:** Hales, Mayor; Commissioner Fritz; Commissioner Fish; Commissioner Saltzman; Griffin-Valade, LaVonne; Severe, Constantin  
**Cc:** Shibley, Gail; Finn, Brendan; Warner, Chris; Callahan, Shannon; Bizeau, Tom; Kuhn, Hannah  
**Subject:** Independent Police Review and accommodation for persons with mental illness

**Independent Police Review and accommodation for persons with mental illness**  
Testimony to Portland City Council, 10/23/2013

Jason Renaud  
Mental Health Association of Portland  
October 23, 2013

Speaking on behalf of supporters of the Mental Health Association of Portland, I support the changes proposed by the director of the Independent Police Review, and endorse the recommendations you have heard from Portland Copwatch. Civilian oversight of the police is a difficult and still maturing task – give your staff the tools to make the work meaningful to us.

We now know our police had a pattern and practice of harming persons with mental illness. Stipulated – policework in Portland is changing. But our blindness and denial indicates a diligent manager will find routine harm to the same group in surrounding bureaucracies, different – but routine, and harm.

It's common for persons with a diagnosis of mental illness to have unusual concerns and fears about police officers. The experience of mental illness expands and warps average thoughts and impulses. When symptoms are present, many people with mental illness avoid any engagement with police, or anyone associated with police.

In our experience a disproportionate number of persons with mental illness come in contact with police officers, and a disproportionate number have been harmed by officers. However, for people with mental illness, the citizen complaint process the IPR presents is daunting. The paperwork, investigations, lengthy waits, and public exposure are substantial barriers to participation.

Accommodation is needed as an add-on to the already successful IPR Citizen-Police Mediation Program, and there is a simple way to provide it.

Our suggestion is the IPR hire peer mediators who share common life experience with persons with mental illness. These peer mediators would be trained and supervised within the IPR to meet prospective complainants in the community, in clinics, in homes, and to start a conversation about how police review works, about how an IPR investigation is managed, and also to offer an alternative – a personal conversation with the identified officer.

If the alternative is selected, the peer worker can make an informal arrangement for the complainant and peer mediators to meet briefly with the identified officer and one of their supervisors. This meeting should not be in a

10/23/2013

police station, and the officers should be out of uniform. The officer should be coached to listen and respond minimally. The prospective complainant should be instructed the meeting will be short and not repeated.

The opportunity to speak, privately and face-to-face, is far more likely to result in meaningful and satisfying conflict resolution than a lengthy investigation and hearing.

We believe if the IPR is allowed and supported to implement a peer mediator-model, complaints to the IPR will decrease, and public trust of officers will increase.

Conflict is normal, and resolution needs to be simple, rapid, and accessible. Our task, as city stewards, is to make it so conflict resolution is available to all, including Portlanders with a psychiatric disability.

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Jason Renaud  
Mental Health Association of Portland