

Agenda Item 945 &amp; 946

TESTIMONY

2:00 PM TIME CERTAIN

**POST DEADLY FORCE PROCEDURES & DOJ SETTLEMENT AGREEMENT**IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE (Optional)	Email (Optional)
✓ DAN HANDELMAN	PORTLAND COPWATCH	
✓ JUAN CHAVEZ	NATIONAL LAWYERS GUILD	
✓ LISA WRIGHT	NAACP PORTLAND BRANCH	
✓ DEBBIE AIGNA	LEAGUE OF WOMEN VOTERS	
✓ REGINA HANNON	PORTLAND COPWATCH	
✓ BARBARA BOCHINSKI	PORTLAND COPWATCH	
✓ MR. W.G. BARNETT	PORTLAND COPWATCH	
✓ Lightning	_____	—
✓ PHILIP J WOLFE	COAB	—
✓ PAT ADAMS		
J. SEAN FIELDS		

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Email (Optional)

✓ THOMAS ETIENNE	SE PDX RESIDENT	
✓ JOE WALL		
✓ MYRLAVIANI PEREZ-RIVIER	SW PDX	
✓ Kenner Swain	SW Portland	
✓ <sup>Destin</sup> John Hett Hennessey	3138 N. Vancouver	

Date 08-24-2017Page 2 of 2



## The League of Women Voters of Portland

618 NW Glisan St., Suite 303, Portland, OR 97209

(503) 228-1675 • [info@lwvpdx.org](mailto:info@lwvpdx.org) • [www.lwvpdx.org](http://www.lwvpdx.org)

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### Portland Committee on Community-Engaged Policing City Council Testimony August 24, 2017

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*Amy Beltaine*  
Outreach

The League of Women Voters of Portland appreciates the improvements that have been made to the proposed Portland Committee on Community-Engaged Policing (PCCEP) and the Settlement Agreement amendments. The League would like to offer its comments and recommendations for further improvements.

We strongly recommend that all PCCEP meetings be open to the public. The League agrees with Open Oregon, a statewide freedom of information coalition, that citizens benefit by "having access to the process of deliberation" and "government officials gain credibility by permitting the public to observe their information gathering and decision-making processes." Officials who "keep their deliberations hidden from public scrutiny create cynicism and erode public trust." In light of the high degree of community concern about policing in Portland, greater transparency and participation are essential.

We thank you for improving the selection process for PCCEP members by including more public participation in developing selection criteria and in the interview panel. It appears, however, that PCCEP members will be limited to one two-year term. The League has encouraged the City to tailor term limits policies to fit the needs of each volunteer City committee. The PCCEP will be dealing with complex issues and its members will require extensive training. The constant turnover resulting from non-renewable two-year terms will be a barrier to the PCCEP's ability to carry out its responsibilities.

The community will look to the PCCEP to assess the City's compliance with the Settlement Agreement, including its implementation. The City will build trust and confidence by ensuring that the PCCEP has the authority to offer its evaluation of the City's progress and report it to the Court at status conferences.

We support including PCCEP in the PPB Universal Directive Review process and, over the years, have recommended consultation with the Citizen Review Committee (CRC) as well. The CRC, through appeals of police misconduct cases, experiences first hand how directives are applied to interactions between the police and community members. The Bureau would benefit from including CRC's perspective in the review process. Furthermore, the PCCEP should not be limited to only recommending review of directives that are not part of the Settlement Agreement.

"To promote political responsibility through informed and active participation in government."

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In addition, the League wholeheartedly endorses the new 90-day timeline for CRC appeals. From the beginning, we have strenuously opposed the unrealistic 21-day requirement.

Finally, we appreciate the efforts Commissioner Fish and the Mayor's office devoted to the 48-hour rule. Clearly, we are in a better position now than when the City was looking at a weeks-long delay in interviewing officers for the administrative investigation. Keep in mind that OIR, the independent experts that review Portland's police shootings, recommends interviewing the involved officer(s) contemporaneously. In other words, they should be interviewed the very day or evening the shooting occurred. The City should be striving to adhere to best practices in post-shooting administrative investigations.

Thank you for your consideration of our recommendations.

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**NATIONAL LAWYERS GUILD  
PORTLAND, OREGON CHAPTER**



3519 NE 15<sup>th</sup> AVE #155  
PORTLAND, OREGON 97212

**MEMORANDUM**

DATE: August 24, 2017

TO: Mayor Ted Wheeler, ted.wheeler@portlandoregon.gov

CC: Commissioner Dan Saltzman, dan@portlandoregon.gov  
Commissioner Amanda Fritz, amanda@portlandoregon.gov  
Commissioner Nick Fish, nick@portlandoregon.gov  
Commissioner Chloe Eudaly, chloe@portlandoregon.gov  
Auditor Mary Hull Caballero, mary.hullcaballero@portlandoregon.gov  
IPR Director Constantin Severe, constantin.severe@portlandoregon.gov

RE: Testimony to City Council re Police Accountability Issues

The NLG thanks the Mayor and City Council for continuing to listen to the public in developing its deadly force directive. The proposal before you today is a great improvement that just needs a few more amendments.

The NLG's greatest concerns center around interviews of involved members and witnesses. The City has provided no reason why involved members are not required to submit to an interview promptly after a deadly force incident. The community has asked for compelled testimony "by the end of the shift" or, at least, "within 24 hours." But, the directive still allows up to 48 hours for involved member interviews. The directive also does not provide an outer time limit for when witness members must be interviewed. Lastly, the directive allows discretion in some circumstances to not audio-record interviews with involved and witness members.

Prompt recorded interviews are necessary. We recommend you take a look at the U.S. Department of Justice Report titled “Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice,” which is available online.<sup>1</sup> It says that “The process of investigating an agency member’s use of lethal force requires an extraordinary degree of attention to capturing and recording the statements of each participant and witness independently, accurately, and as soon as conditions allow.” It recommends that officers be compelled to submit to a comprehensive, electronically audio-recorded interview as soon as is practical and reasonable, after an opportunity to consult for a reasonable amount time with an attorney or labor representative. It defines “a reasonable amount of time” to be “as much as 3 to 5 hours or more.” The guidelines state that all interviews with officers should be recorded. When discussing on-scene walk-throughs, the guidelines note that “the practice of some investigators to conduct unrecorded ‘pre-interviews’ of officers or witnesses prior to formal, electronically recorded interviews should be discouraged.” According to these guidelines, 24 hours is plenty of time to reasonably and practically interview an officer, and all interviews, including on-scene walk-throughs, should be recorded.

With respect to the proposed amendments to the Settlement Agreement and the PCCEP Plan, the NLG defers to the seasoned judgment and expertise of the AMA Coalition. The NLG strongly urges the City to adopt the AMA Coalition’s recommendations.

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<sup>1</sup> <https://ric-zai-inc.com/Publications/cops-p164-pub.pdf>.

DATE: August 24, 2017

TO: Mayor Ted Wheeler, ted.wheeler@portlandoregon.gov

CC: Commissioner Dan Saltzman, dan@portlandoregon.gov  
Commissioner Amanda Fritz, amanda@portlandoregon.gov  
Commissioner Nick Fish, nick@portlandoregon.gov  
Commissioner Chloe Eudaly, chloe@portlandoregon.gov  
Auditor Mary Hull Caballero, mary.hullcaballero@portlandoregon.gov  
IPR Director Constantin Severe, constantin.severe@portlandoregon.gov

FROM: The Albina Ministerial Alliance for Justice and Police Reform

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The Albina Ministerial Alliance for Justice and Police Reform (AMAC) wants to affirm the City for hearing the voice of the stakeholders and citizens about their concerns and the seriousness of them. Thank you for adopting many of the ideals of the stakeholders in the new proposed Portland Committee on Community Engaged Policing (PCCEP) Plan and the City moving in a direction to enhance community policing an engagement.

The following are some areas of concern, identified by section or page, that remain about the PCCEP and a few suggestions we believe will improve the goals of the PCCEP as we continue to work on the assessment and implementation of the Settlement Agreement:

**Section II. Goal** – We affirm the PCCEP member goals however we suggest that “implementation” is added to their assessment, that is progress and non-progress of the SA.

✓ **Page 3 - Scope of Work, bullet point 7 (not numbered)** – We recommend adding “at any other conference that shall be called by the Court” (we understand the matter of the Court having authority to do such is being challenged by the City and it is pending with the 9<sup>th</sup> Circuit a decision. AMAC believes and supports that the Judge has the authority to call additional Status Conferences.). This should also be included in the language of Footnote 2, page five (5).

✓ **Section III. Membership and Reporting** - AMAC believes this should be a committee of 11-15 members and strongly urge that there be, at minimum, 11 persons. This still has too much mayoral control. It would be an improvement to have the community selection panel do the initial screening, and to have the community panel be made up of representatives from different communities. PCCEP members must be required to read the Settlement Agreement and the City should provide “layman” interpretation for the PCCEP. We raise again the concern of member stipends/other financial assistance to reduce barriers to participation.

✓ **Section V.** - AMAC understands the staggering process, which we support to preserve institutional knowledge and operations. It is not clear how the staggering will occur. We understand each person can serve two consecutive terms of two years, with the exception being those who serve initially at formation and seating serve a one-year term to preserve the

staggering of terms. The AMAC seeks clarification as to whether those individuals would still be eligible for two full two-year terms, i.e, they could conceivably serve a total of five (5) years?

✓ **VII. City's Responsibilities** - There needs to be a person(s) designated and compensated as a Community Organizer that does the work, we do appreciate the process of providing funding and staffing for such.

**Page 6 - the paragraph before final in that section** - "The Mayor's office shall publish on the City website an annual report . . ." We recommend adding "Status and progress or no progress of Community Policing and ~~a~~ full summary presentation to City Council." We note the same request in Section IX Deliverable Product that full City Council is included the groups receiving Summary reports.

**Page 7** - "Gather input from . . ." We request that AMAC, who has been working on these issues for decades with several hundred years of collective experience, be named among the organizations.

**Section IX. - Deliverable Product** - We affirm the holding of two public hearings within the first 180 days of PCCEP members being seated and using the quarterly Town Halls for such in neutral and accessible spaces.

**Section IX. – Subsection 5** - How does this impact or allow any input into review of directives, should any come, and will the PCCEP during this one-year period have voice to raise the concerns and outcries from the community about the PPB patterns and practices, independent assessment of and implementation of the SA? Are we to read that the PCCEP has one year to present their Community Engagement Plan proposal to the PPB?

**Moore-Love, Karla**

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**From:** Lisa G Wright <writingweb@gmail.com>  
**Sent:** Thursday, August 24, 2017 12:15 AM  
**To:** Tom Hastings; Jo Ann Hardesty; Commissioner Fritz; Commissioner Eudaly; Commissioner Saltzman; Moore-Love, Karla; Commissioner Fish; Wheeler, Mayor  
**Cc:** Melissa Lang; Haley Zanze  
**Subject:** NAACP Statement on revised amendments to the settlement agreement, August 23  
**Attachments:** Statement on Amendments to Settlement Agreement - 8232017.pdf

To the Mayor and City Council members, here is the statement from the NAACP Portland Branch statement on agenda item #946, to be discussed on August 24, 2017.

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August 23, 2017

NAACP Portland Branch Statement on Proposed Amendments to the Settlement Agreement to *United States of America vs City of Portland*.

The NAACP Portland Branch appreciates the council is giving such serious consideration to the rules on investigating deadly force incidents and community involvement in the administration of the Settlement Agreement. While we appreciate the city's efforts to improve the proposed amendments, we continue to have grave concerns about two key issues: first, the timing of administrative interviews in the case of post-incident use-of-force cases; and second, the elimination of the Community Oversight Advisory Board (COAB).

First, on the proposed changes to the Post Deadly Force Procedures for the Police Bureau. We are pleased that the city has incorporated the guidance of the ACLU and the National Lawyers' Guild to ensure separate administrative investigations with compelled testimony from the involved officer. However, we agree with Revs. Bethel and Haynes, who testified on August 3, 2017, for the Albina Ministerial Alliance Coalition for Justice and Police Reform (AMAC) that the time period should be "within 24 hours," if not by end of shift. It is in the best interest of the community and the investigation to receive a statement as soon as possible.

Second, regarding section IX of the settlement agreement. We are disappointed that the city continues to pursue the "PCCEP" and elimination of the COAB. This change has been opposed by the NAACP, AMAC, the Oregonian Editorial board, Portland Cop Watch, and Kathleen Saadat, former COCL, in addition to

hours of testimony by Portland residents. Although it is evident that the City has attempted to incorporate some feedback from the community, it has still failed to articulate its case for eliminating the COAB instead of repairing the structural and leadership problems from the city and the police bureau. The proposed ordinance goes to great length to outline timelines and culpability and the details of negotiations, but it fails to address the conclusion that the community should no longer have independent oversight of the settlement agreement. None of the findings outlined in the ordinance justify this change. In short, you have not made your case.

The NAACP Portland Branch asserts as we did on August 3 that the proper course of action for the city is to implement the necessary fixes for COAB: training, administrative and budgetary support, shoring up requirements for participation by the city and the PPB, and making it easier to appoint and dismiss board members. This is what is required to repair the damage that the city caused by failing to support the COAB sufficiently to begin with, and then letting it wither. Given the proposed structure, the PCCEP is a pale substitute for what was originally promised in the Settlement Agreement.

Regarding specific concerns on the latest revisions to the PCCEP document:

1. The first goal of the PCCEP is to “independently assess the Settlement Agreement,” but it is unclear what this means and it is not tied to any deliverables.
2. There is mention on page 2 of “Available Tools and Resources,” which are to provide the mechanisms for the PCCEP to “independently assess the Settlement Agreement” but this section appears to be missing from the document (should appear between “City’s Responsibilities” and “Members’ Responsibilities.”
3. Meetings are not required to be public (although it appears that all meeting agendas and minutes would be published on the city’s website). We believe that all meetings should be public, with the possible exception of executive meetings for the purposes of setting agendas, and there should be clarity around what is published on the city website.
4. The community provided overwhelming feedback about the removal of the COAB as an independent oversight body. This feedback is relegated to “concerns” addressed in a footnote on page 5.
5. The committee is entirely accountable to the Mayor, who is also in charge of the Police Bureau. The appendix outlines all the decision points and who is responsible.
6. Members should have the option to serve a third year so that the committee can take full advantage of the training and effort required in the responsibilities section. The staggering of terms should also be clearly outlined and ensure that the committee never experiences full turnover.

We urge City Council members to reject the creation of the PCCEP. Given the errors and omissions in the current draft, we also encourage City Council to withhold a vote until the document can be amended and distributed with adequate time for public review.

Sincerely,

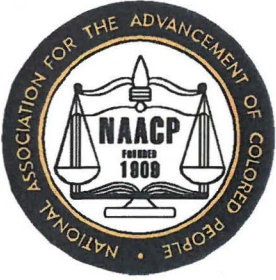
Jo Ann Hardesty

President, NAACP Portland Branch

#### Appendix: Responsibilities for the PCCEP

PCCEP accountability and controls as outlined are:

- Selection Criteria: Mayor + other Commissioners (optional)
- Screening: Mayoral staff + other Commissioners' staff (optional)
- Review: Community members, chosen by Mayor + other Commissioners (optional)
- Interviews: Mayor (feedback from Commissioners)
- Selection: Mayor
- Confirmation: Council
- Reporting: Mayor
  - Consults separately with the Director of the Office of Equity and Human Rights (Mayor oversees)
- Removal: Mayor (sole discretion)



# NAACP

PORTLAND, OREGON  
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PRESIDENT - JO ANN HARDESTY  
1<sup>st</sup> V.P. - E.D. MONDAINE  
2<sup>nd</sup> V.P. - NONI CAUSEY  
SECRETARY - MELISSA LANG  
TREASURER - CLEOPHAS CHAMBLISS

August 23, 2017

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Sincerely,

Jo Ann Hardesty  
President, NAACP Portland Branch

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- Interviews: Mayor (feedback from Commissioners)
- Selection: Mayor
- Confirmation: Council
- Reporting: Mayor
  - Consults separately with the Director of the Office of Equity and Human Rights (Mayor oversees)
- Removal: Mayor (sole discretion)

**Moore-Love, Karla**

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**From:** Pat Adams <pcadams8@yahoo.com>  
**Sent:** Thursday, August 24, 2017 8:16 AM  
**To:** Council Clerk – Testimony  
**Subject:** City's Revised Plan for PCCEP

My comments regarding the relationship between police and the community.

New COAB

1. There is no natural conflict between police and the community. The community needs police and the police are part of the community. If there is conflict it comes from outside this relationship.
2. We can't make the community safer by making the police less safe. Any solution must improve safety for both.
3. We cannot be seeking increased police accountability without also seeking increased community accountability.
4. The racism we see in the police department cannot be our only focus. The racism in the police department is also a mirror for the racism in the community.
5. Police must have a safe, protected way to apologize. If they act wrongly they are encouraged to remain silent and be protected by the department, the union, the lawyers. If an officer wants to apologize he or she is on their own. We want officers to be more human, but deny them the most human of conditions, the ability, the right, to make a mistake.

Pat Adams  
5050 SW 18th Pl  
Portland, OR 97239  
503-245-7339

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***Vancouver Avenue First Baptist Church***

*3138 No. Vancouver Ave., Portland, OR 97227*

*Phone: (503) 282-9496 Fax: (503) 284-6073*

***Pastor J.W. Matt Hennessee, M.Div., D.Min.(c); Senior Servant***

***www.vafbcpx.org/www.facebook.com/Vancouver Baptist Church Portland***

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*Mr. R. Glenn Ward, Chair  
Board of Deacons*

*Mrs. Patricia H. Montgomery  
Church Clerk*

*Mr. Sandy Moore, Acting Chair  
Board of Trustees*

Wednesday, August 23, 2017

The Honorable Ted Wheeler,  
Mayor, City of Portland  
Portland City Hall  
1221 S.W. Fourth Ave. #340  
Portland, OR 97204

Re: Proposed Changes to the PCCEP Proposal

Dear Honorable Mayor & Members of the Portland City Commission:

For the record, my name is Pastor J.W. Matt Hennessee, Senior Servant of the historic Vancouver Avenue First Baptist Church here in Portland.

It is always an honor and a pleasure to come before you to give input and voice to matters you are grappling with in the public square. As a person who has lived here for 28 years I respect the grist it takes to create innovative and sustainable results for one of America's greatest cities. I am convinced that community-engagement was birthed in Portland and have had many great opportunities myself to be so involved.

My purpose today is to support the major changes brought before you regarding the Portland Committee on Community-Engaged Policing (PCCEP). It is important that I say from the bottom of my heart how much I respect and appreciate the great work of many in this community including each of you, the AMA, several other civil and human rights organizations, the Portland Police Bureau, and every citizen who has lent their time and effort to help us comply with the Department of Justice's Settlement Agreement.

As a result of my years in public administration, I have been on the side of administering and creating success for a Consent Decree from the DOJ in Saginaw, Michigan when I was the Assistant City Manager of Police and Fire and Settlement Agreement Monitor for the EEOC overseeing the implantation of the policies and practices of the Thomason Auto Group here in Portland. These were not easy roles to play, but it was clear to me in each of them that transformation is in the hands and feet of those who are committed to stand the test, roll up their sleeves, and work to create a better day for everyone. Today that commitment is no different.

It is against this backdrop that I, on the one hand, acknowledge the work of the COAB and my good friend and colleague, Kathleen Saadat, and all who served with her. I also salute the great work of Nicole Grant and those working with her to bring changes you will consider today and in the weeks to come.

Specifically, I am grateful to see the on-boarding efforts made for those who will serve on the Committee, the terms of office, the ability to meet and work with the public present as well as

*"The Church where everyone is welcome"*

opportunities to meet in private for considerations that are very important which will lend itself to thoughtful and reflective discussion. I am grateful for the recommendation of their input into directives considered by the Portland Police Bureau and, of course, their input in the progress meetings before the Honorable Federal Judge Michael Simon.

I respect the importance for the Committee to coordinate with the COCL as has been established in the past, to participate in town hall meetings. It is my hope that this also means there are requirements for them to meet and report regularly to the AMA Copwatch and other forums from time to time. This would allow for more intimate discussions and input important to them as they carry out their duties and create an atmosphere of sensitivity hearing from those who have been on the receiving end of human and civil disparities.

I am also very supportive of the Committee securing a full-time staff person to help them get their work done. Too often there is a great deal of paperwork and administrative work required to complete the job of the Committee and everything it cannot be accomplished well by relying on volunteers to do all the work entailed.

Again, thank you for the opportunity to add input into this process. I wish each of you well as you receive all the input regarding this matter and make final recommendations.

If there are any questions you may have or any additional information you may need from me, please do not hesitate to let me know.

Respectfully submitted.

*J.W. Matt Hennessee*

J.W. Matt Hennessee,  
Senior Servant

**COMMENTS on New New 48 Hour Rule, DOJ Amendments/New New COAB  
 by Portland Copwatch (sent on August 22 and 23, 2017 for August 24 agenda)**

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**(part 1): The "New, New 48 Hour Rule"**

Mayor Wheeler and members of Council:

We appreciate that the Council voted unanimously on August 9 to suspend the Police Bureau's intended implementation of the "ten times 48 hour rule" and called for a new policy to be drafted by August 24. And while the revised Directive 1010.10 on Deadly Force is much improved from the Bureau's intended policy, there are still many questions and concerns.

As you have heard repeatedly, many in the community would like to see involved officers interviewed before the end of their shift, or within 24 hours, rather than 48 hours (Section 2.2.5.1). We appreciate that the only exception to the 48 hours is if an officer is incapacitated, perhaps that needs to be defined so officers can't say their emotional state after a shooting counts as incapacitation.

Appropriately, clarification has been made about giving officers the "Garrity warning" so they know their compelled statements won't be used for criminal proceedings, but failing to answer questions could get them disciplined. Also, most references to waiting for approval from the District Attorney have appropriately been struck.

The previous version proposed by the Mayor split up tasks based on whether a shooting was fatal or not. The "New, New 48 Hour Rule" splits up tasks between "On-Scene Responsibilities" (2.1) and "Follow-Up Responsibilities Following Departure from the Incident Scene" (2.2). This creates a few problems, including that the Homicide Detectives can ask the involved officer for a voluntary interview and conduct one on scene (2.1.7.1.1) but also afterward (2.2.4.1.6). It should be made clear whether this is a second request if the officer declines on-scene, a follow-up, or both. (This is also true for Witness members in 2.1.2.4 and 2.2.4.1.2). The civilian witnesses do not get interviewed until after the PPB leaves the scene (2.2.4.1.3). Witness officers are told they must submit to an audio recorded interview before going off shift, but not until Section 2.2.2.1 under the "Following Departure from the Scene" rules.

Also, even though Bureau standards are more restrictive than "Constitutional policing," the PSD Captain is asked to decide whether to conduct further interviews after the voluntary Homicide investigation. Homicide will not be asking the same questions as an administrative review (2.2.5.2.1). It seems it would be unusual, then, that Internal Affairs would not have more questions for an officer than what criminal investigators asked. This being an option was not in the previous draft, which in fact also allowed PSD to ask for a voluntary statement from the involved officer (old Sections 1.1.2.1.1 and 1.8.1.2). It would probably be a good idea to reinstate that option so the compelled testimony would not be an issue at all.

The requirement for interviews to be audio recorded has been removed or made optional in a few places: No option to record involved officer's on-scene Public Safety Statement (2.1.1.2) or walk through (2.1.1.4), optional recording of witness officer walk-throughs (2.1.7.1.2.1), and no mention of recording the involved officer's full interviews (2.1.7.1.1.2 and 2.2.1.1), though Internal Affairs' compelled interviews do have to be recorded (2.2.1.2.1 and 2.2.2.1). Homicide's interviews of civilian witnesses are recorded (2.2.4.1.3), and directions to record witness and involved officers' interviews also show up in that later part of the Directive (2.2.4.1.2 and 2.2.4.1.6).

Sections 3.1 & 3.2 still have Professional Standards filling out the Use of Force Report instead of the officer. If the City believes that the officer being required to fill out this form violates their Fifth Amendment rights, and/or is concerned that the officer's words will be used in the criminal investigation if they fill out the Report, nothing in the current draft prevents PSD from sharing that Report with Detectives. (The old version has a prohibition in 1.9.3).

Witness members are no longer required to fill out Use of Force Reports (previous Section 1.9.5).

In a related matter, generally speaking, we're concerned that officers who are under criminal investigation might stay on paid administrative leave even if they admit to wrongdoing during an IA interview. IA is not supposed to share its findings until after all criminal proceedings are over (2.2.5), including with the Police Review Board (6.5). Directive 333.00 on criminal investigations is constructed so that an Assistant Chief who would not be involved in the Criminal process would sit in on the PRB to prevent leaking information between IA and Homicide. The City should consider this to be sure to get officers off the force as soon as possible.

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Also, broadly speaking, while some paragraphs were cut to prevent duplication, it would be good to cross-reference all responsibilities of all parties under their own headings so those parties don't miss anything important. For example, the involved members aren't alerted to the possibility they could be compelled to talk to Internal Affairs on scene (Section 2.1.1). Professional Standards is given instructions on conducting concurrent reviews to the criminal investigation (6), but nothing about compelling testimony or protecting that information (Section 2.2.5).

Finally, a housekeeping item which shows that creating policy in a hurry can have unintended consequences: Subsections of 2.1.3.5 carry the numbers of the last draft (1.3.1.2.1 to .3).

## **(part 2): The "New, New COAB" and Settlement Agreement**

These are our comments on the second item up for a vote on Thursday, August 24, regarding changes to the DOJ Agreement and the COAB. While we are limiting our comments to amendments made since August 3, we want to note up front that Council was able to make some changes to the Settlement Agreement, apparently without push-back from the DOJ. We have asked repeatedly that two items in the definitions section of the Agreement be removed to make it easier for the City to improve its oversight system. One is paragraph 61, which defines "supported by the evidence" by re-stating the Citizen Review Committee's deferential "reasonable person" standard of review. PCW understands Council is not ready to change that standard at this hearing, but removing the definition from the Agreement will free the City up to make that change without involving the federal government and the court. The other is paragraph 43, which prohibits appeals on deadly force cases.

Portland Copwatch still has serious concerns about the re-working of the Community Oversight Advisory Board, including that the word "Oversight" is still being dropped from the new proposed name. The only change being made to the name is\* changing the word "Commission" in "Portland Commission on Community Engaged Policing" to the word "Committee." General consensus seems to be that a Commission would have more authority than a "Committee" so this minor name change seems to indicate further disempowering of the COAB.

While the new draft is far better than the original proposal, the continuation of encouraging behind closed door meetings, lack of broad community input into the membership, unclear mandates and desire to erase the word "oversight" from the original COAB mean this is still not an adequate replacement.

Here are specific items, in which the section of the Plan we're citing is listed in brackets.

—KEY CONCERN: Buried in Deliverables #6, it says that "PCCEP will spend the first year gathering information from the public and compiling recommendations for PPB's Community Engagement Plan." If this means that is the PCCEP's ONLY charge for that first year, this is not something PCW would support. [Deliverables 6] The Mayor's office assured us that the Community Engagement plan would only be one part of PCCEP's first year work plan, but we would like to see this in writing so there is no confusion down the line.

—It now says the PCCEP will "independently assess the Settlement Agreement," which is new, but taken literally means they may not be able to comment on the implementation of the Agreement, which was the #1 charge for COAB. If the intent is for the Committee to assess how the Bureau is doing in terms of implementing the Agreement in a way that meets community expectations, this founding document should say so clearly. Similar unclear language appears in\*\* a footnote suggesting once the Agreement is over there will not be a COCL (or DOJ presence) any more, PCCEP should make recommendations about progress "generally" and on community engagement. It should specify progress toward stated goals of the Agreement and enacting PCCEP's and other community recommendations. In the Goals section, it says PCCEP will make its assessment "using the tools outlined in this plan," which is also unclear. [Goals, City's Responsibilities] Again, the Mayor's office indicated the intent is the same as what PCW is requesting, but written clarification is needed.

—Only one of PCCEP's two monthly meetings is required to be public, even though PCW and others believe all their meetings should be public. At most, an executive committee that sets agendas might meet out of the public eye but should be required to report on all deliberations at the public meetings. [Members' Responsibilities]

—The new plan explicitly calls for PCCEP to review Bureau Directives (policies) and make recommendations, as well as requiring the Bureau to tailor its policy reviews to allow PCCEP to have meaningful input. PCW supports this change, but we are concerned that the new language makes it seem as if recommendations about standard operating procedures, training, Bureau culture, or other aspects not captured by the Directives will not be allowed. [Goals, Scope of Work, City's Responsibilities, Members' Responsibilities]

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\* a typo in our original comments said "it". \*\* our original omitted the word "in". PCW regrets these errors.

—The new document also allows PCCEP to kick a Directive up for review outside its normal review schedule but only if it's NOT part of the Agreement's scope. In other words, had PCCEP found that the Deadly Force Directive was allowing involved officers to wait until after the Grand Jury to speak to investigators after that policy had been adopted, they would have had to wait two years to ask for it to be fixed. PCW appreciates the example of the Crowd Control directive, which moved up in importance because of on-the-ground clashes between police and the public. However, any existing Directive—or the need to create a new one— should be included in this authority. [Scope of Work]

—Whether or not the City is correct about Judge Simon's ability to call extra status conferences, PCCEP should be allowed to present at "all status conferences," rather than just at "annual" ones as stated in the plan. Then if the City is right they only present once a year. If the City loses at the Ninth Circuit, the PCCEP should have a voice at other hearings. [Scope of Work]

—The plan seems to be saying a person can only serve on the PCCEP for two years total. This would be a big mistake after the amount of training and skills that will take time to develop. Moreover, it's not clear whether the terms will all be staggered (odd/even years) or if a person who serves a one-year term can then apply for a second year, vs. applying to be on for three years total (one year plus a full term). As written, "The opportunity to serve a full term" implies they can only serve a total of two years. [Terms]

—PCW strongly supports that the Council will hold a hearing on the Community Outreach plan and order amendments if needed. [City's Responsibilities, Deliverables 6]

—Instead of just three people picked by the Mayor, the interview panel for prospective PCCEP members will be made up of five people picked by all five Council members. While this is an improvement, bear in mind that the original (ill-conceived) proposal to pick members of the COAB in the Agreement was to have community meetings where people voted. There must be some way to have broader community involvement in doing outreach for and selecting members. [Selection]

—The document states that selection may begin before the Judge approves the Agreement and holds a Fairness Hearing. This makes sense in terms of wanting to speed things up, but if for some reason the process is not found to fit the Agreement, the City will have to un-select everyone and start yet again. Obviously this would not be as much of an issue if the PCCEP were simply called the COAB, in which case it would mostly still be within the scope of the Agreement. [Selection]

—It's not clear that the problem of only dealing with certain classes of Portlanders is fixed by changing the requirement to participate in neighborhood association meetings to "consult with ONI and/or District Coalitions, Coalition of Communities of Color, and ONI's Diverse Civic Leadership partners." There are no organizations of houseless persons in that list, or even advocates. [Members' Responsibilities]

—The desired effect of PCCEP making informed recommendations will be better served by requiring meetings with members of the bodies now outlined in Deliverables #7 as optional (BHUAC, TAC, CRC and PRB), as PCCEP is required in the new document to meet with the Human Rights Commission, the Portland Commission on Disabilities and the New Portlander Policy Commission. [Deliverables 7, Members' Responsibilities]

—We earlier raised a question about the requirement for officers to attend round tables and town halls; the new document clarifies that "PPB presence is required at quarterly town halls." However this leaves a lot of questions, including, will the officers be in uniform? Could this language be interpreted as PPB acting as security at such meetings, rather than attending to listen and answer questions if called upon? [Scope of Work]

—PCW appreciates several minor but important changes, such as swapping out the desired outcome of "policing which exceeds constitutional requirements" ahead of "meaningful community engagement" and adding "improve outcomes" to the list of goals. Similarly, the purpose of community engagement is now defined as "leading to bias-free policing and community trust." [Mission, Goals, Members' Responsibilities]

—It is appropriate, given the COCL's disconnect with this community, for PCCEP to coordinate the COCL's town hall meetings. [Members' Responsibilities]

—The City should recognize, five years into the DOJ Agreement, that the mental health community is diverse and has mixed feelings about professional advocates vs. peer representatives. Thus, the document should be more specific when it says that training for PCCEP will include "mental health advocates." [City's Responsibilities]

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—In a few places it says PCCEP members shall do something, where the language could imply they do not have to speak with one voice. A key example is in the explanatory paragraph in the GOALS section where it says “members will independently assess the Settlement Agreement.” This implies each member will do their own assessment. The Mayor’s office indicates that the Committee needs to vote on its recommendations and can include minority opinions; once again we ask that be put in writing for clarification.

—Overall, we hope the City is sincere where it adds: “The parties recognize that meaningful public engagement involves the ability of community members to affect policies, practices and PPB culture, thereby improving outcomes and eliminating unconstitutional actions.” [Deliverables 3]

Thank you for moving in the right direction, and the opportunity to comment.  
dan handelman  
portland copwatch