

## **PCC 3.20.140 - Police Review Board**

### **(Proposed changes in legislative format)**

**A.** Purpose. The Police Review Board (“Board”) is an advisory body to the Chief of Police (“Chief”). The Review Board will make recommendations as to findings and proposed officer discipline to the Chief of Police.

**B.** Powers of the Board:

**1.** Review incidents and investigations. Except as provided in Code Section 3.20.140 J., the Board shall review incidents and investigated complaints of alleged misconduct by non-probationary sworn officers (“officers”) who are employed by the Portland Police Bureau (“Bureau”) in the following cases:

**a.** The supervising Assistant Chief, the Director of the Office of Independent Police Review (“IPR”) or the Captain of the Internal Affairs Division of the Bureau (“IAD”) controverts the findings or proposed discipline of the Reporting Unit (“RU”) manager pursuant to Code Section 3.21.120, unless the controverted findings are only as among the findings other than “sustained” (i.e. “not sustained,” “exonerated,” or “unfounded” findings).

**b.** Investigations resulting in a recommended sustained finding and the recommended discipline is suspension without pay or greater.

**c.** The following incidents involving use of force:

**(1)** All officer involved shootings.

**(2)** Physical injury caused by an officer that requires hospitalization.

**(3)** All in custody deaths.

**(4)** Any use of force where the recommended finding is ~~“out of policy sustained”~~.

**(5)** Any other use of force case referred to the Board pursuant to Code Subsection 3.20.140 B.1.a. or Code Subsection 3.20.140 B.1.e.

**d.** All investigations regarding alleged violations of Human Resources Administrative Rules regarding complaints of discrimination resulting in a recommended sustained finding.

e. Discretionary cases referred by the Chief, Branch Chief, or the IPR Director.

f. In the event the involved member separates from employment prior to the date of the Board convening to hear the case, the Chief shall have the discretion to direct the Board hear the case as scheduled or to reconvene to hear the case at a later date in the event the involved member returns to City employment.

2. Probationary sworn officers. The Board shall review incidents and investigated complaints of alleged misconduct by Portland Police Bureau probationary officers when referred by the Chief, Branch Chief or the IPR Director. However, nothing in this section prohibits the Bureau from terminating the employment of a probationary officer without following the procedures of this section.

3. Recommendations to Chief. The Board shall make recommendations to the Chief regarding findings and discipline. The Board may make recommendations regarding the adequacy and completeness of an investigation. The Board may also make policy or training recommendations to the Chief. The Board shall make recommendations as to discipline based on ~~discipline~~corrective action guidelines. The guidelines shall be developed by the Bureau in consultation with IPR or shall be developed in collective bargaining.

~~4. On September 1, 2010, the Board shall replace the Use of Force and Performance Review Boards set forth in the Bureau's 2009 Manual of Policy and Procedure. Before September 1, 2010, the Use of Force and Performance Review Board shall review incidents and investigated cases pursuant to the existing Bureau directives.~~

### C. Composition of Board

1. The Board shall be composed of five voting members and eight advisory members. All Board members will be advised of every case presented to the Board. A quorum of four Voting Members, including the ~~Citizen~~ community member and the RU Manager or designee, and four Advisory members is required to be present to make recommendations to the Chief.

#### a. Voting members

(1) One community member from a pool of community volunteers recommended by the IPR Director (or designee) and confirmed by the City Council.

**(a)** Community members shall be appointed for a term of no more than three years. Community members may serve two full terms plus the remainder of any unexpired vacancy they may be appointed to fill.

**(b)** All community members, including Citizen Review Committee members, must meet at least the following qualifications to participate on the Police Review Board, except that requirements (ii) and (iv) below may be delayed and community members may still participate on the Police Review Board during a State of Emergency declared by the President of the United States or the Governor of the State of Oregon or the Mayor or Council of the City of Portland, and requirements (ii) and (iv) shall be met as soon as reasonably practicable under the circumstances of the State of Emergency:

**(i)** Pass a background check performed by the Bureau.

**(ii)** Participate in Bureau training to become familiar with police training and policies.

**(iii)** Sign a confidentiality agreement.

**(iv)** Participate in ride alongs to maintain sufficient knowledge of police patrol procedures.

**(c)** The Chief or the IPR Director (or designee) may recommend that City Council remove a community member, including a Citizen Review Committee member, from the pool for the following reasons:

**(i)** Failure to attend training;

**(ii)** Failure to read case files;

**(iii)** Objective demonstration of disrespectful or unprofessional conduct;

**(iv)** Repeated and excessive unavailability for service when requested;

**(v)** Breach of confidentiality;

**(vi)** Objective demonstration of bias for or against the police; or

**(vii)** Objective demonstration of conflict of interest.

- (2) One peer member of the same rank/classification as the involved officer; peer member will be selected from a pool of Bureau representatives pre-approved by the Chief.
- (3) The Assistant Branch Chief (or designee) who is the supervisor of the involved officer.
- (4) The Director of IPR (or designee).
- (5) A Commander or Captain who is the supervisor of the involved officer (RU Manager).

**b. Advisory members**

- (1) ~~The Office of Accountability and Professional Standards~~ Division Commander manager.
- (2) Representative from Bureau of Human Resources.
- (3) Representative from City Attorney's Office.
- (4) The Internal Affairs Division Manager.
- (5) Review Board Coordinator.
- (6) Representative of Commissioner\_in\_Charge of the Bureau ("Commissioner\_in\_Charge").
- (7) Representative of the Training Division.
- (8) ~~The Assistant Chief(s) that are not the supervisor of the involved member.~~ The Bureau Equity Manager (or designee).

**c. Representatives/Individuals that may also be present during the presentation of the case include:**

- (1) ~~Bargaining Units~~ Union representative for the Involved Member.
- (2) Involved Member.

**2. However, w** ~~When~~ When the incident to be reviewed by the ~~h~~ Board involves any use of force, including all officer-involved shootings, all in-custody deaths, any physical injury caused by an officer that requires hospitalization, and any use of force case referred to the Board pursuant to Code Subsection 3.20.140 B.1.a. or Code Subsection 3.20.140 B.1.e., the Board shall include one additional community

member drawn on a rotating basis from the pool of current Citizen Review Committee members (as those members are described in Code Section 3.21.080), and one additional peer member ~~shall serve on the Board~~, for a total of seven voting members. A quorum of six voting members, including two community members, and the RU manager or designee, and four Advisory members is required to be present to make recommendations to the Chief.

**3.** Citizen Review Committee members serving on the Board shall be subject to the same qualification and removal standards as other community members of the Board.

**4.** A Citizen Review Committee member who participates in a Board review of an incident cannot participate in a later appeal to the Committee of the same allegation(s).

**5.** Removal from participation on the Board shall not affect Citizen Review Committee membership.

#### **D.** Access to information

**1.** All members of the Board shall have access to necessary and relevant documents and an equal opportunity to participate in Board deliberations.

**a.** The Bureau and IPR shall develop a Bureau Directive establishing confidentiality provisions and distribution timeline provisions of Board materials.

**2.** The RU manager or designee will provide a written recommendation of the findings, reasoning for the recommendation and disposition recommendation.

#### **E.** Board Facilitator

**1.** The Board shall be facilitated by a person who is ~~not employed by the Bureau and who is not a voting member of the Board~~. All PRB facilitators shall be neutral and shall not be influenced in their work as a facilitator. PRBs shall occur as expeditiously as possible. To schedule PRBs expeditiously, the following order for obtaining a facilitator shall be used when scheduling a PRB:

**a.** A person who is not employed by Portland Police Bureau, which may include someone who is not an employee of the City or someone who is from another City bureau or office; or

**b.** The Bureau Review Board Coordinator.

**2.** In selecting a facilitator who is not a City employee or is a City employee in a Bureau or Office that is not PPB, the Bureau and IPR shall:

**a.** Develop a Bureau Directive establishing selection criteria and confidentiality provisions for the Facilitator(s); and

**b.** The voting members of the Board shall schedule a meeting to recommend a pool of facilitators based on the Bureau Directive referenced above in Section 3.20.140 E.2.a., and shall submit the recommendation for approval of the Commissioner-in-Charge in accordance with City contract rules.

**23.** The Board facilitator shall write the statement of recommended findings and discipline and a summary of any training and/or investigation issues or concerns on behalf of the Board and submit the statement to the Chief within two weeks of the Board meeting date.

**F. Board Recommendations**

**1.** The Board shall prepare a statement of its recommended findings and proposed discipline, if any, in every case for submission to the Chief. Such statement shall include:

**a.** The Board's recommended findings, and a brief explanation of the Board's rationale for its recommendation, and a record of the Board's vote.

**b.** In the event that the Board is not unanimous, the statement shall contain a portion detailing the minority's recommendation.

**2.** The Board facilitator shall write the Board's statement of recommended findings, and proposed discipline, and a summary of any policy training and/or investigation issues or concerns on behalf of the Board and submit the statement to the Chief.

**a.** IPR and the Bureau will develop a Bureau Directive setting forth the timeliness provisions of the statement.

**G. Appeal of Board Recommendation.**

**1.** As provided in Code Chapter 3.21, once the Board has prepared a statement of proposed findings relating to complaints of alleged misconduct of an officer during an encounter involving a community member, the complainant or involved

officer may have the opportunity to appeal the recommended findings to the Citizen Review Committee.

**2.** Until the appeal period allowed by Code Chapter 3.21 has expired, and if an appeal is filed, until there is a final decision by the Citizen Review Committee or Council, the Chief may not issue proposed discipline or make recommendations to the Commissioner-in-Charge.

**3.** The Director of IPR, the Chief of Police, or Commissioner-in-Charge may request an expedited hearing by the Citizen Review Committee of an appeal when deemed necessary due to the nature of the underlying complaint.

**H.** Action by Chief of Police and Commissioner-in-Charge. After receiving the Board's statement described above and after the appeal period allowed by Code Chapter 3.21 has expired, or if an appeal is filed, after the Chief receives the Citizen Review Committee or the Council's recommendation in accordance with Code Chapter 3.21:

**1.** In the following cases, the Chief shall make a recommendation regarding the appropriate findings and level of discipline to the Commissioner-in-Charge:

**a.** Investigations resulting in a sustained finding and the proposed discipline is suspension without pay or greater.

**b.** The following incidents involving use of force:

**(1)** All officer-involved shootings.

**(2)** Physical injury caused by an officer that requires hospitalization.

**(3)** All in-custody deaths.

**(4)** Any use of force where the recommended finding is "out of policy sustained".

**2.** In the cases described in Subsection 1 above, the Commissioner-in-Charge shall make the final decision on findings and discipline, consistent with obligations under state and federal law, Portland City Charter and collective bargaining agreements.

**3.** In all other cases, unless the Commissioner-in-Charge exercises authority over the case, the Chief shall make the final decision on proposed findings and

discipline, consistent with obligations under state and federal law, Portland City Charter and collective bargaining agreements.

**4.** In all cases where the Chief's and ~~Police Commissioner's~~in-Charge's final discipline is outside of the range recommended by the ~~discipline~~ corrective action guide, the Chief and Police Commissioner shall provide an explanation in the final discipline letter of the reason or reasons for imposing discipline outside of the recommended range. The Chief and Police Commissioner shall not be required to disclose information that is confidential or otherwise protected against disclosure. The cumulative report of discipline imposed outside of the recommended range shall be included in the PPB semi-annual report.

**I.** Public reports. As often as deemed necessary by the Board, but at least twice each calendar year, the Board shall publish public reports summarizing its statements of findings and a summary of any training and/or investigation issues or concerns. Except as provided otherwise in this Subsection, the reports shall keep confidential and not include involved officers' names, the names of witnesses, or the name of any complainants. The reports shall be written by the Board ~~F~~facilitator. The reports may not be released before a final decision, including discipline if any, is made by the Chief or Commissioner~~\_in\_Charge~~.

**1.** The public reports shall include the following for each case brought before the Board:

- a.** Allegation(s) heard by the Board.
- b.** A factual summary of the case.
- c.** Summary of the Board's discussion.
- d.** Record of the Board's vote, including recommended findings and discipline.
- e.** Training and policy recommendations, including whether the recommendations were accepted by the Chief.
- f.** The final decision of the Chief or Commissioner~~\_in\_Charge~~.

**2.** The public reports shall include the names of involved officers and witnesses in cases of officer involved shootings or in custody deaths where the names of such persons have previously been publicly released in connection with the incident, unless confidentiality or non-disclosure is required by statute, a court order, an administrative order, or a collective bargaining agreement. Where the names



have not been previously released, the report may include the names if the public interest requires disclosure or if nondisclosure would undermine the public's confidence.

**3.** The public reports shall include any stipulated agreements where a final decision has been reached.

#### **J.** Stipulated Findings and Discipline

**1.** The following categories of cases are not eligible for stipulated findings and recommended discipline: cases involving alleged use of excessive force; those categories of cases listed under Subsection 3.20.140 B.1.c.; cases involving alleged discrimination, disparate treatment or retaliation; reviews of officer-involved shootings and in-custody deaths; and cases in which the Chief or the Commissioner-in-Charge does not agree to accept the member's proposed stipulation to findings and recommended discipline. These categories of cases, if they otherwise meet the criteria for review by the Board, shall go through Board review and recommendations.

**2.** The following categories of investigations are eligible for stipulated findings and recommended discipline without review by the Board when the involved member elects, with the concurrence of the Chief and the Commissioner-in-Charge, to accept the proposed findings and recommended discipline of the RU Manager following a full investigation of the alleged misconduct, issuance of investigative findings and concurrence with the findings by the Independent Police Review, the Professional Standards Division and the member's Branch Chief:

**a.** First time offenses that fall under Category A through Category ~~D~~ C of the Police Bureau ~~Discipline~~Corrective Action Guide.

**b.** Second time offenses that fall under Category A of the Police Bureau ~~Discipline~~Corrective Action Guide.

**c.** First time off-duty driving while under the influence offenses that fall under Category ~~E~~ C of the Police Bureau ~~Discipline~~Corrective Action Guide. To be eligible for stipulated discipline for an off-duty driving under the influence offense, there can be no other driving-related violations or charges and the member must comply with all court ordered conditions of a diversion or delayed prosecution.

**d.** In an investigation involving multiple sustained violations, the violation with the highest category from the Police Bureau ~~Discipline~~Corrective Action Guide will be used to determine whether the case qualifies for stipulated discipline.