CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Independent Police Review
Mary-Beth Baptista, Director
1221 SW 4th Avenue, Room 140
Portland, OR 97204
phone: (503) 823-4078
web: www.portlandoregon.gov/auditor

Date: November 7, 2011

To: Mayor Sam Adams
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman

From: LaVonne Griffin-Valade, Portland City Auditor
Mary-Beth Baptista, Independent Police Review Director

Subject: Draft Ordinance and City Code Revisions

On March 31, 2010, Council voted unanimously to increase the oversight authority of the Auditor's Independent Police Review (IPR) division and to increase the transparency of Portland's police accountability process. As part of that change, Council also established a "Stakeholder Committee" consisting of members from various community organizations and representatives from City bureaus and Council members' offices.

The Stakeholder Committee convened over several months and advanced 41 recommendations in a final report in September 2010. Council accepted the Stakeholder Committee's report on December 1, 2010. At that time, the Mayor agreed to review the Stakeholder Committee's recommendations, along with those made by the Citizen Review Committee (CRC), the Albina Ministerial Alliance, and others to determine whether further changes to IPR's ordinance should be brought back to Council for consideration.

CRC released a report on the structure of IPR with recommendations in June 2010, and they also recently forwarded a memo to the Mayor outlining their priorities for further change. The Albina Ministerial Alliance has also provided the Mayor with a list of desired changes. The Auditor's and IPR Director's responses to those additional recommendations are attached, along with the Auditor's November 2010 Response to the September 2010 report from the Stakeholder Committee.

We have carefully reviewed and weighed the recommendations from the reports noted above, and we are prepared to move forward with the attached draft ordinance and Code revisions. We will present these for Council approval on November 16, 2011 at 2:00 p.m. during the scheduled discussion of public safety recommendations.

ORDINANCE No.

Establish the authority for the Citizen Review Committee to make policy recommendations directly to the Portland Police Bureau, increase the length of term served by Citizen Review Committee members and clarify procedures of the Citizen Review Committee in hearing appeals from community and bureau members. (Ordinance; amend Code Chapters 3.21)

The City of Portland ordains:

Section 1. The Council finds:

1. The City believes that an effective police force requires the community's trust and confidence.

2. The City remains committed to hearing community concerns and complaints about police services and responding quickly so that service is improved.

3. The Portland City Council established a "Stakeholder Committee" in March 2010, consisting of members from various community organizations and representatives from City bureaus and Council members' offices. The Stakeholder Committee convened over several months and advanced 41 recommendations in a final report in September 2010. The Auditor formally responded to the Stakeholder Committee's recommendations on November 8, 2010.

4. Council accepted the Stakeholder Committee's report on December 1, 2010. At that time, the Mayor agreed to review the Stakeholder Committee's recommendations, along with those made by the Citizen Review Committee, the Albina Ministerial Alliance, and others to determine whether further changes to City Code Chapters 3.20 and 3.21 should be brought back to Council for consideration.

5. The Auditor and IPR Director carefully reviewed and weighed recommendations made by the Citizen Review Committee, Stakeholder Committee and the Albina Ministerial Alliance. The Auditor and IPR director find that expanding the Citizen Review Committee's authority to make policy recommendations directly to the Bureau, extending the term of service for Citizen Review Committee members and clarifying procedures of the Citizen Review Committee when hearing appeals, is an important step in increasing the public's confidence in police accountability.

6. Establishing the authority for the Citizen Review Committee to make policy recommendations directly to the Portland Police Bureau will increase the public's trust through greater transparency,

7. Increasing the length of the term of service for Committee members will improve the accountability process through increased efficiency of the Committee,

8. Clarifying the procedures of the Citizen Review Committee in hearing appeals from community and Bureau members will lead to more effective handling of appeals.

NOW, THEREFORE, the Council directs:

a. Code Chapter 3.21 is amended as shown in Exhibit A. The amendments to Code Chapter 3.21 shall apply to complaints filed on or after the effective date of the amendments, as specified in Section 2 of this ordinance;

b. The Portland Police Bureau shall review and revise its directives to the extent that it is necessary to be consistent with these code provisions;

c. Council hereby declares that if any section, subsection, sentence, clause or phrase of this Ordinance, or the code amendments it adopts, is for any reason held to be invalid or unconstitutional, that shall not affect the validity of the remaining portions of the Portland City Code.

Passed by the Council:

Auditor LaVonne Griffin-Valade
Prepared by: Mary-Beth Baptista, Director of IPR
Date Prepared: November 7, 2011

LaVonne Griffin-Valade
Auditor of the City of Portland
By /s/Susan Parsons

Deputy

Chapter 3.21

CITY AUDITOR'S
INDEPENDENT POLICE REVIEW DIVISION

(Chapter replaced by Ordinance No. 175652, effective July 1, 2001.)

Sections:

3.21.010 Purpose.

The City hereby establishes an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to act on complaints against Police Bureau personnel for alleged misconduct, and recommend appropriate changes of Police Bureau policies and procedures toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the provision of community policing services. This office shall be known as the Independent Police Review Division.

3.21.020 Definitions.

(Amended by Ordinance Nos. 176317 and 183657, effective April 30, 2010.) In this chapter:

A. "Appellant" means either:

1. A person who has filed a complaint with IPR and subsequently requested review of the investigation or

2. A member about whom a complaint has been filed with IPR and who has subsequently requested review by the Committee of the investigation.

B. "Bureau" means the Bureau of Police of the City of Portland, Oregon.

C. "Chief" means the Chief of the Bureau.

D. "Citizen" or "community member" means any person who is not an employee of the Bureau.

E. "Commissioner In Charge" means the Commissioner In Charge of the Bureau.

F. "Committee" means the IPR Citizen Review Committee, which is appointed by City Council members to assist the IPR in the performance of its duties and responsibilities pursuant to this Chapter.

G. "Complaint" means a complaint by a citizen, the Director, a member or other employee of the Bureau of alleged member misconduct.

H. "Complainant" means any person who files a complaint against a member of the Portland Bureau.

I. "Director" means the director of the Independent Police Review Division.

J. "Finding" means a conclusion reached after investigation as to whether facts show a violation of Bureau policy.

K. "Early Warning System" means the Bureau's method of identifying officers exhibiting a pattern of behavior that signals potential problems for both the Bureau and public, as explained in General Order 345.00.

L. “IAD” means the Internal Affairs Division of the Bureau, whose responsibilities and procedures are described in Section 330.00 of the Manual of Rules and Procedures of the Bureau, as amended from time to time.

M. "IPR Investigator" means an investigator of the Independent Police Review Division.

N. "IPR" means the Independent Police Review Division.

O. "Member" means a sworn employee of the Bureau. An “involved” member is a member about whom a complaint has been submitted to IPR or the Bureau.

P. “Misconduct” means conduct by a member which conduct violates Bureau regulations or orders, or other standards of conduct required of City employees.

Q. “Request for Review” means a request by an appellant that the Committee review an IAD or IPR investigation of alleged member misconduct.

R. “RU (Responsibility Unit) Manager” means a commanding officer or manager of a Bureau division, unit or precinct.

S. “Supported by the Evidence.” A finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.

T. “Police Review Board” means the board established by Code Section 3.20.140.

U. "Policy-related issue" means a topic pertaining to the Police Bureau's hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular officer's conduct.

3.21.030 Independent Police Review Division.

There is established by the City Council the Independent Police Review Division within the Auditor's Office.

3.21.040 Director Selection.

The City Auditor shall select the Director of the IPR in accordance with any applicable civil service regulations and other laws. The Director shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of administration, and public policy, and shall have a working knowledge in criminal justice

commensurate to the powers and duties of the office.

3.21.050 Staff and Delegation.

A. The Director may appoint other personnel necessary to carry out the provisions of this chapter, when in keeping within the adopted budget for the IPR.

B. The Director may delegate to his or her staff members any of his or her duties, unless otherwise specified in this chapter. The IPR Investigator shall succeed to all duties and responsibilities of the Director, including those specified by ordinance, when he or she is serving as the acting Director.

3.21.060 Office Facilities and Administration.

A. The City shall provide suitable office facilities for the Director and staff in a location convenient for the public but separate from the Bureau.

B. The IPR office shall be located within the City Auditor's office, and be accountable to the City Auditor. The Director shall comply with City purchasing procedures but shall have sole discretion in choosing consultants to assist with investigations.

3.21.070 Powers and Duties of IPR.

(Amended by Ordinance Nos. 176317 and 183657, effective April 30, 2010.) The Director's powers and duties are the following:

A. Intake. IPR shall receive complaints and select the appropriate manner to address the complaint.

B. Report on complaint activities. IPR shall track and report on the disposition of complaints to the public, IAD, the Chief, and the Council and monitor and report measures of activity and performance of IAD and IPR. IPR will also monitor and track trends relating to member history and complaint type and frequency, consistency and adequacy of discipline imposed. In performing these duties, IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.

C. Access to Police data and data sources. IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.

D. Initiate, monitor and conduct investigations. IPR is authorized to initiate, monitor and conduct administrative investigations. IPR is authorized to identify complaints or incidents involving members that are of community concern which merit additional involvement of the Director and to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the investigations in conjunction with or independent of the Bureau. The Bureau shall notify the Director that it intends to conduct an administrative investigation into misconduct before initiating the investigation. IPR will conduct these investigations in accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.

E. Compel review. In accordance with the procedures of Code Section 3.20.140, IPR Director (or designee) may compel review by the Police Review Board of any recommended findings of or recommendation for discipline by an RU Manager or Commanding Officer resulting from an internal or IPR administrative investigation of a member. IPR Director (or designee) may compel review by the Police Review Board on the basis of recommended discipline whether or not discipline was recommended as a result of the investigation.

F. Communicate with Complainants. IPR will be the primary contact with the complainant regarding the status and results of the complaint; to assist IAD in communicating with the Member.

G. Arrange hearings of appeals. IPR will explain the appeal options to complainants and schedule hearings before the Committee and Council.

H. Recommend policy changes. IPR will evaluate complaint and other information and investigation practices to make recommendations to the Chief to prevent future problems. Policy change recommendations shall be published for public review.

I. Outreach. IPR will widely distribute complaint forms in languages and formats accessible to citizens, educate them on the importance of reporting complaints, and hold public meetings to hear general concerns about police services.

J. Access to records. Notwithstanding any other provision of City law, IPR shall have access to and be authorized to examine and copy, without payment of a fee, any bureau records, including records which are confidential by city law, and police databases, subject to any applicable state or federal laws. The Director shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney clients. The Director shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.

K. Adoption of rules. IPR shall adopt, promulgate, amend and rescind rules and

procedures required for the discharge of the Director's duties, including policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Director may not levy any fees for the submission or investigation of complaints.

L. Review of closed investigations. IPR shall hire a qualified person to review closed investigations pertaining to officer-involved shootings and deaths in custody on an ongoing basis. IPR shall issue reports on an annual basis identifying any policy-related issues or quality of investigation issues that could be improved. The Director and the Citizen Review Committee shall address any policy-related or quality of investigation issues that would warrant further review.

M. Additional public reports. The Director may issue public reports related to member misconduct trends and Bureau disciplinary practices.

N. All bureau employees shall be truthful, professional and courteous in all interactions with IPR. No member shall conceal, impede or interfere with the filing, investigation or adjudication of a complaint.

O. The Auditor may work through the City Attorney's Office to hire outside legal counsel when the Auditor and the City Attorney agree that outside legal advice is necessary or advisable.

3.21.080 Citizen Review Committee.

(Amended by Ordinance No. 177688, effective July 9, 2003.)

A. The Committee shall consist of nine citizens. The Committee members shall be appointed as follows:

1. The Director shall solicit applications from the Office of Neighborhood Involvement, the seven Neighborhood Coalition offices, Mayor and commissioners' offices, PPB advisory committees, and the general public.

2. The City Auditor shall appoint a committee that shall recommend to the Auditor the appropriate number of nominees to fill impending vacancies. The committee shall consist of three CRC representatives, either past or not applying for reappointment, two members of the community, and the Director. Three of the committee members, including one CRC representative and the Director, shall serve as the interview panel.

3. Selection criteria shall include a record of community involvement, passing a criminal background check performed by an agency other than the Bureau, and absence of any real or perceived conflict of interest. The Mayor and commissioners may each submit an applicant who may be

given preference over others of equivalent background and qualifications.

4. The Auditor shall recommend nominees to Council for appointment.

5. In the event a majority of the Council fails to appoint a person nominated under the provisions of City Code Section 3.21.080 the Auditor shall initiate the process again within 30 days after the Council action.

6. In selecting Committee members, consideration shall be given to the current composition of the Committee and appointments should be made that will cause the group to best reflect the demographic make-up of the community.

B. The Committee members shall:

1. Participate in orientation and training activities that may include review of Bureau and IPR procedures, attending the Bureau Citizens' Academy, ride-alongs with officers, and training on investigative practices.

2. Each serve a term of ~~two~~ three years, subject to reappointment by Council. Upon expiration of the term, a committee member shall serve until re-appointed or replaced.

3. Attend committee meetings or provide an explanation in advance for an absence.

4. Serve staggered terms to better ensure continuity. Four members of the Committee shall be appointed to one year terms in July 2001.

5. Select a chair from among their members. Adopt such operating policies and procedures as necessary to carry out their duties.

3.21.090 Powers and Duties of the Committee.
(Amended by Ordinance No. 177688, effective July 9, 2003.)

A. The Committee's duties and powers are the following:

1. Conduct meetings. To schedule and conduct at least four meetings per year for the purpose of exercising the authority delegated to it in this chapter. Quarterly meetings and hearings conducted pursuant to the Chapter shall be subject to the Oregon Public Meetings Law, ORS 192.610 through 192.710. The number of Committee members required for a quorum shall be five.

2. Gather community concerns. To participate in various community meetings to hear concerns about police services.

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

4. Advise on operations. To review methods for handling complaints and advise on criteria for dismissal, mediation, and investigation.

5. Hear appeals**.** To hold hearings of complainant or member appeals as defined in City Code Section 3.21.160; to recommend referral to a final hearing before Council; to publicly report its findings, conclusions and recommendations.

6. Outreach to public. To advise and assist the Director to disseminate information about IPR and Committee activities to organizations in the community; to present reports to Council.

7. Create other committees. To create special purpose subcommittees or committees including other citizens to address particular short-term issues and needs.

3.21.100 Council Role.

A. Council shall review applications of nominees to the Committee and vote whether to approve each appointment.

B. Council shall hear final appeals as specified in 3.21.160.

3.21.110 Intake.

(Amended by Ordinance No. 179162, effective March 30, 2005.)

A. The Director shall receive complaints from any source concerning alleged member misconduct. The Director shall make reasonable accommodation when complainants cannot file their complaint at the IPR office.

B. The Director shall develop procedures for handling complaints and appeals involving matters currently in litigation or where a notice of tort claim has been filed. The Director shall not initiate a case where a grievance or other appeal has been filed under a collective bargaining agreement or City personnel rules; or with respect to employee or applicant discrimination complaints.

C. The Director, when requested, shall protect the confidentiality of complainants, members or witnesses consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Director to carry out his or her duties, or to comply with applicable collective bargaining agreements, or the disclosure of records is directed by the District Attorney. When considering a request for public records, the Director shall consult with appropriate Bureau personnel and obtain approval from the Bureau prior to disclosure of records under the Oregon Public Records Law.

3.21.120 Handling Complaints.

(Amended by Ordinance Nos. 179162 and 183657, effective April 30, 2010.) To ensure appropriateness and consistency in handling complaints the Director shall work with the Committee to establish procedures for taking action based upon the characteristics of the complaint.

A. Mediation. The complainant, the Member who is the subject of the complaint, and Bureau administration must all agree before a mediation can be conducted. A complaint that undergoes mediation shall not be investigated. A mediation may be suspended if, in the opinion of the mediator, there is no reasonable likelihood of reaching resolution.

B. Complaint Types:

1. Complaint Type I: The Auditor's Independent Police Review division is the intake point for complaints from community members and others regarding the conduct of members during an encounter involving a community member. Type I complaints involve alleged misconduct of a member during an encounter involving a community member.

2. Complaint Type II: A complaint about alleged member misconduct that does not occur during an encounter involving a community member is a Type II complaint. Such a complaint may be initiated by another Bureau employee or supervisor, or may be based on information obtained from another law enforcement agency, an employee of governmental agency acting in his/her official capacity or a community member. These complaints may be filed with the Bureau or with IPR.

3. Complaint Type III: A complaint may be initiated by the IPR Director at the discretion of the Director that an administrative investigation is warranted. IPR can initiate a complaint whether or not the alleged misconduct occurred during an encounter involving a community member and is not dependent on a community or Bureau member filing a complaint.

a. IPR will initiate and conduct administrative investigations in

accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.

b. If a criminal investigation has been initiated against the involved member, or during the course of an IPR administrative investigation a basis for conducting a criminal investigation arises, IPR shall advise the City Attorney and/or District Attorney prior to initiating or continuing an administrative investigation. IPR shall take all steps necessary to meet constitutional requirements and comply with existing provisions of City labor agreements.

4. Complaint Type IV: When Bureau supervisors generate complaints about poor member performance or other work rule violations. RU managers are responsible for intake and investigation of allegations of Type IV cases.

C. Initial Handling and Investigation of Type I Complaints

1. Once IPR receives a Type I complaint regarding alleged misconduct of a member during an encounter involving a community member, IPR will:

a. Gather information about the complaint through an intake interview;

b. Assign an IPR/IAD Case Number;

c. Make a case handling decision; and

d. Send a letter to the complainant summarizing the complaint and the Director's case handling decision.

2. If IPR determines an investigation is appropriate, IPR will identify the complainant's allegations and either:

a. Recommend that the Bureau/IAD conduct an investigation

The IPR shall gather information from the complainant and forward it to the Bureau/IAD. The IPR shall monitor the on-going Bureau investigation. The Director may determine that a Bureau/IAD investigation should also involve IPR personnel. When forwarding the complaint to the Bureau/IAD the Director shall notify the IAD Commander of the extent that IPR personnel must be included in the investigation. Bureau/IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.

When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, IPR personnel shall direct questions through the IAD investigator. The IAD investigator may repeat the question to the member and/or direct the member to answer the question.

IPR personnel shall have an opportunity to review and comment on draft reports regarding a Bureau/IAD investigation to ensure accuracy, thoroughness, and fairness. The investigation cannot be closed or sent to the RU manager without IPR's determination that the investigation is complete.

To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.

In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

b. IPR may conduct an independent investigation.

The IPR Director or designee may determine that IPR should investigate a complaint. If the Director concludes that IAD has not done an adequate job investigating complaints against a particular member, the Director may determine that IPR should investigate a complaint against the member. If the Director concludes that IAD has not done an adequate job investigating a particular category of complaints, the Director may determine that IPR should investigate a complaint or complaints falling in that category. If the Director concludes that IAD has not completed its investigations in a timely manner, the Director may determine that IPR should investigate some complaints. The Director has the discretion to conduct an independent investigation. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member.

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

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

The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR investigation to the RU manager for preparation of findings and proposed discipline. At the completion of the investigation and any appeal process the records of the investigation shall be transferred to the IAD offices for retention.

3. Referral. IPR may refer a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

4. Dismissal. If IPR declines to take action on the complaint, IPR will send a dismissal letter to the complainant. IPR will also notify the involved officer(s) and involved commanding officer within 30 calendar days of the dismissal. The Director may dismiss the complaint for the following reasons:

a. the complainant could reasonably be expected to use, or is using, another remedy or channel or tort claim for the grievance stated in the complaint;

b. the complainant delayed too long in filing the complaint to justify present examination;

c. even if all aspects of the complaint were true, no act of misconduct would have occurred;

d. the complaint is trivial, frivolous or not made in good faith;

e. other complaints must take precedence due to limited public resources;

f. the complainant withdraws the complaint or fails to complete necessary complaint steps.

g. it is more likely than not that additional investigation would not lead to a conclusion that the officer engaged in misconduct.

D. Initial Handling and Investigation of Type II Complaints

1. If a Type II complaint is filed with IPR, IPR will gather information about the complaint and make a case handling decision. When appropriate, IPR will assign an IPR/IAD case number. Before disposing of a complaint of alleged misconduct or initiating an investigation, IPR shall notify the Bureau in writing how it intends to process the complaint and whether it intends to refer the case to the Bureau/IAD to conduct an investigation or conduct an independent investigation as set forth below. IPR will make an entry regarding the allegations in the Administrative Investigation Management (AIM) or other appropriate database which can be reviewed by the IPR Director.

2. If a Type II complaint is filed within the Bureau, Bureau/IAD staff will create an intake worksheet and assign an IPR/IAD case number for use by IAD. Before disposing of a complaint of alleged misconduct or initiating an investigation, the Bureau/IAD shall notify the Director in writing how it intends to process each complaint and whether it intends to conduct an internal investigation. In addition, the Bureau/IAD will make an entry regarding the allegations in the Administrative Investigation Management (AIM) database or other appropriate database which can be reviewed by the IPR Director.

3. Bureau/IAD Investigation. If the Type II complaint is filed with IPR, the IPR shall gather information from the complainant and forward it to the Bureau/IAD. The IPR shall monitor the on-going investigation. The Director may determine that a Bureau/IAD investigation should also involve IPR personnel. When forwarding the complaint to the Bureau/IAD, the Director shall notify the Bureau/IAD Commander of the extent that IPR personnel must be included in the investigation. Bureau/IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.

When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, IPR personnel shall direct questions through the IAD investigator. The IAD investigator may repeat the question to the member and/or direct the member to answer the question. When a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the Director shall ask the member the question directly and/or direct the member to answer the question.

IPR personnel shall have an opportunity to review and comment on draft reports regarding a Bureau/IAD investigation to ensure accuracy, thoroughness, and fairness. The investigation can not be closed or sent to

the RU manager without IPR's determination that the investigation is complete.

To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.

In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

4. IPR independent investigation. The IPR Director or designee may determine that IPR should investigate a complaint. If the Director concludes that IAD has not done an adequate job investigating complaints against a particular member, the Director may determine that IPR should investigate a complaint against the member. If the Director concludes that IAD has not done an adequate job investigating a particular category of complaints, the Director may determine that IPR should investigate a complaint or complaints falling in that category. If the Director concludes that IAD has not completed its investigations in a timely manner, the Director may determine that IPR should investigate some complaints. The Director may conduct an independent investigation based on the Director's discretion that it is warranted. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member.

IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, the Director shall notify the Bureau/IAD commander that IPR has undertaken an investigation and the reason. The Bureau/IAD commander shall appoint a liaison investigator from that office within two working days to arrange and participate in interviews. When members represented by a collective bargaining unit are being interviewed by IPR personnel, the IAD investigator may repeat the question and/or direct the member to answer the question. When a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the Director shall ask the member the question directly and/or direct the member to answer the question.

The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR investigation to the RU manager for preparation of findings and proposed discipline. At the completion of the investigation the records of the investigation shall be transferred to the IAD offices for retention.

5. Referral. IPR may refer a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

E. Initial Handling and Investigation of Type III Complaints

Upon opening a Type III IPR initiated complaint investigation. IPR staff will create an intake worksheet and assign an IPR/IAD case number. If a Type III case involves alleged member misconduct during an encounter involving a community member, the case will be handled following the same procedures as a Type I complaint. If a Type III case involves alleged member misconduct that does not occur during an encounter involving a community member, the case will be handled following the same procedures as a Type II complaint.

F. Initial Handling and Investigation of Type IV Complaints

RU managers are responsible for intake and investigation of allegations of Type IV cases. The RU manager will provide the IPR Director a summary of the complaint and a summary of any subsequent investigation of a sworn member. The IPR Director may refer the matter to IAD for further investigation, conduct additional investigation, or controvert the RU manager's recommendations and compel review by the Police Review Board after receiving the completed investigation.

G. Type I, II, III & IV Post-Investigative Case Handling Procedures:

1. Adequacy of investigation. When an investigation of any type of complaint is conducted by IAD or other designated PPB division, after the investigation is complete, IAD will provide the IPR Director or designee with a copy of and provide unrestricted access to the entire investigation file. Upon review of the file, the Director or designee must determine whether or not the investigation is adequate, considering such factors as thoroughness, lack of bias, objectivity, and completeness. If the Director or designee determines that the investigation is not adequate, the investigation shall be returned to the IAD or other designated division within the Bureau explaining the determination and providing direction. Such direction shall include, but not limited to, rewriting portions of the summary, gathering additional evidence, conducting additional interviews, or re-interviewing officers or civilians. The investigation can not be closed or sent to the RU manager without IPR's determination that the investigation is complete. Upon receipt of IPR's determination that the investigation is complete, IAD shall send the investigation to the appropriate RU Manager.

2. Submission of recommended findings or proposed discipline. The RU

manager will review the investigation for any type of complaint when the investigation is conducted by IAD, other designated PPB division or IPR and submit recommended findings and proposed discipline to the supervising Assistant Chief. The supervising Assistant Chief will circulate the recommended findings and proposed discipline to the Director and the Captain of IAD. After receipt of the recommended findings and proposed discipline, the supervising Assistant Chief, the Director or the Captain of IAD may controvert the RU Manager's recommended findings and/or proposed discipline.

3. Police Review Board meeting. If the recommended findings and/or proposed discipline are controverted, the Bureau shall schedule a Police Review Board meeting on the complaint. As specified in Code Section 3.20.140, the Police Review Board shall also hold a meeting for review of a case if it involves an officer-involved shooting, physical injury caused by an officer that requires hospitalization, an in-custody death, a less lethal incident where the recommended finding is "out of policy" or if the investigation resulted in a recommended sustained finding and the proposed discipline is suspension without pay or greater.

4. Notification and Appeals of Type I and III complaints without Police Review Board meeting. In Type I cases, and Type III cases where the alleged misconduct occurred during an encounter involving a community member, if the recommended findings are not sent to the Police Review Board for a meeting, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. IPR will notify the complainant that they have a right to request a review of the Bureau's recommended findings to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the disposition of the complaint. The Bureau will notify the involved member of the right to request a review of the recommended findings to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM database or other appropriate database for both IPR and IAD review.

5. Notification and Appeals of Type I and III complaints after Police Review Board hearing. In Type I cases and Type III cases where the alleged misconduct occurred during an encounter with a community member and the recommended findings are sent to the Police Review Board for a meeting, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. IPR will notify the complainant that they have a right to request a review of the recommended findings to the

Committee and provide an appeal form. The Bureau will notify the involved member regarding the proposed findings of the Police Review Board. The Bureau will notify the involved member of the right to request a review of the recommended findings to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM database or other appropriate database for both IPR and IAD review.

6. No appeal of Type II and certain Type III complaints. In Type II cases and Type III cases that involve alleged member misconduct that does not occur during an encounter involving a community member, the recommended findings may not be appealed to the Committee.

7. Nothing in this section prohibits the Bureau from terminating the employment of a probationary officer without following the procedures of this section.

3.21.130 Communications.

The IPR shall ensure that the complainant and member complained about are informed of the progress and status of the complaint or appeal. Communication may be accomplished orally or by first class mail.

3.21.140 Filing of requests for review.

(Amended by Ordinance No. 183657, effective April 30, 2010.)

A. Any complainant or member who is dissatisfied with an investigation of alleged member misconduct that occurred during an encounter with a community member may request a review.

B. The request for review must be filed within 30 calendar days of the complainant or member receiving IPR's notification regarding disposition of the case. The Director may adopt rules for permitting late filings.

C. A request for review must be filed in writing personally, by mail or email with the IPR Office, or through other arrangements approved by the Director.

D. The request for review shall include:

1. The name, address, and telephone number of the appellant;

2. The approximate date the complaint was filed (if known);

3. The substance of the complaint;

4. The reason or reasons the appellant is dissatisfied with the investigation.

E. The complainant or member may withdraw the request for review at any time.

3.21.150 Case File Review

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

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

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

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

3.21.160 Hearing Appeals.

A. An Appeal ~~h~~Hearings ~~may~~ shall be conducted ~~either at the following points~~after a majority vote of the Committee to hold such a hearing at the case file review or other meeting of the full Committee.

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

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

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

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

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

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

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

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

2. In its hearing the Council shall decide:

a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint; or

b. If the finding is not supported by the evidence. The Council shall decide what the finding is. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint.

B. In reviewing the investigation, the Committee may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Committee may receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen. The complainant or member may appear with counsel.

C. In reviewing the investigation, the Council may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD**.** The Council may receive any oral or written statements volunteered by the complainant or the member about whether or not they believe the finding is or is not supported by the evidence in the record. No new evidence may be introduced in the hearing. The complainant or member may appear with counsel.

D. Witnesses.

1. The Committee and Council may require within its scope of review the investigators and Commander of IAD and the Director to appear and answer questions regarding the investigation and may also require the responsible Bureau Commander to answer questions regarding the basis and the rationale for a particular decision.

2. Other Witnesses. Other witnesses shall not be required to appear involuntarily before the Committee.

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

3.21.170 Monitoring and Reporting

(Amended by Ordinance No. 181483, effective January 18, 2008.)

A. The Director shall develop a data system to track all complaints received, develop monthly reports to inform IAD and the Chief regarding IAD workload and performance, and inform complainants and members regarding the status of complaints and appeals.

B. The Director shall use complaint and OMF Risk Management Division data to

support the Bureau's Early Warning System.

C. The Director shall work with the Committee to develop recommendations to modify Bureau policies and procedures in order to prevent problems, improve the quality of investigations, and improve police-community relations.

D. The Director shall work with the Committee to develop quarterly and annual summary reports for the Chief, Commissioner in Charge, Council and public on IPR and IAD activities, policy recommendations, and Bureau follow-through on recommendations. The report may include analysis of closed files which were not appealed, but it is not the intent that the files be reopened.

3.21.180 Increasing Public Access

A. The Director shall work with the Committee to make complaint forms available in formats and locations to reach as many community members as possible.

B. The Director shall work with the Committee to develop programs to educate the public about the IPR and the importance of reporting problems.

C. The Director shall work with the Committee to develop programs to educate Bureau personnel on the complaint process, mediation, and IPR activities. Bureau personnel shall be informed that the IPR is the primary means for citizens to file complaints.

D. The IPR, Committee and Bureau shall develop guidelines for situations when a commander or supervisor in a precinct is directly contacted by a complainant with a complaint. In general, they may intervene and attempt to resolve the complaint themselves, but they must also inform complainants that they can still file with IPR if they do not achieve satisfaction.

3.21.190 Response of Chief.

A. The Chief, after reviewing a report provided by the IPR under City Code Section 3.21.170, shall respond promptly to IPR in writing, but in no event more than 60 days after receipt of the report. The response shall indicate what, if any, policy or procedural changes are to be made within the IAD or the Bureau.

B. If the Chief fails to respond within 60 days after receipt of the Committee Report, the Auditor shall place the matter on the Council Calendar, for consideration by City Council, within 15 days thereafter.

3.21.200 Limitation on Power.

The Committee and Director are not authorized to set the level of discipline for any member pursuant to any request for review made under this Chapter. However, this

Section shall not be construed to limit the authority granted to City Council by the City Charter, City Code, state statutes, and other applicable law.

3.21.210 Subpoenas.

(Added by Ordinance No. 183657, effective April 30, 2010.) IPR shall have the authority to issue subpoenas for the purpose of compelling witness testimony or the production of documents, photographs, or any other evidence necessary for IPR to fully and thoroughly investigate a complaint or conduct a review.

IPR personnel will not subpoena a sworn Bureau member employed by the Portland Police Bureau, but is authorized to direct Bureau members to cooperate with administrative investigations as described in Section 3.21.120.

Any person who fails to comply with a subpoena will be subject to contempt proceedings as prescribed by State law; provided that such persons shall not be required to answer any question or act in violation of rights under the constitutions of the State or of the United States.

OFFICE OF THE
CITY AUDITOR
ENSURING OPEN AND ACCOUNTABLE GOVERNMENT

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

1221 S.W. 4th Avenue, Room 140, Portland, Oregon 97204
phone: (503) 823-4078
web: www.portlandoregon.gov/auditor

MEMORANDUM

Date: November 8, 2010

To: Police Oversight Stakeholder Committee

From: LaVonne Griffin-Valade, City Auditor

Subject: Response to September 21, 2010 final report from the Stakeholder Committee

I appreciate the opportunity to respond to the recommendations put forward by the Police Oversight Stakeholder Committee in its final report. Recommendations and my responses are listed below. In most cases, I have included only the summary recommendation as presented in the Committee's report. It may be helpful for readers to refer to the Committee's full report when reviewing my responses.

I want to acknowledge the commitment and dedication of the individuals and groups actively involved in strengthening police oversight in our community, including the Police Oversight Stakeholder Committee. I want to also extend my appreciation for the ongoing work of the Citizen Review Committee (CRC), the volunteer body that advises and monitors the Auditor's Independent Police Review division and hears appeals of complaint decisions.

RECOMMENDATIONS & RESPONSES

I. IPR authority & structure

A. Repair community distrust of use-of-force investigations (up to and including shootings and in-custody deaths). I agree. I have undertaken such efforts over the past eighteen months and will continue to do so. For example, the March 2010 changes to the ordinance authorizing the work of the Auditor's Independent Police Review (IPR) division in my office, as well as the changes to the Police Review Board, strengthened the civilian oversight role of IPR considerably. In addition, IPR's community outreach function expanded greatly through the hiring of a coordinator. As a result, IPR now has a more effective and positive link to the community.

B. Ensure that IPR investigations include specified more serious complaints. I agree. However, decisions regarding any investigations conducted by IPR will be made on a case-by-case basis and will be subject to available staff resources and to budget constraints.

C. Ensure that IPR has, and exercises, the power to conduct or participate in investigations (from time zero) of specified serious incidents…including police shootings, deaths in custody, and other serious injury incidents… I agree. This is largely current practice in IPR. Regarding IPR's participation in investigations of officer-involved shootings and in-custody deaths, we are currently developing a process to participate "from time zero" in the investigations of any such future incidents involving Portland Police Bureau members.

D. Ensure that IPR has the authority to compel officer testimony and directly interview police officers in administrative investigations. I do not disagree, but this matter is up to Council and subject to collective bargaining.

E. Ensure investigations conducted by IPR or IAD and reviews by CRC can proceed in a manner that is consistently and objectively independent. I agree. As the independently elected Auditor, I am responsible to the public and to the Police Bureau for ensuring a high level of consistency, objectivity, and neutrality in the investigations IPR conducts, the audits of the Audit Services Division in my office, and any other review of the Police Bureau conducted under my authority.

F. Make it easier for the Auditor to hire outside counsel at the Auditor's discretion. I agree that the City Auditor needs the authority to hire outside legal counsel where potential conflicts of interest exist. The responsibilities of the Auditor's Office were established as part of the City Charter and through the mutual agreement of Council and the Auditor. This allows for independence regarding the management and operations of those accountability programs and divisions in the Auditor's portfolio. Some decisions made by the Auditor directly or through the various oversight functions within the Auditor's Office, are in conflict with the decisions made by other City bureaus also represented by the City Attorney's Office. My position on this matter should not be viewed as a criticism of the City Attorney's Office. However, from my perspective, instances of actual or perceived conflict of interest have occurred, and I plan to ask the Charter Review Commission to take up the issue when they convene in 2011.

G. Require that IPR investigate or actively participate in the investigation of all complaints of those with the rank of captain or higher. I agree that IPR should actively participate in investigations of sworn Police Bureau members at the rank of captain or higher, and such participation is current practice. Decisions to investigate any sworn Police Bureau members of any rank must be made on a case-by-case basis and must be subject to available resources.

H. Diversify the pool of investigators at both IPR and IAD… I agree, and as future opportunities become available, I will make every effort to ensure that the pool of investigators at IPR is demographically diverse and from diverse experiences.

I. Ask every complainant if they would prefer to have IPR or IAD investigate their complaint and document the response. I disagree. Doing so would not contribute to the neutral, objective tone that IPR is responsible for establishing and maintaining with complainants and with the Police Bureau throughout the complaint intake, review, and decision-making process.

J. If complainant opinions support doing so, increase investigative resources at IPR. I do not disagree. However, there may be many reasons for increasing investigative resources at IPR, including greater workload demands, diversifying the workforce, and adding staff with specialized skills and training. Any effort to increase investigative resources is subject to funding approval by Council.

K. Formalize/mandate what is current practice to not use mediation in serious use-of-force cases. I agree. I have directed IPR to confer with other jurisdictions on this matter and to develop language that formalizes current practice.

II. CRC and Council oversight authority/structure

A. Change the definition of "supported by the evidence" as that term is used in Portland City Code 3.21.160 Hearing Appeals. The definition should change from the "reasonable person" standard …to a "preponderance of the evidence" standard… I disagree. The "preponderance of the evidence" standard is used by those responsible for deciding whether it is more likely than not that a complainant's allegations are true based on the facts of a case. In our system, the commander and voting members of the Police Review Board (PRB) are the fact finders, and they determine whether that standard has been met and make a recommendation to the Chief of Police.

The purpose of an appeal is to allow a complainant or Police Bureau member to challenge fact finder recommendations. The role of the CRC in an appeal hearing is to assess whether or not recommendations made to the Chief were reasonable. It is not the role or responsibility of CRC to make independent judgments regarding the facts of the case or the efficacy of allegations. Rather,

the role of CRC is to determine whether the fact finders acted reasonably in making recommendations. Therefore, the "reasonable person" standard is the appropriate standard.

B. Give CRC the authority/permission to make policy recommendations directly to PPB. I agree.

C. Increase the length of term for CRC members from two years to three years. I agree.

D. Ensure CRC may hold hearings on all appeals requested by complainants or Bureau members. Ensure that CRC may conduct hearings on all appeals within its purview without delays associated with concerns that the outcome of their review could have an impact on a civil claim against the City. I agree, and this is current practice.

E. Clarify CRC authority to present directly to Council. I agree.

F. Permit CRC to compel testimony. I disagree. The appeal of a Police Bureau decision is not an opportunity to re-investigate a case. Rather, CRC has the authority to assess the quality and appropriateness of the Police Bureau's decision on a complainant's allegations and recommend that the Chief of Police or City Council take an alternative action. Further, there is no requirement for anyone to attend or participate in an appeal, including the complainant, and there is no sanction for not testifying in such instances.

G. If the CRC is not given authority to compel testimony, then grant City Council the power to hear new evidence. I disagree. City Council's role is to provide the final avenue for an appellant. It would be counter to Council's role to hear new evidence that was unavailable to the commander or Police Review Board during the finding of facts. Further, it would not be appropriate for Council to hear new evidence that also was not available to CRC during its review of fact finder recommendations in an appeal hearing.

H. Increase the size of CRC. CRC members recently discussed this issue at length and the consensus opinion was not to increase the size of this body, citing concerns about the practicality of doing so. As such, I will defer to the judgment of CRC.

I. Allow CRC to review proposed allegations prior to investigation. I disagree. One of CRC's roles is to review IPR's case handling process and raise potential policy or procedural issues identified in that review. However, it is not CRC's role to make case handling decisions or factual determinations on individual cases. Allegations are formed based on the facts of the case. Allegations are also fluid and may change over the course of an investigation as more facts come to light.

In addition, the workload for these volunteers is considerable, and timeliness of completing investigations, already an issue for the civilian oversight system, would be further impacted by the need to accommodate CRC members' schedules.

J. Increase CRC authority to act on dismissed complaints, "service improvement opportunities," and formulation of allegations. I disagree. IPR already has an internal process in place to provide complainants with an avenue for reconsideration of dismissals.

Also, in addition to reviewing IPR's case handling process, it is CRC's role to monitor and advise IPR, and as such, CRC established the recurring audit work group. That work group is currently conducting a review of closed service improvement opportunities and will release its assessment and recommendations to the public in the coming months. Once that report is issued, the recurring audit work group plans to review IPR's dismissal decisions and again release its assessment and recommendations.

K. Establish an avenue for appeal or reconsideration for cases involving quality-of-service or minor rule violations. I disagree. Again, this is not the role of CRC for those reasons outlined in responses to I. and J. above.

L. Provide dedicated staff to support the CRC. I disagree. IPR currently provides CRC with extensive support including the following: the analyst on staff assists a number of work groups with data collection and analysis; the outreach coordinator assists the outreach work group and works with CRC members on a variety of projects; the Director and Assistant Director assist multiple work groups; and two administrative support staff, one of whom is the CRC's designated point person at IPR, assist CRC members on an ongoing basis.

In addition, I would not be able to hold a "direct staff person assigned to the Committee" accountable for his/her performance, and that is unacceptable. Finally, no other City commission, committee, or board is given the budget or supervisory authority to hire and direct the work of City employees.

III. Openness, usefulness, and speed of reporting

A. Develop categories of findings regarding the specific allegation that includes four categories, instead of the current three. I do not disagree, but this is a matter for the Police Bureau to address.

B. Ensure that findings indicate a separate ruling regarding the overall incident that would identify the presence of any *policy-related issues* as that term is defined in Portland City Code. I do not disagree, but this is a matter for the Police Bureau to address.

C. Replace the term "service improvement opportunity" with the term "non-disciplinary complaint." I do not disagree, but this is a matter for the Police Bureau to address.

D. Ask opinion on complaint-handling preference. I disagree. IPR management must base case handling decisions solely on the facts in any given case. Asking a complainant his or her preference on how their case is handled would interfere with IPR's responsibility to make neutral and independent decisions.

E. Make it easier for complainants to get publicly available records. Direct IPR and PPB to establish an interagency agreement that would allow the Director discretion to release case-specific records… I disagree, and as the elected Auditor in charge of IPR, I would not be willing to authorize or sign an interagency agreement allowing the Director to release any Police Bureau records. Case-specific records that are generated by and/or are the custodial property and responsibility of the Police Bureau can only be released by the Police Bureau. It would be inappropriate for the Auditor or any staff employed by the Auditor to release any documents made available to them by the Police Bureau during the course of a review, audit, or other analysis.

F. Make certain CRC review documents available to the public. I disagree. Generally, items reviewed by CRC are either Police Bureau documents or IPR case files containing complainant information, correspondence, or Police Bureau generated materials. IPR and CRC are not at liberty to release these confidential records, and as discussed above, Police Bureau documents are the custodial property and responsibility of the Police Bureau, even while being reviewed by CRC.

G. Required reporting on reasons for long investigations. I agree. IPR is currently developing a process for this.

H. Make certain task forces public. I agree. High levels of transparency strengthen accountability and improve public perception.

I. Mandate investigative resource levels. I agree as long as this is not an unfunded mandate.

J. Require prompt explanation for decisions that differ from the Police Review Board's recommendations. I agree, but this is a matter for the Police Bureau to address.

K. Require more specific reporting on the relationship between sustained findings and discipline. I will consider reporting on this in future reports. However, this matter should not be a requirement placed in the ordinance since decisions about the scope and content of any report released by the Auditor's Office are at my discretion and are based on a number of factors.

L. Report on aspects of the "mitigation" process. I do not disagree, but this is a matter for the Police Bureau to address.

M. Order another expert review in 2012. I have already committed to an independent review of the revised Police Review Board processes one year after implementation and barring budget constraints.

N. Hold another stakeholder review. I do not disagree, but Council will need to be prepared to fund facilitation of such a review.

IV. Police Review Board structure/process

A. Do not permit the supervising RU (Resource Unit) commander to vote as a member of the Police Review Board (PRB) in specific situations. I disagree. I support the view of Police

Bureau command staff and the Commissioner-in-Charge that as the direct supervisor, the RU commander's participation on a PRB creates greater accountability and transparency regarding the RU commander's performance as a supervisor. Further, IPR managers are active participants in investigations and are now voting members during PRB sessions. Any concerns they observe regarding the participation of RU commanders or any other voting member on a PRB will be reported to the Auditor and brought before Council for further revisions of PRB processes if needed.

B. Add another citizen member to PRB for use-of-force incidents. I do not disagree, but this is a matter for the Police Bureau to address.

V. Complaint-driven PPB policy improvement process

A. IPR & CRC to be provided drafts of certain policy-change decisions. I agree; however, this is a matter for the Police Bureau to address.

VI. Non-complaint-driven PPB improvement process

A. Request that the Auditor's Office provide regular reports on the status of the Bureau's Employee Information System and on independent analysis of police stop data. I agree. IPR is in the process of doing this.

cc: Mayor Adams
Commissioner Leonard
Commissioner Saltzman
Commissioner Fish
Commissioner Fritz

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CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Mary-Beth Baptista, Director
1221 S.W. 4th Avenue, Room 320, Portland, Oregon 97204
phone: (503) 823-0146
web: www.portlandoregon.gov/auditor/ipr

Memorandum

Date: October 5, 2011

To: Mayor Sam Adams

From: Portland City Auditor LaVonne Griffin-Valade
Independent Police Review (IPR) Director Mary-Beth Baptista

Subject: Auditor / IPR Response to Draft Memo on Citizen Review Committee (CRC) Priorities recommended to City Council

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PRIORITY 1

Stakeholder Report Section II.A: Change the definition of "supported by the evidence" as that term is used in *Portland City Code 3.21.160 Hearing Appeals.*

- Auditor Disagrees: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*

PRIORITY 2

Stakeholder Report Section II.B: Give CRC the authority/permission to make policy recommendations directly to PPB.

- Auditor and Police Bureau Agree: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee and Bureau of Police Response to final report from the Stakeholder Committee dated September 21, 2010.*

PRIORITY 3

Stakeholder Report Section II.C: Increase the length of term for CRC members from two to three years.

- Auditor Agrees: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*

PRIORITY 4

Stakeholder Report Section II.E: Clarify CRC authority to present directly to Council.

- Auditor Agrees: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*

PRIORITY 5

Stakeholder Report Section II.F: (Permit CRC to compel testimony) & G (If CRC is not given the authority to compel testimony, then grant City Council the power to hear new evidence.) and revise the City Ordinance on Appeals section 3.21.160.A.1.b.

- Auditor Disagrees: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*
- Auditor Agrees: Section 3.21.160.A.1.b must be revised to conform to current practice.

PRIORITY 6

Stakeholder Report Section II.L: Provide dedicated staff support to the CRC.

- Auditor Disagrees: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*

PRIORITY 7

Stakeholder Report Section III.A: Develop categories of findings regarding the specific allegation that includes four categories, instead of the current three.

- Auditor No Position / Bureau Recommendation: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*

PRIORITY 8

Stakeholder Report Section III.E: Make it easier for complainants to get publicly available records.

- Auditor Disagrees: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*

PRIORITY 9

Stakeholder Report Section III.J.: Require prompt explanation for decisions that differ from the Police Review Board's recommendations.

- Auditor Agrees / Bureau Recommendation: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Mary-Beth Baptista, Director
1221 S.W. 4th Avenue, Room 320, Portland, Oregon 97204
phone: (503) 823-0146
web: www.portlandoregon.gov/auditor/ipr

Memorandum

Date: October 7, 2011

To: Mayor Sam Adams

From: Portland City Auditor LaVonne Griffin-Valade
Independent Police Review (IPR) Director Mary-Beth Baptista

Subject: The Portland City Auditor's Independent Police Review's (IPR) Response to "Citizen Review Committee (CRC) Report on the Structure of the Independent Police Review Division – With Recommendations."

The IPR Structure Review Workgroup defined *six primary focus areas* to be addressed.

1. Complaint Process
2. Policy Development
3. Staffing and Training Issues
4. Outreach
5. Transparency
6. Mediation Policy and Procedures

Recommendations

OF NOTE:

WHEN DESIGNATED AS EITHER CRC OR IPR "POWERS AND DUTIES" – THAT RECOMMENDATION REQUIRES AN ORDINANCE CHANGE.

1. Complaint Process

- Establish guidelines to require IPR to conduct an independent investigation in certain types of cases (IPR powers and duties; Internal Affairs (IA) protocols and procedures; IPR guidelines).
  - *Auditor / IPR: Disagree. Decisions regarding any investigation conducted by IPR will be made on a case-by-case basis considering the underlying facts of the*

case; parties involved, and will be subject to available staff resources and expertise.

- Require Portland Police Bureau (Police Bureau) officers to cooperate with IPR investigations (IA protocols and procedures; labor contract change).
    - DUPLICATE RECOMMENDATION: Stakeholder Report: I.D. *Police Bureau: Disagree. (Bureau of Police Response to final report from the Stakeholder Committee dated September 21, 2010.*

- Strengthen IPR's ability to do independent investigations by giving IPR subpoena power (IPR powers and duties).
    - **Completed / Current Authority. Portland City Code (PCC) 3.21.210 Subpoenas**

- Explain IPR's involvement in the review of IA investigations (IPR action: Policy/Practice).
    - **Current / on-going practice. Monthly IPR Director Report, IPR Quarterly Report, and IPR Annual Report.**

- Give IPR the same authority in bureau-initiated cases that it has in citizen-initiated cases (IPR powers and duties).
    - **Completed / Current Authority. PCC 3.21.120 Handling Complaints**
        - **PCC 3.21.120.B.2: Complaint Type II** (A complaint about alleged member misconduct that does not involve a community member – i.e. a Bureau Complaint)
        - **PCC 3.21.120.D.1-4: Initial Handling and Investigation of Type II Complaints** (Sets forth the same case handling authority in "Bureau Complaints" as "Citizen-initiated" cases.)

- Review duties and responsibilities of the Appeals Process Advisor (APA) to fulfill its requirement to advise complainants and strengthen the input for this role (CRC action).
    - **Completed. Public Safety Policies and Administrative Rules (PSF) 5.21 IPR – CRC Appeals Process Advisor – Amended and Adopted on August 10, 2011.**

- Determine if an outside agency should be permitted and / or provided to advocate on behalf of complainants at an appeal (CRC action).
    - **Completed: National Lawyers Guild (NLG) began assisting appellants in January 2010. In January 2011, IPR created a standard operating procedure (SOP) for handling appeals that includes an agreed upon IPR / CRC process to connect volunteers from the NLG with CRC appellants.**

- Change the standard of review for appeals from "Reasonable Person" Standard to "Preponderance of the Evidence Standard" (CRC appeals procedures protocol and powers and duties).
    - DUPLICATE RECOMMENDATION: Stakeholder Report: II.A. *Auditor: Disagree. (Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.)*

- Monitor and report to the Citizen Review Committee cases that have not been appealed, but illustrate questionable police responses or possible policy, supervision, or training failures (IPR and IA protocols and procedures).
    - **Completed / Current Practice. EXAMPLE: August 10, 2011 CRC Meeting – Discussion of the Lindsay Hunt Case.**

- Return to the findings *unfounded, insufficient evidence, exonerated*, and *sustained,* and add three new findings of *"policy failure, training failure, and supervisory failure."* [Portland Police Bureau policy change; protocols and procedures]
    - DUPLICATE RECOMMENDATION: Stakeholder Report: III.A & B
      Police Bureau: Disagree. (*Bureau of Police Response to final report from the Stakeholder Committee dated September 21, 2010.*)

- Evaluate the possibility of a protest process for non-investigated complaints, IPR dismissals, Service Improvement Opportunities (SIO) [formerly known as Service Complaints], and / or IA declines (IA protocols and procedures).
    - **Partially completed / On-going.**
        - **Completed – SIO evaluation. CRC Recurring Audit Workgroup reviewed a sample of SIOs and found that these complaints are being handled appropriately. In November 2010, the workgroup released "*The Use of Service Improvement Opportunities: A Report by the Recurring Audit Workgroup*" stating their findings with recommendations.**
        - **Initiated / On-going evaluation - IPR Dismissals. CRC Recurring Audit Workgroup is currently reviewing a sample of IPR dismissals and will release a report with their findings and recommendations in 2012.**

- Establish an effective review process for the formulation of allegations (IPR protocols and procedures).
    - *(Partial)* DUPLICATE RECOMMENDATION: Stakeholder Report: II.I & J
      Auditor: Disagree. (*Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.)*
        - Of Note: Beginning January 1, 2011, IPR management and IA made significant changes to the allegation formation process and the allegations listed in the Administrative Investigations Management Program (AIM) database. IPR management has encouraged CRC Recurring Audit Workgroup to review a sample of IPR / IA investigations to determine what, if any, further recommendations for improvement are necessary.

- Establish a deadline for processing complaints and clarify ambiguities in case handling-timelines (IPR action).
    - **Initiated / On-going. On January 1, 2011, IPR / IA launched significant changes in case tracking and reporting in the shared AIM database. In July 2011, IPR published "Timeliness of Administrative Investigations: A Case Flow and Timeliness Analysis." IPR and IA will revise protocols and a directive regarding timelines based on follow-up analysis after the improved reporting system has been in place for an adequate period of time.**

- Review the frequency, timeliness, and adequacy of notices sent to complainants by IPR and audit the process to ensure it is done appropriately (IPR and IA protocols and procedures).
    - **Completed / On-going: In 2009 and 2010, IPR management revised multiple notifications to better explain the process. In 2011, IPR revised same / additional notifications to clearly reflect IPR's enhanced role in the process. IPR will continue to revise notifications to keep up with changes in the appeal process and other protocol and process changes. IPR management staff has encouraged the CRC Recurring Audit Workgroup to include review of correspondence in its final analysis on dismissals and investigations.**

- Base the sustain rate as a proportion of all complaints (Police Bureau directive change; IPR action).
    - *Auditor / IPR: Disagree. A change in the calculation would lead to a less accurate figure. IPR annually reports the number of investigations completed in a given year and the percentage of those completed investigations that included sustained findings. Important note: many investigations completed in a given year, were initiated in the year prior. Because of the amount of "spill over" from year to year, there is no clean way of stating the number of sustained investigations "as a proportion of all complaints."*

- Monitor complaints against specific officers who achieve or exceed five complaints in one year and officers who receive or exceed three complaints in a six-month period. Follow-up with Police Bureau supervisors who talk with the officer(s) and develop strategies to correct the problem(s) (IPR action).
    - **Current Practice. Assistant Director Severe monitored two officers with a specialty assignment that received multiple complaints in a period of six months and followed up their Supervisors to strategize how to change the behavior in late 2009. Director Baptista monitored one officer that received multiple complaints in a six month period of time and worked with his supervisor to correct the problem in early 2011. Due to confidentiality we can not state the names of the officers.**

2. Policy Development Protocol

- Create a policy review committee to identify and analyze policy issues, and include outreach to stakeholders and experts (CRC action; workgroup protocol).
    - **Completed / On-going. In 2010, CRC re-instated the Outreach Workgroup and established the Recurring Audit Workgroup. CRC plans to revive the Protocol Workgroup when further changes are agreed upon by City Council (Council) / Auditor and IPR / CRC after the Stakeholder and other reports have been formally addressed.**

- Recommend to Council that the Ordinance defining the powers and duties of CRC be changed to state that CRC may make policy recommendations directly to the Police Bureau. **(CRC power and Duties)**
    - **DUPLICATE RECOMMENDATION: Stakeholder Report: II.B**
      Auditor and Police Bureau: Agree. (*Auditor's November 8, 2010 Response to*

***<u>September 21, 2010 final report from the Stakeholder Committee</u> and Bureau of Police Response to final report from the Stakeholder Committee dated September 21, 2010.*)**

- Hold public hearings on policy recommendations (IPR protocol).
    - **Auditor / IPR: Agree. Auditor and IPR will support a protocol change to allow public input as long as protocol maintains Audit Standards.**

- Enforce the current 60-day response requirement / criteria of the Police Bureau's Chief of Police. Enforce the requirement that the Auditor put the matter on the Council calendar within 15 days (Auditor and Police Bureau action).
    - **Current Authority / Practice. PCC 3.21.190 Response of Chief**

3. Staffing and Training Issues

<u>IPR</u>

- Ensure IPR staff receives *on-going* training in *civilian oversight* that is adequate and appropriate to fulfill their responsibilities. Including internal training and national training as provided by National Association for Civilian Oversight of Law Enforcement (NACOLE) (IPR and Council action).
    - **Completed / Current Practice. In 2010 and 2011, three IPR management staff members attended NACOLE. In 2010 the Auditor also attended and in 2011 a member of Audit Services attended.**

- Ensure funding for CRC training necessary to fulfill its responsibilities for citizen oversight, including a combination of in-house and national training as provided by NACOLE (IPR and Council action; CRC duties and responsibilities).
    - **Completed / Current Practice. In both 2010 and 2011, the Auditor funded one CRC member's attendance at the NACOLE conference. In October and November 2010, the Police Bureau's Training Division led an eight-week training series for Police Review Board community members, CRC members and the public. IPR Director, Assistant Director and Community Outreach Coordinator also led a three-part orientation training for new CRC members in 2010 and 2011, that included the Auditors Office, members of Internal Affairs, and CRC workgroup chairs.**

- Hire outside investigators, when needed, for an independent investigation or special case; maintain a sufficient number of investigators on staff to handle special cases and independent investigations (*IPR powers and duties*).
    - <u>(*Partial)* DUPLICATE RECOMMENDATION: Stakeholder Report: I.J. Auditor: Does not disagree. (*Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.)*</u>

- Hire outside counsel, when necessary, to avoid both actual and perceived conflicts of interest of the City Attorney's Office representing CRC, IPR, and the Police Bureau **(City charter change).**

- o **(*Partial)* DUPLICATE RECOMMENDATION: Stakeholder Report: I.F. Auditor: Agree. *(Auditor Response to September 21, 2010 final report from the Stakeholder Committee.)***

- Provide a "dedicated" IPR staff person for CRC committee and workgroup support (IPR action; CRC powers and duties).
  - o DUPLICATE RECOMMENDATION: Stakeholder Report:2.L. *Auditor: Disagree.* (*Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.)*

CITY COUNCIL

- Ensure that IPR receives sufficient funding to accomplish its mission both thoroughly and expeditiously (Council action).
  - o **Completed / On-going. The 2011 City Budget secured funding to make the IPR Assistant Director a full-time permanent position.**

- Fund a "dedicated" IPR staff person for CRC committee and workgroup support (Council action; IPR action; CRC powers and duties).
  - o DUPLICATE RECOMMENDATION: Stakeholder Report: 2.L. Auditor: Disagree. (*Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.)*

- *Dedicate* funds for CRC to accomplish its mission.
  - o *(Partial)* DUPLICATE RECOMMENDATION: Stakeholder Report: 2.L. *Auditor: Partial Disagree*. (*Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.)*
  - o **Partial Completion / Current Practice. The Auditor / IPR management provides staffing for all CRC workgroups, on-going administrative support for general meetings, appeal hearings, and public forums – including printing and distribution of materials and refreshments. IPR staff maintains the CRC webpage and monitors a dedicated e-mail address and phone line. IPR conducts annual new member orientation, conducts annual new member training, and provides for and arranges cultural competency training as well as "ride-alongs" with the Police Bureau.**

- Direct the Portland Police Bureau to return to the finding categories of "unfounded, insufficient evidence, exonerated, and sustained," and add three new findings of "policy failure, training failure, and supervisory failure."
  - o DUPLICATE RECOMMENDATION: Stakeholder Report: III.A & B. *Police Bureau: Disagree*. (*Bureau of Police Response to final report from the Stakeholder Committee dated September 21, 2010.*)

CRC

- Increase the length of members' terms to three years **(CRC powers and duties).**

- **DUPLICATE RECOMMENDATION: Stakeholder Report: II.C.**
  CRC and Auditor / IPR: Agree. *(Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*)

- The Police Bureau should set a firm deadline for full utilization of the data and case management components of its Employee Information System (EIS). The Police Bureau should re-establish its EIS Advisory Board (which included CRC and other community members) and / or be open to involvement by IPR and CRC on EIS issues. Annual progress on EIS, and other functions of the Police Bureau's Professional Standards Division should be publicly reported.
  - DUPLICATE RECOMMENDATION: "Following up on Portland Police Bureau's Response to Reviews of Officer-involved Shootings and In-custody Deaths" CRC Recommendation 2010.1. Police Bureau: Partial Agreement.*(Portland Police Bureau response to the Citizen Review Committee's PARC Report Workgroup Policy Review and Assessment.)*

- Seek training of various topic areas including; civil rights, Police Bureau policy and procedures, problem solving and conflict resolution, and goal setting (IPR action; CRC action).
  - **Completed / Current Practice. *(IPR Annual Report 2010 – Chapter 3: Community Outreach and Chapter 4: Citizen Review Committee).***

- Invite Police Bureau representatives to attend CRC meetings to answer policy questions (Police Bureau action).
  - **Current Practice. Multiple Police Bureau members presented on various topics and answered CRC questions at the January 12, February 9, March 9, July 13, 2011 monthly CRC meeting.**

4. Outreach

- Encourage the Mayor and each Commissioner to make a nomination to CRC (Council action; CRC action).
  - **Completed / Current Practice. PCC 3.21.080.A.1: Citizen Review Committee and *IPR CRC Recruitment SOP*.**

- Identify CRC members to be liaisons with unattached Commissioners and / or vice-versa (CRC action; Council role).
  - **Completed / Current Practice. On February 9, 2011, upon request of CRC Chair Michael Bigham, each CRC member was assigned a City Council member to liaison with.**

- Make joint quarterly and annual reports to City Council (IPR and CRC action).
  - **Completed / Current Practice. CRC and IPR made five joint presentations to City Council in 2010 and one in 2011.**

- Work with police officers to change their view on the disciplinary process (IPR, Police Bureau, and CRC action).
  - **Current Practice. On June 20, 2011, IPR Director made presentation about the powers / duties and responsibilities of IPR on the opening day of the Portland Police Advanced Academy.**

- Schedule periodic ride-along with the Police Bureau (IPR and CRC action).
    - **Current Practice. IPR Assistant Director Constantin Severe rode with Central Precinct Police Officer Ellwood in August 2011.**

- Seek out and attend IPR Community Outreach Coordinator events (IPR and CRC action).
    - **Current Practice. (*IPR Annual Report 2010 – Chapter 3: Community Outreach and Chapter 4: Citizen Review Committee*)**

- Hold community forums / listening sessions to gather community concerns regarding police accountability (CRC action).
    - **Completed / Current Practice. *(IPR Annual Report 2010 – Chapter 3: Community Outreach and Chapter 4: Citizen Review Committee)***

- Establish annual or semi-annual CRC open house events for citizens to learn about IPR, CRC, and the complaint handling process (CRC action).
    - **Auditor / IPR: Agree. IPR will work with CRC Outreach Workgroup to plan an open house event in 2012.**

- Develop and reformulate public education written materials (IPR action).
    - **Initiated / On-going. IPR hired 2011 Summer Youth Connect Program Intern Lawashia Smith to improve / develop an IPR brochure and made changes and improvements to the mediation brochure and complaint form. IPR is also developing a social media strategy.**

- Attend Police Bureau staff meetings and roll calls (IPR action).
    - **Auditor / IPR: Agree. IPR Director and Assistant Director will work with Portland Police Bureau Captains and Commanders to attend staff meetings and roll calls at each precinct in 2012.**

- Discuss IPR's role and functions with police personnel (IPR action).
    - **Current / On-going Practice. IPR Director and Assistant Directors have a standing monthly meeting with Commander of Detectives, standing weekly meeting with Professional Standards Captain, IA Lieutenant, Sergeant and IA staff and have regular meetings with the Police Bureau Director of Services. Frequent meetings by appointment occur with the Chief of Police, Assistant Chief's, Portland Police Association leadership, captains, lieutenants, sergeants and officers.**

5. Transparency

- Make use of the Luna-Firebaugh report's language and suggestions for IPR and citizen oversight transparency – "the public's right to know the public's business" (IPR and CRC action).
    - **Completed / Current Practice. Annually, IPR releases regular reports to increase the transparency of our work and that of the Police Bureau – including the IPR Annual Report, four IPR / CRC Quarterly Reports, and 12 IPR Director's Reports.**

- **Completed / Current Practice. Ordinance 183995 established a Police Review Board, 3.20.140. Section I of the Ordinance requires the Police Bureau to publish public reports twice annually. In compliance with the above Ordinance, the first installment of the memorandums was posted on the Police Bureau's web site in July 2011.**

- Open IPR and IA files to CRC members for review if a concern arises regarding an IPR dismissal or IA decline (IPR and IA guidelines).
    - **Completed / Current Practice. CRC Recurring Audit Workgroup is currently reviewing dismissals.**

- Let the public know about negotiations and discussions between IPR and the Police Bureau regarding policies, and allow citizen comment (IPR and CRC action; IPR protocol).
    - **Completed / Current Practice.**
        - **March 16, 2010, CRC Special Meeting to allow CRC and community members to comment on the proposed changes PCC 3.21.**
        - **IPR / IA development of SOP regarding IPR response to Officer-Involved Shootings (OIS) and In-Custody Deaths (ICD). (*Quarterly Report of IPR and CRC – First Quarter 2011* and *IPR Director's Report – July 13, 2011.)***

- Ensure that IPR publicly reports quarterly and annually on its activities to Council (IPR action)
    - **Completed / Current Practice. CRC and IPR made five joint presentations to City Council in 2010 and one in 2011.**

- Schedule outreach activities to inform the public about IPR's work (IPR action).
    - **Completed / On-going Practice. *(IPR Annual Report – Chapter 3: Community Outreach)***

- Ensure that CRC regularly reports to the community about its activities through reports and outreach events (CRC action).
    - **Completed / On-going Practice. *(IPR Annual Report – Chapter 3: Community Outreach and Chapter 4: Citizen Review Committee)***

- Be open and willing to re-examine CRC's role and processes (CRC action).
    - **Completed / On-going Practice. IPR Director attended Stakeholder Committee meetings from June – September 2010 and a series of CRC Priority Meetings from June – October 2011. IPR Assistant Director has staffed and participated in the CRC Appeal workgroup since January 2010.**

- Be open to new ideas, new ways of doing the work, and communicating with the community (CRC and IPR action).
    - **Completed / on-going Practice. (*IPR Annual Report – Chapter 1: Introduction and Chapter 3: Community Outreach. Auditor / IPR Response to CRC Report on the Structure of the Independent Police Review Division with Recommendations.)***

6. Mediation Policy and Procedures

- Define when a mediation session begins (IPR protocols).
    - **Auditor / IPR: Agree. IPR will develop a protocol based on input from professional mediators on contract and the CRC.**

- Return failed mediations to the IPR Director for case-handling decisions (IPR protocols).
    - **Current Practice. IPR will formalize this practice in an updated protocol with input from professional mediators on contract, Professional Standards Division, and CRC.**

- Notify Police Bureau supervisors if an officer fails to appear for a scheduled mediation (IPR action and protocols).
    - **Current Practice. IPR will formalize this practice in an updated protocol with input from professional mediators on contract, Professional Standards Division, and CRC.**

- Follow-up with Police Bureau supervisors when an officer attends, but refuses to participate in good faith with a mediation session (IPR action and protocols).
    - **Current Practice. IPR will formalize this practice in an updated protocol with input from professional mediators on contract, Professional Standards Division, and CRC.**

- End the option for mediation and close the complaint if the community member refuses to participate in good faith or fails to appear without adequate and/or reasonable notice (IPR protocols).
    - *Auditor / IPR: Disagree*. *Case-handling* d*ecisions of complaints will be made by IPR Management on a case-by-case basis considering the underlying facts of the case.*

- Develop guidelines for identifying cases eligible for mediation (IPR protocols).
    - **DUPLICATE RECOMMENDATION: Stakeholder Report: I.K**
      Auditor / IPR: Agrees. (*Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.*)

- Include a mediation brochure in IPR's initial complaint response mailing (IPR protocols and procedures).
    - **Current Practice. (*IPR Standard Operation Procedures for Investigators - Intake Investigation Process and AIM.)***

OFFICE OF THE CITY AUDITOR
ENSURING OPEN AND ACCOUNTABLE GOVERNMENT

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

1221 S.W. 4th Avenue, Room 140, Portland, Oregon 97204
phone: (503) 823-4078
web: www.portlandoregon.gov/auditor

Memorandum

Date: October 5, 2011

To: Mayor Sam Adams

From: Portland City Auditor LaVonne Griffin-Valade
Independent Police Review (IPR) Director Mary-Beth Baptista

Subject: Response to the Albina Ministerial Alliance's (AMA) Demands

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(6) OVERSIGHT: POLICE REVIEW BOARD

*6.1 The Independent Police Review Division (IPR) and the Citizen Review Committee (CRC) must have the authority, staff, and funding to comprehensively review all records of open and closed investigations of serious injury due to police action and/or deaths while in police custody within one year of the incident, and make all findings public. The IPR and CRC shall explicitly be able to engage in administrative (non-criminal) investigations of these incidents (KJ IR 5, JJP FR 5d, AMA #2).

- Current Authority: Chapter 3.21.070 Powers and Duties of IPR:
  - 3.21.070.D: (in relevant part) Initiate, monitor and conduct investigations. IPR is authorized to initiate, monitor and conduct administrative investigations… the Director [is authorized] to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the investigation in conjunction with or independent of the Bureau.
  - 3.21.070.J: (in relevant part) Access to records: Notwithstanding any other provision of City law, IPR shall have access to and be authorized to examine and copy, without payment of a fee, any bureau records, including records which are confidential by city law …

*6.2 The IPR must gain more independence by adding an attorney not connected to the City Attorney's office and adding civilian investigators (JC 8, AMA #2)

- DUPLICATE RECOMMENDATION: Stakeholder Report I.F. Make it easier for the Auditor to hire outside legal counsel at the Auditor's Discretion. (Auditor Agrees:

Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee.)

*6.3 The IPR and CRC should review and change policies relating to the use of lethal force. (JMP 7, AMA #2 & 3)

- In part, current authority and practice:
  - Current Authority: 3.21.070.L: Review of closed investigations: IPR shall hire a qualified person to review closed investigations pertaining to officer-involved shootings (OIS) and deaths in custody (ICD) on an ongoing basis. IPR shall issue reports on an annual basis identifying any policy-related issues or quality of investigation issues that could be improved. The Director and the Citizen Review Committee shall address any policy related or quality of investigation issues that would warrant further review.
  - Current Practice:
    - Portland City Auditor LaVonne Griffin Valade released the fifth independent expert review in July, 2010, that focused exclusively on the 2006 in-custody death of James Chasse, Jr. The public report reviewed the actions of the Police Bureau and made 26 recommendations for change in both policy and practice. The Auditor hired the Office of Independent Review (OIR) to review the closed investigations of at least 15 OIS incidents and one ICD incident that has occurred since 2004.
    - Citizen Review Committee members form and serve on special-purpose workgroups to address particular issues. In 2010, the "PARC workgroup" (named for the "Police Assessment Resource Center," the experts previously hired by IPR to develop recommendations for improving the Police Bureau's investigations and policies related to officer-involved shootings and in-custody deaths) evaluated the Police Bureau's implementation of the recommendations PARC made in its 2005 and 2006 reports.

- In part, Auditor Disagrees. IPR's role is to make recommendations to the Police Bureau to change policy; however the policy decisions are the responsibility of the Chief of Police and the Police Commissioner.

*6.4 Both the IPR and CRC must be given the authority to compel testimony of anyone involved in a police action. (KJ IR 1, JJP FR 5a, AMA #2)

- In part, DUPLICATE RECOMMENDATION: Stakeholder Report II.F: Permit CRC to compel testimony. (Auditor Disagrees: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee*.)
- In part, DUPLICATE RECOMMENDATION: Stakeholder Report I.D.: Ensure that IPR has the authority to compel officer testimony and directly interview police officers in administrative investigations. (Auditor Does Not Disagree: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee*.)

*6.5 The IPR and CRC must have the authority, staff, and funding to comprehensively review allegations of racial, sexual, socio-economic class, ethnic, and other harassment of the public by the Portland Police. (KJ IR 6, AMA #2)

- Current Authority: Chapter 3.21.070 Powers and Duties of IPR:
  - 3.21.070. D: (in relevant part) Initiate, monitor and conduct investigations. IPR is authorized to initiate, monitor and conduct administrative investigations… the Director [is authorized] to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the investigation in conjunction with or independent of the Bureau.
  - 3.21.070.J: (in relevant part) Access to records: Notwithstanding any other provision of City law, IPR shall have access to and be authorized to examine and copy, without payment of a fee, any bureau records, including records which are confidential by city law …

*6.6 The CRC must have the authority to recommend whether discipline should be imposed on an officer, leaving the type of discipline to be rendered up to the Chief of Police. (KJ IR 9, JJP FR 5e, AMA #2)

- Auditor Disagrees: In our system, the commander and / or the voting members of the Police Review Board are the fact finders that determine whether or not a violation of policy has occurred and if so, what discipline recommendation is appropriate based on the facts of the case. The role and responsibility of the CRC in an appeal is to determine whether the fact finders acted reasonably in making the recommendation regarding findings to the Chief of Police.

*6.7 Meetings involving the IPR/CRC and the Portland Police Bureau about use of force should be open to the public. Use of force data shall be published regularly with the goal of systemic change. (JC 11)

- In part, DUPLICATE RECOMMENDATION: Stakeholder Report III.H.: Make certain task forces public. Auditor Agrees: *Auditor's November 8, 2010 Response to September 21, 2010 final report from the Stakeholder Committee*.)
- In part, current practice. *IPR Annual Report 2010 – Chapter 2: Complaints, Investigations, Appeals, Discipline. (Page 18-19)*