

POLICE OVERSIGHT STAKEHOLDER COMMITTEE

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

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# PORTLAND COPWATCH

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From: Portland Copwatch

To: Members of Portland City Council

Date: November 29, 2010 (revised December 1, 2010)

re: **Top Priorities of the 41 Stakeholder Recommendations**

To the members of City Council

We hope you will accept the Police Oversight Stakeholder report. We would like to see all 41 of the Stakeholder recommendations incorporated into the Independent Police Review Division (IPR) ordinance, and/or directed by Council for the IPR or other City bodies to adopt.

We urge the Council to begin work immediately on drafting an ordinance to incorporate these recommendations. The changes made this past March deliberately did not change any of the powers or duties of the Citizen Review Committee (CRC) and the community asked for input before such changes were made. We participated in the work group, making compromises along the way, and are hopeful that the Council will move forward with the changes as promised. While the management of the Bureau is not the same as it was at the time of the last changes, the purpose of civilian review is much like the checks and balances provided by the Judicial, Legislative and Executive branches of our federal government: They are there regardless of how good or how terrible the people are who sit in those seats. Such checks and balances are needed for the police for the same reasons.

We'd like to emphasize, however, the urgency of the following areas (please note, asterisks [\*] indicate recommendations in the report that had no opposition from the Stakeholder Committee):

## 1) IPR TO CONDUCT INDEPENDENT MISCONDUCT INVESTIGATIONS

Three recommendations relate to the issue of what kind of independent investigations IPR should conduct. I.B., I.C, and I.G. Taken together, these recommendations suggest that the ordinance should specify what kinds of investigations IPR should conduct when they take on a misconduct incident or complaint rather than the Portland Police Bureau (PPB)'s Internal Affairs Division (IAD). I.B. and I.C. emphasize use of force and use of deadly force cases as high priority, including that IPR should go to the scene of shooting incidents ("from time zero"). I.G. suggests that the ordinance mandate IPR involvement or outright exclusive domain in incidents involving those with rank of Captain or higher (Commander, Assistant Chief, Chief). The Auditor and CRC support all of these ideas, at least in principle. The Chief agrees if, he says, it can be shown that IAD is not doing a sufficient job.

Portland Copwatch (PCW) recommends that the ordinance go further and mandate that IPR investigate specific complaints. Our preference in terms of going to the heart of building trust in the oversight system would be to mandate investigations of shootings and deaths. However, a good compromise to ensure IPR at least conducts some investigations might be to mandate the cases involving high-ranking officers be handled only by IPR.

*I. B. Ensure that IPR investigations include specified more serious complaints. Particularly those including shootings, deaths in custody, and physical injury requiring hospitalization; racial profiling, illegal searches, conflicts of interest, or other "high emotion in the community" issues.*

*\*I. 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.*

*\*I. G. Require that IPR investigate or actively participate in the investigation of all complaints of those with the rank of captain or higher.*

## 2) IMPROVE THE CITIZEN REVIEW COMMITTEE'S STANDARD OF REVIEW

Recommendation II. A suggests moving the decision-making criteria for the Citizen Review Committee (CRC) from the "reasonable person" standard, which limits them to determining whether a Commander's finding was reasonable in light of the evidence, to the more widely used "preponderance of the evidence" standard, meaning they need 50% plus one evidence of misconduct. Nobody objected to this proposal during the discussions at the Stakeholder Committee; it is supported by the CRC and the Luna Firebaugh report. The Auditor's arguments against changing this standard talk about cases which go before the Police Review Board (PRB) before reaching this administrative appeal hearing. However, the Auditor ignores the facts that (a) very few cases have gone or will go before both the PRB and the CRC, and more importantly (b) the citizen who filed the complaint is not allowed to attend the Police Review Board hearings to present evidence and talk to the members reviewing the case. Only the CRC can do that. Therefore, this should not be looked at as a judicial appeal, but rather as the first level hearing at which the civilian can make his/her case and the unbiased "jury" (the CRC) can hear all the evidence. Also, the Chief states in his response that CRC cannot hear new evidence at their hearings, which is not accurate: the ordinance as written in 2001 allows for CRC to "receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen" (3.21.160[B]).

*\*II. A. Change the definition of “supported by the evidence” from the “reasonable person” standard defined in 3.21.020 Definitions to a “preponderance of the evidence” standard.*

### **3) ACTUALIZE THE CURRENT ORDINANCE BY EMPOWERING IPR TO COMPEL OFFICER TESTIMONY**

The CRC supports recommendation I.D to give IPR the power to compel police officer testimony, and the Auditor has deferred to Council and the current bargaining sessions. The Chief opposes this idea because nobody can prove IAD has prevented IPR from asking questions in the past--but no complainant would know whether that happened. We have urged Council to correct the Portland Police Association contract so the IPR does not have to ask questions through a police officer. Direct power to compel is another way to bolster community support for IPR.

*I. D. Ensure that IPR has the authority to compel officer testimony and directly interview police officers in administrative investigations.*

### **4) ELIMINATE THE CONFLICT OF INTEREST WHEN THE CITY ATTORNEY ADVISES IPR AND PPB**

The CRC and the Auditor support recommendation I.F. to make it easier for the Auditor to avoid the conflict of interest in the City Attorney advising both IPR and the Police Bureau by hiring outside counsel. The Council should direct the upcoming Charter Review Commission to make this issue a priority in 2011.

*\*I. F. Make it easier for the Auditor to hire outside counsel at the Auditor’s discretion. If it is determined that the above change cannot occur without a Charter change, then such a change should be supported to enable it.*

### **5) ENSHRINE POLICE MISCONDUCT TERMS IN LAW FOR CLARITY AND BETTER ACCOUNTABILITY**

A few years ago, the Bureau, with IPR support, merged two potential outcomes for misconduct investigations, “Insufficient Evidence” and “Unfounded” into one category, “Unproven.” Recommendation III.A suggests returning to the previous system; III. B suggests adding additional terms that can be used to improve the Bureau based on incidents in which officers did not necessarily breach policy; III. C would institute a clearer, more meaningful term for cases of minor alleged misconduct. CRC and the Auditor agree to the recommendations in the report, in principle (though CRC is neutral on the “Non-Disciplinary Complaint” question). We feel these changes should not be left up to the Bureau, which, by making administrative changes, has made the system more confusing and harder to track over time. Eileen Luna Firebaugh suggested that the Council take the lead on defining the findings, we agree and think Council should enshrine all three recommendations in the ordinance. The Chief opposes these idea, claiming differentiating between “unfounded” and “insufficient evidence” takes too long and that changing the minor complaint term a second time would be “confusing.” The Chief himself may be confused about recommendation III.B as he states a similar process is already in place with three of the five recommended categories.

*\*III. A. Develop categories of findings regarding the specific allegation that includes four categories, instead of the current three. Unfounded/Not supported; Exonerated/In policy; Insufficient Evidence; and Sustained/Out of policy. All of the above could be qualified by “With debriefing.”*

*\*III. B. Ensure that findings indicate a separate rating regarding the overall incident that would identify the presence of any policy-related issues as that term is defined in Portland City Code (as opposed to allegations regarding a specific Bureau member). Recommended categories: Communication issues, Management issues, Training issues, Equipment issues and Other policy-related issues.*

*III. C. Replace the term “service improvement opportunity” with the term “non-disciplinary complaint”*

### **6) GATHER COMMUNITY INFORMATION TO DIRECT THE FUTURE OF THE IPR**

Recommendations I.I, I.J and III. D relate to the idea of conducting community surveys with civilians who contact IPR with complaints. They ask that IPR keep statistics on whether, if they had a choice, people would prefer an investigation by IAD or by IPR, and whether they would prefer a non-disciplinary complaint or a full investigation. The idea is to gather this information to determine whether to have more civilian investigators assigned to IPR and to see how the community feels about the IPR/IAD’s heavy reliance on non-disciplinary complaint as an outcome. The Auditor has stated that she feels merely asking these questions will make the IPR seem biased. It is not clear to us how that is true, if the complainant is advised that their opinion is for statistical purposes only. The Chief also opposes this idea, stating it will reinforce distrust of the police. We’d be willing to accept the outcome whether it reflects what we believe or not, perhaps the Auditor and Chief already know the outcome of the surveys. As a historical note, in 2000 the Mayor’s PIIAC Work Group recommended that complainants be given the actual choice about who will investigate their complaint. CRC is silent on these proposals.

*\*I. I. Ask every complainant if they would prefer to have IPR or IAD investigate their complaint and document the response. Gather data that may help measure faith in the system.*

*I. J. If complainant opinions support doing so, increase investigative resources at IPR. If the results of such measurements (L) indicate a substantive preference for investigations by IPR, increase investigative resources at IPR.*

*III. D. Ask opinion on complaint-handling preference. At intake, when applicable, the IPR will record the complainant's opinion in response to this question: If the choice were the complainant's, would he or she prefer to have a full investigation or to have the complaint handled through the non-disciplinary complaint (or Service Improvement Opportunity) process?*

## **7) EXPAND AND CLARIFY CRC'S POWERS**

Recommendations II.I, II. J, II. K, II. B and V. A all expand and/or clarify the powers of the CRC regarding individual complaints and policy review. The CRC agrees with all of these recommendations, except it is silent on V.A which would require the Bureau to share draft policies with IPR and CRC, though the Auditor supports it. In the past, the IPR has been inconsistent in whether to allow CRC to send cases back at the tail end of the appeals process to add or change allegations. Sending cases back for more investigation is also implicit in the code but should be made explicit. In addition, creating a process for CRC to review allegations as they are categorized by IPR on the front end will make a better system. Complainants also need a formal process to appeal assignment of cases as non-disciplinary complaints or dismissals; the IPR's current administrative solution is not required by City Code. The Auditor disagrees with most of the proposed expanded powers on the basis of "this is not how the CRC was envisioned." The City is in the process of "re-envisioning" CRC and they need these abilities.

It is admirable, though, that the Auditor and Chief both agree with CRC and the stakeholders that CRC should be able to make recommendations directly to the Bureau instead of having to go through IPR.

*II. I. Allow CRC to review proposed allegations prior to investigation to ensure they match the complainant's concerns and align with Police Bureau policies.*

*II. J. Increase CRC authority to send complaints back for further investigation, to re-categorize allegations, and to review dismissed and declined complaints.*

*II. K. Establish an avenue for appeal or reconsideration for cases involving quality-of service or minor rule violations. Allow community members to appeal dismissed complaints or low-level, "service improvement opportunity" complaints against officers to the Citizen Review Committee.*

*\*II. B. Give CRC the authority/permission to make policy recommendations directly to PPB.*

*\*V. A. IPR & CRC to be provided drafts of Police Bureau policies that relate to Bureau member interactions with the public (or to the investigation of such interactions).*

## **8) IMPROVE THE STRUCTURE OF THE CRC**

Recommendations II.H, II.C and II.L all would make the CRC a better and more effective civilian oversight body. II.H would increase the CRC's size from 9 to 11 members. We don't buy the CRC's argument that more members mean longer meetings--that's a function of having a better facilitator. The fact is, statistically speaking two members of CRC have dropped off every year for reasons other than their term ending since its inception, and Council should at least create two "alternate" member seats for people to be trained and up to speed to fill in vacant seats. In addition, there have been no Latino or Native American members of CRC for several years; expanding the number of seats can increase CRC's diversity.

CRC supports the other two suggestions, expanding their terms to three years (which the Auditor and Chief also support) and assigning CRC a dedicated staff member (which the Auditor opposes, but the Luna Firebaugh report suggested). We recognize there is a budget issue, but the CRC conducts roughly five meetings per month and holds complex hearings on police issues. They need a dedicated staff person.

*II. H. Increase size of CRC from 9 to 11 members.*

*\*II. C. Increase the length of term for CRC members from two years to three years.*

*II. L. Provide dedicated staff to support the CRC Change Portland City Code 3.21.090.A. to include a new numbered paragraph that would read: Direct committee staff. To direct a staff person assigned to the Committee to provide staff support for the powers and duties outlined in this chapter.*

## **9) CLARIFY AND STRENGTHEN CRC'S APPEAL PROCESS**

Recommendations II.F, II.G, II.D and II.E all act to clarify and/or strengthen CRC's role in hearing appeals of misconduct complaints. Currently, the ordinance allows CRC to hear new evidence from civilians, officers and witnesses, but not to compel that testimony. If the Bureau rejects proposed findings from the CRC, the City Council can hold a hearing, at which they can compel testimony but not hear new evidence. One or the other should be fixed; we recommend giving CRC the power to compel. The Auditor and Chief disagree with these two recommendations, again based on a narrow vision of what CRC's role should be for the community.

The Auditor and Chief agree, however, with the other recommendations which would prohibit the City from discouraging CRC holding hearings on cases which are in litigation, and allow CRC to make presentations directly to Council if the appeal gets to that level. In the only case which went to Council so far, IPR staff undercut the CRC's presentation.

*II. F. Permit CRC to compel officer testimony and the testimony of other witnesses at appeal hearings.*

*II. G. If the CRC is not given authority to compel testimony, then grant City Council the power to hear new evidence.*

*\*II. D. Ensure CRC may hold hearings on all appeals requested by complainants or Bureau members without delays associated with concerns that the outcome of their review could have an impact on a civil claim against the City.*

*\*II. E. Clarify CRC authority to present directly to Council. when the CRC and Bureau do not reach agreement on findings in an appealed case.*

## **10) IMPROVE TRANSPARENCY AND OPENNESS OF OVERSIGHT**

Recommendations III.H, III.E and III.F address areas in which IPR and CRC can make the process of police oversight more transparent and open to the public. III.H asks that any task force reviewing police policies on which IPR or CRC members sit should be open to the public. The Use of Force Task Force has met twice since 2007 and the public was not allowed to attend. In general, there has been too much moving of Bureau discussions about interactions with the public taken behind closed doors. The Auditor agrees with this recommendation, and CRC made reference to a similar idea in their report (p. 21). We believe the Chief misunderstands the proposal as his disagreement implies that having members of the public merely in attendance at such meetings will make the process take longer; however, being open does not necessarily mean public input will be allowed.

The point of recommendations III.E and III.F is that, for example, officers accused of misconduct can easily access the police report about an incident to back up their side of the story, while civilians have to pay \$10 or more, or engage an attorney to get that report. There are times that CRC reviews case material that includes photos of the incident scene or other items which are not confidential, but the public is lost while the hearings discuss these documents at length. There is no reason for IPR and CRC to be restrained from copying such information, and/or redacting any confidential information on documents that make the case more understandable and transparent. We are disappointed that the Auditor and the Chief do not seem to understand the reason for these recommendations, nor how they would help improve public perception of the IPR process.

*III. H. Make certain task forces public. A task force charged with policy review that includes members of IPR or the CRC be open to public observation.*

*III. 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 that are already generally available to the public to complainants or their representatives.*

*III. F. Make certain CRC review documents available to the public .*

We would also like to call Council's attention to **items which the IPR should be directed to include in its reports**, about what kinds of misconduct result in what kinds of discipline (III.K), what role mitigation plays in changing the outcomes of investigations (III.L) and what kinds of information is being collected in the Employee Information System and regarding pedestrian and traffic stops (VI.A). The Auditor and the Chief support these ideas in principle.

Finally, we strongly support the **strengthening of the Police Review Board** by reversing Council's July ordinance change that allowed a Commander to vote on his or her own recommendation about misconduct (IV.A) and adding an extra civilian member to the board in use of force cases (IV.B). The Auditor and Chief disagree regarding the Commander's vote, still arguing that a Commander is held more accountable by voting--but ignoring the question of how that is true if the Commander votes "no" while the rest of the review board votes to Sustain a complaint of misconduct. The Chief also opposes adding an extra civilian to the board, saying there is good "balance" even though there are still many more Bureau employees on the Board than members of the general community.

Thank you for your time

Dan Handelman  
Portland Copwatch



## The League of Women Voters of Portland

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### **Police Oversight Stakeholder Committee Report City Council Testimony December 1, 2010**

The League of Women Voters of Portland urges you to accept the Stakeholder Committee Report today and supports its recommendations. Many will require additions or amendments to the code. We encourage you to begin drafting new language as soon as possible. Representatives from each commissioner's office participated in the committee and should continue to be involved along with community members.

Each of you received detailed written comments from the League. I will highlight a few of those today.

Increase public participation and transparency by making IPR/Police Bureau joint policy committees open to public observation (III, H) and submit draft bureau directives to the CRC for comment (V, A). These two actions will increase public understanding of police policies and help ensure they reflect not only good policing techniques, but community values as well.

Improve the appeals process by allowing CRC the opportunity to review proposed allegations associated with a misconduct complaint prior to the investigation (II, I). Make it clear in City Code that the CRC has the authority to send cases back for reformulation of allegations when necessary. Inappropriate, missing, and poorly formulated allegations have been a recurring problem at CRC hearings; adopting these two measures will help prevent this in the future.

Adopt "preponderance of the evidence" as the standard of review in appeal hearings (II, A). The current "reasonable person" standard has proved problematic and confusing over the years. Some argue that CRC is an appellate body so the standard should not be changed. The CRC has the authority, however, to hear new evidence from the complainant, police officers, and the public. It can also send cases back for more investigation and challenge bureau findings based on additional information. "Preponderance of the evidence" is the appropriate standard.

The report recommends that when IPR conducts an independent investigation, it do so in serious cases (I, B). The League encourages Council to go a step further and require IPR to conduct independent investigations in certain cases. There is currently a great deal of public concern about the quality of investigations in police shootings. Requiring independent investigations in those cases would address that concern. Alternatively, Council could require IPR to investigate all complaints affecting those with the rank of captain or higher (I, G).

As you move forward, please keep in mind that formalizing the elements of an effective oversight system will ensure that it serves the public and stands the test of time.