

Testimony on Amended Version of IPR and PRB Ordinance

January 8, 2014

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Mayor Hales and Commissioners:

Council should not vote on the amended version of the “Independent” Police Review Division (IPR) and Police Review Board (PRB) ordinances being considered today. Council should wait until after the February 18 “Fairness Hearing.” Voting now sends a message that the City joins the Department of Justice (DOJ) in refusing to hear public testimony about ways the Settlement Agreement could be strengthened.

While we do not know whether a meeting occurred between the Portland Police Association (PPA) and members of Council, as was discussed at the last hearing, we do know that no elected officials asked to meet with Portland Copwatch and community stakeholders prior to this week’s vote. Another message sent: The PPA being comfortable with these changes is more important than community concerns.

Before getting to specifics, it is important to clarify what the Fairness Hearing can accomplish. At a meeting last Friday, City Attorney Ellen Osoinach seemed to be verbalizing the City’s belief that the Fairness Hearing will not result in changes to the Agreement. However, the AMA Coalition’s “Collaborative Agreement” lays out changes to the process for picking the Community Oversight Advisory Board (COAB-paragraph 145). This is an example of invoking paragraph 187, which allows informal changes to be made to the Agreement upon a vote of City Council and approval by the Judge. Therefore, after the repeated public testimony he is likely to hear about, for instance, the 21-day timeline for the Citizen Review Committee (CRC) to hold its hearings, the Judge could ask the DOJ and City to negotiate a new side agreement to address that issue while still entering the Agreement as a whole into the Court record.

Using that example, one amendment introduced at the last Council session directs a report be given to the Auditor and Police Commissioner when an investigation lasts more than 129 days. The intention of this amendment is to preserve the 30-day window complainants currently have to file an appeal of Bureau findings, plus the DOJ-required 21 day timeline for that appeal to be held, within the overall 180-day timeline for investigations. By enshrining this timeline in the ordinance, Council is conceding that CRC’s appeal process should stay within the 180 days and that the 21 day timeline is valid. Commissioner Novick was clear on the record that it is the DOJ refusing to move this timeline. The City should give the community and the Judge the chance to change this provision rather than create City Code that could have to be changed again in a few months.

Similarly, another amendment to the paragraph about IPR “independent” investigations clarifies the Chief needs to order officers under investigation to both show up and answer questions from IPR. But this amendment assumes that the scheme drawn up between the October and December Council sessions that leaves IPR dependent on the Bureau to conduct investigations satisfies the DOJ’s order for IPR to conduct “meaningful” investigations. As we argued earlier, the meaningful solution to this would be to propose an amendment to the City Charter to allow IPR to compel testimony.* The City could get such an amendment on the ballot by May if language is ready by early February. Such a charter change would not be a violation of the DOJ Agreement but rather a means to properly fulfill it.

It cannot be stressed enough how little will change if the Bureau still has a hand in these “independent” investigations, including having a member present at all officer interviews. Director Severe repeated Friday that IPR is more likely to use the ability to compel officers (through the Bureau) for cases involving high-ranking officers, and not for every community generated complaint. This does not do much to boost community faith in the IPR system.

The IPR Director has stated that these changes need to be made right away so as to help as many people as possible. Since many people could have been helped over the last 12 years if a better system had been instituted in the first place, this is not a good reason to hurry these inadequate changes. Many more people can be helped in the future if Council gets this right.

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The third amendment calls for the Bureau to put a cumulative report of discipline imposed that is outside the range recommended in the “discipline matrix” in their annual report. While a useful idea, this does not address the original intention, which was for the Chief to publicly report his reasons for applying discipline that was not what was recommended by the PRB.

We also have concerns that the expansion of CRC to 11 members with a legal quorum of 5 could allow for a small faction of the Committee to make decisions without the knowledge or consent of the majority of the group, creating unnecessary tension and confusion. We urge you to look at our proposal to instead require CRC take a vote (perhaps by a 2/3 majority) to delegate its authority to any smaller panel.

We repeat here that the intention of this ordinance appears to be to (inadequately) strengthen the professional staff at IPR but give no more authority to the civilians on CRC. The DOJ-recommended ability for CRC to direct IPR or Internal Affairs to conduct more investigation would benefit many people and should be included in any changes to the IPR ordinance.

We’ve outlined elsewhere other aspects of the Agreement that could be fixed by invoking paragraph 187, including but not limited to the ability to appeal shootings and deaths cases, and at the very least removing the CRC’s deferential standard of review from the Agreement so it can be changed sometime in the next five years. While the COAB will be monitoring the implementation of the Agreement, it is unlikely they will take action to remedy the problems we’re addressing here until they manifest themselves as problematic in the future— which they will. Rather than wait for those problems to arise, the City should hear out the community and the Judge after the Fairness Hearing and delay action on this ordinance.

Thank you again for your time,

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* Incidentally, the 2010 Stakeholder Committee report suggests that a Charter change could be necessary to allow the Auditor to have independent legal counsel. The Auditor supported this concept in her response letter to the Committee.