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To: Mayor Sam Adams, Police Chief Mike Reese, Auditor Lavonne Griffin Valade

cc: Independent Police Review Division (IPR), Citizen Review Committee (CRC), City Council, members of the press and the public

**Comparing the Auditor's proposed ordinance changes to those of the Stakeholder report**
**by Dan Handelman, Portland Copwatch (PCW) November 30, 2011**

This document includes a stand-alone list of the seven (7) ordinance changes (previously six) being proposed to the Independent Police Review Division code (Chapter 3.21), analyzes those changes, and points out at least eleven (11) other ordinance changes proposed just in the Stakeholder report, plus one regarding the Police Review Board.

**CHANGE 1: CRC members' terms lengthened. (II C)**

3.21.080(B)(2): Each serve a term of [two] three years, subject to reappointment by Council.

Comment: This change is identical to that proposed by the Stakeholder report. PCW supports it.

**CHANGE 2: CRC can recommend policies to the Bureau. (II B)**

3.21.090 (A) (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 development of policy recommendations].

Comment: Though the Auditor's language is appropriately more clear about to whom the recommendations will be made (although CRC also makes recommendations to City Council *and the Auditor*, which should be added to the list), the Stakeholders' recommendation for modifying the ordinance language was much simpler:

3.21.090: To [help the Director] identify specific patterns of problems and to [participate in the] develop [ment of] policy recommendations.

PCW recommends combining the two and adding City Council *and the Auditor* to the list of recipients.

**CHANGE 3: Replacing "Reviews and Supplementary Investigations" with "Case File Review" (administrative)**

3.21.150
[Reviews and Supplementary Investigations] +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 [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.]

Comment: This is an administrative fix to make the ordinance better reflect current practices. It is of some concern that language in this section as originally written authorized IPR to conduct supplemental investigation if IAD's investigation was inadequate and that language is being cut out. However, the addition of the new change clarifying CRC's ability to send cases back for more investigation relieves some of this concern.

**CHANGES 4 and 5 (new): Administrative fixes to appeals section, including the current practice "Conference Committee" (administrative), and clarifies CRC ability to recommend further investigation at appeal (II J-partial)**

3.21.160 Hearing Appeals.

A. +An Appeal+ [h]Hearing[s 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. To recommend further investigation by IAD or IPR; or+

a]+b+. 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,+ [T] the Director shall [inform the complainant, member, IAD and the Chief of the Committee's decision and] close the complaint; +or+

[b].+c+. 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.

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

(2) 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.+

Comments:
—The changes in the heading of A and subsection 1 were sorely needed and welcome.
—The addition of the new subsection a, which was proposed between the first and second hearings, is welcome, though it should also address CRC's ability to re-categorize complaints for investigation or as part of their decision making process. From the Stakeholder report, a footnote shows that Portland Copwatch recommended this language:
3.21.160A(1)(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, ++send the case back for further investigation by IPR or IAD, and/or send back the case to reclassify allegations.++
This solution is clearer than the Auditor's proposal, as the finding should not have been made if there was not enough evidence to make the finding. Therefore, a request for more evidence is part of the "not supported by the evidence" finding—regardless of whether the standard of review is changed or not.
**Note: Council also needs to address the situation in which CRC requests investigation but IPR and IA refuse to agree.*
—The change in the subsection now marked (c) takes away the CRC's responsibility to report their findings and gives it to the Director. If it is to remain, there must be a directive for CRC Chair or designee to sign off on any communication about the CRC's recommendations.

—The addition of the "conference committee" in subsections 2(a) and (b) needlessly lengthens and delays the process originally designed in the ordinance wherein the City Council would settle a disagreement between CRC and the Bureau. No community member asked for this change to the ordinance and Council should not support it.

**CHANGE 6: Slightly clarifies CRC's role in Council appeal (II E-partial)**

+(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.+

Comment: The Stakeholder recommendation made the process much clearer by adding a sentence to the paragraph describing Council appeals.
3.21.160C: *(add)* +The Committee shall present its recommendations before Council.+
Council should add that language as well.

**CHANGE 7: Fixes typographical error (administrative)**

3.21.160 (D)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 3.2L160 +C+ [D].3. shall not be delegated by the Council to the Committee.

**OTHER NEEDED CHANGES**

In addition to incorporating the above concerns into the Auditor's proposal, the following other specific code changes were proposed in the Stakeholder report.

**NEEDED CHANGE 1: Ensure IPR can review shootings and deaths in custody cases (I B)**

Portland Copwatch proposed this language in a footnote:
3.21.020 (L) Review of closed investigations. (add at end) ++This provision does not exclude the IPR from conducting investigations into such cases.++
3.21.120 Handling Complaints.
(B) (1) Complaint Type I: (add at end) ++This may include officer involved shootings and deaths in custody.++
(B) (2) Complaint Type II: (add at end) ++This may include any incident involving the discharge of a firearm or less lethal weapon.++
(B) (3) Complaint Type III: (add at end) ++This may include officer involved shootings and deaths in custody.++

Comment: It is also crucial that Council remove the provision in the Portland Police Association contract which states: 62.1.3 "The parties recognize that IPR has no authority or responsibility relating to" chapter 61 sections 6-9, which include Deadly Force Incidents (8) and Criminal Investigations (9).
Council should include a pledge to change this part of the contract, as well as the part that limits who may question officers being investigated (61.2.2.4) in a resolution as part of the police accountability efforts.

**NEEDED CHANGE 2: Give the Auditor greater ability to hire outside counsel (I F)**

3.21.070O
The Auditor may [work through the City Attorney's Office to] hire outside legal counsel to support the purpose and duties of IPR when +the Auditor determines+ [the Auditor and the City Attorney agree] that outside legal advice is necessary or advisable.
[NOTE: In addition, if it is determined that the above change cannot occur without a Charter change, then such a change should be supported to enable it.]

Comment: It is unclear why the Auditor did not include this change in her proposed ordinance, as she supports this recommendation. Council should include support for the Auditor, directed to the Charter Commission, in a resolution.

**NEEDED CHANGE 3: Prohibit mediation for serious use-of-force cases (I K)**

3.21.120A: (add to end) +No use-of-force complaint that results in hospitalization shall be eligible for mediation.+

Comment: While the Director and Auditor say this will be incorporated into policies, it should be written into the ordinance. Otherwise it will be to easy to change in the future.

**NEEDED CHANGE 4: Change the standard of review (II A)**

We suggest
3.21.020S: "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.] +the findings are supported by a preponderance of the evidence.+

Comment: The City Attorney has said there may be other, less deferential standards of review that could be applied to the CRC. PCW is open to discussing other ideas, but agrees with those in the community who believe that our citizen review board should be able to determine on their own whether an officer has violated policy. PCW has an entire document on the preponderance of evidence which we sent to Council in April 2011.

**NEEDED CHANGE 5: Fix the catch-22 that CRC can hear new evidence but not compel testimony, while Council can compel testimony but not hear new evidence (II F & G)**

3.21.090A (new): +Compel testimony: At appeal hearings CRC shall have the power to compel officers and other witnesses to testify regarding the incidents under review.+
or
3.21.160C Remove the sentence fragment and sentence "...in the record. No new evidence may be introduced in the hearing."

Comment: Portland Copwatch believes that if option 1 is used, the CRC also needs to be given power to recommend discipline, as proposed in a footnote:
3.21.090(A)++(9): Recommend discipline: To recommend that discipline should occur for complaints with sustained findings that are more than minor complaints.++

**NEEDED CHANGE 6: Increase size of the CRC (II H)**

3.21.080A: The Committee shall consist of +eleven+ [nine] citizens...

The CRC expressed no opinion on this item at the time of the Stakeholder report. Their objection to enlarging the group, that each person would have less time to talk at meetings, is not reasonable. Increasing the size will allow them to better manage the many work group obligations they have, as well as increase diversity.

**NEEDED CHANGE 7: Expand CRC authority to hear appeals (II K)**

Portland Copwatch proposed this language in a footnote:
3.21.140: add "This provision includes third party complainants in cases in which the subject of the alleged misconduct has not objected to the third party complaint or cannot file his/her own complaint. IPR shall also provide avenues for review in cases that are dismissed or handled as minor complaints."

**NEEDED CHANGE 8: Provide dedicated staff for CRC (II L)**

3.21.090A(new): +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.+

Comment: In discussions since the Stakeholder committee, Portland Copwatch is willing to support this language instead: 3.21.050: (add to end): IPR shall provide adequate staff for the Citizen Review Committee to carry out its powers and duties as outlined in this Chapter.

**NEEDED CHANGE 9: Ensure that IPR reports on certain data (VI A)**

3.21.070B: Report on complaint +and related+ 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 +and report to the same parties regarding+ trends relating +to Bureau member interactions with the public as documented by other available data sources such as Employee Information System (ore equivalent), police stop data,+ 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.

Comment: PCW supports this language.

**NEEDED CHANGE 10: Create guidelines for IPR independent investigations (I C, I G)**

PCW suggests the following language:
add to 3.21.070D: IPR shall investigate or participate in cases involving the rank of Captain or higher. The Citizen Review Committee shall create guidelines for the categories of such high-impact cases for IPR to invoke its power of independent investigation.

Comment: The Stakeholder report includes a list of high-impact cases that may not be appropriate to include in the ordinance. PCW believes it is more likely the IPR will gain community trust (Stakeholder I A) if they follow through with a true independent investigation.

**NEEDED CHANGE 11: Create processes for CRC to review allegations at front end (II I) and to comment on draft policies (V A)**

PCW suggests the following language:
add to section 3.21.090: Other powers: The Committee shall have the authority to comment on incoming complaints to assist the Director in formulating allegations, should they decide to exercise that authority. The Chair of the Committee shall also be presented with drafts of Bureau policies prior to their adoption for the opportunity to comment.

Comment: The Stakeholder report suggests coming up with a timeline in which the CRC must review the complaints so as to keep the process moving, and suggests that the Bureau share policies in draft form. PCW supports these ideas.

**POLICE REVIEW BOARD NEEDED CHANGE: Add more civilian members in use of force cases (IV B)**

3.20.140(C)(2): .....However, when the incident to be reviewed by the board involves the following use of force incidents, [one] +two+ addition citizen member+s+ and one addition peer member shall serve on the Board, for a total of [seven] +eight+ voting members. A quorum of [six] +seven+ voting members, including [two] +three+ citizen members, and the RU manager or designee, and four Advisory members is required to be present to make recommendations to the Chief.

Comment: The IPR staff should not be counted as community members on the board since they are City employees. PCW supports this change.

*(minor changes made after council hearing indicated in italics)*

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**re: Comparing the Auditor's proposed ordinance changes to those of the Stakeholder report**
**Dan Handelman, Portland Copwatch (PCW) December 7, 2011**

**Modification to NEEDED CHANGE 6: Increase the size of the CRC (II H)**

On December 6, Portland Copwatch, recalling earlier discussions with IPR and CRC, recommended the following substitute to the Stakeholder recommendation to expand the CRC to eleven members:

> 3.21.080A:
> The Committee shall consist of nine citizens +and as many as two community members serving as non-voting participants in CRC. These two participants will be trained and certified along with CRC members, attend meetings, serve on Work Groups, and fill vacancies in CRC terms should one occur before a term expires.+

Comments: The idea to add two "alternate" CRC members is based on the fact that on average, from 2002-2010, two CRC members have resigned or otherwise left their position early. We feel that this is a good compromise position between those who feel CRC should remain at 9 members and those of us who want to see more diversity with 11. We used the term "and as many as two" so that if one or both alternates move up to the CRC, they do not have to be replaced until the next round of recruiting. It also does not obligate the City to fill those two seats. We used the terms "trained and certified" to indicate that the non-voting members should be given the same access to IAD files as the full members, which will help spread out the CRC's work load in policy review and other audits.

We hope that the Council and Auditor will support this addition to the ordinance.

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