

Recommendations of Short-Term Committee to Consider CRC Appeals Process & Related Issues

City of Portland, Oregon

December 2016

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Please note: This report was drafted by the facilitators with feedback from committee participants. During the second meeting, an initial version of this report was reviewed and approved with clarifications. After the second meeting an updated draft, reflecting new information from that meeting, was distributed to participants for review and then further modified by the facilitators based on comments received from every committee member who provided feedback. The facilitators have made every effort to accurately describe the conclusions and recommendations of the committee and we thank the many participants who provided guidance to that end.

Regarding meeting minutes: Minutes of the meeting were taken by the City of Portland and are available upon request. Please reach out to Mandi Hood, Program Support Specialist, at 503-823-5149 or Mandi.Hood@portlandoregon.gov for more information.

Committee Participants

Debbie Aiona, *League of Women Voters*

Mark Amberg, *City Attorney's Office*

Captain Jeff Bell, *Portland Police Bureau, Internal Affairs*

Dr. T. Alan Bethel, *Albina Ministerial Alliance Coalition*

Constantin Severe, Anika Bent-Albert, David Nguyen, Irene Konev, *Independent Police Review*

T.J. Browning

Shannon Cogan, *Sisters of the Road*

Nicole Grant, *Mayor's Office*

Dan Handelman, *Portland Copwatch*

Jo Ann Hardesty, President, *Portland NAACP*

Kristin Malone, *CRC Chair* & Julie Ramos, *CRC member*

Kimberly McCullough, Kelly Simon, *ACLU*

James Kahan

Ann Kasper, *Empowerment Roots*

Matthew Klug, *Mental Health Association of Portland*

Amy Ruiz, *Compliance Officer and Community Liaison (COCL)*

Daryl Turner, *Portland Police Association*

Philip J. Wolfe, *Community Oversight Advisory Board (COAB)*

Also attending one or both meetings:

Rochelle Silver, *COAB*

Kalei Luyben

Ted Luyben

Isaiah Spriggs, *Empowerment Roots*

Regina Hannon, *Portland Copwatch*

Charles Johnson, *Portland's Resistance/Don't Shoot Portland*

Roberto Rivera, *CRC*

Teressa Raiford, *Don't Shoot Portland*

Rose Hiong, student

Sylvia Zingeser

Meeting logistics and public meeting record keeping were provided by the City of Portland (Mandi Hood, Program Support Specialist).

Facilitation and reporting were provided by John Campbell & Martha DeLong, Campbell DeLong Resources, Inc.

Summary

Purpose and process

The committee was formed pursuant to a request from Mayor Hales and Commissioner Fritz to convene a short stakeholder review process to provide feedback on two major sticking points noted in public testimony at a City Council meeting on September 14, 2016.¹ The purpose of this short stakeholder discussion was the following:

- ✓ First, to provide constructive recommendations regarding the issues of Appeals Hearing panel size, a potentially-related subject of Citizen Review Committee (CRC) size, and whether (or how) to take public comment during CRC Appeal Hearings. The intent was to identify solutions consistent with a need to accelerate the process without compromising the result.
- ✓ Second, use any remaining available time to outline suggestions for next process-steps for the City to consider to complete a more comprehensive stakeholder review.

Two meetings were held, each three hours in length, the first on November 14, 2016, the second on November 28, 2016. After the second meeting, during which an initial version of this report was reviewed, a final draft was distributed to committee members for review and then further modified by the facilitators based on those comments.

Key areas of agreement

Key areas of relatively broad agreement are shown below. The reader is encouraged to read the full report for more nuance and understanding.

- ▶ There is broad agreement that it makes sense to increase the size of the CRC to at least 15 members, though additional funds for administrative support will likely be needed to do so.
- ▶ There is consensus that, assuming a CRC of at least 15, Appeals panels of a minimum (quorum) of five are acceptable, while going below that number is not desired.
- ▶ The quorum rules for Appeal Hearings and for CRC-generated Policy Recommendations should be different — five for an Appeals panel and a majority of the CRC for policy recommendations. See additional description in the report for how this might work, including how the majority of the CRC would be defined during times of vacant positions.
- ▶ All agree there should be a place for accepting public comment at Appeals Hearings — no one argues for denying public comment entirely at Appeals Hearings. However, there are significant differences of opinion regarding continuing the current practice of allowing public comment during the Hearing itself (that is, prior to decision-making). Highlights of those opinions are described in the report.
- ▶ While the committee endorses increasing the size of the CRC to 15, consistent with the guidelines for the concept described in this report, it recommends against passing other changes, including other modifications reflected in the September ordinance, until such changes can be vetted through a public stakeholder review process.
- ▶ A summary of discussion about what a more comprehensive stakeholder review process could look like, along with a suggested task bin for that work, are also provided in the report.

¹ Item 1033 on the Council agenda was listed as follows: *Amend City Code to revise filing process, investigation and appeal provisions of complaints of police officer misconduct (Ordinance introduced by Auditor Hull Caballero; amend Code Section 3.20.140 and Chapter 3.21).*

Committee Conclusions & Recommendations

Size of Citizen Review Committee (CRC)

Agreement: *There is broad agreement that it makes sense to increase the size of the CRC to at least 15 CRC members.* No one voted in opposition. Abstentions were from the City Attorney and the office of Independent Police Review (IPR) only. Associated caveats and clarifications:

- ▶ **Benefit: Makes achieving a quorum easier.** The recognized benefit to increasing the size of the CRC is primarily one of increasing the likelihood of being able to have a quorum available for Appeal Hearings. While other values are also supported with a size increase (especially diversity in various dimensions), in the context of accelerating the Appeals process the primary value is making it easier to achieve a quorum.
- ▶ **Issue: Resources necessary for added administrative work.** While no committee member opposed increasing the size of the CRC, representatives from IPR abstained and were clear in stating that increasing the number of CRC members is not a revenue-neutral move — that more IPR staff time will be required to scale up the administrative work required to manage a larger CRC. The committee endorses working out the resource issue as necessary to ensure the CRC has the members, and staff support necessary, to fulfill its purpose and obligations.

Agreement: *The quorum rules for Appeal Hearings and for CRC-generated Policy Recommendations should be different.* In brief: With a larger CRC, the quorum for Appeals Hearings should remain at 5 (7 assigned to hear each appeal and 5 constituting a quorum). However, the quorum for making policy recommendations should increase to a number equivalent to a majority of seated CRC members — that is, in the case of a CRC at full strength (15) or one having a single vacancy (14), the quorum would be 8. However, in the event of two vacancies, the number of seated members would be 13, so a quorum would be 7. The concept is to ensure that CRC-originated policy recommendations have the endorsement of the larger committee. Agreement on this approach was broad but not absolute. With the exception of abstaining City staff members and a single vote in opposition from one of the two CRC members on the committee, all votes were in favor.

Size of Appeals Panels

Agreement: *There is consensus that Appeals panels of a minimum (quorum) of five are acceptable, while going below that number is not desired, with these caveats and relevant notes:*

- ▶ **Agreement is contingent on 15 CRC members.** The consensus is contingent on there being at least 15 CRC members. Otherwise, the CRC representatives, in particular, indicate that maintaining five as a minimum size would be difficult.
- ▶ **Benefit: Diversity of panel members.** The primary concern about allowing panels as small as three relates to various concerns about ensuring a diversity (in many dimensions) of panel

members. To be clear, the consensus is not that a five-member quorum is considered a solution for all diversity concerns, but essentially that three is considered too much of a problem in relation to diversity issues.

Taking Public Comment at Appeals Hearings

Regarding the proposed change to PCC 3.21.160.A that would have forbidden public comment at Appeals Hearings in any manner:

Agreement: *All agree there should be a place for accepting public comment at Appeals Hearings — no one argues for denying public comment entirely at Appeals Hearings.*

Key area of disagreement: **There are significant differences of opinion regarding when public comment should be allowed.** The following is intended to be a rough, and necessarily shortened, summary of the positions. (For those wondering which side attorneys in the room favored, the answer is that the opinions of participants in the room who are also practicing attorneys can be found on both sides of this discussion.)

Arguments in favor of changing the code to *forbid public comment* during an Appeals Hearing (that is *prior* to decision making) include:

There is concern expressed by City staff that a labor arbitrator could rule against City-recommended employee discipline by arguing that the City permitted inappropriate, biasing public comments in the Appeal Hearing. The argument is rooted in the concept that, because the employee is, and should be, legally entitled to a fair and unbiased decision-making process, that allowing public comment during the appeal hearing raises the potential for a discipline decision being overturned by a labor arbitrator. While it was noted that this has not happened under the current system that does allow in-hearing public comment, there is evident concern that it could happen in the future. Examples of supporting arguments offered include:

- ▶ Allowing public comment during an appeal hearing is arguably similar to a judge allowing a jury to consider inadmissible evidence, a procedural error that could lead to an overturned verdict in court or, in this case, employee discipline being overturned should an arbitrator see it the same way.
- ▶ Because allowing public comment is not commonly done in other types of appeals procedures it should not be allowed here either.
- ▶ Because the Appeal Hearing is part of an employee discipline process, the ultimate audience is a labor arbitrator who will be assessing whether the officer has received a just and fair process. It therefore makes sense to keep public comment away from the decision-making process to reduce the risk of a discipline recommendation being overturned.

Those expressing concern about the arbitration issue argue for permitting public comment only after the decision has been made.

Arguments in favor of keeping the current practice, which *allows public comment prior to decision-making* at Appeals Hearing, include:

To borrow from the vernacular of the previous argument, while the ultimate audience for upholding employee discipline is a labor arbitrator, citizen involvement in police oversight exists because there is a broader audience as well. The overarching concept is that the purpose of allowing

public comment is essentially that it is consistent with the point of having a Citizen Review Committee — it is the part of the oversight process that is in the public eye. The logic is, if CRC members are volunteers who represent the outside-the-system public, part of the job is to allow the voice of the public into the procedure. It is acknowledged that, despite best efforts, public comment can wander from the point or otherwise convey strong, emotionally-charged opinions. Nevertheless, allowing for public inclusion in the process is seen as central to the purpose and therefore something to be managed, not denied. Examples of related supporting arguments for allowing public comment during the appeal hearing include:

- ▶ Procedural observations from the public have proved beneficial in the past to CRC panel members as a reminder of relevant code or procedure that should be followed. It was noted that providing complainants with paid public advocates (instead of the volunteer Appeals Process Advisors they have access to now) and allowing complainants access to relevant portions of the case file, similar to the access officers currently have, could mitigate some of this issue. But neither of those practices are currently in place (with the issue of sharing the case file information apparently requiring state law changes to accomplish).
- ▶ Given their vetting, training, experience, and familiarity with a wide range of community opinions related to police/community relations, it seems likely that CRC panel members should have sufficient skill to separate non-relevant public comment from their decision-making process, similar to what both judges and juries are called on to do routinely. Also, the Code already contains what might be thought of as the relevant “jury instruction” in 3.21.160(B) regarding new information volunteered during the hearing, from anyone:

“...When the Committee’s review process develops new information, the Committee may consider the new information when determining if additional investigation is warranted, but the Committee may not incorporate the new information in the evidentiary record the Committee considers when determining if a finding is supported by the evidence.”
- ▶ CRC members have to explain the rationale for their vote which contributes to there being a record of whether they were influenced by passions expressed by the public.
- ▶ The reason for the change is, so far, hypothetical. That is, since no discipline recommendation has been overturned by an arbitrator for reasons associated with CRC panel members hearing public comments, the system has worked in regard to that concern for the at-least 15 years the practice has already been in place.
- ▶ The observation that allowing public comment at this stage isn’t commonly done elsewhere should not be considered persuasive. Essentially, the argument is that Portland is known for leadership in oversight, which sometimes involves doing things differently.
- ▶ Observation that *PSF-5.07 - Citizen Review Committee - Public Comment Protocol* (Administrative Rules Adopted by Auditor’s Office Pursuant to Rule-Making Authority) which states, in part, that “The public shall be afforded an opportunity to comment on all issues to be voted on by the Citizen Review Committee after CRC completes its discussion and before CRC votes on the issues” would be in conflict with a code change that forbid taking public comment prior to decision making.
- ▶ Observation that denying public comment during the appeal, as the proposed change to PCC 3.21.160(A) would have done, would place the code in conflict with itself given that the next subsection, 3.21.160(B), includes this statement regarding hearing appeals: “The Committee may receive any oral or written statement *volunteered* by the complainant or the member or other officers involved or *any other citizen.*” [Emphasis added.]

Position of committee participants on allowing during-appeal public comments:

Because the committee did not reach a consensus recommendation, we list here how the committee members voted on the question of whether the code should be changed to forbid public comment during an appeal — that is *prior* to decision making (“during-appeal” comments):

- ▶ Those *in favor of making a change to the code to forbid during-appeal comments* (though allowing comments after the decision) include PPA President Daryl Turner and PPB Captain Jeff Bell.
- ▶ Those *against making the change* (keeping this portion of the code as is) include Debbie Aiona, League of Women Voters; T.J. Browning; Dan Handelman, Portland Copwatch; Kristin Malone, CRC Chair; Kelly Simon, ACLU; James Kahan; Ann Kasper, Empowerment Roots; Matthew J. Klug, Mental Health Association of Portland; and Philip J. Wolfe, COAB.
- ▶ Participating significantly in the discussion but *abstaining* from the vote were IPR Director Constantin Severe; City Attorney Mark Amberg; and CRC member Julie Ramos.

See the facilitator’s recommendation on this topic at the end of this report for additional perspective and suggestions.

Taking Public Comment at the Case File Review

The issue of allowing public comment during the Case File Review¹ does not track the same fault lines as the issue of taking public comment during Appeal Hearings. For example, the representative from the City Attorney’s Office, who had expressed strong concerns about allowing public comment during Appeal Hearings, indicated he had no such concerns regarding public comment during the Case File Review.² Mostly, the concerns about allowing public comment during Case File Review involve little if any discussion about law, due process, or labor contracts and focus more on the frustration that public comments are often unrelated to the question of “the completeness and readiness of the investigation for an Appeal Hearing” which is the question the Case File Review is there to answer.

- ▶ *Those in favor of making the change to PCC 3.2.150(B)* reflected in the September ordinance (that is, inserting the underlined text that begins “Case File Reviews shall not be subject to public comment...”) were PPA President Daryl Turner; PPB Captain Jeff Bell, IPR Director Constantin Severe; and CRC member Julie Ramos.
- ▶ *Those against changing the code to deny public comment* during Case File Reviews include: Debbie Aiona, League of Women Voters; Dan Handelman, Portland Copwatch; Kristin Malone, CRC Chair; Kelly Simon, ACLU; James Kahan; Ann Kasper, Empowerment Roots; and Matthew J. Klug, Mental Health Association of Portland;
- ▶ *Two support an alternate path:* Two committee participants, T.J. Browning and Philip J. Wolfe (COAB), express support for an alternative approach that would accept denying public comment provided that the complainant would have access to the case file.
- ▶ Participating in the discussion but *abstaining* from the vote was City Attorney Mark Amberg.

¹ Public comments during Case File Review are currently part of the process. The proposed change to PCC section 3.21.150(B) would have forbidden public comment during Case File Review.

² The City Attorney’s Office participated in the discussion on both topics while abstaining from all voting.

Recommended Next Steps

OTHER ELEMENTS IN THE PROPOSED ORDINANCE

Agreement: *While the committee endorses increasing the size of the CRC to 15, consistent with the guidelines for the concept described in this report, it recommends against passing any other changes, including other modifications reflected in the September ordinance, until all such changes can be vetted through a public stakeholder review process.*

There were no votes offered in opposition to this statement — all who voted were in favor, with abstentions from the City Attorney's Office and IPR. Two points about the above statement should be kept in mind:

- ▶ Some committee members wish to emphasize that the above statement should not be misconstrued as a negative judgement on all other proposed changes that were beyond the narrow scope of this workgroup.
- ▶ Some, perceiving that the earlier proposed code changes were developed through a process more removed from the public eye and therefore inconsistent with the point of community oversight, want to ensure this report is explicit in stating that proposed changes to code governing the citizen review process should be developed through an equally public process — that is, in public meetings in full collaboration with a broad community of appropriate stakeholders. *See facilitator's comments at the end of this report for more on the above issue.*

WHAT A MORE IN-DEPTH STAKEHOLDER PROCESS MIGHT LOOK LIKE

Though the group did not develop a formal statement to answer the question, we summarize here some of the more resonating points regarding how to convene a longer-term stakeholder review process.

- ▶ There is broad support for convening a longer stakeholder-review process whose purpose is not limited to the narrow scope to which the current group was limited.
- ▶ Inclusiveness is the goal for any stakeholder group, with individuals identifying the following rough guidelines for who should be involved:
 - ✓ Begin with all organizations and/or individual organizers involved in the 2010 stakeholder review process which included:
 - (I'm) Everyday People
 - Albina Ministerial Alliance (AMA)
 - American Civil Liberties Union of Oregon (ACLU)
 - Basic Rights Oregon
 - Center for Intercultural Organizing
 - Citizen Review Committee
 - Portland City Attorney's Office
 - Human Rights Commission
 - Independent Police Review Division (IPR)
 - Latino Network
 - League of Women Voters of Portland

- National Alliance on Mental Illness (NAMI)
- Native American Youth & Family Center (NAYA)
- Portland City Auditor's Office
- Oregon Action
- Portland Copwatch
- Portland National Lawyers Guild
- Portland Police Association
- Portland Police Bureau Chief's Office & Internal Affairs Division
- Portland Police Commanding Officers Association
- Portland City Council, including:
 - ✓ A staff representative from each office
 - ✓ An at-large appointee from each (in 2010 appointees included Jo Ann Hardesty, T.J. Browning, Dorothy Elmore, James Kahan, Rev. Renee Ward, and Gregory Willeford)
- Sisters of the Road
- Truth and Justice for All (TAJFA)
- ✓ Add representatives from:
 - COAB (Community Oversight Advisory Board)
 - Disability Rights Oregon
 - Don't Shoot Portland
 - Empowerment Roots
 - Mental Health Association of Portland
 - Other organizations that may be recommended for the group at the point when such a process begins to take shape. It was also suggested that some youth (or at least under-25) representation be included as well.
- ✓ In response to a devil's-advocate question from the facilitator related to how to define the upper limit in size or participant definition, it was suggested that all participants have experience/familiarity with the issues at hand.

A TASK BIN FOR A FUTURE GROUP

The following topic areas were raised (often repeatedly) in the two meetings and are listed here as a non-exclusive list of recommended discussion topics for a future workgroup:

- 1. Other changes in the ordinance proposed in September 2016.** For example, issues associated with precinct investigations and "controverting" findings were raised in both meetings with requests to discuss further.
- 2. Possible steps to make Appeals Hearing Panel convening easier still.** This issue was discussed at some length before deciding to refer it to this topic list. While the committee reached a consensus on the issue of minimum acceptable panel size, additional suggestions were put forward to make convening easier and to ensure fewer logjams associated with the challenge of scheduling volunteers. The recommendation discussed in most depth is this: With the assigned size of Appeal Hearing panel being seven and a minimum of five being a quorum, that participants on Appeal Hearing panels may also include up to three civilian

members from the Police Review Board (PRB). The proposed approach was to set a rule that might read as follows:

For the purposes of Appeal Hearings, the assigned CRC panel size shall be seven, with a minimum of five constituting a quorum. The assigned panel may include up to three members from the Police Review Board's civilian pool.

The concept is to be able to draw from a slightly larger pool of similarly-trained civilian volunteers and allow an Appeal Hearing to proceed in various instances when a volunteer otherwise is not able to attend. The committee spent time discussing this option without reaching a hard conclusion. The current recommendation is to refer this issue (and potentially an alternate suggestion regarding expanding the Appeals Panel pool by including past CRC members as well) to a future stakeholder committee with a broader scope.

- 3. Allocation of time for review process.** Specifically, various participants question how the logistically-challenging volunteer-run Appeal Hearing process can meet the DOJ-required target of completion within 21 days and are interested in exploring if other procedures can be shortened to still ensure completion of the entire process within 180 days. Points in support included the observation that the length of time allotted for investigation — which does not involve public meeting notices, volunteer coordination, and other logistics of managing an Appeal Hearing, is much longer than the time allotted for the CRC appeal.
- 4. Allowing complainants to see the case file.** On the one hand, there appears to be an imbalance in allowing an officer access to a case file but not the complainant. On the other hand, because the Appeal Hearing is part of an employee discipline process, the City Attorney describes the case file as subject to privacy protections for employee records under state law. Some problem-solving around the various related issues and values seems necessary here.
- 5. Providing a paid advocate for the complainant.** Currently, a volunteer Appeal Process Advisor (who does have access to the case file) is available to the complainant and the complainant may bring his/her own attorney or contact the National Lawyers Guild for a volunteer law student. It is suggested that a more balanced environment might be established with a publicly paid advocate on the complainant side instead.
- 6. Standard of review at Appeals Hearing.** Currently CRC members are required by PCC Chapter 3.21 to make their determination of whether to uphold the finding in an Appeals Hearing based on whether “a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.” (See PCC 3.21.020.S). There is considerable interest in dropping the “reasonable person” standard and using “preponderance of the evidence” instead.
- 7. Role of community in labor negotiations.** Some participants were not pleased when suggestions were made that certain practices were required as a result of items in the labor contract between the City and the PPA. They argue that, if the contract is setting policy and procedures that have bearing on the oversight process and community trust, then arranging for more input from the public on issues such as binding arbitration could be beneficial.
- 8. Methods to better manage public comment without undermining the value of allowing it.** A background refrain is simply that even some of those who highly value public comment find it trying when public comments turn toward the derogatory, inflammatory, or simply non-germane to the purpose at hand.
- 9. Issues associated with Conference Hearings.** There was brief discussion about a suggestion that Conference Hearings (involving the Chief meeting with the CRC about findings with which the Chief disagrees), should be eliminated as another way to speed up the appeals process.

Appendix

Facilitator's Observations

The following are the observations of the facilitation team, based on the current work and our quarter century of local and national work on community and policing issues. These are the opinions of Campbell DeLong Resources, Inc. alone and do not necessarily reflect the opinions of committee participants.

REGARDING SOLVING THE DURING-APPEAL PUBLIC-COMMENT QUESTION

The most difficult issue within this workgroup's limited scope of work was finding a path forward on the question of whether to no longer allow during-appeal public comment. While the findings from the workgroup discussions are described earlier in this report, as facilitators with our own expertise in this arena, we offer the following recommendation and commentary on the subject:

Our recommendation: *Because fairness to the public the City exists to serve is, and should be, as important as fairness to each City employee, we recommend City Council find a way to improve on the process that takes into account the value of both, and to leave the current practice as it is until it identifies that better solution.* The following is our perspective on the issue:

When the discussion turned to this topic, as facilitators we were distressed at the lack of willingness to problem-solve this issue more collaboratively, by many on both sides of the issue. However, we were particularly concerned, despite our prompting and encouragement, at a mystifying lack of expressed awareness that citizen-involved police oversight is included in the disciplinary process because of a need to build/protect public trust — and therefore, such a need should be integrated into the solutions proposed. After all: If the only mission were employment law and labor contract compliance, then it would be simplest to skip oversight by something called a "Citizen Review Committee." Yet we do have a CRC involved in the process and there is a reason for it *separate* from the also-important need to ensure fairness and due process in the employee discipline process. Questions of expediency-versus-public-interest are part of what oversight is, in part, designed to address. Oversight isn't included because it is easy, but because it is important.

In our view, a pathway to solving the underlying issues might begin by considering some or all of the following:

- ▶ **Consider ways to address concerns about complainant support at Appeal Hearings.** As described earlier, some objections to denying public comment during Appeal Hearings hinge on a sense that the playing field is tilted against complainants who, unlike the officer, lack access to information in the case file and guidance from a paid advocate. Solutions that help address the issues of access to case-specific information and access to paid expertise/advocacy, could address some of the concerns held by stakeholders. Given the barriers to doing so identified in the meetings, including laws prohibiting release of certain information, finding solutions would not necessarily be easy, but it seems worth exploring with a greater sense of curiosity about how it could be done.
- ▶ **Split the hearing into two parts.** The first part considers the appropriateness of employee discipline, which is subject to relevant employment law and contractual obligations. The second part considers the often more important question of what, if any, changes the City or Police Bureau could make in response to the case or ones like it. Public comment on that question can then inform policy recommendations that are referred to the larger CRC — and

perhaps somewhat mitigate the desire to deliver the type of emotionally-charged/derogatory comments, if allowed, during the first part.

- ▶ **Manage in-hearing public comment with a paid, skilled process facilitator.** The concept is to have a person with specialized skills (and the benefit of a more neutral position as a non-decision maker), to manage the emotionality and content of public comments and redirecting those that are not germane and appropriate to the appeal to post-decision comment time. To avoid the obvious conflict of interest, such facilitators would likely need to be selected by, and accountable to, the CRC (that is, not employees of the City). A solution along these lines could allow much-valued public comment while perhaps mitigating concerns about vituperative, off-topic, biasing, or unfounded comments. In selecting such a person, we can see value in selecting individuals with judicial or arbitration experience.
- ▶ **Continue the process as it is and direct the City Attorney to take such steps as reasonable to mitigate the potential for an arbitration overturn** — e.g., prepare arguments about the skill and experience of CRC members, provide additional training to CRC members on handling comment content, or other steps as may be of use.

Each of the above suggestions reflect an effort to address the value of fairness to the employee and the value of public involvement and transparency — not as concepts that are assumed to be in opposition to each other, but as important legal and moral obligations, both of which are due fealty and respect. We think individuals who are skilled in grasping both concepts at once can find solutions to this question constructively and quickly.

OBSERVATIONS ON FRUSTRATION WITH THE OVERSIGHT CHANGE PROCESS

Regarding community-stakeholder frustration:

While community stakeholders were glad their voices were heard at the City Council's public meeting where the proposed ordinance changes were discussed, the sense of anger at the process that led to the proposed changes was in evidence throughout much of the two meetings. While this narrow-scope committee did help address some concerns, it did not fully address the suspicion, frustration, and often anger felt by many long-time involved community members about the City's most recent effort to change aspects of the oversight process without developing proposed changes through publicly-held meetings involving a broad range of stakeholders.

What community members on the committee want to see is consistent recognition, and follow-through, by elected leadership at the City that:

- ▶ The point of community involvement in police oversight is to prevent the values of good public service and public trust from being treated as a lower priority than liability avoidance, competing legal mandates, or any number of other issues unrelated to the public service point of the job. Because efficiency and ease of legal compliance concerns can motivate a desire to keeping the public away from the process, stakeholders are understandably suspicious of changes in that direction made without their input.
- ▶ A simple way for an officer to avoid most complaints is to never make a stop or an arrest, but the public benefits hugely from officers who are willing to do those tough things anyway and do them well. Equally, the simplest way for a City to avoid an employment suit is to impose no discipline and never acknowledge a mistake, but the public benefits hugely from police management/leadership that is willing to do those tough things and do them well. In other words, the point of community involved oversight is not to make the City's job easier, but to stand watch at points where management might be tempted to compromise the value of good

public service for the expedience of easier employment law or contract compliance. This makes the City's job harder, but for reasons that are in appropriate service to the public welfare.

- ▶ Changes in the oversight process that raise the likelihood of outcomes that improve community/police trust and partnership should align well with community stakeholder concerns. That begins with ensuring an involved community is at the table when changes to how the community will interact with the oversight process are up for discussion.

A higher commitment to acknowledging the above points will help advance the mission of repairing trust and perhaps help future conversations about these issues pivot more easily from frustration to problem-solving.

Regarding frustration from all sides:

While the oversight process can be improved, regarding the overarching goal of building a better, more workable foundation for police-community trust and collaboration, we encourage all parties to consider the following:

- ▶ **The ability of discipline-oriented oversight to improve trust has hard limits.** Legal proceedings based on there being a complainant and an accused are unlikely to lead to better trust by themselves. Ask people who have close experience with a lawsuit, criminal justice proceeding, discipline hearing, or any similar procedure that involves wronged feelings, accusations, and potentially significant emotional, financial, or other personal stakes in the balance. Our experience suggests the most common emotion — even for those who technically “win” — is some bitterness mixed with a devout wish to avoid going through the experience again.

Indeed, we suspect that, too often, such a reaction is the one thing that officers and complainants are likely to have in common when the process is complete. (To be sure, work has been done to mitigate the frustration both parties can come away with, but the opportunity for embitterment on both sides remains significant.)

- ▶ **Despite its limits, there is a clear need for community-trusted independent oversight.** The reasons for this are numerous, so we'll give only the most obvious one here: Policing is the part of government tasked with making thousands of daily, situational, decisions about the point where the rights of a person and the obligation of that person to comply with society's laws are parsed and weighed — not in the relatively languorous world of a court, committee, or council room, but in the field, in situations often requiring on-the-spot choices about risks, rights, laws, and potential outcomes. Making sure that other pressing cultural characteristics (e.g., loyalty vs. integrity) or legal motivations (e.g., employment law or contract concerns) aren't pushing the interests of the public from the motivational mix is an essential reason to have independent community oversight.

Finally, in light of the above two points, we encourage all parties to recognize that the path to building police-community trust cannot be built on an emotionally-frustrating complaint/response system alone, and then to act on that recognition. Moving both the public and the police to a place of better mutual trust and understanding will also require programs and practices (not just training and discipline-oriented oversight) that give both police and the community it serves a pathway to change together. We think there are very significant opportunities to advance police-community trust (and the officer job satisfaction that would rise with it) by doing more in this arena — an area that is entirely separate from the question of discipline-oriented oversight, yet still critical to the well-being of everyone who calls Portland home.