

Albina Ministerial Alliance (AMA) Coalition for Justice and Police Reform Comments on the new Police Oversight ordinance

MAY 24, 2010 (Revised from March 18, 2010 letter to Council)

From Chair, Dr. Leroy Haynes and members of the AMA Coalition for Justice and Police Reform

GENERAL COMMENTS:

Stakeholders should work together to: (1) review and assess implementation of the changes, (2) hold IPR and the PRB accountable for the changes, and (3) incorporate important changes to the Citizen Review Committee (CRC) of the IPR.

CITY AUDITOR'S INDEPENDENT POLICE REVIEW DIVISION – Chapter 3.21

We support “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” (as described in the ordinance).

The major problem is that the ordinance leaves in place the IPR's dependence on the Bureau's Internal Affairs Division (IAD) in most cases for the full investigation, and when IPR does investigate, it again must rely on IAD to compel officer testimony, until the labor contracts allow for IPR to ask questions directly. We hope Council will take steps to make this truly independent form of investigation a reality.

The ordinance gives vague criteria for the IPR Director to initiate investigations, broad criteria for her to dismiss complaints, and is not explicit as to whether the IPR can investigate shootings and deaths and custody; it should be. We have concerns that the current Portland Police Association (PPA) contract explicitly prohibits IPR involvement in shootings and deaths cases.

POLICE REVIEW BOARD CODE – 3.20.140

We applaud the idea of ingraining the Use of Force and Performance Review Boards into City Code rather than relying only on the Bureau's directives. We are encouraged by the merging of the two boards and the increased role of IPR, which moves us closer to an integrated system of accountability. It is especially encouraging to see the requirement for public reporting about the outcomes of cases, albeit with names taken out.

Our concerns regarding the proposed PRB include (1) the insufficient number of citizens on the PRB, and (2) the final discipline imposed can differ from the PRB's recommendation without explanation.

Line Item Comments on Proposed Police Oversight Ordinance From the Albina Ministerial Alliance (AMA) Coalition for Justice and Police Reform

CITY AUDITOR'S INDEPENDENT POLICE REVIEW DIVISION – Chapter 3.21

Definitions

1. Change the standard of review from “reasonable person” to “Preponderance of the evidence” in the definitions section. 3.21.020 S.

Powers and Duties of the IPR

2. Eliminate the use of police Internal Affairs Division (IAD) to conduct investigations for cases involving contact with community members (all cases except “Type II”); instead, transfer funds being used to pay for the IAD’s civilian investigators to IPR, and allow all cases to be investigated by IPR. 3.21.120 C.2.a; 3.21.120 D.1-3.
3. If IAD continues to investigate cases involving community members, give explicit criteria for why the IPR director would start an investigation. The Luna Firebaugh lists certain kinds of cases such as but not limited to "high-profile shootings, deaths, use of force with serious bodily harm, racial profiling, illegal searches," and when there is "high emotion in the community," or a conflict of interest. 3.21.070 D; 3.21.120 C.2.b; 3.21.120 D.4.
4. Explicitly state that IPR will have the ability to investigate and/or monitor investigations of shootings and deaths in custody. "Incidents that involve members that are of community concern" should state “including officer involved shootings and in custody deaths.” Past directors, Auditors and other officials have claimed they cannot currently review such cases directly, but nothing in the existing ordinance prohibits this. Thus, it must be made explicit that IPR can review officer involved shootings and in custody deaths. 3.21.070 D
5. Address any provisions in the Collective Bargaining Agreement that states that IPR will not be involved in shootings and deaths investigations. This needs to be addressed in the ordinance, and changed in the contract. (PPA Contract sections 61 and 62).
6. The current ordinance creates a conflict of interest where by the City Attorney is asked to approve bringing in outside legal counsel when the conduct of its employees is at issue. The ordinance should allow the IPR Director, the Auditor and/or the Citizen Review Committee to determine whether or not to hire outside counsel, with an eye toward giving IPR independent counsel through charter change. 3.21.070 O.

Powers and Duties of the Committee

7. The Citizen Review Committee needs to be given its own power to compel officer and witness testimony that is not dependent on the City Council or the IPR, and to recommend discipline. 3.21.090, 3.21.160 D.

Handling Complaints

8. Remove the new provision allowing the IPR Director to dismiss a complaint where she determines “it is more likely than not that no misconduct was committed.” If this section must remain, define the criteria the IPR Director may use for such a dismissal. The proposed language grants the IPR Director complete and unreviewable discretion to dismiss complaints under these vague circumstances. 3.21.120 C.4.

POLICE REVIEW BOARD CODE – 3.20.140

The following suggestions to 3.20.140 reflect our view on how to strengthen this body:

1. Voting members: There should be at least three (3) citizens on the Police Review Board as there are currently three (3) citizens total in the combined on Use of Force and Performance Review Boards. The voting members on the PRB are too heavily weighed toward the police: In the proposal, there are five members, of which three are police employees, or for shootings, deaths, injury or less lethal incidents, seven members with four police employees. 3.20.140 C.1.a.(1) / PPB Directives 335.00 and 336.00.
2. The ordinance states that members shall have access to “necessary and relevant documents.” The ordinance must clarify who determines what is necessary and relevant. The voting members should have access to all information pertaining to the incident. 3.20.140 D. 1.
3. The ordinance should set standards or criteria by which the Auditor can exercise her authority to remove citizen members from the pool, rather than at her sole discretion. At the very least, the Auditor should have to explain publicly why she has removed a citizen from the pool. 3.20.140 C.1.a.(1)(b).
4. The Chief of Police or Commissioner in Charge can make the final decision on discipline based on the findings of the Review Board, which are merely recommendations. The Chief or Commissioner should explain in writing, publicly, how and why they made their decision especially if it differs from the Board's recommendation. 3.20.140.H