

POLICE OVERSIGHT STAKEHOLDER COMMITTEE

FACILITATION DRAFT

JULY 15, 2010 WORKING DRAFT 3

While a number of organizational changes have been made in this document, we have limited the text shown in blue to particularly substantive changes since the July 1 meeting.

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DRAFT: This document does not reflect the opinions, conclusions, or recommendations of the workgroup, its participants, or the City of Portland. It is intended only as a facilitation tool to assist in discussion.

Committee Membership

[List to be provided here]

Facilitator's Introduction

The following thematic observations by the facilitator may assist in interpreting the meaning and intent of this draft.

- ▶ **This facilitation draft is an attempt to summarize areas of committee consensus.** Where full committee consensus is not available, the consensus of those on the committee who are not employed by the City of Portland — referred to in this report by the umbrella term “community stakeholders” — is summarized. The descriptions used in the recommendations provided are intended to indicate the degree and type of consensus for each recommendation.
- ▶ **The question of whether a lot has been done to improve the oversight system is not the same as the question of whether enough has been done.** It is important to understand that there is a difference between the level of agreement on the committee for what should be recommended and the level of agreement on the committee regarding the current state of the oversight system. On the one hand, an argument can be made that changes in code, policy, and practices have done much to improve the potential of the complaint system for producing better results — that those involved in shepherding such changes, whether operating from positions in the Bureau, the Auditor's Office, the City Council, or as involved [community members](#), have made a positive difference. However, the ultimate question of effectiveness in government is neither “have we done a lot?” or “have we done more than most cities?” The question that matters most is, “Have we done enough?” By that measure, it is the consensus of community stakeholders that more needs to be done.
- ▶ **Police-community trust levels, critical to ensuring effective public safety partnerships, can be harmed as badly by perception as by reality.** When attempting to build community trust, the factual degree of objectivity is not the only question that matters — community concerns/perceptions over objectivity are a critical and relevant component as well. A theoretically perfectly objective judge who presides over a case that involves a long-time colleague will find his or her objectivity questioned if the case is decided in the colleague's favor. Such questions are unavoidable, regardless of the actual objectivity of the judgment. Current practices, even though they have been substantially improved over time, still present the community with similar, compelling reasons to distrust the outcome.
- ▶ **Ultimately the oversight system must be trusted as one that, when the choice must be made, will place the benefit of full and prompt disclosure to the [community](#) ahead of the need to minimize legal exposure for their government.** Openness, along with a willingness to accept administrative responsibility for tragic outcomes, are critical components to the work necessary to build or maintain community trust. Yet the understandable concern over increased liability risk to City government can result in a reduction in forthright disclosure, longer waits for information, or a reluctance to plainly and specifically acknowledge administrative responsibility for a harmful outcome. On the other hand, case-review procedures that result in multi-year delays or in less-than-forthright disclosure also come at a steep price in lost community trust. As facilitators, we see no perfect resolution. Nevertheless, we believe it is appropriate to point out that the balance point between these two concerns is an important one and that, in the interests of better serving the [community](#), there may be a need to more frequently accept the potential of some elevated risk in order to keep faith with the value of accountable, and timely disclosure.

Key Results Desired

OVERALL OUTCOMES

The following outcomes were discussed at the meeting on June 3rd, with adjustments to reflect that discussion shown.

1. Increase community faith that the oversight system is independent, fair, appropriate, worthwhile.
2. Reduce use-of-force incidents generally and use of deadly force incidents, specifically. Prevent all shootings of unarmed subjects and achieve fewer injuries to unarmed subjects who have mental illness or are in crisis.
3. Improve City's response to people who are mentally ill.
4. Demonstrate clearer Bureau commitment to improving trust & partnership relationships with communities served.
5. Increase percentage of community members experiencing officers as welcome, safe to call and interact with.

METHOD RESULTS

The following method results are recommended as a working definition of the type of specific structural or procedural changes stakeholders have expressed a desire for.

1. More true independence, fewer real or perceived conflicts of interests
2. Reporting that is more coherent, transparent, and prompt
3. More evidence/reality of IPR commitment to purpose
4. More evidence/reality of responsive change at Police Bureau

Recommendations of the Committee

I. IPR authority & structure

Issue statement: Community trust in the oversight system is a function of the fairness and professionalism of the individuals tasked with making it work as well as the likelihood that community members, when considering the design of the system, would conclude that conflicts of interests and historically perceived biases have been designed out of the approach.

From the community stakeholders on the committee, there appears some consensus around the need for the following direction of change:

- 1. Ask every complainant if they would prefer to have IPR or IAD investigate their complaint and document the response.** IPR can immediately begin measuring complainant faith in the system by asking each complainant their opinion of whether they would prefer to have the complaint investigated by the Auditor’s Office or by the Portland Police Bureau.
 - A.** If the results of such measurements indicate a substantive preference for investigations by IPR, move investigative resources from IAD to IPR.
- 2. Repair community distrust of use-of-force investigations (up to and including shootings and in-custody deaths).** There is consensus from community stakeholders around this concept: Public faith in the oversight system is critically important and, regardless of the steps taken in the past to improve public faith in the investigation of police use-of-force incidents, public faith has not improved. The specific steps recommended to accomplish this have generated less consensus, with recommendations along the following lines mentioned more frequently:
 - A.** Have IPR conduct all administrative¹ investigations of use of force complaints, and in particular, all shootings, deaths in custody, and other serious injury incidents. Monitor any associated criminal investigation as well. Have IPR conduct all other investigations involving allegations of racial profiling, illegal searches, conflicts of interest, or other “high emotion in the community” issues.
 - B.** Ensure that IPR has, and exercises, power to conduct the above described investigations with no waiting period.
- 3. Diversify the pool of investigators at both IPR and IAD to include:**
 - A.** People with investigative skills who have not been police officers in general, nor Portland officers specifically, per Luna-Firebaugh recommendations².
 - B.** A much greater demographic (racial, ethnic, cultural) diversity and competency. (One suggestion is to apply the diversity and conflict-of-interest guidelines already existent for the CRC.³)

¹ The term “administrative” investigation is used here to draw a distinction from the criminal investigation which would seek to determine if a crime has been committed. An administrative investigation would, for example, evaluate whether the officer acted in a manner that is consistent with Bureau policy and training.

² “...In order to balance the IPR office, these new investigators should not have a police background. While it is important to retain existing staff, it is also important to broaden the recruitment, and selection process. Outreach for new staff positions should include civilian investigative arenas, for example, organizations that have investigators (e.g. OSHA, Housing authorities, health care programs and others), Public Defenders, Private Investigators, attorneys and legal workers. This will enhance public confidence in the office, while preserving dedicated staff in their positions.” From Luna-Firebaugh report, Recommendation 4 shown on page 117.

- 4. Require that IPR investigates all complaints of those with the rank of captain or higher.**
- 5. Ensure investigations by IPR and reviews by CRC are neither delayed nor prevented by City liability concerns.** There is a consensus among community stakeholders that both IPR and CRC should be able to “go where the investigation takes them,” to do so without delay, and to appropriately publicly disclose the result unimpeded by liability concerns to the City of Portland as a corporation. Concepts offered in support of the above consensus statement include:
 - A.** Make it easier for the Auditor to hire outside counsel at the Auditor’s discretion.
 - B.** Ensure that the CRC may conduct all reviews within its purview at its own option exclusively.

II. CRC and Council oversight authority/structure

- 1. Change the definition of “supported by the evidence” as that term is used in PCC 3.21.160 Hearing Appeals.** The definition should change from the “reasonable person” standard defined in 3.21.020 Definitions to a “preponderance of the evidence” standard, per the discussion in the Luna-Firebaugh report.

III. Openness, usefulness, and speed of reporting

[No specifics defined yet]

IV. Police Review Board structure/process

- 1. Do not permit the supervising RU command to vote as a member of the PRB in specific situations.** The supervising RU commander should not be a voting member of the Police Review Board in cases of deadly force, in-custody death, or physical injury requiring hospitalization. *After considerable discussion on the topic, this recommendation was supported by a vote of 11 to 1 (with 1 abstention) by community stakeholders present, and opposed by a vote of 5 to 1 (with 5 abstentions) by city staff persons present.*

V. Complaint-driven PPB policy improvement process

[No specifics defined yet]

VI. Non-complaint driven PPB improvement process

[No specifics defined yet]

V. Complaint-driven PPB policy improvement process

[No specifics defined yet]

³ 3.21.080 A3: “Selection criteria shall include...[the] absence of any real or perceived conflict of interest.” And 3.21.080 A6: “...consideration shall be given to the current composition of the Committee and appointments should be made that will cause the group to best reflect the demographic make-up of the community.”

Recommended July 15 Discussion Topics

The following topics are recommended for discussion at the July 15th meeting. These are selected based on recommendations from committee members as well as the facilitator's perception of either their importance or likelihood to reach consensus efficiently.

- ▶ **Give CRC the authority/permission to make policy recommendations directly to PPB.**
- ▶ **Increase the length of term for CRC members from two years to three years.**
- ▶ **Revise the definition/categories of findings.**
 - ✓ Return possible findings to: *exonerated, unfounded, sustained, and insufficient evidence.*
 - ✓ Add *supervisory failure, training failure, and policy failure* as possible findings. The added findings would give options to those making the decisions who may find officers were within policy, but the policy itself needs to change, the training is inappropriate, or the supervisor should have intervened differently.
 - ✓ Use a better term for minor complaints (currently "Service Improvement Opportunities").
- ▶ **Change the policy on mediation for certain types of complaints** such as use of force; when a person is hospitalized; legal violations, use of a racial, ethnic, gender or sexual-orientation-related epithet; or in cases of officers with a pattern of misconduct.⁴ *[Facilitator's note: This recommendation appears to spring not from a dislike of mediation, but from a concern that participating in mediation would result in the information about the complaint no longer appearing in the officer's record.]*
- ▶ **Grant IPR authority to compel officer testimony and directly interview police officers.**
- ▶ **Get a faster timeline for public release of investigative results.** In particular, methods are needed that would guarantee the more rapid release of the results of administrative investigations of deadly force, in-custody death, or physical injury requiring hospitalization. *[Facilitator's note: while the comments on this issue tended to urge "completion of investigations" more quickly in order to gain the results, we have rephrased somewhat because delays in releasing results are often a function of steps occurring after the investigation phase is already complete.]*
- ▶ **Bureau use-of-force policies (and proposed changes) should be reviewed with input from IPR or CRC.** Examples of specifics: Any proposed changes to use of force policies should be reviewed by IPR or CRC and/or representatives of one or both should be included on any Bureau task force established to review such policies.
- ▶ **Fund adoption of technology that would video record, or at least audio record, every interaction with the public.** Existing technology would permit the creation of the functional equivalent of a 9-1-1 tape for every interaction. (May require legislative change to permit full use.)
- ▶ **Have Auditor's Office (or IPR or CRC) monitor the Employee Information System and provide independent analysis of stop data and related management information.**

⁴ Luna-Firebaugh report, page 118: "The IPR should offer and conduct the mediation of complaints at the request of either party, and the concurrence of both, on all complaints that make allegations of discourtesy or procedural complaints. *The IPR should not offer mediation for complaints that allege use of force, legal violations such as improper stop, detention, search, or arrest, or where the officer has a pattern of misconduct.*" (emphasis added).

Other Suggestions Offered

Through surveys collected from committee members in advance of the meetings, a number of suggestions were offered. The following briefly summarizes suggestions which have not been discussed in the full committee meeting and have not been placed in the queue for the next meeting. As such, these suggestions do not necessarily represent a majority or consensus view of the Oversight Committee.

The following pages are intended to categorize the broad range of subject areas that stakeholders have raised in advance surveys, during the meetings, and in follow-up discussions.

Please note that this is only an attempt to summarize, in very compact form, the nature of the other comments offered. *It is possible that some comments offered are based on inaccurate or outdated information about process or policies, which issues we assume will be clarified during the meetings to come.*

IPR AUTHORITY & STRUCTURE

- ▶ Ensure sufficient investigation resources by mandating a per-officer ratio (e.g. one investigator for every 100 officers)
- ▶ Consider methods to prevent or address the possibility that a future appointed IPR director could be unsympathetic to the purpose of Independent Police Review.
- ▶ Establish an avenue for appeal or reconsideration for cases involving quality-of-service or minor rule violations. For example, allow citizens to appeal dismissed complaints or low-level, so-called “service” complaints against officers to the Citizens Review Committee.
- ▶ Provide more clarity, definition or limits to the IPR Director’s discretion to dismiss complaints when “it is more likely than not that no misconduct was committed.”

CRC AND COUNCIL OVERSIGHT AUTHORITY/STRUCTURE

- ▶ **Expand/change the powers of the CRC or make it more independent of IPR.**
 - ✓ Give CRC more control over hearings, make explicit CRC’s authority to send back allegations for reformulation
 - ✓ Give (or strengthen) CRC authority to:
 - Compel officer testimony and the testimony of other witnesses
 - Present appeals cases directly to City Council without IPR staff involvement
 - Send complaints back for further investigation or to re-categorize allegations
 - Review dismissed and declined complaints
- ▶ **Make changes to the CRC structure.**
 - ✓ Increase the size of the CRC from 9 to 11 members to encourage more diversity and spread out the workload.
 - ✓ Modify the member selection process to improve transparency, inclusiveness.
 - ✓ Provide CRC with its own staff person.

▶ **Have CRC more directly involved in policy review and recommendations.**

- ✓ Consider creation of a separate civilian committee within IPR, perhaps made up of former CRC members, to focus on policy review as its sole duty. There should be overlap with the CRC because in many cases of civilian complaints about officer conduct there is no violation of policy, but those complaints help identify policies that need to be revised or improved. *[Facilitator's note: If the committee recommends to permit the CRC to make recommendations directly to the Police Bureau, it would seem that the CRC would have all necessary authority to implement this type of approach under existing code.]*

▶ **Strengthen, adjust, or clarify the City Council's role.**

- ✓ Reconcile situation where Council can subpoena witnesses but not hear new evidence, while the CRC can hear new evidence but not compel witness testimony.
- ✓ Change the fact that while Council is given the "final" vote on whether an officer is in or out of policy, the officer still has the ability to overturn the finding in "mitigation."
- ✓ Have City Council require another stakeholder review one year after the effective date of the implementation of the ordinance.

OPENNESS, USEFULNESS, AND SPEED OF REPORTING

- ▶ Reexamine the need to pause the clock when cases are in civil litigation. This can lead to a years-long delay. Holding an officer accountable for his/her actions and identifying policy and training issues as soon as possible will improve police services in Portland.

▶ **Allow more information to be released.**

- ✓ The chain of ownership on documents should be changed so that IPR can make reasonable decisions to release public information such as police reports, even if the code requires them to block out names and other personally identifiable information.
- ✓ Documents utilized by the CRC in reviewing complaints should be accessible to the public. Decisions made that rely on "secret" documents will not help establish public trust in the oversight process. It may be that some documents will require redaction to protect the security of complainants and witnesses, but most information should be available for public review.

▶ **Identify currently closed meetings that would benefit from being open to the public.**

- ✓ Open police bureau/IPR task force meetings such as the Use of Force Task Force to public observation.

▶ **Provide more public disclosure of discipline information.**

- ✓ Require the Chief or Commissioner to explain in writing, publicly, how and why they made their decision when it differs from the PRB's recommendation and to do so in 30 days.
- ✓ Provide more disclosure of the discipline, perhaps in aggregate, that takes place in the Police Bureau.

▶ **Give complainants the same rights as officers to waive the time limits and to receive written notification of time extensions.**

POLICE REVIEW BOARD STRUCTURE/PROCESS

- ▶ Increase the number of citizens on Police Review Board by at least three additional community members.
- ▶ Clarify process to ensure that voting PRB members have access to all information pertaining to the incident. For example, clarify the process for determining which documents are “necessary and relevant” and thus available for voting PRB members to review.

COMPLAINT-DRIVEN PPB POLICY IMPROVEMENT PROCESS

- ▶ **Provide better reporting of policy recommendations received, and policy changes made, by PPB**
 - ✓ Public reports summarizing statements of findings and concerns about training and investigations should include summaries of policy recommendations the Police Review Board submitted to the Chief.
- ▶ **More public (or CRC) participation in development of all bureau policies.** When the Bureau establishes task forces or committees to work on policy issues, the meetings should be open to public attendance. Alternatively, when new/revised PPB directives are in draft form, they should be presented to CRC for their review and for public comment. *[Facilitator’s note: A separate suggestion to ensure participation in use of force policy change specifically has been schedule for committee discussion.]*
- ▶ **Other complaint-specific policy change.**
 - ✓ Preserve investigation information throughout the entire career of each officer investigated.

NON-COMPLAINT DRIVEN PPB IMPROVEMENT PROCESS

- ▶ **Enhance Bureau’s QA/ “curiosity” methods to improve Bureau’s ability to make changes before issues become complaints.**
 - ✓ Implement a Quality Assurance program to better identify, correct, and improve institutional practices through a system that is not based on determining blame, but based on finding and correcting errors. (Would not replace complaint-based oversight tools, but provide a alternate method to ensure responsive change regardless of whether specific proof of wrong-doing has been established.)
- ▶ **Develop and expand more effective two-way trust and understanding steps between police and communities served.**
 - ✓ More recruitment of minority officers and those with particularly high cultural competency.
 - ✓ Consider other proactive options, such as ride-along expansions.
- ▶ **Ensure Bureau’s commitment to various specific recommendations and programs already in place or recommended.**
 - ✓ More training of police about mental health and other problems that need to be addressed some other way than lethal force.
 - ✓ Expanded training on de-escalation techniques.
 - ✓ Keep the Crisis Intervention Training program intact.