

Police Oversight Stakeholder Committee

August 12, 2010 Working Draft

## Recommendations of the Committee as of July 15, 2010

The following are the recommendations of the Police Oversight Stakeholder Committee as of the conclusion of the July 15, 2010 meeting, with information developed at that meeting shown in blue text. (Red text shown on page 4 is a suggested modification from the Subcommittee that is believed to be minor in scope and is scheduled for discussion at the August 12 meeting). Additional recommendations will be determined through a process to be concluded in the last two meetings and will be added to this list. As the final set of recommendations will likely be included through a process of voting without the benefit of comprehensive discussion on each item, it seems possible that a lower level of overall agreement will be found for those recommendations yet to be added.

### I. IPR authority & structure

<p><b>1. Ask every complainant if they would prefer to have IPR or IAD investigate their complaint and document the response.</b> 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.</p>	<p><b>Consensus</b></p>
<p><b>2. Repair community distrust of use-of-force investigations (up to and including shootings and in-custody deaths).</b> 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 sufficiently improved.</p> <p><i>The specific steps recommended to accomplish this have generated less consensus, and committee members will be polled on their opinions of those elements.</i></p>	<p>Community Consensus</p>
<p><b>3. Diversify the pool of investigators at both IPR and IAD to include:</b></p> <p><b>A.</b> People with investigative skills who have not been police officers in general, nor Portland officers specifically, per Luna-Firebaugh recommendations<sup>1</sup>.</p> <p><b>B.</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.<sup>1</sup>)</p>	<p><b>Consensus</b></p>

<sup>1</sup> "...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.

<p><b>4. Ensure investigations by IPR and reviews by CRC can proceed in a manner that is consistently and objectively independent.</b> There is a general consensus that both investigations by IPR and reviews by CRC should be consistently permitted to “go where the investigation takes them” without delays associated with concerns that the resulting findings could help support a civil claim against the City.</p> <p><i>Concepts offered in support of the above consensus statement focus on allowing the Auditor’s office to more easily hire outside counsel. Committee members will be polled on their opinion of those elements.</i></p>	<p><b>Consensus</b></p>
<p><b>5. Formalize/mandate what is current practice to not use mediation in serious use-of-force cases.</b> It is the consensus of the committee that cases involving use of force that result in hospitalization should always be investigated and, as such, should not be eligible for mediation. Specifically <i>Portland City Code 3.21.120 (A) Mediation</i> should have an additional sentence added to the end of the paragraph that would read as follows: “<u>No use-of-force complaint that results in hospitalization shall be eligible for mediation.</u>” While the committee members recognize, and appreciate, that this is current practice, the desire is to ensure that the practice remains policy regardless of personnel/management turnovers.</p>	<p><b>Consensus</b></p>
<p><b>II. CRC and Council oversight authority/structure</b></p>	
<p><b>1. Change the definition of “supported by the evidence” as that term is used in <i>Portland City Code 3.21.160 Hearing Appeals</i>.</b> The definition should change from the “reasonable person” standard defined in <b>3.21.020 Definitions</b> to a “preponderance of the evidence” standard, per the discussion in the Luna-Firebaugh report. <b>A consensus recommendation:</b> This recommendation was supported by the committee with no opposition stated.</p>	<p><b>Consensus</b></p>
<p><b>2. Give CRC the authority/permission to make policy recommendations directly to PPB.</b> Specifically, that <i>Portland City Code 3.21.090 Powers and Duties of the Committee</i> section (A)(3) be modified to read: “Recommend policy changes. To <del>help the Director</del> identify specific patterns of problems and to <del>participate in the development of</del> policy recommendations.” <b>A consensus recommendation:</b> The committee voted to endorse this recommendation with no opposing votes, a majority in favor, and a limited number of staff abstentions.</p>	<p><b>Consensus</b></p>

<sup>1</sup> 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.”

<p><b>3. Increase the length of term for CRC members from two years to three years.</b> Specifically, that Portland City Code 3.21.080(B)(2) be modified to read: “Each serve a term of <del>two</del> <u>three</u> years, subject to reappointment by Council. Upon expiration of the term, a committee member shall serve until re-appointed or replaced.” <b>A consensus recommendation:</b> The committee voted to endorse this recommendation with no opposing votes, a majority in favor, and a limited number of staff abstentions.</p>	<p><b>Consensus</b></p>
<p><b>III. Openness, usefulness, and speed of reporting</b></p>	
<p><b>1. Revise the definition/categories of findings.</b> The purpose in doing so is to facilitate more useful statistical understanding of results, more clarity of understanding for complainants, and to more formally identify systemic (as opposed to individual) areas of concern / opportunities for improvement. Two recommendations are endorse by committee consensus:</p>	<p><b>Consensus</b></p>
<p><b>A. Develop categories of findings regarding the specific allegation that includes four categories, instead of the current three.</b> While some committee members envision these categories as <i>exonerated/in policy, unfounded/not supported, insufficient evidence and sustained/out of policy</i> (along with the currently-in-use <i>with/without debriefing</i> qualifiers), there is <i>not</i> a full consensus on using those terms specifically. <i>There is, however, a full consensus on the need to achieve the fourth category by separating the current category of “unproven” into categories approximately equivalent to the technical understanding of the terms “unfounded” (meaning that the evidence does not, in fact, support the allegation) and “insufficient evidence” (meaning that there is simply not enough evidence to draw a conclusion as to whether the allegation is true or not).</i> The distinction is one that is understood to be important in the mind of complainants, because the former is, roughly speaking, a finding in the officer’s favor, while the latter is simply a statement that the investigation is inconclusive.</p> <p><i>The specific definitions recommended to accomplish this have not reach a full consensus. Committee members will be polled on their opinions of those elements.</i></p>	<p><b>Consensus</b></p>

<p><b>B. Ensure that findings routinely indicate a separate rating regarding the overall incident that would identify the presence of any <i>policy-related issues</i><sup>1</sup></b> (as opposed to allegations regarding a specific Bureau member). Recommended categories for this data are as follows: <i>Communication issues, Management issues, Training issues, Equipment issues and Other policy-related issues</i>. It must be emphasized that the consensus that underlines this recommendation hinges on these categories being used to identify associated system deficiencies and expressly <i>not</i> used for the more narrow purpose of identifying an individual whose specific behavior associated with the complaint-incident requires investigation. The purpose of these categories, rather, is to identify important institutional/administrative issues that do not rise to the level of possible individual employee misconduct. (As is the current practice, instances of potential supervisory / management misconduct would continue to be dealt with through the process of investigating that specific behavior.)</p> <p><i>The specific definitions recommended to accomplish this have not reach a full consensus. Committee members will be polled on their opinions of those elements.</i></p>	<p><b>Consensus</b></p>
<p><b>IV. Police Review Board structure/process</b></p>	
<p><b>1. Do not permit the supervising RU command to vote as a member of the PRB in specific situations.</b> 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. <i>After considerable discussion on the topic, this recommendation was not supported by a consensus of the committee but 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.</i></p>	<p><b><i>Split vote. Favored by most community stakeholders.</i></b></p>
<p><b>V. Complaint-driven PPB policy improvement process</b> [No specifics defined yet]</p>	
<p><b>VI. Non-complaint driven PPB improvement process</b> [No specifics defined yet]</p>	

<sup>1</sup> By "Policy-related issues" we are specifically referring to the current definition of this phrase in the Portland City Code 3.21.020.U: "Policy-related issue" means a topic pertaining to the Police Bureau's hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular officer's conduct.