

**3-31-10: Changes to Exhibits A, B & C – proposed IPR revisions:** The IPR Director and Assistant Director had several meetings since the 3-18-10 hearing, including a public meeting coordinated by the Human Rights Commission, and several hours of meetings at the Portland Police Bureau with Bureau Command Staff and the leadership and membership of the PPCOA. IPR leadership also spent several hours working with the leadership of the Bureau of Human Resources and the City Attorney’s Office. Due to the input of these stakeholders the following changes have been made to the proposed revisions to the IPR Ordinance. Attached is the substitute ordinance and exhibits which included the revisions shown below.

**Exhibit A – Section 3.20.140 – Police Review Board**

**Exhibit A, pg. 1 of 7: 3.20.140-B.1.**

1. Review incidents and investigations. The Board shall review incidents and investigated complaints of alleged misconduct by Portland Police Bureau (“Bureau”) non-probationary sworn officers (“officers”) who are employed by the Portland Police Bureau (“Bureau”) in the following cases:

**Exhibit A, pg. 1 of 7: 3.20.140-B.1.b.**

b. Investigations resulting in a recommended sustained finding and the proposed discipline is suspension without pay or greater.

**Exhibit A, pg. 1 of 7: 3.20.140-B.1.c.(2):**

(2) Bodily harm caused by an officer resulting in medical treatment Physical injury caused by an officer that requires hospitalization.

**Exhibit A, pg. 1 of 7: 3.20.140-B.1.c.(4)**

(4) Less than lethal incidents where the recommended finding is “out of policy”

**Exhibit A, pg. 1 of 7: 3.20.140-B.1.d.**

d. All completed Equal Employment Opportunity investigations regarding alleged violations of Human Resources Administrative Rules regarding complaints of discrimination resulting in a recommended sustained finding.

**Exhibit A, pg. 2 of 7: 3.20.140-B.3.**

3. Recommendations to Chief. The Board shall make recommendations to the Chief

regarding findings and discipline. The Board may make recommendations regarding the adequacy and completeness of an investigation. The Board may also make policy or training recommendations to the Chief. ~~The Review Board shall make recommendations as to discipline based on discipline guidelines developed by the Bureau and consistent with the Bureau of Human Resources' Administrative Rules.~~

**Exhibit A, pg. 2 of 7: 3.20.140 –C.1.**

1. The Board shall be composed of five voting members and ~~eight~~ nine advisory members. All Board members will be advised of every case presented to the Board. A quorum of four Voting Members, including the Citizen member, and four Advisory members, including the RU manager or designee, is required to be present to make recommendations to the Chief.

**Exhibit A, pg. 2 of 7: 3.20.140 –C.1.a.(1)(a)(i)**

- (a) Citizens shall be appointed for a term of no more than three years. Citizens may serve two full terms plus the remainder of any unexpired vacancy they may be appointed to fill.
  - i. The Bureau and IPR shall develop a Bureau Directive setting the criteria for Citizen selection to be approved by City Council.

**Exhibit A, pg. 2 & 3 of 7: 3.20.140 –C.1.a.(1)(b)(i)**

- (b) The Auditor and the Chief shall have the authority to recommend to City Council the removal of citizen members from the pool.
  - i. The Bureau and IPR shall develop a Bureau Directive setting the criteria for removal to be approved by City Council.

**Exhibit A, pg. 3 of 7: 3.20.140 –C.1.b.(9)**

(9) The Assistant Chief(s) that are not the supervisor of the involved member.

**Exhibit A, pg. 3 of 7: 3.20.140 –C.1.c.(1)&(2)**

c. Representatives/Individuals that may also be present during the presentation of the case include:

(1) Bargaining Units

(2) Involved Member

**Exhibit A, pg. 4 of 7: 3.20.140 –C.2.**

However, when the incident to be reviewed by the board involves the following use of force incidents, one additional citizen member and one additional peer member shall serve on the Board, for a total of seven voting members. A quorum of six voting members, including two citizen members, and four Advisory members, including the RU manager or designee, is required to be present to make recommendations to the Chief.

**Exhibit A, pg. 4 of 7: 3.20.140 –C.2.b.**

**b.** Bodily harm caused by an officer resulting in medical treatment. Physical injury caused by an officer that requires hospitalization.

**Exhibit A, pg. 4 of 7: 3.20.140 –C.2.d.**

**d.** Less than lethal incidents where the recommended finding is “out of policy”

**Exhibit A, pg. 4 of 7: 3.20.140 –D.1.a.**

**1.** All voting members of the Board shall have access to necessary and relevant documents and an equal opportunity to participate in Board deliberations.

**a.** The Bureau and IPR shall develop a Bureau Directive establishing confidentiality provisions and distribution timeline provisions of Board materials.

**Exhibit A, pg. 4 of 7: 3.20.140 –D.2.**

**2.** The RU manager or designee will provide all members of the Board with a written documentation recommendation of the findings, reasoning behind for the decision recommendation and proposed discipline disposition recommendation at least 14 days before the Board’s meeting on a matter. The RU manager will attend and remain for the duration of the meeting to answer any questions from the Board members.

**Exhibit A, pg. 4 & 5 of 7: 3.20.140 –E.1.a. & b.**

**1.** The Board shall be facilitated by a person who is not employed by the Bureau and who is not a member of the Board. The voting members of the Board shall schedule a meeting to select a facilitator based on recommendations from the Commissioner in Charge.

- a. The Bureau and IPR shall develop a Bureau Directive establishing selection criteria and confidentiality provisions for the Facilitator(s).
- b. The voting members of the Board shall schedule a meeting to recommend a pool of facilitators based the Bureau Directive for approval of the Commissioner in Charge in accordance with City contract rules.

**Exhibit A, pg. 5 of 7: 3.20.140 –F.1.a.**

A recitation of the facts of the case, the Board's recommendation of the Board, and an analysis recommended findings and a brief explanation of the Board's rationale for its recommendation, and a record of each the Board's member's vote.

**Exhibit A, pg. 5 of 7: 3.20.140 –F.1.b.**

- b. In the event that the Board is not unanimous, the statement shall contain a portion detailing the minority's position recommendation.

**Exhibit A, pg. 5 of 7: 3.20.140 –F.2.a.**

2. The Board facilitator shall write the Board's statement of recommended findings and proposed discipline and a summary of any policy, training and/or investigation issues or concerns on behalf of the Board and submit the statement to the Chief.

- a. IPR and the Bureau will develop a Bureau Directive setting forth the timeliness provisions of the statement.

**Exhibit A, pg. 6 of 7: 3.20.140 –H**

**H.** Action by Chief of Police and Commissioner in Charge. After receiving the Board's statement of recommended findings and discipline from the Board described above and after the appeal period allowed by Code Chapter 3.21 has expired, or if an appeal is filed, after the Chief receives the final decision from the IPR Citizen Review Committee or the Council's recommendation in accordance with Code Chapter 3.21:

**Exhibit A, pg. 6 of 7: 3.20.140 –H.1.b.(2)**

(2) Bodily harm caused by an officer resulting in medical treatment Physical injury caused by an officer that requires hospitalization.

**Exhibit A, pg. 6 of 7: 3.20.140 –H.1.b.(4)**

(4) Less ~~than~~ lethal incidents where the recommended finding “out of policy”

**Exhibit A, pg. 6 of 7: 3.20.140 –H.2.**

2. In the cases described in Subsection 1. above, the Commissioner in Charge shall make the final decision on findings and discipline, consistent with obligations under state and federal law, Portland City Charter and collective bargaining agreements.

**Exhibit A, pg. 6 of 7: 3.20.140 –H.3.**

3. In all other cases, unless the Commissioner in Charge exercises authority over the case, the Chief shall make the final decision on proposed findings and discipline, consistent with obligations under state and federal law, Portland City Charter and collective bargaining agreements.

**Exhibit A, pg. 6 & 7 of 7: 3.20.140 –H.4.a. & b. & c.**

~~4. The disciplinary process, including proposed discipline, the opportunity for a due process hearing and a final determination of discipline, if any, shall be completed within the following time frames:~~

~~a. If the case is eligible for appeal to the IPR Citizen Review Committee, within 90 days after receiving the statement of recommended findings and discipline from the Board described above and after the appeal period allowed by Code Chapter 3.21 has expired, or if an appeal is filed, after the Chief receives the final decision from the IPR Citizen Review Committee or the Council in accordance with Code Chapter 3.21.~~

~~b. If the case is not eligible for appeal to the IPR Citizen Review Committee, within 90 days after receiving the statement of recommended findings and discipline from the Board as described in this subsection.~~

**Exhibit A, pg. 7 of 7: 3.20.140 –I**

I. Public reports. As often as deemed necessary by the Board, but at least twice each calendar year, the Board shall publish public reports summarizing its statements of findings and a summary of any training and/or investigation issues or concerns. The reports shall keep confidential and not include involved officers’ names, the names of witnesses, or the name of any complainants. The reports shall be written by the Board facilitator. The reports may not be released before a final decision, including discipline if

any, is made by the Chief or Commissioner in Charge.

**Exhibit B – 3.20.145 Expeditious Investigations – DELETED IN ITS ENTIRETY**

**Exhibit C – 3.21 – City Auditor’s Independent Police Review Division**

**Exhibit C, pg. 2 of 22: 3.21.020- J.**

**J.** "Finding" means a conclusion reached after investigation as to whether facts show a violation of Bureau policy.

**Exhibit C, pg. 4 of 22: 3.21.070-D.**

**DC.** Initiate, mMonitor and conduct investigations. IPR is authorized to initiate, monitor and conduct administrative investigations. IPR is authorized to ~~To~~ identify complaints or incidents involving members that are of community concern which merit additional involvement of the Director and; to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the ~~initial~~ investigations in conjunction with or independent of the Bureau. The Bureau shall notify the Director that it intends to conduct an internal administrative investigation into misconduct before initiating the investigation. IPR will conduct these investigations in accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.

**Exhibit C, pg. 4 & 5 of 22: 3.21.070-E.**

**E.** Compel review. In accordance with the procedures of Code Section 3.20.140, IPR Director (or designee) may compel review by the Police Review Board of any recommended findings of or recommendation for discipline imposed by an RU Manager or Commanding Officer resulting from an internal or IPR administrative investigation of a member. IPR Director (or designee) may compel review by the Police Review Board on the basis of recommended discipline whether or not discipline was imposed recommended as a result of the investigation.

**Exhibit C, pg. 5 of 22: 3.21.070-M.**

**M.** Additional public reports. The Director may issue public reports related to member misconduct trends and Bureau disciplinary practices.

**Exhibit C, pg. 5 & 6 of 22: 3.21.070-N.**

N. All bureau employees shall be truthful, professional and courteous in all interactions with IPR. No member shall conceal, impede or interfere with the filing, investigation or adjudication of a complaint. Members may be subject to penalty for violation of applicable state law, including ORS 162.235 and 162.305.

**Exhibit C, pg. 9 of 22: 3.21.120-B.3.a. & b.**

3. Complaint Type III: A complaint may be initiated by the IPR Director at the discretion of the Director based on the judgment of the Director that a review an administrative investigation is warranted. IPR can initiate a complaint whether or not the alleged misconduct occurred during an encounter involving a community member and is not dependent on a community or Bureau member filing a complaint.

a. IPR will initiate and conduct administrative investigations in accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.

b. If a criminal investigation has been initiated against the involved member, or during the course of an IPR administrative investigation a basis for conducting a criminal investigation arises, IPR shall advise the City Attorney and/or District Attorney prior to initiating or continuing an administrative investigation. IPR shall take all steps necessary to meet constitutional requirements and comply with existing provisions of City labor agreements.

**Exhibit C, pg. 9 of 22: 3.21.120-B.4.**

4. Complaint Type IV: When Bureau supervisors may generate complaints about poor member performance or minor other work rule violations. RU managers are responsible for intake and investigation of allegations of Type IV cases.

**Exhibit C, pg. 10 of 22: 3.21.120-C.2.a.**

When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, IPR personnel shall direct questions through the IAD investigator. The IAD investigator may either repeat the question to the member and/or direct the member to answer the question.

**Exhibit C, pg. 13 of 22: 3.21.120-C.3.**

3 E. Referral. IPR may refer a complaint regarding quality of service or ~~minor~~ other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

**Exhibit C, pg. 13 of 22: 3.21.120-C.4.**

4 F. Dismissal. If IPR declines to take action on the complaint, IPR will send a dismissal letter to the complainant. IPR will also notify the involved officer(s) and the involved commanding officer within 30 calendar days of the dismissal. The Director may dismiss the complaint for the following reasons:

**Exhibit C, pg. 13 of 22: 3.21.120-C.4.g.**

g. ~~it is more likely than not that no misconduct was committed and~~ it is more likely than not that additional investigation would not lead to a ~~different~~ conclusion that the officer engaged in misconduct.

**Exhibit C, pg. 14 of 22: 3.21.120-D.2.**

2. If a Type II complaint is filed within the Bureau, Bureau/IAD staff will create an intake worksheet and assign an IPR/IAD case number for use by IAD. Before disposing of a complaint of alleged misconduct or initiating an investigation, the Bureau/IAD shall notify the Director in writing how it intends to process each complaint and whether it intends to conduct an internal investigation. In addition, the Bureau/IAD will make an entry regarding the allegations in the Administrative Investigation Management (AIM) database ~~or other appropriate database~~ which can be reviewed by the IPR Director.

**Exhibit C, pg. 14 of 22: 3.21.120-D.3.**

When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, IPR personnel shall direct questions through the IAD investigator. The IAD investigator may ~~either~~ repeat the question to the member ~~and/or~~ direct the member to answer the question. When a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the Director shall ask the member the question directly and/or direct the member to answer the question.

**Exhibit C, pg. 15 of 22: 3.21.120-D.4.**

4. IPR independent investigation. The IPR Director or designee may determine that IPR should investigate a complaint. If the Director concludes that IAD has not done an adequate job investigating complaints against a particular member, the Director may determine that IPR should investigate a complaint against the member. If the Director concludes that IAD has not done an adequate job investigating a particular category of complaints, the Director may determine that IPR should investigate a complaint or complaints falling in that category. If the Director concludes that IAD has not completed its investigations in a timely manner, the Director may determine that IPR should investigate some complaints. The Director may conduct an independent investigation based on the judgment of the Director's discretion that it is warranted. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member.

IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. When a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, the Director shall notify the Bureau / IAD commander that IPR has undertaken an investigation and the reason. The Bureau / IAD commander shall appoint a liaison investigator from that office within two working days to arrange and participate in interviews. When members represented by a collective bargaining unit are being interviewed by IPR personnel, the IAD investigator may either repeat the question and/or direct the member to answer the question. When a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the Director shall ask the member the question directly and/or direct the member to answer the question.

**Exhibit C, pg. 15 of 22: 3.21.120-D.5.**

5. Referral. IPR may refer the complaint to the Bureau with a recommendation that the complaint be handled as a Service Improvement Opportunity, a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

**Exhibit C, pg. 16 of 22: 3.21.120-F.**

**F. Initial Handling and Investigation of Type IV Complaints**

RU managers are responsible for intake and investigation of allegations of Type IV cases. The RU manager will provide the IPR Director a summary of the complaint and a summary of any subsequent investigation of a sworn member. within 21 days of receiving the completed investigation, The IPR Director may initiate a Type III complaint investigation at their discretion, refer the matter to IAD for further investigation, conduct

additional investigation, or controvert the RU manager's recommendations and compel review by the Police Review Board within 21 days of after receiving the completed investigation.

**Exhibit C, pg. 16 of 22: 3.21.120-G.1.**

1. Adequacy of investigation. When an investigation of any type of complaint is conducted by IAD or other designated PPB division, after the investigation is complete, IAD will provide the IPR Director or designee with a copy of and provide unrestricted access to the entire investigation file. Upon review of the file, the Director or designee must determine within 21 business days whether or not the investigation is adequate, considering such factors as thoroughness, lack of bias, objectivity, and completeness. If the Director or designee determines that the investigation is not adequate, the investigation shall be returned to the IAD or other designated division within the Bureau explaining the determination and providing direction. Such direction shall include, but not limited to, rewriting portions of the summary, gathering additional evidence, conducting additional interviews, or re-interviewing officers or civilians. The investigation can not be closed or sent to the RU manager without IPR's determination that the investigation is complete. Upon receipt of IPR's determination that the investigation is complete, IAD shall send the investigation to the appropriate RU Manager.

**Exhibit C, pg. 16 & 17 of 22: 3.21.120-G.2.**

2. Submission of recommended findings or proposed discipline. The RU manager will review the investigation for any type of complaint when the investigation is conducted by IAD, other designated PPB division or IPR and submit recommended findings and proposed discipline to the supervising Assistant Chief within 45 days of receiving the investigation. The supervising Assistant Chief will circulate the recommended findings and proposed discipline to the Director and the Captain of IAD. Within 14 days aAfter receipt of the recommended findings and proposed discipline, the supervising Assistant Chief, the Director or the Captain of IAD may controvert the RU Manager's recommended findings and/or proposed discipline.

**Exhibit C, pg. 17 of 22: 3.21.120-G.3.**

3. Police Review Board meeting. If the recommended findings and/or proposed discipline are controverted, the Bureau shall schedule a Police Review Board hearing meeting on the complaint. As specified in Code Section 3.20.140, the Police Review Board shall also hold a hearing meeting for review of a case if it involves an officer-involved shooting, bodily harm caused by an officer resulting in medical treatment physical injury caused by an officer that requires hospitalization, an in-custody death, a less than lethal incident where the recommended findings is that the deployment was "out

of policy” or if the investigation resulted in a **recommended** sustained finding and the proposed discipline is suspension without pay or greater.

**Exhibit C, pg. 17 of 22: 3.21.120-G.4.**

**4.** Notification and Appeals of Type I and III complaints without Police Review Board hearing meeting. In Type I cases, and Type III cases where the alleged misconduct occurred during an encounter involving a community member, if the **recommended findings** are not sent to the Police Review Board for a **meeting**, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. IPR will notify the complainant that they have a right to request a review of the Bureau’s **recommended findings** to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the disposition of the complaint. The Bureau will notify the involved member of the right to request a review of the **recommended findings** to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM data base **or other appropriate database** for both IPR and IAD review.

**Exhibit C, pg. 17 & 18 of 22: 3.21.120-G.5.**

**5.** Notification and Appeals of Type I and III complaints after Police Review Board hearing. In Type I cases and Type III cases where the alleged misconduct occurred during an encounter with a community member and the **recommended findings** are sent to the Police Review Board for a **hearing, meeting, within 7 days after the Police Review Board makes its recommendation** the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. IPR will notify the complainant that they have a right to request a review of the recommended findings to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the proposed findings of the Police Review Board. The Bureau will notify the involved member of the right to request a review of the **recommended findings** to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM data base **or other appropriate data base** for both IPR and IAD review.

**Exhibit C, pg. 18 of 22: 3.21.120-G.6.**

**6.** No appeal of Type II and certain Type III complaints. In Type II cases and Type III cases that involve alleged member misconduct that does not occur during an encounter involving a community member, the **recommended findings** may not be appealed to the Committee.

**Exhibit C, pg. 18 of 22: 3.21.140-B.**

**B.** The request for review must be filed within 30 **calendar** days of the complainant or member receiving IPR's notification regarding disposition of the case. The Director may adopt rules for permitting late filings.

**Exhibit C, pg. 22 of 22: 3.21.210**

IPR shall have the authority to issue subpoenas for the purpose of compelling witness testimony or the production of documents, photographs, or any other evidence necessary for IPR to fully and thoroughly investigate a complaint or conduct a review.

IPR personnel will not subpoena a sworn Bureau member employed by the Portland Police Bureau, but is authorized to direct Bureau members to cooperate with administrative investigations as described in 3.21.120.

Any person who fails to comply with a subpoena will be subject to contempt proceedings as prescribed by State law; provided that such persons shall not be required to answer any question or act in violation of rights under the constitutions of the State or of the United States.