

March 13, 2024 8:00 A.M.



**Portland
City Auditor**
Elections

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

LEROY HAYNES, JR. an individual,
Petitioner,

vs.

ROBERT TAYLOR, in his official capacity as
City Attorney for the City of Portland,
Respondent.

No. _____

PETITION FOR REVIEW OF BALLOT
TITLE (“INITIATIVE PDX24OL-03”)

Expedited consideration requested per
ORS 250.296(3)

Filing Fee: \$281 – ORS 21.135(1)

INTRODUCTION

1.

This is a petition for review of the ballot title for prospective City Initiative Petition PDX24OL-03 (“the Initiative”), an initiative petition that its proponents say would “Strengthen[] . . . Accountability for the Portland Police Bureau” and “Adds powers” and “expand[s] the duties of the existing Community Police Oversight Board.” But the Initiative does just the opposite, *gutting* the oversight and disciplinary powers of the current Community Police Oversight Board (“Board”), *repealing* the Board’s independence, *reducing* community representation on the Board by removing diversity requirements and opening such membership for law enforcement instead, and *eliminating* the five percent budget for the Board. Despite this, the Initiative’s ballot title prepared by the City Attorney frames the Initiative as resulting

1 in mere “Changes” to the authority, membership and budget for the Board, asks voters if the
2 investigatory authority of the Board should be “amended,” and if its community representation
3 membership and budget requirements should be only “revised,” and tells voters that the
4 Initiative’s major effects, if approved, will largely be affirmative changes. This phrasing is
5 inaccurate and misleading. Voters should not have to read between the lines to figure out the
6 major effects of the Initiative, which collectively convert the Board from a fully independent
and empowered community police oversight bureau to an advisory committee.

7 2.

8 The voter-approved independent police oversight board was passed by 82 percent of
9 Portland voters in 2020. That year marked a critical flashpoint in the long march toward justice
10 for Black people in the United States, who experience alarming levels of disproportionate
11 police killings, police violence and other criminal legal system harms. In 2020, police in
12 Minneapolis, MN murdered George Floyd during a minor arrest. Portlanders of all
13 backgrounds flooded the streets to protest the ongoing pattern of police violence against Black
14 people, an amplification of the longstanding advocacy by Black Portlanders and their allies to
15 improve accountability for Portland police officers. The Portland Police responded to these
16 racial justice protesters with disturbing levels of violence. That is why both the community of
Portland and the United States Department of Justice (“USDOJ”) made a resounding call for
independent police oversight.

17 3.

18 The Initiative now seeks to directly repeal several parts of that voter-approved police
19 oversight board, which the USDOJ incorporated into its settlement agreement with the City of
20 Portland regarding accountability measures for the Portland Police Bureau. Yet, the City
21 Attorney’s ballot title does not use the word “repeal” even once to describe the Initiative’s

1 effects, and only uses the word “eliminate” in the Summary. Adding insult to injury, the north
2 star of the Community Police Oversight Board – its independence – stands to be *fully repealed*
3 yet neither the Caption or Question mention this extraordinary aspect of the Initiative, and the
4 Summary buries this effect at the end.

4 4.

5 Such wording renders the ballot title legally infirm as not concise, unfair, and not
6 conforming to the requirements of ORS 250.035.

7 5.

8 This Court is the sole recourse for the public electorate to correct the harmful and
9 misleading ballot title and place accurate information about the Initiative and its major effects
10 before the voters.

11 6.

12 This Petition is brought pursuant to ORS 250.296 and Section 2.04.070 of the Portland
13 City Code.

13 **PARTIES**

14 7.

15 Petitioner Dr. Rev. LeRoy Haynes, Jr. (“Petitioner”) is an Oregon elector who is
16 registered to vote in Multnomah County and who resides within the city limits of the City of
17 Portland. Petitioner Haynes is also the lead pastor at the Allen Temple Christian Methodist
18 Episcopal Church in Portland and chair of the Albina Ministerial Alliance Coalition for Justice
19 and Police Reform. Dr. Haynes has been an active participant in the civil rights movement
20 since the early 1960s and has received numerous awards for his community leadership,
21 including but not limited to a 2016 award from then-Attorney General Loretta Lynch for

1 National Leadership in Community Policing. Petitioner Haynes is dissatisfied with the ballot
2 title for Initiative PDX24OL-03 and seeks a different ballot title.

3 8.

4 Respondent Robert Taylor (“Respondent Taylor”) is the City Attorney for the City of
5 Portland. Respondent Taylor prepared the ballot title for Initiative PDX24OL-03.

6 **FACT BACKGROUND**

7 **A. Background on Portland Community Police Oversight Board**

8 9.

9 On July 30, 2020, the Portland City Council unanimously referred Measure 26-217, a
10 charter amendment to establish a new community-led police accountability and oversight
11 system. The support for the measure was robust: a voters’ pamphlet statement from Mayor
12 Ted Wheeler explained that the measure will help “rebuild trust and truly keep ALL
13 Portlanders safe.”¹ Other statements in support were signed by members of the Multnomah
14 County Commission, state and federal elected officials, civil rights and community
15 organizations, the Albina Ministerial Alliance Coalition for Justice and Police Reform and
16 other faith leaders, labor unions, and mental health advocates.

17 10.

18 On November 3, 2020, Portland voters passed Measure 26-217 by an 82 percent
19 margin in favor of independent civilian oversight of police and greater law enforcement
20

21 ¹ VOTERS’ PAMPHLET STATEMENTS FOR MEASURE 26-217 (2020), available at [https://multco-
22 web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/20200912135322767.pdf](https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/20200912135322767.pdf).
There were no statements filed in opposition to the Measure. See Everton Bailey Jr., *Portland
police oversight ballot measure has detractors, but no formal opposition*, THE OREGONIAN
(Sept. 28, 2020), available at [https://www.oregonlive.com/portland/2020/09/portland-police-
oversight-ballot-measure-has-detractors-but-no-formal-opposition.html](https://www.oregonlive.com/portland/2020/09/portland-police-oversight-ballot-measure-has-detractors-but-no-formal-opposition.html).

1 accountability to the community they serve. The measure was codified as Chapter 2, Article
2 10 of the Portland City Charter.

3 11.

4 Chapter 2, Article 10 contains several critical provisions to support *independent*
5 community police oversight and accountability, including provisions for:

- 6 a. Creating a fully independent Community Police Oversight Board, with which
7 no other city entity could interfere, and on which current and former police and
8 immediate family members may not sit;
- 9 b. Requiring the composition of the Community Police Oversight Board to be
10 diverse, including people with lived experience with systemic racism, mental
11 health and addiction, and alcoholism, which are populations that have
12 historically experienced significant levels of force and enforcement by Portland
13 police;
- 14 c. Requiring the Community Police Oversight Board to investigate the most
15 serious types of misconduct, including the use of deadly force, and allowing the
16 Board to investigate any other types of complaints;
- 17 d. Vesting the Community Police Oversight Board with the tools to investigate
18 police misconduct, and to impose discipline in a fair and transparent manner;
- 19 e. Allowing the Community Police Oversight Board to make recommendations to
20 the Portland Police Bureau on policies and directives and to seek City Council's
21 binding approval if the Bureau rejects the recommendations; and
- 22 f. Ensuring funding by tying the Community Police Oversight Board's funding to
five percent of the Portland Police Bureau's budget.

Initiative PDX24OL-03 would repeal or materially undermine all of these provisions.

12.

The charter amendments enacted by Measure 26-217 reflect a comprehensive, best-
practices approach to community police oversight and police accountability. Campaign Zero, a
national organization dedicated to ending police violence, described the police accountability
and oversight model envisioned by Measure 26-217 as “the strongest in the nation,” because it

1 is “structurally independent of the Police Bureau and removed from the direct control of
2 politicians. It has the necessary powers and resources to conduct thorough investigations and it
3 is designed to have the power to enact discipline and change policy.” Further, the charter
4 amendments “bring[] together best practices from around the country into one system that could
5 become a national model.” Campaign Zero cited its research showing that adoption of common
6 sense policies on police oversight and accountability makes “policing safer, for both officers
7 and the community.”²

7 13.

8 Two days after the overwhelming passage of Measure 26-217, the Portland Police
9 Association filed a grievance about Measure 26-217 and the Community Police Oversight
10 Board it created. In response, the City of Portland worked with state legislators to enact
11 Senate Bill 621 in June 2021, confirming the City’s authority to enact the Community Police
12 Oversight Board.³ In July 2021, the City approved Resolution 37548 which established the
13 Police Accountability Commission and charged it with developing recommendations and
14 suggested code provisions for the new oversight system.⁴

14 14.

15 In 2012, the City of Portland entered into a historic settlement agreement with the
16 USDOJ in *United States v. City of Portland*, Case No.3:12-cv-02265-SI, to stop and prevent
17 unconstitutional Portland Police Bureau policies and practices. The Portland Police

18 ² Campaign Zero, *A National Model for Police Accountability*, VOTERS’ PAMPHLET
19 STATEMENTS FOR MEASURE 26-217 (Sept. 8, 2020), available at [https://multco-web7-psh-
files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/20200912135322767.pdf](https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/20200912135322767.pdf).

20 ³ Jonathan Levinson, *Oregon lawmakers clear path for Portland police oversight board*, OPB
21 (June 8, 2021), available at [https://www.opb.org/article/2021/06/08/oregon-lawmakers-clear-
path-for-portland-police-oversight-board/](https://www.opb.org/article/2021/06/08/oregon-lawmakers-clear-path-for-portland-police-oversight-board/).

22 ⁴ City Council of Portland, Res. No. 37548 (2021), available at
<https://www.portland.gov/council/documents/resolution/adopted/37548>.

1 Association is an intervenor in that case. That case and the oversight and implementation of its
2 extensive settlement agreement is an ongoing process that has lasted more than a decade and
3 continues to this day.

4 15.

5 In April 2022, the United States District Court approved amendments to the settlement
6 agreement, including paragraph 195 which requires the City to implement the charter
7 amendments establishing the new Community Police Oversight Board. The Portland Police
8 Association supported this amendment to the settlement agreement.

9 16.

10 In August 2023, the Police Accountability Commission submitted its recommendations
11 and code revisions to the City of Portland to implement the new community police oversight
12 system. In early November 2023, the City of Portland published its revised code package and
13 draft settlement agreement amendments to implement Chapter 2, Article 10.

14 17.

15 On November 15, 2023, the City Council approved Resolution 37637,⁵ authorizing the
16 City to engage in collective bargaining on the code revisions to implement Chapter 2, Article
17 10 with the Portland Police Association and Portland Police Commanding Officers Association
18 and to obtain required approvals from the USDOJ and the U.S. District Court under the
19 settlement agreement. The collective bargaining process on the new community police
20 oversight system is currently underway.

21 18.

22 ⁵ City Council of Portland, Res. No. 37637 (2023), *available at*
<https://www.portland.gov/council/documents/resolution/adopted/37637>.

1 As this history makes clear, the Portland Police Association’s attorney filed PDX24OL-
2 03 to effectively *repeal* Chapter 2, Article 10 and Measure 26-217’s intended police
3 accountability measures *at the same time* the Portland Police Association is engaged in
4 collective bargaining with the City to *implement* Chapter 2, Article 10 and its police
5 accountability measures. Initiative PDX24OL-03 would not only repeal all material provisions
6 of Measure 26-217, it would also undo the extensive implementation process underway since
2020 and undermine the City’s compliance with the settlement agreement.

7 **B. Proposed 2024 Initiatives to Increase the Power of Portland Police While
8 Decreasing Independent Community Oversight and Police Accountability**

9 19.

10 In 2024, three proposed ballot initiatives were filed with the City of Portland which
11 collectively seek to *increase* resources and funding for the Portland Police Bureau and expand
12 the degree of influence police exert over various City services, and *decrease* power and funding
13 for community oversight of police and reduce accountability for police misconduct. These
14 proposed initiatives were identified by the City as proposed petitions PDX24OL-01,
PDX24OL-02, and PDX24OL-03 (the Initiative at issue here). All three proposed initiatives
were filed by Chief Petitioner William B. Aitchison.

15 20.

16 Upon information and belief, all three proposed initiatives were developed and are
17 being supported by William B. Aitchison and Anil Karia, who are attorneys for the Portland
18 Police Association.

19 21.

20 The first and second proposed initiatives, PDX24OL-01 and PDX24OL-02, were filed
21 on February 7, 2024.

22.

1 The initial proposed initiative, PDX24OL-01, had a proposed title of “Strengthening
2 Recruitment, Retention, Training, and Accountability for the Portland Police Bureau.”

3 PDX24OL-01 was deemed unconstitutional by the Portland City Elections Officer because the
4 proposed amendments were administrative rather than legislative in nature and therefore
5 violated Article IV of the Oregon Constitution. Because PDX24OL-01 was deemed
6 unconstitutional, no official ballot title was prepared by the City Attorney and no Portland
7 elector had the opportunity to challenge the proposed title. Petitioner Aitchison withdrew
8 PDX24OL-01 after it was deemed unconstitutional.

23.

9 In response to PDX24OL-01 being deemed unconstitutional, on February 20, 2024,
10 Petitioner Aitchison filed the third proposed Initiative PDX24OL-03, at issue in this case, with
11 the same proposed title as PDX24OL-01 of “Strengthening Recruitment, Retention, Training,
12 and Accountability for the Portland Police Bureau.” A true and correct copy of Initiative
13 PDX24OL-03, as published on the website maintained by the City, is attached as Exhibit 1 and
14 is incorporated by reference herein.

24.

15 Meanwhile, the second proposed initiative PDX24OL-02 was deemed
16 constitutional even though it “veers towards administrative, rather than legislative” by the
17 City, and an official ballot title was prepared.

25.

18 On March 5, 2024, Portland elector Joy Alise Davis filed a Petition challenging the
19 constitutionality of PDX24OL-02 as both violating the single subject rule and concerning
20 administrative matters, in contravention of Article IV of the Oregon Constitution. The

1 constitutionality of PDX24OL-02 is currently pending before the Multnomah County Circuit
2 Court in *Davis v. Hansen et al*, 24-CV-11288.

3 26.

4 On March 5, 2024, Portland elector Jackie Yerby filed a Petition challenging the ballot
5 title of PDX24OL-02 as containing false or misleading information in the caption, question,
6 and summary, and alleging the ballot title was not concise, was unfair, and did not conform to
7 the requirements of ORS 250.035. The validity of the ballot title of PDX24OL-02 is currently
8 pending before the Multnomah County Circuit Court in *Yerby v. Taylor*, 24-CV-11268.

9 27.

10 Petitioner Haynes now challenges the ballot title of the third proposed Initiative
11 PDX24OL-03.

12 28.

13 Initiative PDX24OL-03 proposes repealing and replacing language in eight key sections
14 of Chapter 2, Article 10 of the Portland City Charter as follows:

15 (1) Amend Section 2-1001 by eliminating the Board’s ability to investigate supervisors
16 of Portland Police Bureau employees, eliminating the ability of the Board to impose
17 discipline as determined by the Board, and eliminating the Board’s authority to make
18 recommendations regarding police practices, policies, and directives with a primary
19 focus on community concerns; minimizing the mission of the Board to reviewing and
20 recommending improvements to Portland Police Bureau recruiting, retaining, and
21 training efforts and investigating and making disciplinary recommendations about
22 *certain* complaints for Portland Police Bureau sworn employees only;

(2) Amend Section 2-1002 by eliminating the Board membership diversity requirement
that the Board includes “those from diverse communities and with diverse lived

1 experiences, particularly those who have experienced systemic racism and those who
2 have experienced mental illness, addiction, or alcoholism” and replacing this language
3 with a requirement to include people from “various professional backgrounds, and from
4 different geographic areas”;

5 (3) Fully repeals Section 2-1003, which prohibits people currently employed by law
6 enforcement or their immediate family members or former law enforcement employees
7 from serving on the Board;

8 (4) Amends Section 2-1004 by eliminating the minimum budget set at “no less than 5
9 percent of the Police Bureau’s Annual Operating Budget” and replacing it with
10 language permitting City Council to set the budget;

11 (5) Amends Section 2-1005 to require the Director and professional staff of the Board
12 only receive the same briefing as Board members;

13 (6) Fully repeals Section 2-1006 which describes the Board’s “Independent Authority”
14 to exercise independent judgment in performing its powers and duties, prohibits the
15 Mayor, City Council, Auditor, and City departments, bureaus, and other administrative
16 agencies from interfering in the Board’s exercise of independent judgment, and requires
17 that the Board’s office be located outside Portland Police Bureau facilities;

18 (7) Amends Section 2-1007 by eliminating the ability of the Board to investigate
19 complaints involving supervisors, the ability to subpoena documents, the ability to issue
20 disciplinary actions, and the authority to make policy recommendations; reducing the
21 Board’s investigation authority to deaths in custody and deadly force, excessive force,
22 discrimination, constitutional rights violations, and bias-based policing; reducing the
evidentiary powers of the Board to the ability to “gather” and “seek” information;
removes the Board’s final discipline authority and transfers that power to the Chief of

1 Police, and requires the Board to issue public reports about their investigations and
2 recommendations of discipline that anonymize the identities of all parties involved,
3 including the officers who are subject of the misconduct investigations; and
4 (8) Fully repeals Section 2-1008 which currently provides the Board’s authority to
5 investigate all deaths in custody and uses of deadly force; all complaints of force
6 resulting in injury, discrimination, and constitutional rights violations; and any “other
7 complaints or incidents of misconduct as [the Board] see fit.”

8 29.

9 On February 23, 2024, pursuant to ORS 250.270(1) and Section 2.04.055 of the
10 Portland City Code, the City Elections Official completed the constitutional review of
11 prospective Initiative PDX24OL-03 and determined it preliminarily met the requirements of
12 Article IV of the Oregon Constitution, but that “this determination is a limited review of
13 constitutional conformity and does not necessarily identify all potential constitutional
14 difficulties that may preclude the proposed measure from proceeding.” A true and correct copy
15 of the constitutional determination, as published on the website maintained by the City, is
16 attached as Exhibit 2 to this Petition and is incorporated by reference herein.

17 30.

18 The City Elections Official forwarded Initiative PDX24OL-03 to City Attorney
19 Respondent Taylor for preparation of the ballot title.

20 31.

21 On March 1, 2024, pursuant to ORS 250.275 and Section 2.04.060 of the Portland City
22 Code, Respondent Taylor prepared the official ballot title for Initiative PDX24OL-03 and
transmitted it to the City Auditor, who inscribed a date of receipt on the ballot title. A true and
correct copy of the ballot title indicating the notice and date of receipt, as published on the

1 website maintained by the City, is attached as Exhibit 3 to this Petition and is incorporated by
2 reference herein.

3 32.

4 This Petition filed by Petitioner Haynes challenging the ballot title for Initiative
5 PDX24OL-03 is timely pursuant to ORS 250.296(1) and Section 2.04.055 of the Portland City
6 Code because it is filed no later than seven business days after the ballot title for Initiative
7 PDX24OL-03 was filed with the City Elections Officer.

8 **BALLOT TITLE INFIRMITIES**

9 33.

10 The components of the ballot title for Initiative PDX24OL-03 do not meet the legal
11 requirements of ORS 250.035.

12 34.

13 Petitioner Haynes is dissatisfied with the ballot title for Initiative PDX24OL-03. The
14 ballot title is insufficient, not concise, or unfair for the following reasons:

- 15 a. All portions of the ballot title are insufficient or unfair because they fail to
16 inform the voters about, or materially downplay, the significant repeals of
17 existing Board authority that the Initiative would effectuate. All portions also
18 fail to inform voters that they would be repealing and replacing language that
19 was recently enacted by voters and not yet fully implemented. And all portions
20 of the title lack important specificity and utilize vague language, which risks
21 misleading voters.
- 22 b. The Caption is also insufficient because it uses misleading language when it
states the Initiative merely “Changes” the authority, membership, and budget
for the Community Police Oversight Board, when in reality the Initiative

1 eliminates Board authority, reduces diverse community membership
2 representation requirements while adding the new opportunity for law
3 enforcement to hold power on the Board, and eliminates the five percent
4 budget minimum for the Board. The Caption is also entirely silent about the
5 full repeal of the Board’s current independence and current requirement of
6 noninterference by other City departments or bureaus, including the Portland
Police Bureau.

7 c. The Question is also insufficient for the following reasons:

- 8 1. Similar to the Caption, the Question uses verbs that fail to
9 communicate the impact of the Initiative. The Question repeats the
10 word “change” and uses the words “amend” and “revise” without
11 indicating the directional effects (e.g. “repeal,” “eliminate,” “remove”)
of the referenced amendments.
- 12 2. The Question also omits issues of central importance to voters,
13 including board independence and noninterference by the City or
14 Portland police.

15 ci. The Summary is also insufficient and fails to summarize the Initiative and its
16 major effects for the following reasons:

- 17 1. The Summary fails to properly contextualize the voters’ choice in the
18 current status of the implementation of the 2020 voter-initiated
Community Police Oversight Board.
- 19 2. The Summary repeats the phrase “diverse communities” to describe
20 the effects of the approved measure and only describes the eliminated
21 requirement of people historically impacted by police violence as

1 “eliminate emphasis on certain experiences.” This is not true, because
2 “certain experiences” – specifically, “professional” backgrounds and
3 geographic locations – will be emphasized if the Initiative is approved,
4 while de-emphasizing the experience of those with historically
5 marginalized racial identities, mental illness, and addiction. Given the
6 connotation of the term “diversity,” it is misleading to use the phrase
7 “diverse communities” to refer to all of these certain experiences that
8 stand to be de-emphasized or newly emphasized.

- 9 3. The Summary fails to mention the elimination of community oversight
10 of Portland Police Bureau supervisors.
- 11 4. The Summary fails to mention the elimination of the Board’s authority
12 to recommend policy and directive changes.
- 13 5. The Summary fails to identify the impact on the implementation
14 process that the repeals would effectuate, including restarting and/or
15 revisiting required implementation steps under current legal settlement
16 and collective bargaining processes.
- 17 6. The Summary uses the phrase “substance abuse” instead of the
18 Charter’s actual word “addiction” and thus invokes a more negative
19 connotation, with the inflammatory effect of causing prejudice against
20 people struggling with addiction.

21 35.

22 For the reasons stated above, the ballot title for Initiative PDX24OL-03 filed with the
City Auditor does not comply with ORS 250.296(1) because it is insufficient, not concise
and/or unfair.

36.

This Court should certify a Caption for Initiative PDX24OL-03 that reads: “Repeals voter-approved police oversight board’s independence, disciplinary authority, budget.”

37.

This Court should certify a Question for Initiative PDX24OL-03 that reads: “Should Portland repeal voter-approved police oversight board’s independence, power to discipline officers/supervisors, investigation authority, membership diversity and minimum budget?”

38.

This Court should certify a Summary for Initiative PDX24OL-03 that reads:

In 2020, voters amended the City Charter to add an independent police oversight board that will (once implemented):

- Independently investigate police employees, including supervisors, and discipline appropriately
- Include members from diverse communities, particularly with systemic racism, mental illness, addiction experience
- Prohibit members who are current law enforcement, immediate family thereof, or former law enforcement
- Operate with minimum budget proportional to 5% of Police Bureau’s operating budget
- Exercise independent judgment
- Make policy recommendations
- Investigate all manner of complaints with ability to compel witness statements, other evidence

If measure approved:

- Repeals required independence and noninterference
- Repeals authority to discipline; replaces with authority to make discipline recommendations
- Repeals diversity of membership based on systemic harm; replaces with geographic, professional variety
- Repeals prohibition on law enforcement membership
- Repeals authority to investigate all manner of complaints, including power to compel information; replaces with authority to investigate certain types of complaints with some power to seek information
- Repeals 5% budget requirement

- Requires reporting about recruitment, retention, training of police officers
- Will require new implementation and Department of Justice Settlement Agreement process.

39.

Pursuant to ORS 250.296(2), not later than 5:00 p.m. on Wednesday, March 13, 2024, Petitioner will give written notice to the City Elections Officer that this Petition has been filed.

WHEREFORE, Petitioner prays for a judgment as follows:

1. Declaring the ballot title for Initiative PDX2424OL-03 to be insufficient, not concise, unfair, and not conforming to the requirements of ORS 250.035;
2. Certifying to the City Auditor a ballot title that conforms to the requirements of ORS 250.035;
3. Awarding Petitioner his costs and disbursements; and
4. Awarding any other relief the Court considers just and equitable.

DATED: March 12, 2024.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF OREGON, INC.

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Attorneys for Petitioner

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a copy of the foregoing PETITION FOR REVIEW OF BALLOT
3 TITLE (“INITIATIVE PDX24OL-03”) on:

4 Robert Taylor
5 Maja Haium
6 Office of the City Attorney, City of Portland
7 1221 SW 4th Ave., Suite 430
8 Portland, OR 97204
9 Email: Robert.Taylor@portlandoregon.gov
10 Email: Maja.Haium@portlandoregon.gov

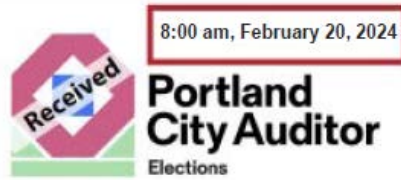
11 Respondent

12 by emailing a copy thereof to said attorneys at their last-known email
13 addresses as set forth above.

14 AMERICAN CIVIL LIBERTIES UNION
15 FOUNDATION OF OREGON, INC.

16 By: /s/ Kelly Simon
17 Kelly Simon, OSB #154213
18 Alicia LeDuc Montgomery, OSB #173963

19 Attorneys for Petitioner
20
21
22



AN ACT

BE IT ENACTED BY THE PEOPLE OF THE CITY OF PORTLAND

The City Charter of the City of Portland is amended as follows (additions in underlined bold text; deletions in strikethrough):

1. Amend Chapter 2, Article 10 by amending Section 2-1001 to read as follows:

Section 2-1001. City of Portland Community Police Oversight Board. A Board is hereby authorized and shall be established upon compliance with any legal obligations the City may have under the Public Employees Collective Bargaining Act, other state and federal laws, and upon adoption by City Council of an implementing Ordinance. The mission of the City of Portland Community Police Oversight Board (Board) is to review and recommend improvements to recruiting, retaining, and training efforts by the Portland Police Bureau, and to independently receive, investigate, and make disciplinary recommendations about certain complaints against Portland Police Bureau sworn employees and supervisors thereof promptly, fairly, and impartially, ~~to impose discipline as determined appropriate by the Board, and to make recommendations regarding police practices, policies and directives to the Portland Police Bureau and with a primary focus on community concerns.~~ The final name of this Board will be established by City Code.

2. Amend Chapter 2, Article 10 by amending Section 2-1002 to read as follows:

Section 2-1002 Nature of the Board. Board members shall be appointed by approval of Council to a term of years established in City Code. Members may not be removed from the Board prior to the completion of their term except for cause. Successors to an unexpired term shall be appointed by approval of Council for the remainder of the term. The Board shall make provisions to ensure its membership includes representation from diverse communities, ~~including those from diverse communities and with diverse lived experiences, particularly those who have experienced systemic racism and those who have experienced mental illness, addiction, or alcoholism~~ various professional backgrounds, and from different geographic areas within the City. Board members must live or work in the City. Board members shall receive briefing on best practices surrounding recruiting, retaining, and training police officers and investigating complaints against police officers.

3. Delete Chapter 2, Article 10, Section 2-1003:

~~**Section 2-1003 Restrictions on Board Membership.** People currently employed by a law enforcement agency and their immediate family members are not eligible for service on the Board. People who were formerly employed by a law enforcement agency are not eligible for service on the Board.~~

4. Amend Chapter 2, Article 10, Section 2-1004 to read as follows:

Section 2-1004~~3~~ Budget of the Board. Funding for the Board shall be proportional to be no less than 5 percent of the Police Bureau's Annual Operational Budget **set by Council so that the Board will provide sufficient focus on recruiting, retaining, training, and investigating complaints against police officers.**

5. Amend Chapter 2, Article 10, Section 2-1005 to read as follows:

Section 2-1005~~4~~ Professional Staff of the Board. The Board shall hire a Director to manage the professional ~~administrative~~ staff and ~~professional~~ investigators, and to make operational and administrative decisions. The Director is a "Bureau Director" for purposes of Charter section 4-301 and shall be appointed by, and serve at the will and pleasure of, the Board. Professional staff of the Board, other than the Director, shall be appointed by and serve under the direction of the Director as classified employees. **The Director and Professional staff will receive the same briefing as Board members.**

6. Delete Chapter 2, Article 10, Section 2-1006:

Section 2-1006 Independent Authority. ~~The Board shall have authority to exercise independent judgment in performing all legally assigned powers and duties. The Mayor, City Council, Auditor, and City departments, bureaus and other administrative agencies shall not interfere in the exercise of the Board's independent judgment. The physical office of the Board shall be located outside of a Portland Police Bureau facility.~~

7. Amend Chapter 2, Article 10, Section 2-1007 to read as follows:

Section 2-1007~~5~~ Powers of the Board.

(a) **Recruiting and Retaining Police Officers. Annually, the Board shall review and issue a report regarding the effectiveness of, and provide recommendations to further improve, the recruiting and retention programs for sworn police officers of the Police Bureau.**

(b) **Training Police Officers. Annually, the Board shall review and issue a report regarding the effectiveness of, and provide recommendations to further improve, training programs for sworn police officers of the Police Bureau.**

(c) **Investigating and Disciplining Police Officers.**

(1) **The Board, by and through its Director and Professional Staff, shall have the power to the full extent allowed by law to receive and investigate complaints including the power to subpoena and compel documents, and to issue disciplinary action up to and including termination for against all sworn members and the supervisors thereof within employees of the Portland Police Bureau for:-**

- a. **All deaths in custody and uses of deadly force;**
- b. **Complaints of excessive force;**
- c. **Complaints of discrimination against a protected class;**
- d. **Complaints of violations of constitutional rights; and**
- e. **Complaints of bias-based policing.**

(b) The Board shall have the authority to make policy and directive recommendations to the Portland Police Bureau and City Council. The Portland Police Bureau shall consider and accept or reject all policy or directive recommendations made by the Board. If the Portland Police Bureau rejects a policy or directive recommendation, then at the request of the Board, City Council must consider and vote to accept or reject the policy recommendations received from the Board. Council's decision will be binding on the Portland Police Bureau.

(2) (c) For cases within its jurisdiction, the The Board, **by and through its Director and Professional Staff,** shall have the authority and ability, **to the extent allowed by federal and state law and collective bargaining agreements,** to gather and ~~compel~~ all evidence; ~~to access all police records; to the extent allowed by federal and state law,~~ and the ability to ~~compel~~ **seek** statements from **complainants, subjects, and witnesses, including officers; and subpoena documents and witnesses. Such investigations must respect the legal rights of all complainants, subjects, and witnesses, including officers.**

(3) The Board, by and through its Director and Professional Staff, shall provide to the Chief of Police full, fair, and objective investigation reports and recommended levels of discipline, if any, for complaints within its jurisdiction. The Chief of Police shall have final and sole authority to impose discipline against Portland Police Bureau sworn employees, subject only to the approval of the City Administrator, and consistent with applicable law and collective bargaining agreements.

(4) Annually, the The Board shall make provisions for regular and open meetings; public transparency; and **issue a public** reporting on the Board's activities **surrounding its receipt, investigation, and disciplinary recommendations for complaints against Police Bureau sworn employees within its jurisdiction, while taking all reasonable and necessary steps to anonymize the identities of complainants, subjects, and witnesses.** One of the goals of the Board will be to remove barriers for Board members to fully participate in the work of the Board.

(d) The Board shall have the power to compel sworn members of the Portland Police Bureau and their supervisors to participate in investigations and to completely and truthfully answer all questions. Refusal to truthfully and completely answer all questions may result in discipline up to and including termination.

8. Delete Chapter 2, Article 10, Section 2-1008:

Section 2-1008 Duties of the Board. The board shall have the authority to investigate certain Police actions, including but not limited to;

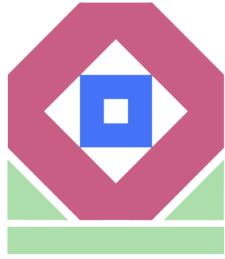
(a) All deaths in custody and uses of deadly force.

(b) All complaints of force that result in injury, discrimination against a protected class, violations of federal or state constitutional rights.

(c) The Board may investigate other complaints or incidents of misconduct as they see fit or as mandated by City Code.

9. Amend Chapter 2, Article 10, Section 2-1009 to read as follows:

Section 2-1009 Severability. For the purpose of determining constitutionality, every section, subsection and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.



**Portland
City Auditor**
Elections



February 23, 2024

William B. Aitchison
PO Box 12070
Portland, OR 97212

Delivered Electronically

wiaitchison@gmail.com
anil@pslglawyers.com

**Notice of Determination
Constitutional Requirements Met**
Prospective Initiative Petition PDX24OL-03

Dear Chief Petitioner Aitchison:

On February 20, 2024, you filed a prospective initiative petition with the City Elections Office. As required by ORS 250.270(1) and City Code Section 2.04.055, I have determined that Prospective Initiative Petition ID PDX24OL-03, "Strengthening Recruitment, Retention, Training, and Accountability for the Portland Police Bureau," meets the requirements of Article IV of the Oregon Constitution, section 1 (2)(d) and (5).

Please note that this determination is a limited review of constitutional conformity and does not necessarily identify all potential constitutional difficulties that may preclude the proposed measure from proceeding.

Next Steps

On February 23, 2024, the City Elections Office will deliver your prospective petition to the City Attorney's Office and request preparation of a ballot title. Under state law, the City Attorney's Office will be required to deliver a ballot title to the City Elections Office within 5 business days, or by March 1, 2024. After we have received the ballot title, our Office will reach out to you regarding next steps and the ballot title process.

1221 SW 4th Avenue, Room 130
Portland, OR 97204
portland.gov/elections
elections@portlandoregon.gov
503-823-4022

EXHIBIT 2

Challenge Rights

As provided in ORS 250.270(4), any elector dissatisfied with the current constitutionality determination may petition the circuit court of the judicial district in which the City is located for review within 7 business days of the City Attorney filing the ballot title with the City Elections Officer.

If you have any questions, please feel free to reach out to our Office.

Thank you,

A handwritten signature in black ink that reads "Louise Hansen". The signature is written in a cursive style with a large initial "L" and "H".

Louise Hansen
City Elections Officer



Ballot Title

CAPTION

Amends Charter: Changes authority, membership and budget for community police oversight board.

QUESTION

Should Portland change police oversight board authority to recommend but not impose discipline; amend investigatory authority; revise membership, budget requirements?

SUMMARY

In 2020, voters added new community police oversight board to Charter to:

- Impose discipline, including termination, on police employees
- Investigate certain misconduct complaints, other complaints as they see fit
- Recommend police policies, focused on community concerns
- Include board members from diverse communities, particularly with systemic racism, mental illness, substance abuse experience
- Prohibit board members who are current law enforcement employees and immediate family members, or former law enforcement employees
- Operate with budget proportional to 5% of Police Bureau's operating budget
- Exercise independent judgment in executing assigned duties

If measure approved, amended board will:

- Recommend discipline to Police Chief who makes all discipline decisions, subject only to City Administrator approval
- Investigate certain misconduct complaints, eliminate authority to investigate other complaints as they see fit
- Include board members from diverse communities, eliminate emphasis on certain experiences, remove prohibition on law enforcement employees, family members
- Eliminate 5% budget requirement, Council sets budget
- Eliminate language regarding independent judgment, noninterference
- Issue annual report:
 - Recommending recruiting, retention, training program improvements
 - Summarizing complaints, with anonymous complainants, subjects, witnesses

Other provisions.