



Office of Mayor Ted Wheeler
City of Portland

June 9, 2023

Police Accountability Commission
c/o Project Manager Sameer Kanal

Dear Police Accountability Commissioners:

Thank you for your presentation at the Council work session on May 23, 2023. All of us at Council appreciate the significant time and dedication of PAC members to create a new police accountability system. It was extremely helpful to learn more about the PAC's vision so that we can share our feedback as we move toward our shared goal of a system that is considered fair and just by the community and Portland Police officers.

After considering the information presented, and to share the interests of constituents of Council offices, we jointly provide our perspectives and suggestions here.

General requests and suggestions for the final recommendation.

Because of the significant amount of research you have done over these many months, it would aid Council's evaluation to note in your recommendation when existing Independent Police Review and/or Professional Standards practices are being recommended for the new system. Citations to legal authority, supporting research, and/or cities that are already employing a recommended strategy, just as you did in your recent communication with Council, is very helpful, as is noting when practices currently in use in Portland are being maintained.

Additionally, it is important that the PAC be clear about how legal limitations that apply to the current system will also apply to a new system. As stated at page 4 of the Council Briefing Book, "[t]he current system is governed and protected by layers of law and policy. Collective bargaining is not open to the public [in] the current system." If the PAC believes that the Board would not be bound by the same legal framework, it would be helpful to Council and the public to understand what authority it is relying on in reaching that conclusion.

As the PAC continues its work, it is also critically important to ensure it is making recommendations based on accurate information and distinguishing between statements of perception and statements of fact. Council wants to be certain that the difference between PAC's perception of a process versus whether a process exists are

communicated clearly. For instance, it is factually inaccurate to state that “IPR and CRC are not involved in use of deadly force reviews” as stated at page 4 of the PAC’s Council Briefing Book. Both IPR and CRC are included in the PRB review process in disciplinary cases, including deadly force review. It is also inaccurate to state that the current system does not compel officers to make statements, and that complainants are not notified of the outcome of their cases. Officers are compelled to make statements and complainants are notified when their cases are resolved. We urge you to clarify these matters to ensure legitimacy in your recommendation to Council.

Functionality within the current legal framework.

Understanding that you have only recently identified independent counsel to advise the PAC, we want to encourage you to be adaptable if some of the procedures you are envisioning are not feasible within the current legal framework. We also encourage you to seek advice regarding applicable legal and evidentiary standards for different phases of employee disciplinary cases.

For instance, as you consider the Board structure, it will be important to have clarity regarding:

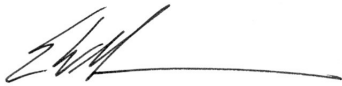
- Participant roles.
 - The roles of the subject employee, the complainant, advocates, investigators, and Board members.
 - Articulating what the PAC envisions for Board members and staff qualifications that are appropriate to these roles, and what having “a demonstrated support for police accountability and racial justice” looks like within the entire Portland community.
 - Limitations on these roles are also important to consider, such as unauthorized practice of law, whether complainants are legally a party to a disciplinary action between an employer and employee, collective bargaining impacts, etc.

- Whether different standards apply to employee discipline cases and varying levels of review.
 - What are the standards/criteria for intake determinations?
 - What are the standards/criteria for determining eligibility for mediation?
 - What standards apply to preliminary hearings, including rules of evidence?
 - Who decides what information is accessible to involved employees prior to a preliminary hearing?
 - What is the impact of changing from a due process meeting whose purpose is to provide an employee with an opportunity to give additional or contradicting information from a proposed discipline, as well as

- mitigating information, to a hearing where evidence is received and considered from the complainant and the employee?
 - Is there an impact on due process by holding a public hearing to provide the required due process?
 - How and when new evidence can be considered in the appeal process.
 - The legal due process requirements at each phase for employees facing discipline from an employer.
- Public records laws and confidentiality.
 - Complying with public records law and also maintaining privacy and confidentiality obligations related to criminal justice records.
 - Which Board procedures/hearings are able to be held publicly and which are not.
 - How to communicate these limitations to the public to ensure accurate understanding and trust in the new system.
 - Board role within City infrastructure.
 - Maintaining consistency with City standards, including centralized administrative processes like Human Resources standards of conduct, website development and maintenance, Board facilities, etc.
 - Articulating how the Board is envisioned to contribute to the City's legislative agenda and collective bargaining, including authority and/or precedence for that vision.
 - Clarity regarding how the PAC envisions the City providing mental health support and services to non-employees and any resulting legal implications.

In sum, we want to thank you again for the important work you are doing. Our city is in the midst of significant transformation and ensuring that the new system of police discipline is unbiased, legally grounded, and functional is critical to its successful implementation.

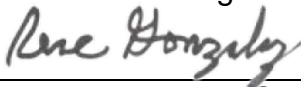
Sincerely,



Mayor Ted Wheeler



Commissioner Mingus Mapps



Commissioner Rene Gonzalez



Commissioner Carmen Rubio



Commissioner Dan Ryan