

**City of Portland**  
**Police Accountability Commission**  
**DRAFT Areas of Agreement on Officer Accountability**

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The Police Accountability Commission was asked to complete the following tasks which were assigned to the Sub-Committee on Officer Accountability:

- Describe case handling and investigative processes (“Complaint, Investigation, Determination, Discipline, etc. processes”), including workflow description.
- Compliance with State laws
- Consideration of the existing procedure and the addition of the Community Police Oversight Board.

The Portland City Charter indicates the new Board will be made up of community members who are authorized to hire the Board's director, ensure investigations are conducted into misconduct allegations, and to discipline officers who have violated policy.<sup>1</sup>

In accordance with Portland Police Association Contract Section 62.7 and US Department of Justice Section VIII and Paragraph 195c, the Police Accountability Commission has designed the following outline of a system, from the time an incident occurs to the time discipline, if any, is imposed.<sup>2</sup>

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<sup>1</sup> City Charter Section 2-10.

<sup>2</sup> PPA Contract 62.7:

“62.7 The parties acknowledge that when the City is prepared to present the terms that will commence the Portland Community Police Oversight Board, the City will provide notice to the Association prior to implementation. The City and the Association will comply with any bargaining obligations that may exist under the PECBA consistent with the procedures of ORS 243.698.”

USDOJ Section VIII:

“PPB and the City shall ensure that all complaints regarding officer conduct are fairly addressed; that all investigative findings are supported by a preponderance of the evidence and documents in writing; that officers and complainants receive a fair and expeditious resolution of complaints; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent. The City and PPB seek to retain and strengthen the citizen and civilian employee input mechanisms that already exist in the PPB's misconduct investigations by retaining and enhancing IPR and CRC as provided in this Agreement.”

In designing this outline, we have kept in mind the Values of the PAC:<sup>3</sup>

1. Equity and Inclusion
2. Anti-Racism
3. Harm Reduction
4. Transparency and Trustworthiness
5. Community-Centered
6. Effectiveness

### Definitions

|                               |  |
|-------------------------------|--|
| Complainant                   | "Complainant" may mean a person who has filed a complaint about misconduct, or has been the recipient of alleged misconduct even if they did not file a complaint.               |
| Preponderance of the Evidence | The "Preponderance of the evidence" standard means that a majority of evidence supports a finding on an allegation (applies to In Policy, Out of Policy and Unfounded findings). |
|                               |  |
|                               |  |

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Paragraph 195c:

"The City will comply with any collective bargaining obligations it may have related to the Oversight Board, which the City agrees to fulfill expeditiously and in compliance with its obligation to bargain in good faith."

<sup>3</sup> [Police Accountability Commission Values and Goals \(03-24-2022\)](#)

## A. Intake of Complaints

### A1. Advocates and Interview Process<sup>4</sup>

- A. The new Board will provide an advocate (or "complaint navigator") for each community member.<sup>5</sup>
  - i. **To the extent possible, the** advocate will be appropriately culturally attuned to the complainant's needs.
- B. Civilians can additionally have two support people including an attorney for a total of up to three support people. However, the support person cannot be a witness to the incident.<sup>6</sup>
  - i. If the complainant is an officer, who already has the automatic ability to have a bargaining unit representative and an attorney, they can also bring a peer officer or community member of their choosing (who is not a witness to the incident). This means they may also have as many as three support people.
  - ii. If the officer is not a part of the bargaining unit, they will be assigned an advocate from the pool for community members. The officer can decline this option.
- C. Interviews will be scheduled around civilians' work schedules and can be rescheduled if need be.<sup>7</sup>
  - i. Interviews will include accommodations for people with disabilities, and interpreters if needed.

**Commented [PAC 02-091]:** Commissioner proposed change (Aje/Dan):

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<sup>4</sup> Includes references to these documents, among others:

PAC Areas of Agreement on Other Jurisdictions B, R5, T

PAC Areas of Agreement on Subject Matter Experts H

PAC Areas of Agreement on Barriers and Best Practices, "Accessibility & Equity"

<sup>5</sup> From PAC's Barriers/Best Practices "Lack of Transparency" section: "Complainants are not offered access to an advocate during the intake process."

<sup>6</sup> From San Diego County.

<sup>7</sup> From New York.

## A2. Timelines to File

- A. The timeline to file a complaint shall be 12 months after the incident.<sup>8</sup>
  - i. The timeline can be extended by the Board chair and/or Director for good cause.<sup>9</sup>
  - ii. The time limit on filing a complaint will be extended until a civil case has concluded and/or for the term of the involved community member's incarceration, to a maximum of five years.<sup>10</sup>
  - iii. Good cause for extending the timeline may include (but is not limited to) fear of retaliation, or if an officer who was not previously identified has their identity become known after the 12-month deadline.<sup>11</sup>

## A3. Who can file

- A. Anyone who experiences or witnesses alleged misconduct can file a complaint. The right to file a complaint is absolute and unconditional.<sup>12</sup>
  - i. Parents ~~and~~ guardians should be able to file complaints on behalf of minors up to the age of 18. Youth can file complaints on their own beginning at age 15 (with that age based on healthcare laws).<sup>13</sup>
  - ii. The complainant pool is inclusive regardless of age, immigration status, residence, criminal record, or language used. Incarcerated people can file complaints.<sup>14</sup>

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<sup>8</sup> Adapted from San Diego County

<sup>9</sup> Adapted from New York

<sup>10</sup> Adapted from San Diego County

<sup>11</sup> Adapted from Washington, DC.

<sup>12</sup> From San Diego County.

<sup>13</sup> Adapted from Washington, DC.

<sup>14</sup> Adapted from New York.

- iii. Anonymous complaints will be accepted, and will be prioritized depending on the nature and severity of allegations and, for more minor complaints, the Board's workload.<sup>15</sup>
  - iv. Complaints involving any community members can be filed by third parties ~~—~~ individuals or organizations.<sup>16</sup>
- B. Police officers with city police, or with other agencies, can file complaints against Portland police officers.<sup>17</sup>
- C. No member of the community or the Police Bureau shall face retaliation, intimidation, coercion, or any adverse action for filing a complaint, reporting misconduct, or cooperating with a misconduct investigation.<sup>18</sup>

Commented [PAC 02-092]: Commissioner proposed change (Monica):

#### **A4. Ways to file complaints**

- A. The complaint process is inclusive and offers multiple methods and accommodations to ensure access.<sup>19</sup>
- i. Filing will be offered in person or by mail, phone, email, online, texting, or by other common technological means of communication. Collect calls will be accepted.<sup>20</sup>
  - ii. Translation for documents and for verbal communications shall be offered with appropriate interpretation to be inclusive of people for whom English is not their preferred language, and people with disabilities.<sup>21</sup>
  - iii. The complainant shall be asked to state their preferred method of communication at the beginning of the process.<sup>22</sup>

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<sup>15</sup> Adapted from New York.

<sup>16</sup> Added by Commissioners.

<sup>17</sup> From San Diego (City)

<sup>18</sup> from Portland City Code 3.21.110 D

<sup>19</sup> PAC Other Jurisdictions area of agreement T2.

<sup>20</sup> Adapted from San Diego County.

<sup>21</sup> Adapted from San Francisco.

<sup>22</sup> Added by Commissioners.

- B. Complaints called in to members of the Police Bureau (including Internal Affairs) or the appropriate City investigatory body or to the City's information lines (such as 311) shall be directed to the Board's staff.<sup>23</sup>
- C. The Board's offices shall be open to accept complaints for longer hours than M-F 9 AM-5 PM, including early mornings, weekend times, and evenings.<sup>24</sup>
- D. The Bureau shall inform the Board immediately upon their knowledge that a member has engaged in conduct that may be subject to criminal and/or administrative investigation.<sup>25</sup>
- E. The Board shall work with staff to be sure complaint forms are widely available.<sup>26</sup>

**A5. Providing information to complainants (for providing information to officers, see "Investigations")**

- A. During intake, the complainant shall be informed of any obligations the Board may have to report something that is stated to them as part of a complaint and to provide the complaint itself to the involved officer. It is important that the Board not turn over any admission of civil violations, criminal conduct, or criminal intent unless there is an imminent threat of harm to the complainant or others. That part of the investigation or interview which could incriminate the complainant in criminal proceedings will be considered confidential.<sup>27</sup>
  - i. During intake, staff shall not express opinions about the complainant or the truth or merit of their allegations.
  - ii. However, if the staff conducting intake has some kind of bias or conflict regarding the complaint, complainant or nature of the

**Commented [PAC 01-303]:** 01-09 Flagged for further discussion (wording – conceptual agreement)

Flagged to ask attorneys: can information irrelevant to the officer's conduct impacting the community member be withheld from the officers?

<sup>23</sup> Adapted in part from New York as well as City Code 3.21.110A1b.  
<sup>24</sup> Expanded from New York/San Francisco.  
<sup>25</sup> Adapted from City Code 3.21.110 A3.  
<sup>26</sup> Adapted from Portland City Code 3.21.090A1.  
<sup>27</sup> Added by Commissioners.



allegations, they should reveal that bias. ~~If possible~~ At that point,  
another staff member should complete the intake, ~~otherwise the~~  
~~person with the conflict should hand the case off after intake.~~

~~ii.~~ iii. If they perceive bias, complainants may request another staff person  
to complete the intake.

- B. Complainants shall receive records of their complaint, including:<sup>28</sup>
- i. confirmation of the receipt of the complaint including a summary of the allegations;
  - ii. literature about the Board and its process including explanation of confidentiality issues;
  - iii. as appropriate, a medical release form for records related to the complaint;
  - iv. notice if the investigation cannot be completed in the ordinary timeline;
  - v. notification of completion of the investigation in a final report; and
  - vi. a survey about their experience with the complaint system.
- C. Information for the complainant about the complaint shall be made available online.<sup>29</sup>
- D. The complainant should have access to as much information about their complaint as legally possible, even if some material has to be redacted.<sup>30</sup>
- i. The advocate (as described in A1) shall have access to all available records in order to best advise the complainant, even information the complainant or their community representatives are not legally authorized to access. ~~Such materials may also be redacted to comply with privacy laws.~~
- E. The complainant shall not incur costs for access to information about their complaint.<sup>31</sup>

Commented [PAC 02-094]: Commissioner proposed change (Monica):

Commented [PAC 02-095]: Commissioner proposed change (Monica/Aje/Dan)

<sup>28</sup> Adapted from San Diego County and Chicago.

<sup>29</sup> From New York; also currently exists in Portland (DOJ paragraphs 138-140).

<sup>30</sup> Added by Commissioners.

<sup>31</sup> Adapted from Portland City Code 3.21.070J

F. Communication shall not be made by postcard or other means of written communication that jeopardizes privacy.<sup>32</sup>

**A6. Types of conduct/complaints the new agency will investigate and determine outcomes**

A. The Board shall investigate certain Police actions, including but not limited to:<sup>33</sup>

- i. All deaths in custody (including effective/constructive custody) and uses of deadly force;
- ii. All complaints of force that result in injury, discrimination against a protected class, violations of federal or state constitutional rights.

B. The Board shall also investigate allegations of:<sup>34</sup>

- i. dishonesty/untruthfulness including perjury;
- ii. false reports & concealing evidence;
- iii. sexual assaults, sexual misconduct, or sexual harassment;
- iv. domestic violence;
- v. unlawful search/arrest;
- vi. neglect of duty;
- vii. discourtesy, including use of profanity;
- viii. improper discharge of a firearm;
- ix. criminal conduct, including off-duty criminal conduct;
- x. improper or illegal act, omission or decision that directly affects a person or property;
- xi. violation of orders which affect a community member;

Commented [PAC 02-096]: Staff note: Add to definitions by 02-13.

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<sup>32</sup> Added by Commissioners.

<sup>33</sup> With the exception of "effective/constructive custody" (which was added by Commissioners) language of A6a is from Portland City Charter Section 2-1008.

<sup>34</sup> Items in A6b variously comes from San Diego (City), San Diego County, Denver, and New York, except where noted.

- xii. harassment;
  - xiii. intimidation;
  - xiv. retaliation;
  - xv. force used at protests;
  - xvi. abuse of authority (such as use of police credentials in a personal dispute);
  - xvii. officer failure to identify;
  - xviii. theft of money;
  - xix. corruption;
  - xx. allegations of affiliation with white supremacist groups;<sup>35</sup>
  - xxi. cases of substantial public interest; and
  - xxii. where data show a pattern of inappropriate policies.
- C. The Board may also investigate:
- i. Any alleged misconduct directly affecting the public, including work-related allegations such as tardiness if they affect a community member;<sup>36</sup>
  - ii. Other cases which do not originate from a complaint, at the discretion of the Board.<sup>37</sup>
- D. If the involved officer is within their 18-month probationary period and is fired by the Bureau, the Board shall complete the investigation.<sup>38</sup>
- E. When the only officers involved are from another jurisdiction, the Board shall ask permission from the complainant to forward their complaint to the proper investigating authority.<sup>39</sup>
- F. If a complainant asks the Board not to investigate a case that falls under the Board's mandate in the Charter, the Board shall weigh the interests of

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<sup>35</sup> Added by Commissioners.

<sup>36</sup> ~~expanded~~ Expanded from Philadelphia.

<sup>37</sup> Portland City Charter 2-1008 (c): "The Board may investigate other complaints or incidents of misconduct as they see fit or as mandated by City Code."

<sup>38</sup> From Portland City Code 3.20.140B2

<sup>39</sup> Added by Commissioners to ensure community member input, so that they have the option whether or not to participate in a system where, unlike in Portland, police investigate other police.

community concerns and the need for justice against the wishes of the complainant (and/or their attorney if there is one).<sup>40</sup>

#### **A7. Complaints not involving community members**

- A. Internal Affairs should investigate violations that do not impact the community.<sup>41</sup>
  - i. For example, taking home a police car for personal use would not be investigated by the Board, unless that vehicle then runs into another car or person or is used for intimidation.
- B. Officers who file complaints against other officers should have the ability to ask the Board to investigate to ensure an impartial review.<sup>42</sup>
  - i. However, when Bureau supervisors generate complainants about poor member performance or other work rule violations, Responsible Unit managers are responsible for intake and investigation.<sup>43</sup>

**Commented [PAC 02-097]:** Staff note: To be replaced by the terminology chosen by the sub-committee, which means "another City entity other than the Oversight Board".

**Commented [PAC 02-098R7]:** (From A4-B)

**Commented [PAC 02-099]:** Staff note: Add to "definitions" (if possible) by 02-13.

#### **A8. Preliminary investigations**

- A. When the Board receives a complaint involving a Bureau member, the staff shall:<sup>44</sup>
  - i. Assign a case number;
  - ii. Conduct a preliminary investigation, including gathering information about the complaint through an intake interview;

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<sup>40</sup> Added by Commissioners.

<sup>41</sup> Suggested by Commissioners.

<sup>42</sup> Added by Commissioners.

<sup>43</sup> Portland City Code 3.21.120 B4

<sup>44</sup> Adapted from Portland City Code 3.21.120 C

- iii. Make a decision about whether the case should be investigated, suggested for mediation, addressed by some other means, or dismissed;
  - iv. If appropriate for a full investigation, identify the complainant's allegations; and
  - v. Communicate to the complainant summarizing the complaint and the case handling decision (see section **A5b**).
- B. Informal Complaint: If the complainant expresses an interest in resolving the complaint informally through discussion with the officer's supervisor, the Board shall determine whether such resolution is appropriate.
- i. The supervisor shall make a determination whether to resolve the case informally or send it back to the Board for full investigation.
  - ii. Once approved, a case can be resolved this way without formal investigation and the complainant will be informed of this decision.<sup>45</sup>
  - iii. If the case is sent on for full investigation, the Board will inform the complainant.

#### **A9. Dismissals**

- A. After a preliminary investigation, the Board may dismiss the case.<sup>46</sup>
- i. If the case is dismissed, the Board will provide notification to the complainant.
  - ii. The Board will also notify the involved officer(s) and their commanding officer once the appeal deadline has passed (see "Appeals" section).
- B. The Board may dismiss a complaint for the following reasons (but may wish to initiate potential policy recommendations from dismissed complaints):<sup>47</sup>

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<sup>45</sup> Proposed by Commissioners to replace Supervisory Investigation with a more informal resolution. Based on conversation with IPR.

<sup>46</sup> Section A9a from Portland City Code 3.21.120C4

<sup>47</sup> Portland City Code 3.21.120C4

- i. The complaint is only related to criminal charges or alleged violations against the complainant, and does not allege misconduct;
- ii. The complainant delayed too long in filing the complaint to justify initiating an investigation (see "Timelines to file");
- iii. Even if all aspects of the complaint were true, no act of misconduct would have occurred or it would be so minor that it would not justify the time spent investigating;
- iv. The complainant withdraws the complaint or fails to complete necessary steps to continue with the complaint. It may benefit the community to finish the investigation. However, lack of cooperation and lack of consent from a complainant may make it impossible ~~or~~ inappropriate to complete the investigation.
- v. Lack of jurisdiction (see A6e).
- vi. For the duration of the US DOJ v. City of Portland Settlement ~~US Department of Justice~~ Agreement, cases alleging excessive force shall only be dismissed when there is "clear and convincing evidence" that the allegation has "no basis in fact."

**Commented [PAC10]:** Commissioners would like to see all force allegations investigated, but are awaiting more information on this subject from IPR/the DOJ and/or the Compliance Officer.

## B. Investigations

### B1. Referral of criminal investigations

- A. The Board has the authority to refer cases to the District Attorney or other authority for criminal investigation when the incident or allegations indicate possible criminal activity by the officer(s).<sup>48</sup>

### B2. Basic elements of a misconduct investigation

- A. Beyond the basic elements listed here, the Board shall determine investigative procedures to provide guidance for staff operations.<sup>49</sup>
- B. Investigations shall follow federal and state constitutions and laws, city charter, Board rules and regulations, relevant collective bargaining agreements, and the National Association for Civilian Oversight of Law Enforcement (NACOLE) ethics code regarding Personal Integrity, Independent and Thorough Oversight, Transparency and Confidentiality, Respectful and Unbiased Treatment, Outreach and Relationships with Stakeholders, Agency Self-examination and Commitment to Policy Review, Professional Excellence, and Primary Obligation to the Community.<sup>50</sup>
- C. In all investigations involving Officer Involved Shootings and other cases which may involve criminal misconduct, officers shall receive Lybarger/Garrity warnings that they are being compelled to testify for administrative investigation, and the content of the interview cannot be used in a criminal proceeding.<sup>51</sup>
- D. Investigations must be ethical, independent, thorough, timely, fair, and impartial.<sup>52</sup>

Commented [PAC 02-0911]: Staff note: Add to "definitions" by 02-13.

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<sup>48</sup> From San Diego (City).

<sup>49</sup> From New York.

<sup>50</sup> From San Diego (City)

<sup>51</sup> From San Diego (City).

<sup>52</sup> From San Diego County.

- E. Investigations shall include, if these elements exist and are reasonably available:<sup>53</sup>
  - i. interviews of the complainant, officer(s), and witness(es);
  - ii. gathering evidence including photos, videos, proof of injuries and other relevant medical records;
  - iii. examining police roll calls, logs, assignments, and other relevant information; and
  - iv. site visits as deemed appropriate.
- F. Interviews with officers are all recorded.<sup>54</sup>
- G. Interviews with community members will be recorded, unless the community member requests not to be recorded. In these instances, the request by the community member shall be documented, and a stenographer will be enlisted to ensure the interviewee's answers are captured accurately.<sup>55</sup>
  - i. However, a community member concerned about confidentiality of certain information may request that parts of their transcript be redacted for confidentiality purposes, so long as the redaction does not interfere with the ability to fully investigate or the due process rights of the officer.
- H. Civilian interviews can take place at locations other than the oversight body's office.<sup>56</sup>
- I. Incomplete complaints can be investigated if the oversight body determines investigation is warranted.<sup>57</sup>
- J. Investigations shall be completed even if an officer retires, resigns, or is fired.<sup>58</sup>

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<sup>53</sup> From San Diego (City).

<sup>54</sup> Adapted from San Diego City.

<sup>55</sup> Adapted from San Diego City.

<sup>56</sup> From San Diego (City).

<sup>57</sup> From Chicago.

<sup>58</sup> From PAC's Barriers and Best Practices document, Best Practices section.



- K. Anonymous complaints and complaints with unidentified officers will be investigated to the full extent possible, and if necessary left open pending identifying the persons involved as needed.<sup>59</sup>
- L. Investigators shall have access to and be authorized to examine and copy, without payment of a fee, any Bureau information and records, including confidential and legally privileged information and records so long as privilege is not waived as to third parties, and police databases, subject to any applicable state or federal laws.
- M. All Bureau employees shall be truthful, professional and courteous in all interactions with the Board. No member shall conceal, impede or interfere with the filing, investigation or determination of findings of a complaint.<sup>60</sup>
- N. Information on compelling officer testimony, subpoenas and other related items (such as keeping confidential information) shall be included from the Access to Information Subcommittee's work.
- O. If for any reason during the process, investigators come to a decision that there is not enough information to finish the investigation, the complainant has the right to appeal that decision by providing further information.

**Commented [PJ12]:** Insert information from Access to Information subcommittee document.

**Commented [PAC 02-0913]:** Sub-Committee Co-Chairs' Proposed Change (Dan and Charlie) between 02-02-2023 referral and 02-09.

**B3. Timelines to complete investigations**

- A. Investigations shall be completed in 180 days or less.<sup>61</sup> An investigation reaching the 180-day timeline will continue until resolved.
  - i. If investigators are unable to meet these timeframe targets, the staff shall undertake and provide a written review of the process for the Board to identify the source of the delays and implement an action plan for reducing future delays.<sup>62</sup>
  - ii. Informal complaints shall be resolved in 60 days or less.<sup>63</sup>

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<sup>59</sup> Suggested by Commissioners to give guidance on anonymous complaints.  
<sup>60</sup> From Portland City Code 3.21.070(O)  
<sup>61</sup> From Washington, DC  
<sup>62</sup> DOJ Agreement Paragraph 123.  
<sup>63</sup> Adapted from San Diego (City). **Relates to Section A8b.**

- iii. These timelines may be extended if more time is needed, including at the request of a complainant and/or their attorney.<sup>64</sup>
  - iv. The investigative staff shall inform the Board, the complainant (and their advocates) and the officer(s) (and their advocates) if an investigation goes beyond the mandated timeline. They shall also inform the officer's supervisor, the Chief and Commissioner of Police should those parties still be involved in the discipline process.<sup>65</sup>
- B. Use of deadly force, and death investigations are prioritized for completion.<sup>66</sup>

**Commented [PAC14]:** Co-Chair Comment (Dan): Suggestion to call New York to see if there is an outside limit on requested delays.

**Commented [PAC 02-0915]:** Flagged for further revisitation (current charter uses this terminology).

#### **B4. Investigations of deadly force / deaths in custody**

- A. When an incident involves police use of deadly force or a death in custody, the Board shall follow these procedures:
- i. Board staff investigators head to the scene and collect evidence alongside criminal investigators.
  - ii. Board investigators sit in on interviews conducted for the criminal investigation.
  - iii. When those criminal investigation interviews are completed, if there are questions about the possible administrative violations, board investigators will ask questions of witnesses and, if available, involved officers.
  - iv. The investigations shall include:
    - a. A review of the supervisors and others who were on the scene, including officers who used force or may have precipitated the use of deadly force<sup>67</sup>

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<sup>64</sup> Adapted from San Francisco and New York.

<sup>65</sup> Adapted from City Code 3.21.170A

<sup>66</sup> From San Diego County.

<sup>67</sup> Police Review Board public reports <https://www.portland.gov/police/divisions/prb-reports>

- b. The final investigation will also be sent to the PPB Training Division for an analysis to be presented to the Board at the hearing on the deadly force incident.<sup>68</sup>
- B. The community member subjected to use of deadly force, or their survivors if the interaction resulted in death, shall be considered as complainants and shall have full rights to appeal.
  - i. In cases in which survivors choose not to file a complaint, the investigation shall still be handled in the same way as all other misconduct investigations.

#### **B5. Information provided to officers**

- A. When an investigation begins, an officer shall be informed in writing:<sup>69</sup>
  - i. of the nature of the investigation;
  - ii. whether the member is a witness or an involved member; and
  - iii. other information necessary to reasonably inform the involved member of the nature of the allegations, including the time, date, and location of the incident (if known).
  - iv. No information that would compromise the integrity of the investigation shall be shared with the involved officer.

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<sup>68</sup> PPB Directive 1010.10, Section 7

<https://www.portlandoregon.gov/police/article/656780>

<sup>69</sup> Section adapted from PPA Contract Section 61.2.1

## C. Findings

### C1. Determination process and findings

- A. Findings are determined using the "Preponderance of the Evidence" Standard.<sup>70</sup>
- B. The oversight body uses a standard set of four options for findings in all cases:<sup>71</sup>
  - i. "Out of Policy," meaning the action is found to have violated policy. In some jurisdictions, this is known as "sustained";
  - ii. "In Policy," meaning the officer's actions were within the law and policy. In some jurisdictions, this is known as "exonerated";
  - iii. "Unfounded," meaning the evidence shows the alleged events did not occur; and
  - iv. "Insufficient Evidence," meaning there is not enough information or evidence to attach any of the other findings.
- C. The Board may also add these additional findings related to systemic aspects of the case which led to the interaction that caused the complaint:<sup>72</sup>
  - i. Policy Failure, meaning the Board recommends that the Bureau revise its policy;
  - ii. Training Failure, meaning the Board recommends that the Bureau revise its training;
  - iii. Supervisory Failure, meaning someone in the chain of command supervising the officer engaged in an action that led to the incident;

**Commented [PAC 02-0916]:** Staff note: Add to "definitions" by 02-13.

**Commented [PAC 02-0917]:** Staff note: Update language based on "structural oversight" document (e.g. "Systemic Findings")

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<sup>70</sup> As in San Diego County, New York, and the recommendation of Consultant Eileen Luna Firebaugh's 2008 report on the IPR.

<sup>71</sup> Reflects current practice in Portland (Directive 332.00) and Washington, DC, New York, San Francisco, San Diego (City) and San Diego County.

<sup>72</sup> Adapted from Consultant Eileen Luna Firebaugh (2008), Seattle and San Francisco.

- iv. Communication Failure, meaning officers did not communicate well among themselves or information was otherwise not properly relayed to the involved officer(s); and
  - v. Equipment Failure, meaning the equipment provided did not function properly or was not adequate.
- D. All of these findings shall be applied whether the case is generated by a complaint or if the Board investigates as required by City Code and Charter.<sup>73</sup>
- i. ~~When the body or supervisor investigating officer complaints not involving community members conducts an investigation, these findings shall also be used for consistency.~~ These findings shall also be used for consistency by any other body or supervisor who investigates officer complaints which do not involve community members.

## **C2. Hearings, preliminary hearings and panels**

- A. The Board may create panels to hear cases to determine findings about whether policies were violated.<sup>74</sup>
- i. Panels shall be no smaller than five Board members.
  - ii. In more serious cases, these panels shall have more members than in other cases.<sup>75</sup>
  - iii. The panels shall be created to ensure diversity based on life experience, race, gender, and other factors, including, if appropriate, whether members are nominated by different people or entities<sup>76</sup>
  - iv. Each panel shall have a presiding individual over each hearing.

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<sup>73</sup> Added by Commissioners.

<sup>74</sup> Adapted from San Diego (City), New York and San Diego County.

<sup>75</sup> Portland City Code 3.20.140C.

<sup>76</sup> Added by Commissioners.

- B. The Board can take interim steps prior to findings being determined in specific cases.<sup>77</sup>
  - i. A case can be ~~expedited prioritized~~ if an officer is retiring or being promoted.
  - ii. The Board can recommend suspending an officer, ~~or delaying promotion,~~ while administrative charges are pending.
- C. Members of the hearing panel shall review all investigative materials.<sup>78</sup>
  - i. In reviewing the case, the panel may examine any supporting documents, the file and report of the staff, and any documents accumulated during the investigation. They may also listen to and/or watch the recordings of all interviews.<sup>79</sup>
- D. The panel shall hold a public preliminary hearing to assess the completeness and readiness of the investigation for a full hearing.<sup>80</sup>
  - i. The complainant and officer will be notified of the date of the preliminary hearing, but are not required to attend. They may appear with any or all of their support persons.<sup>81</sup>
  - ii. Public comment on the readiness of the investigation will be taken before the panel makes a decision whether to proceed.<sup>82</sup>
- E. The panel will decide whether to:<sup>83</sup>
  - i. Send the case back for further investigation, specifying the information sought; or
  - ii. Send the case forward to a full Hearing.

Commented [PAC 02-0918]: Co-chair proposed change (Dan):

Commented [PAC 02-0919]: Commissioner proposed change (Sophia):

Commented [PJ20]: This was a hard-fought win for the community over objections from the Auditor. While this is a personnel hearing, officers have extraordinary powers to use force and the community should have the right to speak. SUGGEST INCLUSION. DH/DA/CMW

<sup>77</sup> From New York.

<sup>78</sup> Adapted from CRC protocol PSF 5.03(6): "Only Committee members who have reviewed the complete administrative case file will participate in the appeal."

<sup>79</sup> From Portland City Code 3.21.060B (IPR).

<sup>80</sup> From Portland City Code 3.21.150B

<sup>81</sup> This is current practice for the Citizen Review Committee but is not in City Code.

<sup>82</sup> From Portland City Code 3.21.150B

<sup>83</sup> From Portland City Code 3.21.150C and D.

### C3. Hearings process

- A. The Board will hold open hearings on misconduct complaints and investigations.<sup>84</sup> The hearings shall be recorded.
- i. Public notice of hearings shall be posted at least seven business days before the hearing date.<sup>85</sup>
  - ii. In limited specific circumstances defined by state or federal law, parts of the hearings can be held without being open to the public.<sup>86</sup>
  - iii. Examples of reasons to close the hearings to the public include to protect the identity of a victim or private medical information.<sup>87</sup>
  - iv. While details protected in closed session are confidential, decisions shall be made publicly.<sup>88</sup>
  - v. Throughout the hearing process, the Chair or presiding individual shall remind the audience of the seriousness of the employment matter being discussed while acknowledging community responses.<sup>89</sup>
  - vi. A person from the upper management of the Bureau's Training Division shall attend all hearings to answer questions about police policy, training, or procedure.<sup>90</sup>
- B. The hearings process has accommodations to ensure accessibility.<sup>91</sup>
- i. The complainant can appear with their advocate, as well as a support person and/or an attorney.

**Commented [PJ21]:** Note: the PPA contract guarantees 61.9.1.3 The Association shall be allowed to have a representative present during any portion of [PRB] Executive Session in which non-Board member "presenter" representatives of Training Division, Internal Affairs Division, or Detective Division are allowed to attend. Should the complainant also be allowed to attend the executive session?  
SUGGESTION: If there is private medical information about an officer or complainant the other side may be excluded, but perhaps an attorney/advocate can attend with the agreement of confidentiality. CMW/DH 1/5

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<sup>84</sup> Based on Citizen Review Committee hearings, Portland City Code 3.21.160A, Maryland and Seattle.

<sup>85</sup> Adapted from San Diego County.

<sup>86</sup> Adapted from Maryland.

<sup>87</sup> Adapted from Maryland.

<sup>88</sup> From ORS 192.660(6).

<sup>89</sup> This should address concerns raised in the "embarrassment clause" in the PPA contract Section 20.2.

<sup>90</sup> From Police Review Board advisory members in Portland City Code 3.20.140 C1(b)(7).

<sup>91</sup> Adapted from San Diego County.

- ii. The officer can appear with their bargaining unit representative/advocate, and/or their attorney and/or support person.
  - iii. Interpreters shall be provided with adequate advance notice for arrangements to be made.
  - iv. Other accommodations shall be made for people with disabilities.
- C. Procedure for the hearings (Note: throughout this subsection, "complainant" and "officer" may include their representatives.)<sup>92</sup>
- i. The basic circumstances of the case and allegations shall be read into the record at the beginning of the hearing.<sup>93</sup>
  - ii. The complainant and officer can make opening statements; the complainant can choose whether to provide their statement before or after the officer.<sup>94</sup>
  - iii. The presiding individual begins questions of witnesses, followed by other panel members.<sup>95</sup>
  - iv. Board staff can ask questions at the invitation of the presiding individual.
  - v. The officer or complainant can request specific items about which the panel may ask more questions.
  - vi. Once recognized by the presiding individual, the complainant and officers<sup>7</sup> have the ability to ask questions, request additional questions, call witnesses, introduce exhibits, cross-examine witnesses, and suggest that the panel impeach witnesses. The Oversight Board shall establish guidelines and methods for these processes.
  - vii. The complainant and officer can offer rebuttals.<sup>96</sup>

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<sup>92</sup> Except as noted, steps listed in section C3c are from PSF 5.03 Citizen Review Committee Appeals Procedures.

<sup>93</sup> From PSF 5.03 7b.

<sup>94</sup> From PSF 5.03 7c&d

<sup>95</sup> Sections C3c3 to C3c6 adapted from San Diego County.

<sup>96</sup> From PSF 5.03 7j and San Diego County.



- viii. The officer and complainant can make closing statements.<sup>97</sup>
- ix. The panel deliberates on the evidence.<sup>98</sup>
- x. Public input shall be taken before the panel's final deliberation and decision.<sup>99</sup>
- xi. Should there still be outstanding issues regarding evidence that can be obtained, the panel may decide to send the case back one time for further investigation, specifying the information sought.<sup>100</sup>
- xii. The panel decides findings, with each member explaining their vote position.<sup>101</sup>
- xiii. Those who disagree can include their dissenting information along with the findings.<sup>102</sup>
- xiv. When a decision is made at the end of a public hearing, the presiding individual should explain the next steps, including the appeal process.<sup>103</sup> If any finding is made outside the public hearing process where an appeal is still possible, or the complainant does not appear at the hearing, a Board representative can explain the process or delegate that responsibility to staff.

D. Should the panel decide that one or more allegation is in violation of Bureau policy, they will move to a decision on the discipline for the involved officer,<sup>104</sup> which shall also be decided.<sup>105</sup>

Commented [PAC 02-0922]: Commissioner proposed change (Aje):

Commented [PJ23]: Should there be a limit on how long this explanation can be (Commissioner Hussaini)

Commented [PAC 02-0924R23]: Garden plot (Phase 4 or Oversight Board Bylaws)

Commented [PAC 02-0925]: Co-Chairs' proposed change (Charlie/Dan):

<sup>97</sup> from San Diego County.

<sup>98</sup> Adapted from PSF 5.03 7l.

<sup>99</sup> From PSF 5.03 7i.

<sup>100</sup> From City Code 3.21.160 A1a and PSF 5.03 l-i.

<sup>101</sup> From PSF 5.03m

<sup>102</sup> From City Code 3.20.140 F2 and San Diego County.

<sup>103</sup> Adapted from PSF 5.03n.

<sup>104</sup> City Code 3.20.140 directs the Police Review Board to vote on findings and discipline at the same time.

<sup>105</sup> The public interest in hearings for public employees authorized to use force outweighs the PPA contract's "embarrassment clause."

- E. Hearings can be held even if parties fail to appear.<sup>106</sup>
- F. The panel may receive any oral or written statements volunteered by the complainant, ~~or the involved member, or other officers involved,~~ or any other person.<sup>107</sup>
- G. Hearsay is admissible; evidence is allowed if "responsible persons are accustomed" to using such information in "serious affairs."<sup>108</sup>
- H. When the Hearing process develops new information, the panel may consider the new information when determining if additional investigation is warranted, but the panel may not use the new information to determine findings.<sup>109</sup>

Commented [PAC 02-0926]: Commissioner proposed change (Seemab):

Commented [PAC 02-0927]: This formatting change is to move it from being a sub-item of C3-F, to being its own item under C3.

#### **C4. Providing information to complainants and officers**

- A. Board staff shall distribute information to involved parties before the hearing.<sup>110</sup>
- B. An investigative report will be sent to the complainant, officer, and their identified support persons no less than fourteen business days before the hearing.
  - i. The complainant and officer shall be given access to the same information as allowable by law.<sup>111</sup>

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<sup>106</sup> From San Diego County.

<sup>107</sup> From Portland City Code 3.21.160B.

<sup>108</sup> From San Diego County

<sup>109</sup> from Portland City Code 3.21.160B.

<sup>110</sup> C4a and b adapted from San Diego County.

<sup>111</sup> Note: the PPA contract guarantees the officer rights to:

61.2.3.2 A copy of all materials developed in the investigation which will contain all material facts of the matter, including witness statements relied on to make findings. And

61.2.3.3 The names of all witnesses and complainants who will appear against the member and/or whose statements will be used against the member.

- ii. Any information that is provided to the officer but not the complainant shall be shared with confidentiality protections with the complainant's advocate.<sup>112</sup>
- C. Following the decision of the Board, the findings shall be shared in writing (or other means if requested) with the complainant and officer(s).<sup>113</sup>

**C5. Stipulated discipline (in which an officer admits to misconduct and accepts discipline)**

- A. To expedite the process, officers can admit to misconduct and accept the proposed discipline.<sup>114</sup> Stipulating to discipline will not reduce the level of discipline imposed.
- B. The officer may have up to 7 days to inform the Board that they stipulate to the Findings and Discipline, thus waiving all four possible avenues of appeal (to an Appeals Panel of the Board, to the Civil Service Board, through a grievance or through a due process hearing).
- C. The following categories of cases are not eligible for stipulated discipline:<sup>115</sup>
  - i. cases involving alleged use of excessive force including officer shootings and deaths in custody;
  - ii. cases involving alleged discrimination, disparate treatment or retaliation;
  - iii. cases in which the body which determines discipline does not agree to accept the member's proposed stipulation to findings and recommended discipline.
- D. The following categories of investigations are eligible for stipulated discipline:

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<sup>112</sup> From PSF 5.21(4).

<sup>113</sup> From San Diego (City), San Diego County and San Francisco.

<sup>114</sup> Concept from DOJ Paragraph 131.

<sup>115</sup> Adapted from Portland City Code 3.20.140 J

- i. First time offenses that would not ordinarily lead to discipline of more than one day off without pay;
  - ii. Second time offenses that would only lead to command counseling or a letter of reprimand.
- E. In an investigation involving multiple potential violations, the violation with the highest category from the City's Discipline Guide will be used to determine whether the case qualifies for stipulated discipline.
- F. Stipulating to out-of-policy findings and discipline does not remove the complainant's ability to appeal any other finding.

## D. Discipline / Corrective Action

### D1. How to impose discipline / application of the discipline guide

- A. The Board has the authority to issue disciplinary action up to and including termination for all sworn members and the supervisors thereof within the Portland Police Bureau.<sup>116</sup>
  - i. Because the Bureau of Human Resources has authority over every city employee, if for some reason the Board is unable to directly impose discipline/corrective action, the Bureau of Human Resources shall enact the will of the Board.<sup>117</sup>
  - ii. Discipline may include various consequences for the officer, as well as education-based alternatives to promote a positive outcome and avoid employee embitterment.<sup>118</sup>
- B. The discipline imposed must be consistent with the City's corrective action guide, including exceptions that are written into the guide.<sup>119</sup>
- C. The discipline can note trends and take into account the officer's individual history.<sup>120</sup>
- D. The Police Bureau may not issue discipline less than what the Board chooses to impose.<sup>121</sup>

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<sup>116</sup> Portland City Charter 2-1007a.

The 2021-2025 Portland Police Association contract 2.1 states "The City shall retain the exclusive right to exercise the customary functions of management including [...] the right to hire, lay off, transfer and promote; to discipline or discharge for cause" and the new Board is part of the City infrastructure.

<sup>117</sup> Portland City Charter section 2-1006 states: "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."

<sup>118</sup> Language from Portland's 2021-2025 Corrective Action Guide.

<sup>119</sup> **Added by Commissioners.**

<sup>120</sup> From San Diego County.

<sup>121</sup> The Board decides discipline (Portland City Charter 2-1007); in Oakland the Police Commission can make a final determination.

- i. If the Bureau wants to increase discipline they need to appear before the Board to discuss the reasoning. The Chief or representative will have to describe the aggravating factors informing their proposal.<sup>122</sup>
- ii. The Board has the authority to accept or reject the Bureau's proposal.

## **D2. Due process and just cause rules**

- A. The discipline process shall be consistent with due process and just cause considerations.<sup>123</sup>
  - i. The state of Oregon defines "Just cause" as "a cause reasonably related to the public safety officer's ability to perform required work. The term includes a willful violation of reasonable work rules, regulations or written policies."<sup>124</sup>
  - ii. Due process includes:<sup>125</sup>
    - a. The right to a hearing, which includes the right to present one's case and submit evidence;
    - b. The decision-makers must consider the evidence presented;
    - c. The decision must be supported by the evidence;
    - d. The evidence must be substantial, in this process defined as a preponderance of the evidence;<sup>126</sup>
    - e. The decision must be made based on the evidence presented at the hearing, or on evidence contained in the record and disclosed to the parties affected;
    - f. The decision-makers (in this case, the Board) must act on their own independent consideration of the law and facts

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<sup>122</sup> Sections D1d1 and D1d2 adapted from City Code 3.21.140 H4

<sup>123</sup> From PAC Agenda and Scope document (cite Council resolution).

<sup>124</sup> From ORS 236.350.

Includes but is not limited to "willful violations"

<sup>125</sup> from Supreme Court case Ang Tibay v. CIR

<sup>126</sup> Note that "substantial" does not actually have to be a preponderance so the proposed standard is higher than required.

and not simply accept the views of a subordinate (such as the staff) in arriving at a decision;<sup>127</sup> and

- g. The board or body should, in all controversial questions, make its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision made.

B. Due process includes the officer's right to a separate due process ("Loudermill") hearing. These hearings are required to be administered by the body imposing the discipline, in this case the Board.<sup>128</sup>

- i. When discipline is imposed by the Board, a panel made up of Board members shall hold the due process hearing.<sup>129</sup>
- ii. When discipline is imposed by the Bureau of Human Resources, one or more representatives of the Board's panel shall attend the due process hearing to aid in deliberations.<sup>130</sup>

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<sup>127</sup> The Board is cited here because of the independent judgment clause in Portland City Charter 2-1006.

<sup>128</sup> From Supreme Court case [Loudermill v. Cleveland Board of Education](#).

Due process is guaranteed by court decisions in cases of dismissal, demotion, fine, or suspension. In Portland this also applies to Letters of Reprimand (see PPA 20.1). Because this is a constitutional right, the code should be specific but not prevent contract changes. (In other words, the law may not apply automatically to Letters of Reprimand.)

<sup>129</sup> Added by Commissioners.

<sup>130</sup> Added by Commissioners.

## E. Appeals

### E1. Both the complainant and the officer have rights to appeal their cases.<sup>131</sup>

- A. The complainant may appeal findings, dismissals or decisions not to investigate.<sup>132</sup>
- B. Police officers may also appeal findings, dismissals, or decisions not to investigate.<sup>133</sup>
  - i. Supervisors cannot file appeals on behalf of officers.<sup>134</sup>
  - ii. Officers may alternately file appeals with the Civil Service Board (E3b)<sup>135</sup> or initiate a grievance procedure, which may lead to arbitration (E3c).<sup>136</sup>
- C. The request for an appeal will include the name of the complainant or officer filing, date of the incident, and reason for the appeal.<sup>137</sup>
  - i. The advocate provided by the Board shall assist the complainant in filing the appeal form.<sup>138</sup>
- D. The Board has independent authority to reopen cases when it is in the public interest; reasons may be due to written, verbal or other community opposition to a decision.<sup>139</sup>
  - i. Suggestions for the Board to reconsider a case may be made by a vote of City Council.<sup>140</sup>
- E. A request to end an appeal may be made at any time, but withdrawal

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<sup>131</sup> From New York and Portland City Code 3.21.140A.

<sup>132</sup> Adapted from New York and San Diego County (and Portland).

<sup>133</sup> Adapted from New York, San Diego (City), San Diego County, Seattle (and Portland).

<sup>134</sup> From San Diego (City).

<sup>135</sup> Portland City Charter Article 4.

<sup>136</sup> Portland Police Association Contract Article 20.1.1.2, as allowed by ORS 243.706. RESEARCH: Recall being told because police can't go on strike arbitration is required to be in the contract?

<sup>137</sup> Portland City Code 3.21.140 D.

<sup>138</sup> Added by Commissioners.

<sup>139</sup> Adapted from San Diego County and New York.

<sup>140</sup> Adapted from San Diego County.



should be done in consultation with the advocate and may include confidential information. If practical and appropriate the appeal might still proceed without the complainant.<sup>141</sup>

## E2. Timelines for appeals

- A. Community members have 30 days to appeal, but exceptions can be made to extend the timeline.<sup>142</sup>
  - i. The Board may adopt rules for permitting late filings up to 60 days, for reasons including, but not limited to:<sup>143</sup>
    - a. The complainant has limited English language proficiency.
    - b. The complainant has physical, mental or educational issues that contributed to an untimely request for review.
- B. The timeline for officers to appeal is 30 days, with only limited exceptions allowing up to 60 days if they are incapacitated or unable to receive or send information to the Board.<sup>144</sup>
- C. Until the appeal period has expired, and if an appeal is filed, until there is a final decision by the Board, the City may not enact proposed discipline.<sup>145</sup>

**Commented [PJ28]:** Because officers have access to more resources, are responding to their own employment issues, and have other avenues of appeal.

## E3. Appeals Hearings

- A. Appeals will be heard by a different panel of Board members than heard the original complaint, except in cases in which the basis for the appeal is the discovery of new information.<sup>146</sup> In either situation, this will be referred to as an Appeals Panel.

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<sup>141</sup> Adapted from Portland City Code 3.21.140E.

<sup>142</sup> From New York.

<sup>143</sup> Portland City Code 3.21.120B.

<sup>144</sup> Adapted from San Diego (City).

<sup>145</sup> Portland City Code 3.20.140 G2.

<sup>146</sup> Adapted from New York.

- i. A certain number of Board members may be assigned to a Board Appeals Committee whose main function is to hear appeals.<sup>147</sup>
- ii. If a member of the original panel is unavailable, a Board member or Appeals Committee member who was not part of the original hearing may be assigned to the hearing.<sup>148</sup>
- iii. If there are not enough members of the Appeals Committee for a quorum, members of the full Board who did not hear the original case may be assigned to the hearing.<sup>149</sup>

iv. In the case that an appeal is based on the discovery of new evidence, investigators will confirm the validity of the evidence prior to an appeal hearing.<sup>150</sup>

iv-v. The Board may select a subset of between 2-5 members to process appeals of dismissals or decisions not to investigate.<sup>151</sup>

B. If an officer chooses to appeal to the City's Civil Service Board, the Hearings panel shall receive a copy of the appeal and provide a written statement about the misconduct and supporting evidence.<sup>152</sup>

- i. One or more Hearings panel members may attend the Civil Service Board hearing, subpoena witnesses, present evidence, and cross-examine.

**Commented [PJ29]:** : If the full Board is broken up into several subgroups holding multiple hearings in a month, it would seem to make sense to create a body that only hears those appeals which are not based on new information. This would be similar to the Citizen Review Committee.  
[Question for next phase: would they also be assigned to, or participate in, Board committee work such as proposing policy changes?]

**Commented [PAC30]:** Proposed addition (pre-02-13 meeting) from sub-committee co-chairs.

**Commented [PAC 01-3031]: GARDEN PLOT (2 items):**  
- Would it require a Charter amendment to allow the Hearings panel to be a part of the Civil Service Board process?  
- Is there a limitation on the officer appealing to **both** the Civil Service Board and another process?

<sup>147</sup> Proposed by Commissioners.

<sup>148</sup> Adapted from New York.

<sup>149</sup> Adapted from New York.

<sup>150</sup> Added by Commissioners.

<sup>151</sup> Added by Commissioners.

<sup>152</sup> Adapted from San Diego County.

The Portland Civil Service Board (~~Board~~) consists of three commissioners appointed to voluntary positions by the Mayor under the City Charter, Chapter 4 - Civil Service. The commissioners are appointed to reflect the perspectives of labor, management and the general public.

Their charge is to "Review the suspension, demotion or discharge of a permanent employee, where the employee alleges that the discipline was for a political or religious reason, or was not made in good faith for the purpose of improving the public service."

- C. If an officer chooses to file a grievance and an arbitration hearing is held, the Hearings panel shall receive a copy of the grievance and provide a written statement about the misconduct and supporting evidence.<sup>153</sup>
  - i. The Hearings panel may have one or more representatives attend the arbitration hearing to present evidence and answer questions about the findings.
- D. To the extent possible, the complainant will be allowed to attend, or at least remain apprised of appeals held outside of the Board's direct scope and authority, with their advocate assigned until a final decision is made.<sup>154</sup>
- E. At an appeal hearing, decisions on the findings shall be made on a preponderance of the evidence.<sup>155</sup>
- F. All members of the Appeals Panel shall review recordings and other records of the original hearing.<sup>156</sup>
- G. Appeals hearings shall follow the same procedure described in the Findings section on Hearings, including for disciplinary decisions; the panel may expedite matters by not repeating information already in the record.<sup>157</sup>
  - i. At the start of the hearing, the basic circumstances of the case, allegations and original findings shall be read into the record.<sup>158</sup>
  - ii. At the end of the hearing, the Appeals Panel may decide:<sup>159</sup>
    - a. To recommend further investigation; or
    - b. To affirm the original findings, after which the Board staff shall close the complaint based on those findings; or

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<sup>153</sup> Adapted from San Diego County's role in Civil Service hearings.

<sup>154</sup> Added by Commissioners to address "Barriers and Best Practices" Lack of Transparency Section 2: "Important parts of the accountability process are inaccessible to the public."

<sup>155</sup> From San Diego County and Subject Matter Experts F2 (proposed by Eileen Luna Firebaugh to City of Portland in 2008).

<sup>156</sup> From PSF 5.03(6).

<sup>157</sup> Added by Commissioners.

<sup>158</sup> Adapted from PSF 5.03 (5).

<sup>159</sup> From Portland City Code 3.21.160A1.

- c. To determine a different finding based on the evidence, and make disciplinary decisions if there are findings that the officer violated policy.
- H. Members of the Appeals Panel shall have the same authority to compel officer testimony and subpoena witnesses or documents as the original Hearings Panel.<sup>160</sup>
- I. Notifications of the appeal outcomes to complainants and officers shall be the same as under the Hearings process (C4c) with the exception that no further appeals are allowed through the Board.<sup>161</sup>
- J. The Board staff shall schedule appeals in consultation with the Board leadership or designee.<sup>162</sup>

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<sup>160</sup> Adapted from Portland City Code 3.21.160A1.

<sup>161</sup> adapted from previous recommendation in C4c.

<sup>162</sup> Adapted from Portland City Code 3.21.070G.

## F. Mediation

### F1. There shall be a voluntary mediation program between complainants and officers.<sup>163</sup>

- A. The Board has the authority to provide for voluntary mediation between community members and law enforcement.<sup>164</sup>
  - i. Goals of mediation include improving police-community relations and building better policies.<sup>165</sup>
  - ii. The Board shall determine whether the case is eligible for mediation based on substance the nature of the allegations and the officer's history.<sup>166</sup>
    - a. The community member shall be able to consult with their advocate and/or their other support persons before making that a decision. has whether to agree to mediation.<sup>167</sup>
    - b. Complainants shall not be unduly pressured to choose mediation if they prefer an investigation to take place.<sup>168</sup>
    - c. The officer has to be cleared for approval by the officer's supervisor before the officer can agree to mediation. An officer's supervisor must clear them for approval before the officer can agree to mediation.<sup>169</sup>
- B. Mediation is not offered for complaints involving use of force, profiling, legal violations such as improper stop, detention, search, or arrest, or for

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<sup>163</sup> From San Francisco, New York and Chicago, and Portland City Code 3.21.120A.

<sup>164</sup> From San Francisco, New York and Chicago, and Portland City Code 3.21.120A.

<sup>165</sup> From San Francisco.

<sup>166</sup> Based on Subject Matter Experts G1 suggestion from Eileen Luna Firebaugh.

<sup>167</sup> Adapted from PSF 5.09 (5b).

<sup>168</sup> **Added by Commissioners.**

<sup>169</sup> Adapted from PSF 5.09 (5b).

officers with a pattern of misconduct. No case identified as an automatic investigation by the Charter shall be eligible for mediation.<sup>170</sup>

- i. Mediation is offered for complaints involving discourtesy and procedural complaints including unwarranted action other than those described in section F1b, and neglect of duty.<sup>171</sup>
  - ii. If the [re] complainant filed the misconduct complaint based on actions during arose from an incident in which involving the officer filing filed criminal charges or citations filed against the community member, once those criminal allegations have been resolved, mediation about the misconduct complaint can still proceed.<sup>172</sup>
  - iii. If there is a civil lawsuit or criminal case against the officer, mediation cannot proceed.<sup>173</sup>
- C. The discussions that take place in the mediation are confidential unless the parties agree otherwise.<sup>174</sup>
- D. Mediators shall be screened and trained properly about power dynamics, cultural awareness, racial bias, and other issues which may underlie the incident.<sup>175</sup>
- E. For eligible cases, mediation is an alternative to full investigation.<sup>176</sup>
- i. If either party rejects mediation, the case is sent to a full investigation.<sup>177</sup>
  - ii. Either party to the mediation, or the mediator, can determine that mediation is not successful, and ask for a full investigation if mediation fails.<sup>178</sup>

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<sup>170</sup> From San Francisco, New York and Chicago, Subject Matter Experts G1 suggestion from Eileen Luna Firebaugh and PSF 5.09 (4).

<sup>171</sup> From San Francisco.

<sup>172</sup> Adapted from PSF 5.09 (4).

<sup>173</sup> From New York.

<sup>174</sup> Adapted from PSF 5.09 (10).

<sup>175</sup> Added by Commissioners.

<sup>176</sup> From New York, San Francisco and adapted from Portland City Code 3.21.120A.

<sup>177</sup> From New York.

<sup>178</sup> From New York.

**F2. Mediation is accessible and open to affected individuals, and in some cases to people other than complainants.**

- A. Mediation includes accommodation for people with disabilities, as well as interpreters as needed.<sup>179</sup>
- B. To accommodate schedules, complainants can provide adequate notice of cancelation on as many as two separate occasions before mediation is abandoned.<sup>180</sup>
- C. Mediation is open to complainants, as well as to family members of people subjected to alleged police misconduct, with the complainant's permission, even if complainants do not themselves participate.<sup>181</sup>
- D. Upon agreeing to the confidentiality of the mediation, one support person of each party's choosing may attend, but not engage in the mediation, to provide moral support and consult during breaks.<sup>182</sup>

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<sup>179</sup> From New York.

<sup>180</sup> From New York.

<sup>181</sup> From New York.

<sup>182</sup> Added by Commissioners.