

**City of Portland**  
**Police Accountability Commission**  
**Areas of Agreement on Proposals to Consider,**  
**and to Avoid, from Subject Matter Experts**

**Proposals to Consider**

The Police Accountability Commission, having evaluated proposals given to the Commission or the City from experts and academics, agrees that the following items are proposals worth considering for implementation in Portland.

**A. Structure**

**A1. The oversight body should have the ability to proactively provide structural oversight, not solely react to misconduct by individual officers.**

Proposed by: NACOLE

**Spreadsheet Reference: MA-001**

- NACOLE proposes that oversight bodies should not solely be reactive entities like “civilian review boards”. The term “Civilian Review Board” indicates that the only power an Oversight Body has is to “review” individual complaints. These structures often cannot engage in work focused on systemic problems and development of structural solutions. NACOLE’s examples of proactivity include independent analysis of police data related to Use of Force, Stop-and-Frisk, or other procedures; financial auditing and recommendations; review of policies, independent investigations, and proposals to address systemic issues.

**A2. The oversight body should be independent of the police department.**

Proposed by: NACOLE

Spreadsheet Reference: MA-002, MA-003A

- Oversight bodies should be independent of the police department in all ways. NACOLE proposes that they have independent authority, be independent from political process, and not keep secrets for law enforcement. NACOLE specifically suggests that the police department should not be involved in member selection in any way.

**A3. The oversight body should be the final decision-making authority on disciplinary matters, adjudicating use of force, recruiting practices, and policy development.**

Proposed by: NACOLE

Spreadsheet Reference: MA-010B

- NACOLE proposes these powers as part of ensuring that the oversight body is sufficiently empowered to provide civilian oversight of law enforcement. State laws already afford extraordinary protections to law enforcement officers and conceal extensive information regarding their work from the public. Civilian oversight bodies must be given real power or else they risk being performative political statements with no actual “teeth” or power.

**A4. The oversight body should be individualized to the local jurisdiction, with a structure and rules meeting their unique needs.**

Proposed by: NACOLE

Spreadsheet Reference: MA-013

- NACOLE proposes individualized civilian oversight, for each locality based on specific needs of the community. This requires broad (not prescriptive) enabling legislation for each municipality to establish a structure that meets their unique needs.

## **B. Law and Policy**

### **B1. Eliminate Qualified Immunity for police officers**

Proposed by: National Police Accountability Project

**Spreadsheet Reference:** MA-004

Qualified immunity is a court doctrine that prevents many lawsuits against police officers unless the officer is found to have violated “clearly established statutory or constitutional rights of which a reasonable person would have known.” When applied, qualified immunity results in cases being thrown out before being heard, which prevents the community member filing the lawsuit from being heard or presenting evidence.

### **B2. Eliminate Absolute Immunity for prosecutors**

**Proposed by:** National Police Accountability Project

**Spreadsheet Reference:** MA-005

- NPAP states that prosecutors are protected by law from liability if they falsify evidence, coerce witnesses into guilty pleas, soliciting and knowingly sponsor perjured testimony, withholding exculpatory evidence (evidence of innocence), introducing evidence that has been illegally seized, initiating a prosecution in bad faith. They recommend the elimination of this prosecutorial immunity.

### **B3. Changes to Police Employer Liability**

Proposed by: National Police Accountability Project

**Spreadsheet Reference:** MA-011

- NPAP states that a municipality can only be held liable if the actions if their "official policy" caused a constitutional violation. This avoids police departments and municipalities being held liable for many actions. If their actions were not in keeping with their "official policy" the officer may be

held liable but not the municipality- which has deeper pockets and is able to provide more compensation for victims of violence/abuse of power. In addition, if a police officer for example has a long history of abuse and the police department was aware of this, this can be used to hold them liable. But police records are most often kept private and not shared so the public is kept unaware of this history or have no access to it, so they can't use it to prove the pattern of misbehavior.

## **C. Reporting**

### **C1. The oversight body should present annual reports to City Council each year.**

Proposed by: Eileen Luna Firebaugh

**Spreadsheet Reference: DH-Expert2**

- Eileen Luna Firebaugh proposes annual reports from the oversight body. Public reporting on oversight keeps elected leaders and community members informed on an ongoing basis.

### **C2. The statistical definition of “sustain rate” in oversight agency reports should be sustained complaints out of all complaints received, not just those investigated.**

Proposed by: Eileen Luna Firebaugh

**Spreadsheet Reference: DH-Expert3**

- Portland calculated its sustain rate, at the time of Eileen Luna Firebaugh’s 2008 IPR assessment, based on the number of *investigated* cases, which makes the percentage seem higher by removing cases that were never investigated. The sustain rate calculation should show sustained complaints out of *all complaints received*, including those never referred to another agency, and be presented alongside the rates by which cases are dismissed

or declined; referred to Internal Affairs; and those received by Internal Affairs regardless of the disposition decision made by IA.

## **D. Access to Information**

### **D1. The oversight body should have direct access to police files.**

Proposed By: Washington DC Oversight System Staff Support, NACOLE

Spreadsheet Reference: WDC-14, MA-010A

- Washington DC's oversight system does not have direct access to police files, and receives them only upon request. Staff from that agency ([name/link](#)) suggests that Portland's oversight board should get direct access to police files.
- NACOLE proposes empowered civilian oversight systems which can subpoena duces tecum (or compel documents). They also propose the repeal of laws at the city or state level that prevent public access to and publication of police records on discipline and other matters of public concern.

### **D2. The oversight body should be able to compel testimony from police officers, as a condition of continued employment.**

Proposed By: Eileen Luna Firebaugh, NACOLE

Spreadsheet Reference: DH-Expert4, MA-010B

- In her 2008 IPR assessment, Eileen Luna Firebaugh suggested that PPB members should be ordered by City Council to testify as a condition of employment. This is one possible mechanism to ensure the power to compel testimony is vested in the oversight body.
- NACOLE proposes empowered civilian oversight systems which can subpoena witnesses, including police officers.

## **E. Staff and Budget**

**E1. The oversight body should have support from paid staff across the range of duties the oversight body is expected to perform.**

Proposed By: NACOLE, City of San Diego oversight body staff

Spreadsheet Reference: MA-007, DH-271

- NACOLE proposes that staff be hired by localities, with statewide and/or local permanent financial structures for staff.
- City of San Diego oversight staff (CPP/link), when contacted regarding current practices, suggested that they hoped to create positions in analysis, communications, and personnel management. They also suggested these as practices for Portland, as these functions may be essential to the new oversight system in Portland.

**E2. The oversight body should have permanent guarantees of sufficient funding.**

Proposed By: NACOLE

Spreadsheet Reference: MA-003B

- NACOLE proposes that as a prerequisite for independence, oversight bodies must be permanently secured and supported financially.

**E3. The oversight agency should include as a preference in staff recruitment that candidates have experience working with community.**

Proposed By: Oakland oversight body staff

Spreadsheet Reference: DA-016,

- The interim director of the Oakland Community Police Review Agency suggested that candidates with public defense or civil rights backgrounds might be better suited to lead oversight agencies because it is important for them to know how to connect to the community. This would be a desired qualification alongside investigative, policy, and/or management skills.

## **F. Continual Improvement**

### **F1. The oversight system should be able to be improved by City Council, or independently, over time.**

Proposed By: NACOLE, Eileen Luna Firebaugh

Spreadsheet Reference: MA-009, DH-Expert5

- NACOLE defines as a principle the idea that oversight is an iterative process that is fluid and changes over time, and learns from its experiences. The oversight system should be built to work within existing legal structures that guarantee overwhelming protection to law enforcement officers, including statutory procedural guarantees when faced with discipline or firing, qualified immunity and more. It should also be able to change and grow as these legal structures change and hurdles to meaningful civilian oversight from those structures are reduced.
- Eileen Luna Firebaugh, in her 2008 IPR assessment, proposes that the City Council use its authority to make changes to improve the system if it is not meeting the community's needs. Her assessment indicates that the City was unwilling to make any changes to IPR's structures for the first 8-9 years of IPR's existence.

## **G. Findings and Standard of Review**

### **G1. Use the standard four options for "findings" after investigation for clarity, and allow the addition of other findings for systemic solutions.**

Proposed By: Eileen Luna Firebaugh

Spreadsheet Reference: DH-Expert8, DH-Expert7

- Eileen Luna Firebaugh, in her 2008 IPR assessment, proposed that the City of Portland adopt the standard four findings used by most other jurisdictions, using language that is clear to the public. These findings are Sustained, Exonerated, Insufficient Evidence, and Unproven.
- In the same assessment, Firebaugh recommended creating three additional options to add on to the option selected from the four standard findings.

These additional options were: Policy Failure, Supervisory Failure, and Training Failure. Having findings which are not specific to the officer's behavior can provide the possibility of systemic change.

## **G2. The oversight body should use the "preponderance of the evidence" standard, not the "reasonable person" standard.**

Proposed By: Eileen Luna Firebaugh

**Spreadsheet Reference: DH-Expert9**

- Eileen Luna Firebaugh, in her 2008 IPR assessment, proposed that the City of Portland change the standard of review. Preponderance of the evidence seems to be standard in most oversight decision making. The "reasonable person" standard is too difficult to understand, and the more commonly used "Preponderance of the evidence" is easier.

## **H. Mediation**

### **H1. Mediation should be offered in more minor cases, but not in larger cases.**

Proposed By: Eileen Luna Firebaugh, Mental Health Alliance

**Spreadsheet Reference: DH-Expert6**

- Eileen Luna Firebaugh, in her 2008 IPR assessment, proposed that mediation be offered on all discourtesy and procedural complaints, but not for use of force, legal violations such as improper stop, detention, search, or arrest, or for officers with a pattern of misconduct.
- The Mental Health Alliance, in briefing the full Police Accountability Commission, also made this suggestion.

**Commented [PAC1]:** Note: Mental Health Alliance also said this in their briefing to the full PAC, and used this type of framing (more generally than Eileen Luna Firebaugh's specific list).

**Commented [PAC2]:** Note: Will be expanded by next draft.

## **I. Board Jurisdiction and Case Authority**

**1. Some categories of cases should be defined for automatic investigation by the oversight body.**

Proposed By: Oakland oversight body support staff

**Spreadsheet Reference: DA-001**

- Acting Community Police Review Agency Director Aaron Zisser suggested that Portland adopt a practice under consideration in Oakland: designating cases related to use of force, in-custody deaths, profiling protected classes, untruthfulness, and First Amendment violations, as categories for automatic investigation by the civilian review agency. This suggestion would apply regardless of the potential role of Internal Affairs. Zisser suggested that this approach would be a good way to ensure that serious cases were always investigated by the civilian agency.

**Uncategorized**

**4. Civil Asset Forfeiture**

**Proposed by:** National Police Accountability Project

Forfeiture of civil assets can be done before a person is found guilty of a crime- all that needs to be said is that the person is a suspect of a crime, and the department can seize all of your property in the name of "their investigation". This has caused a major issue especially for communities with economic barriers and as a result communities of color, who are disproportionately affected. It is one of the many ways that the system perpetuates poverty and systemic oppression and disadvantage.

**5. Suing federal officers for constitutional violations**

**Proposed by:** National Police Accountability Project

This is important for agents of federal agencies of law (FBI, narcotics, etc), so less applicable to Oregon officers.

**12. Investment in Communities**

NACOLE

**Justification:** Financial and administrative support (as requested by the individual oversight body) by municipalities is critical to the success of police oversight.

## Proposals to Avoid

The Police Accountability Commission, having evaluated proposals given to the Commission or the City from subject matter experts, agrees that the following items are proposals to avoid for implementation in Portland.

### **1. The community oversight agency should limit community involvement where it “interferes with the ability to get work done.”**

Proposed By: San Diego (City) oversight agency staff

Spreadsheet Reference: DH-276

- In research on the City of San Diego’s practices, PAC members heard concerns from a oversight agency staff member that community member involvement, including by those who helped put the system on the ballot, interfered with the ability to get work done. An example was having to go start a search for a staff position a second time. The PAC believes that community members should have a voice in how things move forward, for a community-driven oversight system.