

City of Portland
Police Citizen Review Subcommittee

AGENDA
February 8, 2023
6:00 PM

1. Zoom Information
 - a. Please click the link below to join the webinar:
<https://portlandmaine-gov.zoom.us/j/81655910101?pwd=UC83eDVPVWZqN2h4Z3RCeHpZTi9zZz09>
Passcode: 819804
Or One tap mobile :
US: +19292056099,,81655910101# or +13017158592,,81655910101#
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
US: +1 929 205 6099 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 or +1 646 931 3860 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 669 444 9171 or +1 669 900 6833 or +1 689 278 1000 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623
Webinar ID: 816 5591 0101
International numbers available: <https://portlandmaine-gov.zoom.us/j/81655910101?pwd=UC83eDVPVWZqN2h4Z3RCeHpZTi9zZz09>
2. Call to Order
3. Approval of January 11, 2023 minutes
 - a. January 11,2023 draft minutes
4. The Subcommittee may go into Executive Session to discuss review of Category Us with Attorney Millette pursuant to 1 M.R.S. Sec. 405(6)(E).
 - a. Attachments: Cat. U & 1 Criteria guidelines, IA Review Guidelines, SOP 90 & Chapter 2
5. Public Comment
6. Discussion on planning a public session to discuss the new citizen oversight board structure
7. Public Comment

8. Discussion of Complainant letters
9. Public Comment
10. Approval of the Revised Remote Participation Policy of the PCRS
Attachment
 - a. Remote Participation Policy of the PCRS
11. Public Comment
12. Discussion of appointment of new chair
13. Public Comment
14. Adjourn

**MINUTES
POLICE CITIZEN REVIEW SUBCOMMITTEE**

**January 11, 2023
Meeting Held Remotely Via Zoom**

Members present: Emily West, Chair; Reggie Parson, Vice Chair; Rev. Lewis; Anne Hardcastle; Tim Smith; Jean-Raymond Desruisseaux (Gino); *Kaylin Kerina (joined later during Executive Session)

Members absent: none*

Staff present: Acting Corporation Counsel Michael Goldman; Associate Corporation Counsel Rachel Millette; Major Robert Martin; Tracy Boyd

6:02 Call to order.

Motion was made by Gino and seconded by Reggie to adopt minutes of the November 9, 2022 meeting. Passage 6-0.

Chair West reviewed the agenda for the meeting. Acting Corporation Counsel Michael Goldman and Associate Corporation Counsel Rachel Millette introduced themselves. Attorney Millette will be advising the group going forward.

No public comment.

6:06 Motion was made by Reverend Lewis and seconded by Tim to move into Executive Session to review two IA cases. Passage 6-0.

7:25 Motion was made by Tim and seconded by Gino to move out of Executive Session. Passage 7-0.

Motion was made by Reverend Lewis and seconded by Anne that the IA2022-10 categorization of this complaint was appropriate and consistent with SOP 90; Passage 7-0.

Motion was made by Tim and seconded by Reverend Lewis that the IA2022-13 categorization of this complaint was appropriate and consistent with SOP 90; Passage 4-2, Kaylin abstained. Voting in favor: Reverend Lewis, Tim, Reggie, and Anne. Voting against: Gino and Emily.

Motion was made by Reverend Lewis to go into Executive Session.

Attorney Goldman stated that the ballot measure does not go into effect until July 1, 2023, and that then a new ordinance will need to be drafted and adopted by the City Council, thus making an Executive Session on this topic premature. He went on to say that he and Attorney Millette could answer high level questions on the subject and the succession plan.

Reverend Lewis retracted his motion.

Attorney Goldman suggested that the subcommittee members read the ballot question. Reggie asked about whether being appointed to the new board resets the clock on their terms and Attorney Goldman responded that it would as it would be a new board, appointed by the Mayor and City Council, with a new title: the Civilian Police Review Board.

In the future, Kay would like to have a conversation about the lack of the present board's input around the new changes. Reverend Lewis concurred and would also like to have a robust public conversation about each section of the new ordinance.

Discussion of next month's agenda, Emily believes there are either 2 or 3 Cat. Us to review. The group is going to pause review of Cat. Us until they reach a consensus. The group would like a robust discussion in the public forum before entering into Executive Session for advice from Attorney Millette regarding Category Us. Ballot question 7 will be discussed in the public forum in either March or April. Tim will provide a draft of the annual report for public discussion next month. Emily announced that she is terming out in March and will not seek re-appointment.

Motion was made by Reverend Lewis and seconded by Tim to adjourn. Passage 7-0.

PORTLAND CITIZEN REVIEW SUBCOMMITTEE: SUGGESTED GUIDELINES FOR EVALUATING “CATEGORY U” AND “CATEGORY 1” ALLEGATIONS UNDER PORTLAND POLICE DEPARTMENT SOP # 90

This document offers suggestive guidance to PCRS members as they review receipt and categorization of “Category U” and “Category 1” Allegations under the Portland Police Department’s SOP 90. This guidance and suggested review criteria are intended to ensure that the receipt, investigation, and categorization of such allegations are fair and in keeping with the purpose and intent of the City of Portland Code of Ordinances and the provisions establishing the Portland Citizen Review Subcommittee.

Below are some points to consider when reviewing Category U and Category 1 Complaints, understanding that complaints categorized as such do not undergo the full investigative process by internal affairs that other categories of complaints investigated by IA and reviewed by the PCRS do. This list should not be considered mandatory or exhaustive. Instead, it simply provides guidance to members of the PCRS as they undertake their work.

Adopted June 8, 2022

- Was the basis for categorizing the complaint as a Category U or a Category 1 complaint clearly articulated in a written statement by the Portland PD?
- Was the articulated basis for categorizing the complaint as a Category U or a Category 1 complaint consistent with SOP 90 issued by Portland PD?
- Was the complaint handled and/or resolved in accordance with deadlines included in SOP 90 issued by Portland PD?
- Was the complaint received and considered in an impartial, non-judgmental way?

PORTLAND CITIZEN REVIEW SUBCOMMITTEE: SUGGESTED GUIDELINES FOR EVALUATING INTERNAL AFFAIRS INVESTIGATIONS

This document offers suggestive guidance to PCRS members as they review completed investigations by internal affairs (IA) to determine whether or not an IA investigation was fair, thorough, timely and objective—the four criteria that the PCRS votes on. Below are some points to consider for each of these four criteria, however, this should not be considered an exhaustive list and its use is not mandatory.

Last updated 9/20/2021

Timely

- Number of days between date of complaint and date of IA letter transmittal to command staff _____

Note: [SOP 90](#) provides that every effort will be made to conclude review within 45 business days.

- Number of days between date of complaint to when letter was sent to complainant. _____

Note: [SOP 90](#) provides that investigation and command review should be completed within 60 business days of complaint.

- If delays occurred, did IA provide a reasonable explanation given either the level of complexity of the case or outside demands that took precedence over the timely disposition of the case in their report?

Thorough

- Was key Information evidence (including available video and audio files, telephone logs, electronic media posts, photos, written statements, etc.) pursued and analyzed by IA?
- Were all witnesses identified in the complaint interviewed?
- Was an adequate level of due diligence used to locate and contact witnesses?
- Did the investigator elicit all relevant information from the complainant, witnesses and officer(s) in their interviews?
- Did the investigator conduct follow up interviews with the complainant, witnesses or officer(s) to clarify any conflicting or new information discovered after the initial interviews, if applicable.?

Fair

- Was the investigation process followed as defined by IA department standards and policies?

Note: See [SOP 90](#) issued by Portland PD on IA standards and policies.

- Did the investigator approach the investigation in an impartial, non-judgmental way?

Objective

- Did the investigator exhibit professionalism and neutrality with the complainant, witnesses or officer(s) in his/her interviews?
- Did the investigator evaluate all facts and evidence in a dispassionate, objective manner in the IA report
- Was open-ended questioning used by the investigator with the complainant, witnesses or officer(s)?
- Did the investigator explain his or her role and the IA process, including the role of the PCRS?

DIVISION 4. POLICE CITIZEN REVIEW SUBCOMMITTEE

Sec. 2-76. Functions and duties.

(a) *Duties.* The duties of the police citizen review subcommittee are as follows:

- (1) To determine whether police investigations into citizens' complaints by members of the public against police officers are thorough, objective, fair and timely by auditing the police department's internal affairs' unit investigative methods and procedures;
- (2) To report in writing to the City Manager periodically, but no less than annually beginning in January 2003, as follows:
 - a. on the subcommittee's determination as to the thoroughness, objectivity, fairness and timeliness of the police internal affairs' investigation of citizen complaints against police officers; and
 - b. any recommendations and/or proposals for improvements or modifications in the police internal affairs investigative process, policies or training, and for enhancing public confidence in the methods and process of investigation of citizen complaints against police officers.
- (3) To hold a public hearing at least annually to receive comments upon the police citizen complaint process.
- (4) Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the subcommittee shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable.
- (5) Reports of the subcommittee shall be made available to the public to the extent consistent with the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 et.seq.
- (6) To make suitable procedural rules, from time to time, for the conduct of its duties. Proposed rules shall be submitted to the City Council and shall become effective only when approved by the City Council. All such rules shall be recorded in the office of the City Clerk.

(b) *Complaints to be reviewed:* The subcommittee shall review all completed internal affairs investigations of citizen complaints.

(c) *Timing of review.* All subcommittee reviews of citizen complaints shall take place only after final disciplinary action has been taken and all appeals exhausted or the case has been finally

closed with no disciplinary action taken.

(d) *Notification of review.* The subcommittee shall notify the citizen complainant, in writing, of the subcommittee's review and any findings made by the subcommittee regarding the thoroughness, objectivity, fairness and timeliness of the internal affairs investigation.

(e) *Scope of authority.* The subcommittee shall conduct its duties solely to determine the thoroughness, objectivity, fairness and timeliness of the police department's internal affairs' methods and procedures in regard to citizen complaints against police officers, and the subcommittee shall have no power or authority to subpoena or call witnesses nor to impose or modify any disciplinary action, or lack of action, against any police officer. The subcommittee shall make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer.

(f) *Training.* Prior to assuming their duties hereunder, subcommittee commissioners shall attend training by city staff as to the subcommittee's duties and responsibilities, applicable state and local law and regulations, issues relevant to the conduct of the citizen review function, accepted police practices and the department's internal affairs investigation process. Such training shall be provided by the city at no cost to the subcommittee members.

(g) *Resources.* To facilitate the effectiveness and objectivity of the police citizen review subcommittee, the city shall make available to the subcommittee the services of a technical advisor, as needed by the subcommittee. The technical advisor may be used for the purposes of training; briefing the subcommittee on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the subcommittee on aspects of the internal investigation process. The advisor shall be retained by the City Manager after consultation with the Chief of Police, representatives of the police unions and the subcommittee chairperson. Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor.

The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the subcommittee to conduct its duties hereunder. In no case shall the subcommittee have access to police officers' personnel records except to the extent that they are part of an internal affairs investigation report or are considered a public document under the state Freedom of Access law.

(Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-77. Confidentiality.

Each member of the civil service commission is obligated to maintain the confidentiality of all information and documents either

provided to or reviewed by them, in accordance with state law. Failure to maintain such confidentiality will be cause for removal from the commission. All reports and requests for disclosure of any information shall be referred to the corporation counsel for review prior to release.

(Substitute Ord. No. 83-01/02, § 3, 11-5-01)

Sec. 2-78 thru 2-90. Reserved.

ARTICLE V. EMPLOYEE BENEFITS

DIVISION 1. GENERALLY

Sec. 2-91. Reserved.
Sec. 2-92. Reserved.
Sec. 2-93. Reserved.
Sec. 2-94. Reserved.
Sec. 2-95. Reserved.
Sec. 2-96. Reserved.
Sec. 2-97. Reserved.
Sec. 2-98. Reserved.
Sec. 2-99. Reserved.
Sec. 2-100. Reserved.

DIVISION 2. RETIREMENT*

*State law reference(s)--State retirement system, 5 M.R.S.A. § 1001 et seq.

Sec. 2-101. Membership in state retirement system mandatory.

Any person who is hereafter appointed to employment with the city shall become a member of the state retirement system to the extent of the benefits made applicable to the department into which the person is appointed by the terms of the city's participation in the system.
(Code 1968, § 203.1)

Sec. 2-102. Prior benefits retained.

PORTLAND POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

	Subject:	Internal Affairs	Policy #:	90
	Distribution:	All Personnel	Effective Date:	06/29/2014
	Standards:	BOT 9	Revision Date:	1/10/2021
	By Order Of:	Chief of Police	Review:	Biennially

I. Purpose

To establish uniform procedures for receiving, investigating, reviewing, addressing and analyzing complaints of misconduct or violations of law or department policy or procedure by police personnel with the intention of providing a thorough, timely, objective, and fair review that will serve to protect the public, the department and the employee.

II. Policy

The Portland Police Department depends upon the integrity, decision-making and discipline of every employee. Therefore, it is the policy of this department to expediently investigate all complaints of employee misconduct in a thorough, fair and consistent manner, and to take appropriate action based upon the outcome of the investigation. The procedures addressed in this policy will be administered in a manner consistent with applicable collective bargaining agreements and/or the City's personnel policy and local, state and federal law. Given this is a statutorily mandated policy, employees must abide by this SOP as it applies to all standards of the MCJA Board of Trustees.

III. Definitions

- A. **Aggravating Factors:** Relevant facts and circumstances that increase the severity or culpability of an employee's actions, including but are not limited to deceitfulness, dishonesty, maliciousness, injury or harm to the public or an employee, prior history of corrective action, a supervisory or command rank of the subject officer, an actual or demonstrable legal or financial risk to the Department or City, loss or damage to public or private property, and prejudicial or biased conduct.
- B. **Complaint:** A clear and specific written or verbal allegation of employee misconduct which, if true, would constitute a violation of law, order, directive, rule, regulation or department standard operating procedure. An inquiry about police procedure or department policy is not a complaint.
 - 1. **External Complaint:** A complaint made by a member of the public against the department or its members.
 - 2. **Internal Complaint:** A complaint made by a police supervisor, command staff member or other department employee against another member.
- C. **Cooperative Resolution:** A method of resolving minor, external complaints that is facilitated by the Shift Commander and does not result in discipline.
- D. **Internal Affairs Unit:** The unit which reviews, documents and controls all investigations into alleged employee misconduct or law or procedural violations. Its members include the Professional Standards Lieutenant, Internal Affairs sergeant, and any additional investigator(s) temporarily assigned by the

Chief of Police.

- E. **Professional Standards Lieutenant:** The Lieutenant assigned to provide direct supervision of the Internal Affairs Unit.
- F. **Internal Affairs Investigator:** The permanently assigned sergeant or any supervisory officer who is assigned by the Chief of Police to investigate, or assist in the investigation of a complaint.
- G. **Inquiry:** An allegation regarding the actions of department personnel, and / or the department's policies, procedures, practices or training, that does not rise to the level of a complaint, as defined above.
- H. **Misconduct:** Any violation of any statute, law, department policy, rule, regulation, order or standard operating procedure, or any conduct which, by its nature, may reflect adversely or unfavorably upon the department or is otherwise inappropriate.
- H. **Mitigating Factors:** Relevant facts and circumstances that decrease the severity or culpability of an employee's actions, including but are not limited to intent, truthfulness, lack of prior corrective action, willingness to accept responsibility and acknowledge wrongdoing, prior work history and the circumstances under which the misconduct occurred.
- I. **Discipline:** Measures taken to correct or address behavior that involves misconduct. Disciplinary actions may include an oral or written reprimand, suspension from duty without pay, demotion or termination. Routine critiques or corrections of an officer's performance by his/her supervisors are not considered to be discipline.

IV. **Procedures:**

A. **External Complaints**

1. The department will accept and document all complaints of employee misconduct. A supervisor must meet with the complainant within thirty (30) minutes of the Complainant's arrival at the department, if call volume and resources allow. The complainant will be informed of the approximate wait time. If he/she chooses not to wait, the complainant will be given a Complaint Form and asked to provide contact information (name, phone number, or email). The Shift Commander shall contact the complainant within 24 hours or, if that is not possible, forward it to the Major for follow-up.
2. Given that the department has a responsibility to protect members from false, unjust and malicious complaints, the best and most preferred manner in which to receive and process a complaint shall be with the complainant appearing in person. Complaints articulated verbally, by telephone, by mail, electronic means, or anonymously, however, will also be documented, investigated and reviewed, to the extent possible, consistent with this policy. In person and telephone complaints should be audio recorded, whenever possible.
3. The on-duty shift commander, or designee, will promptly meet with and interview all complainants. If, based on the information given, the Shift Commander deems that the complaint itself is *without merit*, in that no misconduct or violation of law, order, directive, rule, regulation, policy or SOP is even alleged, the Shift Commander has the authority to decline acceptance of a '*complaint*' and shall so advise the complainant. These instances will be documented as an *inquiry*. By taking the time to listen and resolve an inquiry at the initial contact, it may be possible to clear up concerns,

address current perceptions and misconceptions, and prevent future issues. Supervisors shall document inquiries by sending a memo to the Office of Professional Standards, explaining the inquiry, along with its resolution and any recommendations. This information will also be forwarded through the chain of command to the Chief of Police, and will be used to identify possible trends, training needs or policy deficiencies. During review, inquiries may be upgraded to a complaint, as appropriate, and assigned for administrative investigation, consistent with this policy.

4. If the complaint *may have merit*, in that, *if true*, the allegation would indicate that there may have been misconduct, or a violation of law, order, directive, rule, regulation, policy or SOP, the Shift Commander shall accept the complaint and do the following:
 - a. Review with the complainant the options of a formal complaint versus a cooperative resolution. The attached document titled "Options When Filing a Complaint about an Officer" should be used in all instances.
 - b. Complete a Complaint Form or Cooperative Resolution Form;
 - 1) When completing the Complaint Form, a written statement is received from the complainant or, if the complainant is unable to write a statement, a synopsis of the complainant's statement is written.
 - 2) Cooperative resolutions may be summarized by the Shift Commander on the Cooperative Resolution Form and does not require a written statement from the complainant.
5. If the subject officer's Shift Commander is off duty and unavailable to facilitate the cooperative resolution process in a timely fashion, the on-duty supervisor will consult with the Major. If it is determined that a cooperative resolution is appropriate, the form will be forwarded to the appropriate shift commander. A determination whether a complaint can be mediated or if it will require an investigation is required within seven days. A copy of the cooperative resolution form shall also be sent to the Major. The complainant will be advised if there may be a delay in the handling of the complaint.
6. No complaint is to be refused due to the physical or emotional condition of the complainant. If the complainant is apparently intoxicated, suffering from a mental health disorder, or displays any bias or other trait, attitude or condition that may bear on credibility, the Shift Commander should note such observations on the complaint form narrative. If the complainant cannot be interviewed due to physical condition, the Complaint Form will be partially completed with contact information and a brief synopsis of the complaint. The completed Complaint Form will be promptly submitted directly to the Internal Affairs Unit, so arrangements can be made for a subsequent interview with an Internal Affairs investigator.

B. Internal Complaints

1. Internal complaints may be generated by any police employee who believes that a police department employee has engaged in misconduct or violated department policies and procedures.
2. The complaint should be documented on a Complaint Form. The Form should include a written statement from the reporting employee summarizing the complaint.
3. The completed Form must be promptly submitted directly to the Internal Affairs Unit either in person or by sealed envelope.

C. Cooperative Resolution

1. Cooperative Resolution may be used to document complaints that allege minor infractions of department policies and procedures. By taking the time to listen and resolve the complaint at the initial contact, it may be possible to clear up an issue without requiring an investigation. Complaints of a minor nature do not include allegations of criminal activity, excessive force, improper arrest, search or entry, civil rights violations or repeated minor violations. A pattern of repeated minor violations is considered any two similar prior complaints, formal or cooperatively resolved, within the past twelve months. This process is referred to as cooperative resolution.
2. In determining if a cooperative resolution is appropriate the supervisor must:
 - a. Ensure that the nature of the complaint is minor and appropriate for resolution in this manner.
 - b. Review the details of the complaint with the Major to ensure it meets the criteria for cooperative resolution. The Major or higher authority must grant approval before proceeding and should be sought when the complaint is initially received.
 - c. Ensure that both parties understand and agree to the cooperative resolution process, to include that the process will not result in the discipline of the officer. All parties must acknowledge, in writing, using the Cooperative Resolution Form.
3. Cooperative resolution may be implemented through a meeting between the supervisor, the employee and the complainant or by separate meetings with the supervisor.
4. All cooperative resolutions must be documented on a Cooperative Resolution Form. The form will be sent through the chain of command to the Chief of Police for review.
5. Cooperative Resolution Forms approved by the Chief of Police are forwarded to the Internal Affairs Unit where a control number is assigned. Internal Affairs will track cooperative resolution complaints for patterns of behavior related to individual officers and/or for department-wide training or policy revisions. The Cooperative Resolution Form related to external complaints will also be sent to the Police Citizen Review Subcommittee.
6. Discussions between employees and supervisors occurring as part of the cooperative resolution process are not recorded and employees will not be entitled to union representation during the meetings that occur as a result of the mediation. Employees are entitled to consult with a union representative regarding their decision whether to proceed with a cooperative resolution process and potential outcome. If union consultation causes more than a 24 hour delay, the supervisor will initiate the formal complaint process.
7. No internal findings, as outlined below, and no discipline will result from a cooperative resolution.
8. A follow-up letter will be sent by the Chief's office to the complainant to acknowledge receipt and review of the complaint and to obtain feedback regarding the cooperative resolution process. Contact information for the Professional Standards Lieutenant will be included in the letter.

D. Classification of Allegations

1. All complaints will be assigned an allegation classification code by the receiving shift commander, as follows:

Category 1: Alleged conduct which has a negative impact on the operations or professional image

of the Department or that negatively impacts relationships with other officers, agencies or the public. Category 1 allegations include, but are not limited to:

- Failure to report or tardiness for any shift or overtime assignment
- Failure to report to court
- Rudeness towards the public
- Equipment violations (failure to maintain, unauthorized, lack thereof)
- Grooming or uniform violations
- Leaving the city without approval
- Failure to maintain patrol vehicle
- Failure to properly search prisoner(s)
- Failure to take appropriate police action
- Inappropriate social media postings
- Unsatisfactory job performance
- Improper or Unauthorized emergency response
- Minor vehicle operations violations
- Substandard reports
- Substandard evidence booking of a minor nature.
- Improper radio traffic

Category 2: Alleged conduct that involves serious abuse or misuse of authority, unethical behavior, or that results in an actual or serious adverse impact on officer or public safety, is contrary to the values of the Department or that negatively impacts its mission, operations, or professional image.

Category 2 violations include, but are not limited to:

- Excessive force,
- Unlawful arrest,
- Civil rights allegations,
- Negligent discharge or handling of a firearm,
- Causing unwarranted property damage,
- Inappropriate vehicle pursuit,
- Any Notice of Claim, and
- Any violation of law, rule or department policy that does not fit neatly into Category 1.

Category U: Allegations brought forth by a member of the public which, after review of immediately available evidence, are shown to be unfounded or deemed to be within department policy.

E. **Complaint Processing and Assignment of Investigations**

1. An allegation of misconduct is a serious matter and deserves a fair, accurate, and professional investigation and a timely resolution. To achieve all of those ends, all complaints will be forwarded to the Internal Affairs Unit and assigned a control number.
2. Complaints alleging **Category 1** violations will generally be investigated by the subject officer's Lieutenant. Category 1 violations may be investigated by Internal Affairs if:
 - a. Requested by the subject officer;
 - b. The subject's Lieutenant, with the Major's concurrence, cannot resolve the complaint within 72 hours of receipt; or
 - c. Aggravating factors are present. (e.g., repeated complaints for the same conduct)

3. Complaints alleging **Category 2** violations will be investigated by Internal Affairs.
4. Once the complaint is logged, the Professional Standards Lieutenant will:
 - a. Verify the Allegation Category assigned by the receiving shift commander;
 - b. Review the subject officer's IA history;
 - c. Notify the chain of command, to include the Chief of Police;
 - d. Notify, in writing, within five (5) business days, any employee who is the subject of an internal investigation and provide them with a copy of their rights and duties. The notice will include the name of the complainant and the nature of the allegations unless, in the opinion of the Chief of Police, the release of this information could impede the investigation.
 - e. Notify the complainant, in writing, of the receipt of any complaint filed electronically or by mail.
 - f. Refer the complaint to the subject officer's Lieutenant or an Internal Affairs investigator in accordance with the guidelines below.
5. Allegations deemed **Category U** by the receiving shift commander will be handled as follows. The Professional Standards Lieutenant will:
 - a. Review the complaint Form and Shift Commander's intake form and concur with the classification or recommend reclassification.
 - b. Forward the complaint and intake forms up the chain of command to the Chief of Police or designee for review.
 - c. If the chief or designee concurs that the complaint meets the definition of a Category U allegation, notify the complainant and subject officer.
 - d. If the chain of command determines the complaint has merit, reclassify the allegations and process the complaint in accordance with the new category.

F. Investigation of Complaints

1. Investigations by a Lieutenant
 - a. At a minimum, a Lieutenant assigned to investigate a Category 1 Allegation should interview the complainant and the subject officer and review relevant reports, documents, and video.
 - b. If a Lieutenant determines the incident is of greater complexity, or the investigation cannot be completed within 3 business days, he/she can refer the investigation back to Internal Affairs with the concurrence of the Major or higher authority.
 - c. Upon completion of the investigation, the Lieutenant will summarize their findings and recommendations, in writing, and forward up the chain of command for review.
2. Investigations by Internal Affairs Investigators
 - a. Review the initial complaint and compile all related reports and materials in the department's custody.
 - b. Ascertain the specific allegations, note the member(s) involved and the date, time, and location of the incident. Identify any other witnesses to the incident, noting their name(s), address(es) and contact information.
 - c. Compile all relevant reports, statements, and transcriptions for inclusion in the case file.
 - d. Forward the transcription (if any) of each interview to the Professional Standards Lieutenant for review upon its completion.
 - e. Maintain and update the Internal Affairs database for each assigned case.
3. The investigator and Internal Affairs Unit should consult with the Police Attorney as the investigation is ongoing, submitting reports for review of timeliness, thoroughness, fairness, and objectivity.

4. The Internal Affairs Unit, and investigators assigned to investigate a complaint, have the authority to report directly to the Chief of Police or designee on the matter under investigation.
5. Investigators will conduct thorough, timely and objective investigation of all complaints, and will do so in a manner consistent with the member's duties and rights, as outlined below, and any applicable department or city policies and collective bargaining agreements.

G. Command Review

1. Upon completion, the investigation will be immediately referred for command review by the officer's shift commander and chain of command.
2. Reviewers will simultaneously review the case file. All reviews will be completed within 10 days, unless otherwise approved by the Chief of Police.
3. If a reviewer is unavailable, the case will be reviewed by the remaining staff members, unless an alternate staff member is named by the Chief of Police.
4. Each reviewer will provide, in writing, a recommendation and justification for appropriate action.
5. Any reviewer may make recommendations to the Chief of Police on the need for additional information or clarification.
6. A completed investigation involving a non-sworn employee will be submitted to that employee's Division Head for review and then forwarded through the chain of command to the Chief of Police or designee utilizing the above guidelines.

H. Findings

1. The Chief of Police shall review all completed internal investigations and may request additional information or clarification. Taking into account the facts, circumstances and any aggravating or mitigating factors, the Chief will give final approval to the disposition of the case as follows:

Sustained: The alleged complaint is substantiated. Sufficient evidence exists to indicate that the employee did, in fact, commit one or more of the alleged violations. The Department shall have the burden of proving that a violation is sustained by a preponderance of the evidence.

Per state law, it shall be the duty of the Chief of Police to refer all sustained complaints of criminal conduct or criminal convictions to the Complaint Committee of the Board of Trustees of the Maine Criminal Justice Academy.

Not Sustained: The alleged complaint is unsubstantiated no violation of Department rule, regulation or procedure, or local, state or federal law.

Exonerated: The incident occurred, but the employee's actions were justified, lawful and proper.

Unfounded: Reasonably credible evidence exists to indicate the complainant's allegations are false, not factual or without merit.

Cleared Exceptionally:

- There is no indication, beyond the initial complaint, of an actual violation of department rule, regulation, procedure, or law, and / or the complainant voluntarily withdraws, or does not cooperate or participate with the complaint / investigation; or
 - Departure of the subject employee makes an effective investigation impossible; or
 - The employee's actions were based upon and compliant with existing policies, procedures or directives that appear to have been ambiguous or deficient.
2. Following completion of the investigation and prior to any hearing with the Chief, the employee will be offered access to, or provided a copy of, all material contained in the IA file. Such requests should be made to the Police Attorney.
 3. The Chief shall afford the employee an opportunity for an informal hearing to discuss the outcome of the investigation with the Chief or his/her designee, prior to the imposition of discipline or corrective action. The employee shall be entitled to representation at that hearing.

I. Responsibilities of the Internal Affairs Unit

1. The Internal Affairs Unit shall have primary responsibility for the recording, registering, and controlling the investigation of all complaints against employees, whether initiated by a citizen or the Department.
2. The Internal Affairs Unit shall have the following responsibilities:
 - a. Receipt of all complaint forms and maintenance of a numbered index system.
 - b. Receipt of Response to Resistance Reports.
 - c. Maintenance of secure central files, in the Internal Affairs office, of all internal investigations, Response to Resistance Reports, and other complaints against the department and/or its employees. These files shall be the exclusive repository for all internal investigations and all Response to Resistance Reports. These files will be kept confidential in accordance with this policy.
 - d. Notification to the Police Attorney of any investigation or use of force that may result in civil liability to the City.
 - e. Recommending to the Chief of Police that a matter be referred to the District Attorney or Attorney General's Office for consideration of criminal charges.
 - f. Review of "Unfounded" internal investigations with the District Attorney's Office if it appears that charges against the complainant for unsworn falsification may be warranted.
 - g. Review of car to car messaging once per month.
 - h. Review of the status of employees' operator's licenses once per year.
 - i. Tracking and analysis of complaint and force information on a continuing basis for the following purposes:
 - 1) to identify training needs, policy deficiencies, and areas where the department can be more responsive or improve service;
 - 2) to conduct an annual audit and summary of complaints and uses of force and to forward a copy of said summary to the Maine Criminal Justice Academy, in accordance with state law.
 - 3) to compile an annual report for the Chief of Police containing an audit and summary of complaints and uses of force, and reporting any need for changes in training, policy, or department procedures.
 - 4) to notify the Chief of Police should the number, pattern, or nature of complaints or uses

of force indicate a potential risk of civil liability or civil rights violations.

- k. Administer and maintain the Performance Management Review System in accordance with SOP.
- l. Conduct investigations of officers' use of deadly force as part of the Administrative Investigations Team.

J. Employee's Duties and Rights during an Internal Affairs Investigation

1. The employee's duties and rights contained in this section shall be applicable to any internal investigation. A supervisor should afford an employee all the applicable rights under this section whenever the supervisor reasonably believes that an employee's conduct may result in either a criminal investigation or the filing of an internal affairs complaint. The failure of the supervisor to afford an employee these rights does not entitle the employee to disobey the orders of a supervisor. The supervisor's failure to allow an employee to exercise these rights will be considered by the Chief of Police prior to imposition of any discipline against the employee.
2. Once a complaint has been designated for investigation, the employee shall be advised, in some confidential, written manner, that a complaint has been made and that an investigation will be conducted. The notice will include the name of the complainant, the nature of the allegations, and copies of the employee's rights and duties. The employee will be instructed that he/she is prohibited from contacting the complainant. In addition, the employee will normally be afforded the opportunity to read the initial complaint form. If the disclosure of the existence of the complaint or the identity of the complainant would impede the investigation, the Chief of Police shall decide all questions concerning employee notification and employee access to complaint information.
3. Complaints against an employee that allege a criminal violation will be investigated as any other criminal matter by supervisors assigned to the Criminal Investigations Division or other supervisors designated by the Chief of Police. Evidence Technicians may be asked to collect, process and test evidence. The polygraph examiner may be asked to conduct polygraph exams. During the investigative process the employee involved may be reassigned or placed on administrative leave with pay at the discretion of the Chief of Police. Employees under criminal investigation will be afforded the same rights as any other suspect, and any other rights afforded by the applicable collective bargaining agreement. Generally, once the criminal investigation is complete, an internal affairs investigation and/or disciplinary process may be initiated. If appropriate, an internal affairs investigation may be conducted contemporaneously and separately with the criminal investigation.
4. All employees interviewed as part of an internal investigation shall be provided with a written copy of the Garrity Warning and the employee's rights section of the applicable collective bargaining agreement. The employee will be asked to sign a copy of the Garrity warning to acknowledge its receipt. In cases involving criminal allegations, the employee will not be read the Garrity warning until the criminal investigation is completed. The employee may be asked to provide a voluntary, non-custodial statement. In the event an employee is subject to custodial interrogation in the course of a criminal investigation, the employee shall be advised of his/her Miranda rights.
5. As part of the internal investigation, the employee will be asked to provide information which is specifically, directly and narrowly related to the employee's duties or fitness for duty. An employee may be asked about off-duty conduct if there is a sufficient relationship between the employee's off-duty conduct and the employee's official duties. Statements made by the employee during an

internal investigation, and subject to Fifth Amendment protection, will not be used against an employee in a criminal proceeding. However, a matter may be referred for further investigation by a criminal investigator or the Maine Criminal Justice Academy Complaint Review Committee if the Chief of Police deems it appropriate.

6. Employees may request to have an attorney or union representative present and available for consultation during an investigative interview. That representative is not entitled to interfere with, disrupt or impede the interview in any way. The employee's representative should act in accordance with federal and state law and these procedures.
7. An employee's statement may be provided in any one of the following forms, at the discretion of the investigator:
 - a. an investigator's summary of a taped interview with the employee. This method will be utilized in the majority of internal investigations as it allows for the completion of investigations in a timely manner, while still assuring that the investigation is thorough and complete.
 - b. a written statement completed and signed by the employee.
 - c. a transcription of a recorded interview with an investigator.
8. The same methods as in #4, above may be utilized by the investigator, at his/her discretion, to obtain statements from civilian witnesses.

K. **Procedures During an Investigation**

1. All investigations will be conducted without unreasonable delay. Every attempt will be made to complete the investigation and professional standards review within forty-five (45) days of receipt of the complaint.
2. All interviews will be held in the Internal Affairs office or at location agreeable to both parties; and will be conducted at a time mutually agreeable to the employee and the interviewer unless the seriousness of the allegation requires the interview to be completed immediately.
3. Written statements shall be submitted to the investigator immediately upon his/her request. The failure to submit a statement upon request, without good cause, may result in discipline.
4. During interviews conducted by more than one investigator, there will be one designated interviewer; only the interviewer will ask questions of the employee.
5. Employees under investigation will not use or be subject to offensive language, nor threatened with transfer, dismissal, or disciplinary action during an interview. No promise or reward shall be made by the investigator as an inducement to answer questions.
6. All interviews with employees conducted as part of an IAU investigation will be recorded. The investigator will have discretion in determining if a transcript of the interview or a summary should be prepared. If the recordings are not transcribed, they will be retained as part of the investigation file. A copy of the recording will be provided to the employee with the completed investigation file.
7. All investigations shall be conducted without unreasonable delay. An employee who is the subject of a complaint should be advised of the final outcome of the investigation, in writing, within sixty (60) business days of the filing of the complaint. If additional time is necessary to complete a thorough investigation, extensions may be granted by the Chief of Police, upon written request

from the Professional Standards Lieutenant. The accused employee and the complainant will be notified, in writing, of any granted extensions. The Professional Standards Lieutenant will notify the employee, in writing, of the status of the investigation and will provide an explanation of any delay. Except under exceptional circumstances, as determined by the Chief of Police, the employee will be advised within fifteen (15) days of the completion of the investigation and its submission to the command staff for review. An employee or the employee's representative may contact the Internal Affairs Unit at any time to ascertain the status of any pending investigation.

8. An employee will be given the opportunity to explain his/her actions to the Chief of Police prior to the imposition of any disciplinary action. Prior to any hearing with the Chief of Police concerning possible disciplinary action, an employee will be allowed access to all information and/or documents upon which the contemplated discipline is based, unless in the judgment of the Chief of Police circumstances warrant anonymity.
9. The Police Chief or designee will notify the complainant, employee, the employee's union president and the employee's Lieutenant and / or Division Head, in writing, of the disposition of the investigation.
10. The department maintains digital photographs of all current Portland Police Officers. The department reserves the right to allow complainants or witnesses to view these photos to identify officers whose identity is material to an investigation. Officers may be required to periodically have an updated photograph taken.
11. All other medical or laboratory examinations, photographs, line-ups, and disclosures of financial information will only be requested of employees if they are material to a current investigation and only upon individual written authorization from the Chief of Police and in accordance with law.
12. Employees will only be asked to submit to a polygraph examination if the examination is material to a current investigation and only upon individual written authorization from the Chief of Police and in accordance with law.

L. Citizen Review

1. Per Chapter 2 of the City Code, the Police Citizen Review Subcommittee [PCRS] of the Civil Service Commission shall review the investigation of external complaints.
2. Internal investigations shall be forwarded to the PCRS only after final disciplinary action has been taken and all appeals exhausted or the case has been closed with no disciplinary action.

M. Confidentiality / Public Comment

1. Internal investigations are conducted for the internal use of the Portland Police Department. These investigations are to be kept confidential in accordance with state law. The department reserves the right, however, to provide information regarding investigations to the department's legal counsel, the Maine Criminal Justice Academy, the PCRS or the appropriate prosecutorial authority, if warranted. All other releases of investigative information will be done only as mandated by a court, in keeping with collective bargaining agreements or with the employee's and the department's consent.
2. For legal, contractual, and policy reasons, public comment on internal investigations shall be limited

to the Chief of Police or the Chief's designee. Inquiries from the news media or public shall be referred to the Chief of Police. The items of information released by the Chief of Police or the Chief's designee upon request will be in accordance with applicable state and federal Law.

REMOTE PARTICIPATION POLICY
OF THE
POLICE CITIZEN REVIEW SUBCOMMITTEE

Adopted on February __, 2023

Pursuant to 1 M.R.S. § 403-B, and after public notice and a hearing, the Police Citizen Review Subcommittee (hereinafter referred to as “PCRS”) hereby adopts the following policy to govern remote methods of participation in public proceedings or meetings (collectively, “meetings”).

In addition to conducting meetings with in-person participation, the PCRS conducts meetings with two other types of participation: remote and hybrid.

Remote meetings allow PCRS members and the public to participate only by telephonic or video technology allowing simultaneous reception of information but may include other means necessary to accommodate disabled persons (referred to herein as “remote methods of participation”). Remote meetings will not be by text-only means such as e-mail, text messages, or chat functions.

Hybrid meetings allow PCRS members and the public to participate in-person or by remote methods of participation. Members of the PCRS are encouraged to participate in-person for hybrid meetings.

Prior to each meeting, the Chair or other presiding officer, in consultation with other members of the PCRS if appropriate and possible, will determine whether participation at a meeting will be in-person, remote, or hybrid in as timely a manner as possible under the circumstances. Any PCRS member who is unable to attend a meeting in-person will notify the Chair or other presiding officer as far in advance as possible.

The public, City staff and applicants before the PCRS will be provided a meaningful opportunity to attend a meeting via remote methods of participation when any member of the PCRS participates via remote methods or when remote methods are available and operational at a given PCRS meeting. If public input via remote methods is allowed or required at a meeting, an effective means of communication between the PCRS and the public will also be provided. The public will also be provided an opportunity to attend the meeting in person unless there is an emergency or urgent situation that requires the entire PCRS to meet only by remote methods.

Notice of all PCRS meetings will be provided in accordance with 1 M.R.S. § 406, and the City Charter, City Code or policy, if applicable. When the public may attend via remote methods, the notice will include the means by which the public may access the meeting remotely and will provide a method for disabled persons to request necessary accommodation to access the meeting. The notice will also identify the location where the public may attend the meeting in person. The PCRS will not restrict public attendance to remote methods except in the case of an emergency or urgent issue that requires it to meet using remote methods of attendance.

The PCRS will make all documents and materials to be considered by it during a meeting available, electronically or otherwise, to the public who attend remotely to the same extent customarily available to the public who attend in person, provided no additional costs are

incurred.

All votes taken during a PCRS meeting using remote methods will be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology only, by other members of the PCRS and the public. A member of the PCRS who participates remotely will be considered present for purposes of establishing a quorum and voting.

This policy will remain in force indefinitely unless amended by the PCRS.