

City of Portland
Police Citizen Review Subcommittee

AGENDA
July 12, 2023
6:00 PM

1. Zoom information

- a. On Wednesday, July 12, 2023 at 6:00 p.m., the Police Citizen Review Subcommittee will conduct a virtual meeting. This meeting will take place remotely using Zoom.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Police Citizen Review Subcommittee and as authorized under 1 M.R.S. 403-B . Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available following the meeting.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

You are invited to a Zoom webinar.

When: July 12, 2023 06:00 PM Eastern Time (US and Canada)

Every month on the Second Wed, until Apr 10, 2024, 13 occurrence(s)

July 12, 2023 06:00 PM

Topic: July 12, 2023 PCRS Meeting

Please click the link below to join the webinar:

<https://portlandmaine->

[gov.zoom.us/j/89129715334?pwd=a1BiN0ZlczRodi83VFpxVnVXSk1HQT09](https://portlandmaine-gov.zoom.us/j/89129715334?pwd=a1BiN0ZlczRodi83VFpxVnVXSk1HQT09)

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Webinar ID: 891 2971 5334

International numbers available: <https://portlandmaine-gov.zoom.us/j/89129715334?pwd=a1BiN0ZlczRodi83VFpxVnVXSk1HQT09>

2. Call to Order
3. Approval of June 14, 2023 minutes
 - a. Attachment
4. Q & A regarding the implementation of the new review board
 - a. Draft Chapter 2 with Civilian Police Review Board
 - b. Memo to PCRS: Ordinance Creating Civilian Police Review Board
5. Public Comment Session
6. Adjourn

DRAFT MINUTES
POLICE CITIZEN REVIEW SUBCOMMITTEE

June 14, 2023
Meeting Held Remotely Via Zoom

Members present: Reggie Parson, Chair; Anne Hardcastle, Vice Chair; Tim Smith; Jean-Raymond Desruisseaux (Gino); Kaylin Kerina; Xavier Botana

Members absent: Reverend Lewis

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

6:03 Call to order.

Motion was made by Gino and seconded by Tim to adopt minutes of the May 10, 2023 meeting. Passage 6-0.

Review and finalize the 2022 Annual Report: Reggie thanked Gino and Tim for their work on the Annual Report. Tim recommended that the subcommittee only review the edits to the charts because the text was previously reviewed in last month's meeting and that there have been no substantive changes to the text. The group agreed to review the report using a Q & A method of review. Xavier asked about the difference in numbers in the charts, Gino responded that charts compare cases reviewed vs. allegations contained in each case. Anne asked that the approval of the report contain a caveat that the redline markup be removed. Motion was made by Tim to approve the report subject to the removal of the redline markup, seconded by Anne. Passage 6-0.

No public comment offered.

6:18 Executive session pursuant to M.R.S. Sec. 405(6)(F) to discuss IA2023-004.
Motion was made to enter into Executive Session by Tim and seconded by Gino. Passage 6-0.

6:32 Out of Executive Session.
Motion to find that IA2023-004 was timely; second; roll call vote 6-0.
Motion to find that IA2023-004 was fair; second; roll call vote 6-0.
Motion to find that IA2023-004 was thorough; second; roll call vote 6-0.
Motion to find that IA2023-004 was objective; second; roll call vote 6-0.

No public comment offered.

Reggie announced that Chief Gorham is retiring soon adding that his retirement should have no impact on the subcommittee's work.

Next month's agenda: There may be a Category 1 case for review. Anne will follow up with Major Martin to confirm. Tim suggested that the agenda include a discussion of where they are in the process of the implementation of the review board, which might include an update and

an opportunity for a Q & A. Rachel told the subcommittee that the City Council workshop to discuss aspects of the new ordinance is going to be held on Wednesday, June 21, 2023 at 5:00 p.m., she is hoping to have a draft of the ordinance by July or August for review. The PCRS members are welcome to attend the workshop in their personal capacity, not as members of the PCRS. Conversation ensued around whether their attendance would constitute a meeting, Rachel will email the group regarding the question if she finds that it would be considered a meeting. Anne asked if the meeting was to decide technical issues, Rachel responded that there are certain outstanding issues and that she is still working on what the focus of the meeting will be, adding that the agenda and any back-up information will be posted on the City website by Friday, June 16, 2023. Tim asked that Rachel send the meeting information to the PCRS.

Anne informed the subcommittee that Virtual Reality Training is getting close to being available, the PD are building scenarios, and once they have been tested, the training will be available for all subcommittee members.

No public comment offered.

6:53 Motion was made by Kay to adjourn, seconded by Tim. Passage 6-0.

Chapter 2 ADMINISTRATION*

*Charter reference(s)--Powers and duties, art. I, § 2.

Cross reference(s)--Ordinances promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds in the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city saved from repeal, § 1-4(1); ordinances making any appropriations saved from repeal, § 1-4(4); ordinances prescribing the number, classification or compensation of any city officers or employees saved from repeal, § 1-4(10); ordinances providing for retirement benefits saved from repeal, § 1-4(11); uniform procedure for collecting assessments, § 1-16; elections, Ch. 9; general assistance, Ch. 13; planning board, § 14-16 et seq.; administration and enforcement of zoning, § 14-461 et seq.; jurisdiction of board of appeals for zoning, § 14-471 et seq.; board of appeals, § 14-541 et seq.; historic preservation, § 14-600 et seq.; licenses and permits, Ch. 15; police, Ch. 20; special police, § 20-16 et seq.; administration and enforcement of traffic regulations, § 28-11 et seq.; traffic division, § 28 et seq.; traffic engineer, § 28-21 et seq.; parking division, § 28-41 et seq.

Art. I. In General, §§ 2-1 -- 2-15

Art. II. Officers, §§ 2-16--2-30

Div. 1. Generally, §§ 2-16-2-20

Div. 2. Prohibition on Immigration Status Checks §§ 2-21-2-30

Art. III. Boards, Commissions, Committees, etc., §§ 2-31--2-40

Art. III-A. Portland Land Bank Commission; Fund, §§ 2-41-2-45

Art. IV. Civil Service, §§ 2-46--2-90

Div. 1. Generally, §§ 2-46

Div. 2. Civil Service Commission, §§ 2-47--2-57

Div. 3. Employment Subcommittee, §§ 2-58-2-75

Div. 4. ~~Police Citizen Review Subcommittee~~Civilian Police
Review Board, §§ 2-76-2-90

Art. V. Employee Benefits, §§ 2-91--2-200

Div. 1. Generally, §§ 2-91--2-100

Div. 2. Retirement, §§ 2-101--2-200

Art. VI. Funds Due to City, §§ 2-201--2-300

Div. 1. Generally, §§ 2-201--2-220

Div. 2. Provisional Payments, §§ 2-221--2-229

Div. 3. Interest, §§ 2-230--2-300

Art. VII. Procurement and Contracting Procedures, §§ 2-301--2-400

Div. 1. Generally, § 2-301

Div. 2. Competitive Process for Contracts, §§ 2-302-2-312

Div. 3. Sale or Disposal of Real or Personal Property §§ 2-
313-2-400

Art. VIII. Civil Emergency Preparedness, §§ 2-401--2-415

Art. X. Exemption from Vehicle Excise Tax for Certain Military Personnel, §§ 2-436--2-437

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ARTICLE III. BOARDS, COMMISSIONS, COMMITTEES, ETC.*

*** * * Sec. 2-32. Limitation on term of service--Generally.**

(a) No person shall be appointed to, nor serve, more than three (3) consecutive full terms or nine (9) consecutive-years, whichever is greater, on the same board or commission of the city.

~~(b) Except as otherwise specified in the Charter, the~~ foregoing limitation shall apply only to service as a regular voting member of the board or commission, and not to service as an alternate nor as a nonvoting member.

(c) To the extent that this Code provides for a different limitation on the term of service for a specific board or commission, the limitation provided in this article shall apply.
(Ord. No. 301-91, 4-1-91; Ord. No. 118-08/09, 12-1-08)

Sec. 2-33. Applicability.

(a) The above limitation on terms shall apply to the following boards and commissions:

- (1) Board of appeals;
- (2) Board of assessment review;
- (3) Reserved;
- (4) Cable television committee (CATV);
- (5) Civil service commission employment subcommittee;
- (6) ~~Civil service commission police citizen review subcommittee~~ Civilian Police Review Subcommittee;
- (7) Community development block grant allocation committee;
- (8) Friends of the park;
- (9) Historic preservation committee;
- (10) Land bank commission;
- (11) Planning board; and
- (12) Portland public art committee;

(b) Except as otherwise specified in the Charter, the above limitation on terms shall not be applied retroactively and shall

apply to any person serving on one (1) of the above-named boards or commissions on the effective date of this section (5/1/91) beginning with the expiration of the term in which they are so serving. Notwithstanding the foregoing, the limitation on terms shall be applied to members serving on the boards and commissions identified in section 2-33, subsection (a), paragraphs 5,6,7 and 12, beginning with the expiration of the term of any sitting board or commission member following the passage of this amendment.

***Editor's Note**--In reference to Section 2-33(b) above, "passage of this amendment" refers to Council Order 118-08/09, passed on December 1, 2008.

(c) Nothing herein shall prevent consecutive appointment of any person to a different board or commission from that on which he or she has served the maximum consecutive time.

(d) In the case of the board of harbor commissioners, such limitation shall apply only to the two (2) members appointed by the City Council.

(e) Any member on the above-named boards or commissions who completes the maximum years of service prior to the expiration of his or her term shall be allowed to complete that term of service and to continue to serve after expiration of that term until a successor is appointed and qualified, provided such service shall not continue in excess of one hundred twenty (120) days after expiration of the term.

(Ord. No. 301-91, 4-1-91; Substitute Ord. No. 233-99, §2, 4-5-99; Ord. No. 118-08/09, 12-1-08; Ord. No. 219-17/18, 6-4-2018)

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ARTICLE IV. CIVIL SERVICE*

***Charter reference(s)**--Mandate for civil service, Art. VI, § 3.

***Cross reference(s)**--Commissions generally, § 2-31 et seq.

***Cross reference(s)**--32 M.R.S.A. § 7166 (Limitation on use of polygraph in employment)

***Editor's Note**--The Civil Service Ordinance was substantially reorganized and revised by Council Order No. 89-02/03, 11-4-02.

DIVISION 1. GENERALLY

Sec. 2-46. Definitions.

The following words and phrases, when used in this article, shall having the meanings respectively ascribed to them unless the context otherwise indicates:

Cause. In the case of a member, "cause" shall mean just cause and shall include any act or omission which constitutes legal cause and includes, but is not limited to: violation of any departmental rule or rules; incompetent or inefficient performance of duty; or inattention to or dereliction of duties; insubordination; discourteous treatment of the public or a fellow employee; violation of any provision of this article or the rules adopted thereunder, whether such violation may result in a forfeiture of office hereunder, or not; job suitability or physical unfitness to perform the normal duties of the position which the member holds; the use of intoxicating liquors, narcotics, or any other drug, liquid, or preparation on duty, or to such an extent that such use interferes with the efficiency or job suitability or physical fitness of the member, or prevents the member from properly performing the normal functions and duties of his or her position; misconduct; the commission of any disqualifying criminal offense; failure to report to the appropriate superior; errors, incompetence, misconduct, inefficiency, neglect of duty, or any other form of misconduct or negligence of which the member has knowledge; and any other acts or omissions which would tend to directly discredit or injure the public service or would jeopardize the effective functioning of the department. In the case of a civil service commissioner or alternate, "cause" shall include any act or omission which constitutes legal cause, and includes but is not limited to: incompetent or inefficient performance of duty; unexcused absences from commission meetings; violation of any provision of this article or the rules adopted thereunder, whether such violation may result in a forfeiture of office hereunder, or not; the commission or conviction for any disqualifying criminal offense, or any action by the Civil Service Commissioner or alternate intended to affect or influence, or which could reasonably be expected to affect or influence any decision of the City Manager, the Chief of either department, or the City Council with respect to the department, or of any member of the department with respect to the performance of his or her duty.

Charge means a written statement to the member describing the act or omission constituting cause for action taken or proposed to be taken.

Civil service commission means collectively the two independent subcommittees constituting the commission, i.e. the employment subcommittee and the ~~police-citizen review subcommittee~~civilian police review board.

Demotion means any reduction in rank within the department but shall not include any economic layoff.

Director of human resources shall mean the person designated by the City Manager to act as Director of Personnel for the City and his or her designees (also referred to herein as the "Director").

Member means any firefighter, fire officer, police officer, or superior officer appointed hereunder to any rank within the fire or police departments, except the chiefs thereof.

Promotion means any advancement in rank within the department, other than the rank of chief.

Rank means the position classification of any member to which he or she has been appointed hereunder within the fire department or police department but shall not include any contractual or other pay differentials between functions or grades within each rank.

Relative means grandfather, grandmother, father, mother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother, step-sister, half-brother, or half-sister, whether by half-blood or full blood, and whether by consanguinity or affinity.

(Code 1968, § 201.1; Ord. No. 89-80, 7-7-80; Ord. No. 433-82, § 1, 3-15-82; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 4, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

DIVISION 2. CIVIL SERVICE COMMISSION*

Sec. 2-47. Created.

There is hereby created a civil service commission, also referred to in this article as the commission. The commission shall consist of two separate and independent subcommittees as follows: the civil service employment subcommittee and the ~~civil service police citizen review subcommittee~~ civilian police review board. Commissioners shall be appointed to, and serve on, one of the two subcommittees only.

(Code 1968, § 201.3; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01)

Sec. 2-48. Composition.

(a) The Civil Service Employment Subcommittee of the Civil Service Commission shall consist of three (3) commissioners and one (1) alternate who shall serve in the absence of any commissioner.

(b) The ~~police citizen review subcommittee~~civilian police review board shall consist of ~~seven-nine~~ (97) or more commissioners ~~who shall serve in the absence of any commissioner. A minimum of six (6) of the commissioners shall be voting members, while three (3) of the commissioners shall be non-voting members and may vote only in the absence of a voting member of the board.~~

(Code 1968, § 201.3; Ord. No. 89-80 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-49. Qualifications.

(a) *Qualifications of commissioners.* Every civil service commissioner and alternate shall be at least 18 years of age and a resident of the City of Portland for at least three (3) months prior to the start of their term. In addition, the following persons shall not be eligible for appointment to, or service on the Commission:

(1) Any present or former employee of the city, who was employed by the city within the previous ten (10) years;

(2) Any present or former member of the City Council, who has held that position in the previous ten (10) years; or

(3) Any civil service commissioner who has completed three (3) consecutive full terms of three (3) years as provided in Chapter 2, Article III.

(b) Additional subcommittee eligibility requirements:

(1) *Employment subcommittee.* The following persons shall not be eligible to serve on the employment subcommittee:

any relative of a present member of the police or fire departments.

(2) ~~Police Citizen Review Subcommittee~~Civilian Police Review Board. In order to ensure an objective and unbiased audit of the police department's internal affairs investigation process, any applicant for service on the ~~citizen review subcommittee~~civilian police review board shall be disqualified from serving on said subcommittee if:

a. any member of the applicant's immediate family is or

Commented [RM1]: The City Council is considering reducing this restriction. They are also considering whether this restriction should be different for those in policy-making positions.

has been a Portland police officer in the previous ten (10) years;

- b. the applicant or any member of his or her immediate family has been arrested by any member of the Portland police department within the previous ten (10) years, or has had the final disposition of any criminal proceedings resulting from such an arrest within the previous ten (10) years, whichever is longer;
- c. his or her immediate family has filed a complaint with the internal affairs unit of the Portland police department within the previous ten (10) years;
- d. the applicant or any member of his or her immediate family has brought suit against the City of Portland, the Chief of Police, the police department or any individual police officer for a cause of action arising out of an officer's performance of his or her duties; within the last ten (10) years, or has had such a suit finally disposed of within the previous ten years, whichever is longer; and
- e. "Immediate family" as used herein shall mean and include spouse, domestic partner, children, grandchildren, parents, grandparents, and siblings.

(c) Failure to disclose any grounds for disqualification or falsification of any information in the application process shall disqualify the person from service on the commission and shall constitute "cause" within the meaning of section 2-46.

(d) Any civil service commissioner or alternate who becomes ineligible to serve during his or her term shall resign, and failure to do so shall be "cause" within the meaning of section 2-46. A commissioner or alternate on the employment subcommittee who is a relative of any candidate for appointment under this article shall inform the secretary in writing of such relationship and shall not attend any meeting of the subcommittee dealing with such candidacy, nor participate in nor attempt to influence any action by the commission with respect to the position for which such relative has applied.

(e) Reasonable efforts shall be made to ensure that the appointments to the civil service commission are diverse and representative of the community.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299.86, 1-22-86; Ord. No. 370-91, § 1, 6-5-91; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97;

Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 118-08/09, 12-1-08; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-50. Appointment.

(a) Civil service commissioners and the alternates of the employment subcommittee shall be appointed by the City Council.

(b) Members of the civilian police review board shall be appointed as follows:

- (1) A minimum of five (5) voting members appointed by the City Council;
- (2) One (1) voting member appointed by the Mayor; and
- (3) Three (3) non-voting members appointed by the City Council.

~~+(a)(c)~~ Such power of appointment shall be exercised only after the City Clerk has published a notice announcing such position or positions, describing the responsibilities thereof, and soliciting applications by qualified persons in a newspaper of general circulation within the city not less than fifteen (15) calendar days in advance of action by such council. Applications may be solicited whether or not there is a vacancy, and such applicants may be considered for any vacancy which occurs within one hundred eighty (180) days of the closing date for such applications. Such applicants may also be considered for appointment as a commissioner pro tem pursuant to section 2-55 below. Nothing herein shall limit the city's authority to solicit applications whenever the City Manager deems that it is necessary.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 138-92, § 3, 10-19-92; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97)

Sec. 2-51. Terms.

(a) *Term.* Each civil service commissioner or alternate shall be appointed to a three-year term, unless appointed to fill a vacancy. ~~Police citizen review subcommittee commissioners first appointed hereunder shall be appointed for one-, two- and three-year terms so that only two (2) are initially selected each year other than by reason of resignation, removal or death.~~ A commissioner or alternate shall serve until his or her successor is appointed and qualified, but in no case longer than one hundred twenty (120) days from the expiration of his or her term.

(b) *Limitation on service.* The term limitations of Chapter 2, Article Iii shall apply to service on each of the subcommittees of the civil service commission.

(c) *Applicability.* The limitation on terms provided by this amendment shall apply to any person serving on the civil service commission as of the effective date of this amendment (7/5/1991) and to any person appointed after said effective date.

(d) *Initial Civilian Police Review Board.* For the first civilian police review board appointed following its creation, the City Council and Mayor shall first select from the current members of the police citizen review subcommittee in making appointments to the board. Additional vacancies shall be filled in accordance with the process outlined in Section 2-50. On the first board, two (2) voting members appointed by the City Council shall serve for a one (1) year term, two (2) voting members appointed by the City Council shall serve for a two (2) year term; one (1) voting member appointed by the City Council shall serve for a three (3) year term; the one (1) voting member appointed by the mayor shall serve for a three (3) year term; one (1) non-voting member appointed by the City Council shall serve for a one (1) year term; one (1) non-voting member appointed by the City Council shall serve for a two (2) year term; and one (1) non-voting member appointed by the City Council shall serve for a three (3) year term.

(Code 1968, § 201.3; Ord. No. 89-80, 7-7-80; Ord. No. 275-83, 11-7-83; Ord. No. 299-86, 1-22-86; Ord. No. 370-91, § 2, 6-5-91; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 118-08/09, 12-1-08)

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Sec. 2-54. Officers.

Each subcommittee of the civil service commission shall annually elect one (1) of its members as the chair. Each subcommittee ~~may, at its option, shall~~ also elect one (1) of its members as the vice chair, to serve in the absence of the chair. The Director of Human Resources or his or her designee shall serve as secretary to the employment subcommittee and shall furnish any necessary administrative assistance. The ~~corporation counsel~~Justice, Diversity, Equity, and Inclusion Director or the City Manager's designee shall serve as secretary to the ~~police citizen review subcommittee~~civilian police review board and shall furnish any necessary administrative assistance to that subcommittee.

(Code 1968, § 201.3; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 288-90, 4-2-90; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 143-17/18, 2-5-2018)

Sec. 2-55. Commissioners pro tem.

In the case of temporary absence from the city, temporary disability of the ~~civil service commission~~employment subcommittee

members and alternate, or other circumstances, so that a quorum of ~~thea~~ subcommittee cannot be constituted without such action, the City Council may appoint such commissioners pro tem as may be necessary to constitute a quorum. Commissioners pro tem shall be subject to the eligibility requirements of this division. A commissioner pro tem shall possess the powers and discharge the duties of a regular commissioner during the absence or disability for which he or she has been appointed; provided, however, that a commissioner pro tem shall have no authority with respect to rule-making by the commission and shall not participate in any action or decision where a quorum is otherwise present.

(Code 1968, § 201.4; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97)

Sec. 2-56. Meetings.

(a) *Calling of meetings.* Meetings or hearings of either subcommittee of the Civil Service Commission may be called at any time by its Chair, or in the absence from the city or disability of the Chair, by any member of the Subcommittee. The Chair of a Subcommittee shall call a meeting upon request from any Subcommittee Commissioner.

(b) *Quorum.* A quorum of the Employment Subcommittee of the Civil Service Commission shall be two (2). The Subcommittee Alternate may attend any hearing or meeting, but shall participate as a Commissioner only during the absence or disability of any Commissioner or whenever a vacancy on the Subcommittee exists.

A quorum of the ~~Police Citizen Review Subcommittee~~Civilian Police Review Board shall be a majority of the total number of voting members presently appointed to the board. When a majority of the total number of voting members presently appointed to the board is not available for a meeting, the Mayor may appoint non-voting members as voting members to the extent necessary to create a quorum for that particular meeting. The board shall act by a majority of voting members present and voting.~~four (4). Notwithstanding the foregoing, the quorum shall be reduced to three (3) during any period when there is a vacancy on the Subcommittee, including a vacancy in the position of alternate.~~

(Code 1968, § 201.5; Ord. No. 89-80, 7-7-80; Ord. No. 299-86, 1-22-86; Ord. No. 117-95, 11-20-95; Ord. No. 184-97, 1-22-97; Substitute Ord. No. 83-01/02, § 3, 11-5-01; Ord. No. 247-03/04, 6-21-04)

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DIVISION 4. ~~POLICE-CITIZEN REVIEW SUBCOMMITTEE~~CIVILIAN POLICE
REVIEW BOARD

Sec. 2-76. Functions and duties.

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

(1) To receive, through the Justice, Diversity, Equity, and Inclusion Director or the City Manager's designee (the "Community Liaison"), complaints of police misconduct by civilians and police as follows:

a. Complaints received by the Community Liaison shall be referred to the police internal affairs department for investigation.

b. To the extent that civilians report police misconduct to the police department directly, the police department will provide the Community Liaison with a copy of the complaint within five (5) calendar days.

c. The Community Liaison will not accept any complaints from police officers or their representatives regarding disciplinary actions or personnel matters.

d. The Community Liaison or his or her designee shall provide a report to the board each month regarding the complaints received.

~~(1)-(2) To review all final investigation reports submitted by internal affairs and/or police command staff to determine whether such police investigations into citizens' complaints by members of the public against police officers are were thorough, objective, fair and timely by auditing the police department's internal affairs' unit investigative methods and procedures;~~

(3) To maintain the confidentiality of all information and documents provided to and/or reviewed by the board in accordance with state law.

(24) To provide a written annual report in writing to the City ManagerMayor, City Council, and Chief of Police that includes, but is not limited to, the periodically, but no less than annually beginning in January 2003, as follows:

a. a.—the board's policy and funding recommendations concerning the police internal affairs process, the

board's review process, and the appeal process laid out in Section 2-78; and

b. the number of complaints submitted to the board and the number of complaints resolved during the previous year.

~~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 and to engage the City residents as to the board's purposes and goals.

(4) ~~Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures,~~To ensure that all reports of the ~~subcommittee board~~ shall be prepared ~~done~~ in such a manner that particular complainants, witnesses, and officers are not personally identifiable.

(5) ~~To ensure that its r~~Reports ~~of the subcommittee shall be are~~ made available to the public but only to the extent permitted by~~consistent with~~ the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 et. seq. and other applicable law.

(6) To propose make ~~suitable~~ procedural rules and rules regarding board member roles, from time to time, for the conduct of its duties. Such ~~P~~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 board~~ shall review all completed internal affairs investigations ~~of citizen complaints~~ and investigations of police misconduct by police command staff.

(c) *Timing of review.* All ~~subcommittee board~~ reviews of ~~citizen complaints~~ internal affairs investigations shall take place

only after final disciplinary action has been taken and all appeals exhausted or settled or the case has been finally closed with no disciplinary action taken. The police department shall submit its report on the conclusions of any internal affairs investigation no more than fourteen (14) calendar days after the findings become final and after final disciplinary action has been taken and all appeals exhausted or settled or the case has been finally closed with no disciplinary action.

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

(e) *Scope of authority.* The ~~subcommittee~~ board 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 investigations of police misconduct~~, and the ~~subcommittee~~ board 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~~ board 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~~ board commissioners shall attend training by city staff as to the subcommittee's duties and responsibilities, applicable state and local law, ordinances, and rules 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~~ board members.

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

serving as technical advisor.

In addition to receiving complaints and forwarding them to the board, the Community Liaison shall ensure that the public is aware of the methods for filing complaints, and shall assist the board with carrying out its duties, conducting outreach, and other duties as assigned by action of the board.

The Police Department shall designate a staff member to serve as the civilian police review board's Police Liaison. The Police Liaison shall be familiar with the police department's standard operating procedures and shall assist the board with questions concerning the department's standard operating procedures.

The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the ~~subcommittee-board~~ to conduct its duties hereunder. In no case shall the ~~boardsubcommittee~~ 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. Appeals.

(a) Individuals aggrieved by the civilian police review board's determination regarding the thoroughness, objectivity, fairness, and timeliness of an internal affairs investigation may appeal the civilian police review board's determination to the City Council.

(b) The City Council shall review the internal affairs investigation materials as well as the basis for the appeal and provide an advisory opinion regarding the thoroughness, objectivity, fairness and timeliness of the internal affairs investigation. The City Council's review shall be de novo and will occur in executive session in accordance with state law. The City Council 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 City Council shall make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer. The City Council's decision on any appeal will be final and not appealable.

(c) All such appeals to the City Council are subject to the same confidentiality requirements that are applicable to members of the police civilian review board. All reports or decisions of such appeals and requests for disclosure of any information related to an appeal shall be referred to the corporation counsel for review prior to release.

Sec. 2-7~~98~~ thru 2-90. Reserved.

Office of Corporation Counsel

Michael Goldman, *Acting Corporation Counsel*

Amy McNally, *Associate Corporation Counsel*

Nicole Albert, *Associate Corporation Counsel*

Rachel Millette, *Associate Corporation Counsel*



MEMORANDUM

To: Police Citizen Review Subcommittee

From: Rachel Millette, Associate Corporation Counsel

Date: July 7, 2023

Subject: Ordinance Creating Civilian Police Review Board

At a workshop on June 21, 2023, the City Council discussed changes to the City Code in order to implement Ballot Question #7 – Civilian Police Review Board, which was approved by the voters during the November 2022 election and added Article IX to the City Charter as of July 1, 2023. Article IX creates a new Civilian Police Review Board (the “New Board”), which will replace the City’s existing Police Citizen Review Subcommittee (“PCRS”) and requires the Council to adopt an ordinance that will govern that board. The New Board, like the existing PCRS, is charged with reviewing internal affairs investigations on the issues of fairness, thoroughness, objectivity, and timeliness.

At the City Council’s workshop, the Council provided guidance with respect to what eligibility criteria it felt were appropriate for members of the New Board. In addition, the Council considered what the new appeal process outlined in the Charter will look like. Following the City Council’s workshop, my office prepared a revised version of Chapter 2 of the City Code, which includes the ordinance governing the New Board. For ease of reference, I have attached a copy of Article IX of the City Charter and the revised draft of Chapter 2.

Given that the City Council and Mayor will first select from the PCRS in creating the first New Board, I am seeking the PCRS’ input as to the revised ordinance. Following this Subcommittee’s input, the revised ordinance will be shared with the police unions for their input as well (though the City maintains its position that bargaining is not necessary). Next steps will include an

additional workshop with the City Council prior to final adoption of the ordinance.

Below I have highlighted the major changes to the City Code, most of which are required by the revisions to the Charter:

Term Limits for Board Members

- Section 2-32 provides that members may not serve more than three (3) consecutive full terms or nine (9) consecutive years on the same board or commission. The changes to the ordinance in Section 2-33 make clear that service on the existing PCRS will count towards members' term limits on the New Board.

Composition of the Board

- Section 2-48 increases the number of members of the New Board from seven (7) to nine (9); however, four (4) members will be non-voting members.
- Section 2-50 outlines who is responsible for appointing each of the Board members.
- Section 2-51 requires that the City Council and Mayor first select from the existing PCRS in appointing members of the first New Board. All other vacancies will be posted for application in accordance with the normal process. Term limits for the initial New Board members are also laid out in this section.
- Section 2-56 updates the quorum of the Board.

Eligibility Criteria for Board Members

- Section 2-49 is amended to include requirements that Board members be at least 18 years of age and a resident of the City for at least three (3) months before the start of their term.
- Section 2-49 of the City Code currently provides that present or former city employees and City Council members are prohibited from serving on the subcommittee for ten (10) years after their service with the City. The City Council is considering whether this time period should be reduced. In addition, the Council is considering whether there should be different standards for individuals who hold or have held policy-making positions in the past. As the City Council is still considering these issues, changes have not yet been made to this section of the Code. This section is not required by the new Charter revisions.

Staffing of the New Board

- Section 2-54 changes the staffing of the New Board from corporation counsel's office to the Justice, Diversity, Equity, and Inclusion ("JDEI") Director or the City Manager's designee.
- Section 2-76 provides that the JDEI Director or the City Manager's designee shall serve as the New Board's Community Liaison.
- Section 2-76 further provides that the Police Department will designate a staff member to serve as the New Board's Police Liaison and that such person will assist the New Board with respect to the Police Department's standard operating procedures.

Board's Functions and Duties

- Increasing the public's trust and confidence in the police department is added as a duty of the New Board in Section 2-76.
- Section 2-76 also requires the Community Liaison to accept complaints of police misconduct on the New Board's behalf. Complaints may be accepted from civilians or from police. The City Charter requires that the Board receive all civilian complaints of police misconduct.
 - If civilians make complaints directly to the police department, a copy of those complaints will be sent within five (5) calendar days to the Community Liaison.
 - Complaints accepted by the Community Liaison will be referred to the police internal affairs department for investigation.
 - The Community Liaison will report on complaints received to the New Board each month.
- As outlined in Section 2-76, the New Board will review all final internal affairs investigations, not just those brought by civilians.
- The New Board's annual report will be provided to the Mayor, City Council, and Chief of Police, rather than the City Manager, as outlined in Section 2-76.

Appeal Process

- Section 2-78, a new section of the Code, creates an appeal process for "persons aggrieved by a report issued by the [New

Board].” Appeals will be heard by the City Council in executive session and subject to the same confidentiality requirements as those required of the New Board. The City Council will provide a de novo review of the investigation and the grounds of appeal and will provide an advisory opinion regarding the thoroughness, objectivity, fairness, and timeliness of the internal affairs investigation.

If you have suggestions for other changes or any questions about the Charter, the ordinance changes, or the ordinance-development process, please feel free to contact me directly to discuss them either before or during the upcoming PCRS meeting.