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CITY COUNCIL WORKSHOP

Civilian Police Review Board

September 25, 2023 at 5:00 PM in Council Chambers

REMOTE PARTICIPATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. The public may attend the meeting in person, however space in Council Chambers is limited. The public is therefore strongly encouraged to attend remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council.

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

Please click the link below to join the webinar:

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AGENDA ITEMS:

Draft Ordinance

Staff Presentation (Rachel Millette, Associate Corporation Counsel)

Council Questions

Council Discussion

Next Steps

EXECUTIVE SESSION:

The City Council may enter into Executive Session pursuant to 1 M.R.S.A. sections §405(6)(D) and (E) to discuss the development of the Civilian Police Review Board ordinance and any collective bargaining obligations with the Portland Police Benevolent Association and the Portland Police Superior Officers Association.

ADJOURNMENT:



MEMORANDUM

To: Mayor Snyder and Members of the City Council

From: Rachel Millette, Associate Corporation Counsel

Date: September 25, 2023

Subject: Ordinance Creating Civilian Police Review Board

Previously, 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. As discussed at that workshop, 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. A copy of Article IX of the City Charter is attached to this memo.

At the City Council's June 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. A copy of the revised ordinance is attached to this memo.

The draft ordinance has been reviewed by the existing PCRS. After reviewing the draft ordinance, the PCRS prepared a letter outlining its questions and concerns with the draft ordinance. This letter was sent to the Council on August 29th.

This workshop is intended to permit the Council to ask questions about and provide guidance as to the draft ordinance. Once that guidance has been

received, I would suggest that my office make any necessary revisions to the proposed ordinance and circulate it to the police unions for their review and feedback.¹ Following that process, the proposed ordinance will be returned to the Council for review and approval in the ordinary course.

Below I have highlighted the major changes to the City Code as outlined in the draft ordinance, 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, three (3) 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 for recruiting board members. 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 considered at its prior workshop whether this time

¹ The City disputes that the ordinance requires collective bargaining, but is extending the opportunity for the police unions to provide feedback as a courtesy.

period should be reduced. The Council also considered whether there should be different standards for individuals who hold or have held policy-making positions in the past. As the City Council did not come to a conclusion with respect to these issues, changes have not yet been made to this section of the Code. Changes to this section are 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

- Section 2-76 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.

I look forward to your thoughts and feedback at the upcoming workshop. Please do not hesitate to contact me beforehand if you have any questions or concerns.

ARTICLE IX: CIVILIAN POLICE REVIEW BOARD

Section 1. Purposes, composition, term, appointment, first board, qualifications, vacancies, removal, compensation.

(a) Purposes. For the purposes of increasing public trust and confidence in the Portland Police Department, there shall be a civilian police review board.

(b) Composition, term, appointment, first board. The civilian police review board shall be composed of nine (9) or more members who shall hold office, except as hereinafter provided, for a term of three (3) years unless appointed to fill a vacancy, and until their successors are appointed and qualified, but in no case longer than 120 days after expiration of their term. A minimum of four (4) voting members shall be appointed by the city council, one (1) voting member shall be appointed by the mayor and three (3) non-voting members shall be appointed by the city council. A majority of the total number of voting members appointed shall constitute a quorum of the board and the board shall act by a majority of voting members present and voting.

For the first board appointed following its creation, the city council and mayor shall first select from the current members of the police citizen review subcommittee, currently established by City ordinance, which subcommittee shall be supplanted by the board, in making appointments to the board. On the first board, two voting members shall serve for a one (1) year term, two voting members shall serve for a two (2) year term, and the voting member appointed by the mayor shall serve for a three (3) year term; and one non-voting member shall serve for a one (1) year term, one non-voting member shall serve for a two (2) year term, and one non-voting member shall serve for a three (3) year term. Thereafter, all members shall serve for a term of three (3) years. 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 board. Following appointment of the first board, the city council shall exercise its power of appointment only after the city clerk has published a notice announcing the availability of board positions, describing the responsibilities thereof and soliciting applications by qualified persons, in a newspaper of general circulation at least 15 days before the city council acts to appoint to the board.

(c) Qualifications. All candidates for the civilian police review board must be at least 18 years of age and must be residents of the City for a period of at least three (3) months prior to the date on or before which the board member is to be seated.

(d) Vacancies and Removal. The City Council shall provide by ordinance procedures for vacancies and removal of members.

(e) Training. Prior to assuming their duties hereunder, civilian police review board members shall attend training provided by city staff as to the board's duties and responsibilities, applicable state and local law, ordinances and rules and regulations, accepted police practices and the police department's internal affairs investigation process.

(f) Confidentiality. Each member of the civilian police review board 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 constitute "cause" for removal from the board under (d) above. All reports prepared by the board and all requests received by the board for disclosure of any information or documents in the custody of the board or its members shall be referred to the corporation counsel for review prior to release.

(g) Transition. The city council shall promptly consider and enact an ordinance to implement this Article, which ordinance upon its effective date also shall repeal the existing Police Citizen Review Committee ordinance provisions in Chapter 2, Art. IV, Div. 4 of the Code of Ordinances, City of Portland, Maine.

(Referendum 11/8/2022)

Section 2. Powers and duties.

(a) Complaints. The civilian police review board shall receive all complaints brought by civilians regarding the Portland police department and shall refer such complaints to the Portland police internal affairs department. Members of the police department may bring complaints to the board, to internal affairs, or to command; the board shall refer any such complaints it receives to internal affairs. Portland police department command shall review internal affairs draft findings on complaints and shall submit its report on the conclusions of any investigation on complaints to the board for consideration no more than fourteen (14) days after the findings become final and after any final disciplinary action has been taken and all appeals exhausted or settled or the case has been closed with no disciplinary action. Neither police officers nor their representatives may file complaints regarding disciplinary actions or personnel matters under this subsection.

(b) Review, reports. The board shall review all final investigation reports submitted by internal affairs and/or command staff under Section 2. (a) above for due process issues, including but not limited to, issues of fairness, thoroughness, objectivity, and timeliness. Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the board issued to address complaints filed under Section 2. (a) above shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable. Reports of the board 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.*

(c) Appeals. The city council shall by ordinance adopt an appeal process consistent with federal, state, and local law for persons aggrieved by a report issued by the civilian police review board on complaints filed with the board under Section 2. (a) above to appeal that board report to the city council or such other body as the city council may designate or create for

a hearing, in executive session where required, and for the issuance of an advisory opinion which shall not be legally binding on the city, the police department, police officers, or individuals, and which hearing and advisory opinion shall not include or address any disciplinary proceedings. Neither police officers nor their representatives may file appeals regarding disciplinary actions or personnel matters under this subsection.

(d) Policy. The civilian police review board shall be able to make policy recommendations to the mayor, the city council, and the chief of police.

(e) Annual report, communications, additional duties. The civilian police review board shall hold a public hearing at least annually to receive comments upon the community complaint process and to engage City residents as to the board's purposes and goals, and shall prepare and present to the mayor, city council, and chief of police an annual report, including but not be limited to, policy and funding recommendations, and the number of complaints submitted to the board and the number of complaints resolved during the previous year. Any recommendations made by the board regarding the police department shall be based on policy evaluations, may be assigned by the city council and mayor to staff for research, and may be enacted or implemented. The board also may, in its discretion, address the city council on an as-needed basis. The city council and mayor may add to the board's duties by ordinance at any time.

(f) Board Officers & Procedural Rules. The civilian police board shall annually elect one of its members to serve as chair, and shall annually elect one of its members to serve as vice-chair, to serve in the absence of the chair. The City Council shall by ordinance establish rules of procedure and board member roles. The board may recommend such rules to the City Council¹.
(Referendum 11/8/2022)

Section 3. Funding, staff, resources.

(a) Funding, staff. The civilian police review board shall be funded as needed by the city council through the annual budget. Such funding shall include professional staff, including but not limited to a "Community Liaison" and a "Police Liaison" familiar with Portland police department standard operating procedures. The city council shall decide whether the community liaison and police liaison positions are part-time or full-time and/or whether the duties of these positions may be assigned to existing employees. The community liaison shall serve at the direction of the board and shall ensure the public is aware of the methods for filing complaints, and shall assist the board with carrying out its duties, powers and functions, conducting outreach and with other duties as the board may assign. The board may request additional funding from the city council at any time. The police liaison may be the same person/position as the "technical advisor" described in Section 3(b) below.

(b) Resources. The city shall make available to the board the services of a technical advisor, as needed by the board. The technical advisor may be used for the purposes of training; briefing the board on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the 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 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. The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the board to conduct its duties hereunder. In no case shall the board 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 Maine Freedom of Access Act.

(c) Coordination. The board shall work in conjunction with the City's communications department, internal affairs, and any other city departments or offices to effectuate all powers and duties granted to it in this charter and any additional duties assigned to it by the city council or mayor.

(Referendum 11/8/2022)

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)~~ seven (7) 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 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)

* * *

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 ~~the~~a 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)

* * *

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.
- (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 rReports ~~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 Pproposed 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.~~

(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-officersinternal affairs investigations~~, 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 ~~subcommitteeboard~~. 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.



CITY OF PORTLAND
POLICE CITIZEN REVIEW SUBCOMMITTEE
Reginald Parson, Chair

August 29, 2023

Mayor Snyder and honorable members of the Portland City Council,

I submit this letter on behalf of the members of the Police Citizen Review Subcommittee (PCRS). I write to provide our assessment regarding the proposed ordinance that will implement provisions of the Portland City Charter to create the new Civilian Police Review Board (CPRB).

At our regularly scheduled meeting on July 12, 2023, we discussed the proposed language of the ordinance along with a memo prepared by Associate Corporation Counsel Rachel Millette. We spent over two hours engaging in a very thorough and productive discussion about many provisions of the proposed ordinance that led to the decision to write this letter. On August 9, 2023, the PCRS discussed the contents within the letter and approved the document to move forward with some additional modifications. Our hope is that you will take into consideration our feedback on the provisions below as you continue to work on this proposal in the coming months. Below please find our comments for your review:

Eligibility requirements:

During our deliberations, we expressed concerns about the length of time an individual must wait to serve on the CPRB if they are or were an employee with the City of Portland within the last 10 years. This caused some members on the PCRS to be concerned that this 10-year *cooling off period* could disenfranchise members of our community from serving simply because they worked for the City of Portland. Therefore, we recommend the City Council look further into reducing the *cooling-off period* from 10 years to a minimum of 1 year before becoming eligible to serve on the CPRB.

In connection with this, we would also ask the City Council to consider creating parity for both City of Portland employees as well as Portland Public School employees with respect to the eligibility requirements to serve on the CPRB. It is our understanding that based on the interpretation of the current ordinance by Corporation Counsel, it allows for a current or former Portland Public School employee to immediately become eligible to serve on the PCRS while a City of Portland employee will be disqualified from serving on the PCRS for at least for 10 years. Some members are unsure as to why this distinction exists between the two organizations, given that a Portland Public School employee also receives their compensation from Portland taxpayers similar to a City of Portland employee. Therefore, we recommend the City Council examine whether this distinction

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creates an unintentional barrier for all Portland citizens to engage in serving their community regardless of whether they worked for the Portland Public Schools or the City of Portland.

Role of the Community Liaison and Police Liaison:

Our review of the proposed ordinance allows for a Community Liaison and Police Liaison to assist the CPRB in its duties, such as receiving and referring complaints to the Portland Police Department, along with other public facing functions on behalf of the CPRB. However, questions remained about who the Community Liaison would report to and how much of their role would be focused on service to the CPRB. In addition, our assessment of the proposed ordinance leads us to believe there are two separate and distinct roles that we hope the City Council will provide financial support for in future municipal budgets. To provide better understanding, we ask the City Council and/or City Officials to provide a position description of these roles that may provide clarity and how they fit in the overall function of police oversight in Portland. In addition, we also ask if there is any flexibility in allowing either the Community Liaison and/or Police Liaison be a contracted person from outside the City and reports to the CPRB.

Review of Complaints and Criteria:

The proposed ordinance that was presented to the PCRS in August allows for the CPRB to review **“all final investigation reports submitted by internal affairs and/or police command staff [...]”** Two questions were raised during our review: (1) what is the definition of “all complaints” as proposed in the ordinance? And (2) whether this will include any complaints that do not receive an Internal Affairs (“IA”) number and are addressed by the Portland Police Department informally?

Finally, the current ordinance requires PCRS to review cases in a **timely, fair, thorough, and objective** manner. The proposed ordinance also calls for the same criteria to be used. We appreciate the consistency between the current and proposed ordinance with regard to the criteria. However, questions arose on whether the scope of our review will constrain the CPRB to the four criteria standards as outlined in the ordinance or will there be any flexibility in reviewing a case that allows for the four criteria to be used plus any other factors that a member deems relevant during the review of a case. We also ask for the City Council’s guidance on this question as well.

Appeal of the CPRB’s Findings:

As stated above, the proposed ordinance allows the City Council to review the findings of the CPRB as to whether the Internal Affairs case was completed in a **timely, fair, thorough, and objective** manner. The proposed ordinance also enables a complainant to appeal the CPRB’s findings to the Portland City Council that will, then, issue its own advisory opinion about the review of the CPRB’s findings.

During our discussions, a question was raised about the effectiveness of the appeal process given the uncertainty based on the language as written that the City Council will be able to review the information that is only provided to members of the PCRS/CPRB. While the appeals process may provide value to complainants that would like a second review of the CPRB's findings that a case may have met all, some or none of criteria, we believe this provision as written will not achieve the goals that the Charter is attempting to accomplish. Therefore, we ask the City Council to consider making significant modifications to the proposed ordinance that will strengthen the process for all parties involved.

Composition of CPRB with Voting and Non-voting Members:

Finally, we also ask the City Council to explore the option of reviewing the number of voting and non-voting members of the CPRB including the selection of the non-voting member on the CPRB. During our discussions, a concern was raised on how the Mayor would select a non-voting member if there was less than the required number of voting members to constitute a quorum. Without fully knowing the criteria the Mayor would consider in appointing a non-voting member of the CPRB, some members expressed that the selection of the non-voting member may be based on preference if they express similar ideologies on matters of policing, etc.

In addition, some members were concerned that having six voting members may result in a deadlock if members are split on the outcome of a case with a 3-3 tie for example. By having more than six as voting members, it ensures the CPRB can conduct the work in a manner that accomplishes both an opportunity to achieve a quorum if at least four voting members are present and prevents potential issues of a tie, when voting to decide whether a case is done in a timely, fair, thorough, and objective manner.

CPRB Status as Separate and Independent Agency:

Under the current City Code, the PCRS is constituted under the Civil Service Commission as "two independent subcommittees constituting the commission."¹ While the recently adopted provisions in Article 9 may not address whether the CPRB will be maintained as a separate but independent body from other commissions, we ask the City Council to consider separating the CPRB from the Civil Service Commission entirely, which will strengthen the CPRB role as an independent body and further the intended purpose of the new Board.

In sum, we would like to thank you for your consideration of our recommendations and thoughts that we hope carries out the will of the public to create better police oversight in Portland.

Best,

A handwritten signature in black ink, appearing to be 'RP' with a stylized flourish.

Reginald Parson
Chair, Police Citizen Review Subcommittee