



July 9, 2020

To: Parties interested in Portland policing and accountability

From: Mary Hull Caballero, City Auditor *MHC*

Re: Suggested policy questions and community resources for reform

My office is home to considerable expertise in Portland's police oversight and accountability system and joins you in its desire to increase its transparency, independence, and authority.

I am sharing this document to pose some questions we think would be useful to you as you consider reforms, provide information about how the existing system operates given those questions, and recommend changes to State Law, City Code, and police labor contracts to achieve substantial improvements.

Among the system's flaws is its lack of transparency, which makes it difficult for the community to evaluate whether the City is meeting its responsibility to hold officers accountable. The legal and contractual constraints in place mean that you do not have the information you need to determine if I am appropriately managing Independent Police Review. They also keep you from knowing how well the Police Commissioner is managing the system components assigned to his office, or if his final decisions about individual police misconduct cases are sound.

Whether the existing system is strengthened, or a decision is made to start over, these questions are worthy of the community's time to answer.

My staff and I are available to discuss any matters of concern related to the police oversight system or clarify information provided here.

**City Auditor’s recommended policy questions for policing and oversight reforms  
9 July 2020**

	Policy questions	Status quo	Policy resources/choices
1	What do Portlanders want from their police?	<ul style="list-style-type: none"> <li>▪ Structure born from white supremacy and reflects a quasi-military ethos</li> <li>▪ Most Portlanders do not interact with police</li> <li>▪ Black, brown, and young Portlanders say they are overpoliced but not safe</li> <li>▪ Warrior approach pits officers against some community members</li> <li>▪ Community policing model has been discussed but not funded at level to implement</li> </ul>	<p>President’s task force on <a href="#">21<sup>st</sup> Century Policing</a> (May 2015) recommends six pillars and describes a “guardian” model.</p> <p>National Association for Civilian Oversight of Law Enforcement (NACOLE) <a href="#">agency profiles</a></p> <p>U.S. Department of Justice, Community Oriented Policing Services (COPS) <a href="#">publications</a></p> <p>Portland Committee on Community-Engaged Policing <a href="#">recommendations</a></p>

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2	What should fall within the scope of a police response?	<ul style="list-style-type: none"> <li>▪ Code <a href="#">3.20.110</a> Duties of Police Force</li> <li>▪ Calls for service for people experiencing homelessness, mental health crises</li> <li>▪ Pretext traffic stops; overrepresented by drivers of color</li> <li>▪ Calls to remove “unwanted person”</li> <li>▪ Domestic violence/all violence</li> <li>▪ Calls to schools</li> <li>▪ Traffic/transit</li> </ul>	<p>Independent Police Review <a href="#">report</a> on transit police</p> <p>Independent Police Review <a href="#">report</a> on police role in homelessness response</p> <p>Independent Police Review <a href="#">report</a> on street protests</p> <p>Audit <a href="#">report</a> on gang enforcement traffic stops</p> <p>Criminal Justice Commission traffic stops <a href="#">report</a> by agency</p>
3	What should fall to others?	<ul style="list-style-type: none"> <li>▪ Police are the default responders</li> <li>▪ Decreased state funding for mental health and other social services</li> <li>▪ Union leadership has expressed concerns about alternatives to enforcement</li> <li>▪ <a href="#">Settlement agreement</a> references community-based mental health services (section V) and crisis interventions (section VI)</li> </ul>	<p>Portland Street Response pilot</p> <p><a href="#">Public Safety Support Specialists</a></p>

	Policy questions	Status quo	Policy resources/choices
4	Is City Council willing or able to pay for this scope of work?	<ul style="list-style-type: none"> <li>Public Safety Bureaus (Police, Fire, 911, Emergency Management) made up the largest General Fund appropriation for the fiscal year that just ended (52%)</li> <li>Police Bureau’s appropriation was \$238.2 million or 32% of General Fund (\$733 million)</li> </ul>	<p>FY19-20 Public Safety <a href="#">budget</a> (Police, pg 17-51)</p> <p>FY19-20 Police <a href="#">budget</a> (pgs 141-155)</p> <p>FY20-21 Adopted Budget will be available <a href="#">here</a> soon</p>
5	What training is needed to ensure Portlanders get the policing they want?	<ul style="list-style-type: none"> <li>The Oregon Department of Public Safety Standards and Training certifies and trains officers after they are hired by local agencies</li> <li>The Bureau’s Training Division provides on-going training throughout an officer’s career</li> <li><a href="#">Settlement agreement</a> included training requirements to “instill agency expectations that officers are committed to the constitutional rights of the individuals who have or are perceived to have mental illness...” (section IV)</li> <li>It also acknowledges the role of the Training Advisory Council (paragraphs 86-87), which is made up of community volunteers who meet regularly and make recommendations to the Chief</li> </ul>	<p>Compliance officer <a href="#">reports</a> on settlement agreement compliance</p> <p>Training Advisory Council <a href="#">recommendations</a></p> <p>Audit <a href="#">report</a> on training recommendations</p>
6	What equipment do officers need to carry out the policing Portlanders want?	<ul style="list-style-type: none"> <li>Lethal and less-lethal firearms, munitions, distraction devices, CS gas, batons, Tasers, dogs, riot gear, etc.</li> </ul>	

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7	What policies and rules ( <a href="#">directives</a> ) should govern officer conduct and who should set them?	<ul style="list-style-type: none"> <li>▪ The Chief adopts directives after a public comment period (Code <a href="#">3.20.160</a>)</li> <li>▪ They are <a href="#">posted</a> for public review on the Bureau’s website but changes are not formatted to easily identify them</li> <li>▪ Directives guide officer conduct but allow for discretion in many circumstances; they are reviewed and changed regularly by the Bureau</li> <li>▪ Directives are the criteria against which administrative investigations into misconduct allegations are based</li> <li>▪ Investigative findings are based on whether directives were violated</li> <li>▪ If directives don’t align with community expectations, community will not be satisfied with investigative outcomes</li> <li>▪ <a href="#">Settlement agreement</a> required Bureau to revise its use-of-force policy and reporting requirements (section III)</li> </ul>	
8	Who should be responsible for taking misconduct complaints and determining how they are handled?	<ul style="list-style-type: none"> <li>▪ Complaints can be received a number of ways but all are to be forwarded to Independent Police Review or Internal Affairs for entry in the case management system (<a href="#">Code 3.21.110</a>)</li> <li>▪ Independent Police Review is the central intake point for community member complaints in-person, by phone, or online and conducts initial investigations to determine the appropriate next steps, including closure without further action.</li> </ul>	

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9	Should the oversight system decline to take some complaints before assigning resources to them?	<ul style="list-style-type: none"> <li>▪ Portland has no barriers to filing complaints. All complaints are accepted and undergo an initial evidence-gathering phase to determine the appropriate further action.</li> <li>▪ Code <a href="#">3.21.120(C)4</a> provides eight reasons for Independent Police Review to decline further action on a complaint after an initial investigation. The reasons are:               <ol style="list-style-type: none"> <li>1. Another remedy exists that would resolve the complainant’s issue (e.g. traffic court)</li> <li>2. The complainant delayed too long in filing the complaint (time works against evidence collection)</li> <li>3. Even if all aspects of the complaint were true, no act of misconduct would have occurred (e.g. officer gave complainant a speeding ticket but did not cite other drivers who were speeding)</li> <li>4. The complaint is trivial, frivolous, or not made in good faith (e.g. an officer declined to intervene when a complainant was upset about food prices at a grocery store)</li> <li>5. Where there is clear and convincing evidence that the involved member did not engage in misconduct (e.g. the officer declined to arrest a party in a civil dispute)</li> <li>6. The complainant withdraws the complaint or fails to complete necessary steps to continue with the complaint</li> <li>7. The officer involved in the complaint could not be identified during the initial investigation</li> <li>8. Lack of jurisdiction (complaint involves a non-Portland officer)</li> </ol> </li> <li>▪ In 2019, 38 percent of community complaints and 5 percent of complaints filed by officers were closed after an initial investigation for one of the reasons above. The closure rate has steadily declined with increased investigative resources and the addition of less serious allegations being investigated by an officer’s supervisor and reviewed by Independent Police Review.</li> </ul>	<p>Some oversight systems have thresholds, such as requiring complainants to sign affidavits (<a href="#">New York</a>) or declining to accept anonymous complaints.</p> <p>Independent Police Review 2018 <a href="#">annual report</a></p> <p>Independent Police Review <a href="#">complaint dashboard</a></p>

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10	Who should investigate allegations of officer misconduct?	<ul style="list-style-type: none"> <li>▪ Hybrid: Independent Police Review is in the Auditor’s Office; Internal Affairs is in Police Bureau</li> <li>▪ The U.S. Department of Justice recommended the two investigative entities identify categories of allegations they each would investigate to avoid redundancies in the system and improve community understanding.</li> <li>▪ Independent Police Review generally investigates allegations of high community concern: vulnerable populations; mass events, such as protests; high-ranking officers; biased or disparate treatment.</li> <li>▪ Internal Affairs generally investigates allegations of procedural violations, excessive force, officer-involved shootings, in-custody deaths</li> <li>▪ Investigative entities reach conclusions on whether a preponderance of the evidence indicates an officer violated directives, but their conclusions are in the form of recommendations to the officer’s supervisor. They do not make recommendations about discipline. (<a href="#">3.21.200</a> and</li> <li>▪ Independent Police Review is prohibited in the Portland Police Association labor contract from investigating deadly force incidents (Article 62.1.3 referencing 61.7 deadly force incidents)</li> <li>▪ Independent Police Review monitors officer-involved shooting and in-custody death investigations and manages a contract for outside experts to review closed deadly force case files and publicly <a href="#">report</a> on them (currently the OIR Group)</li> <li>▪ The Department of Justice and the Compliance Officer have reviewed the investigative case files and timeliness data of Independent Police Review and Internal Affairs since 2014 and found them to be in substantial compliance with the accountability paragraphs in the settlement agreement. [see court <a href="#">notice</a>]</li> </ul>	Investigators work in a legally constrained environment that requires expertise and skill. That will be true no matter which oversight model is used.

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11	How many levels of review are needed once the investigators finish their evidence gathering and reach conclusions whether misconduct occurred?	<ul style="list-style-type: none"> <li>▪ The oversight system is infamous for its byzantine design in Code involving complex complaint types and handling rules (Code <a href="#">3.21.120</a>), responsible parties, and multiple layers of review</li> <li>▪ All reviewers make recommendations (investigators, officers' managers, <a href="#">Police Review Board</a>, <a href="#">Citizen Review Committee</a>, City Council)</li> <li>▪ Multiple layers are largely regarded as time-consuming, challenging to schedule, and not helpful to the final recommendation of the Chief to the Police Commissioner</li> <li>▪ The Department of Justice urged the City to streamline the system by removing elements that did not add value. While that was not achieved, individual components were streamlined to substantially achieve timeliness requirements (<a href="#">Settlement agreement</a>, section VIII)</li> </ul>	This should be aligned with what the ultimate decision-maker(s) need to make a sound decision and with procedural fairness requirements
12	Is an appeal process for community members and officers necessary before the final decision is made?	<ul style="list-style-type: none"> <li>▪ Citizen Review Committee hears appeals (Code <a href="#">3.21.150</a> and <a href="#">3.21.160</a>), which can be so time-consuming that its policy workgroups and community engagement suffers</li> <li>▪ Code requires conferences between the Committee and the Bureau when they disagree (3.21.160(A1)(c2)); a dispute may go to City Council if they can't work out their differences (3.21.160(A1)(c2)(b))</li> <li>▪ This conference occurs before the Chief has held a meeting with the officer to discuss mitigating circumstances and before a final decision is made.</li> </ul>	If yes, consideration should be given to having an Administrative Law Judge or Hearings Officer hear appeals to free the Citizen Review Committee to focus on obtaining community input on policy questions and make the process timely
13	Who should make the ultimate decision whether an officer engaged in misconduct by violating a directive?	<ul style="list-style-type: none"> <li>▪ Police Commissioner is the ultimate decision-maker; Police Chief makes the final recommendation to the Commissioner</li> <li>▪ Bureau management exercises decision-making authority in some cases</li> <li>▪ Legal and union contract issues must be considered</li> </ul>	National Association for Civilian Oversight of Law Enforcement <a href="#">models</a> by jurisdiction and <a href="#">agency profiles</a>
14	Who should decide what the discipline level will be?	<ul style="list-style-type: none"> <li>▪ Police Commissioner is the ultimate decision-maker; Police Chief makes the final recommendation to the Commissioner</li> <li>▪ Legal and union contract issues must be considered</li> </ul>	National Association for Civilian Oversight of Law Enforcement <a href="#">models</a> by jurisdiction and <a href="#">agency profiles</a>



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15	Is the discipline guide aligned with what the community wants in policing, state law, and the union contract?	<ul style="list-style-type: none"> <li>▪ <a href="#">Settlement agreement</a> required the Bureau to develop a discipline guide (paragraph 137)</li> <li>▪ A City stakeholder group developed the guide, which is also called a discipline matrix</li> <li>▪ It was adopted March 1, 2014, to ensure consistent results across cases</li> <li>▪ The matrix needs to be updated; legal and union contract issues must be considered</li> </ul>	<a href="#">Discipline guide</a>
16	How transparent should the administrative investigation process and results be?	<ul style="list-style-type: none"> <li>▪ With few exceptions, investigative files and results are protected from public scrutiny by state law (ORS <a href="#">192.345</a> and ORS <a href="#">181A.830</a>) and Portland Police Association <a href="#">contract</a> (embarrassment clause, Article 20.2).</li> <li>▪ Complainants receive information about the status and results of their complaints.</li> <li>▪ Code requires Independent Police Review to consult with and obtain approval from Bureau personnel prior to disclosing records under Oregon Public Records law. <a href="#">Code 3.21.110.C</a></li> <li>▪ By not being allowed in most cases to show its work after a case has concluded, Independent Police Review is unable to correct misinformation and earn the public’s trust in the oversight system</li> <li>▪ Public must “take our word for it.”</li> <li>▪ Exceptions include investigations into former Chief O’dea and Lt. Niiya, whose investigative files were posted to the website because their cases met the disclosure requirement or permission was granted</li> </ul>	<p>Changes to state law, Code, and labor union contracts should be pursued to make the existing system more transparent</p> <p>Public should be provided enough information to evaluate the City’s effectiveness at managing officer conduct and whether investigations are timely and complete</p>

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17	How independent should the administrative investigation process be?	<ul style="list-style-type: none"> <li>▪ The elected City Auditor manages Independent Police Review, which is located in City Hall</li> <li>▪ The Mayor in his capacity as the Police Commissioner manages the Police Chief, who is responsible for the Professional Standards Division, which includes Internal Affairs</li> <li>▪ Independent Police Review reviews all Internal Affairs investigations in its monitoring role, including officer-involved shootings and in-custody deaths. (Code <a href="#">3.21.120(4)(D)(3)</a>); this is intended to keep the police from investigating themselves without oversight</li> <li>▪ The Portland Police Association labor <a href="#">contract</a> requires that all investigative interviews must be conducted in a Police Bureau facility. [Section 61.2.2.2] Amending <b>the contract</b> to allow for interviews to occur in City Hall or the Portland Building would improve independence.</li> <li>▪ Independent Police Review’s autonomy from the Police Bureau has improved in recent years as it has gained investigative positions; problems remain in its ability to <u>directly</u> access reports and data from the Bureau for structural and technological reasons, and because the Bureau is slow to change its practices. Independent Police Review is taking steps to address the access issues, one of which requires changes to state law and City contracts for certain law enforcement data.</li> <li>▪ A <b>change to Code</b> would remove the requirement that Internal Affairs sit in on Independent Police Reviews interviews of officers. (Code <a href="#">3.21.220(A)</a>)</li> </ul>	Changes to state law, Code, and labor union contracts should be pursued to make the existing system more independent

## Entities involved in Portland police misconduct complaints

Task	Auditor's Independent Police Review	Police Internal Affairs	Police Commanders	Police Review Board	Police Chief	Police Commissioner (Mayor)	Arbitrator
Receives complaints	■	■					
Assigns/closes complaints	■						
Investigates complaints	■	■					
Recommends findings based on investigation	■	■	■	■	■		
Decides if violation occurred						■	■
Recommends discipline			■	■	■		
Decides discipline						■	■
Monitors process	■						

Notes:

1. The Police Review Board considers cases in which the outcome could result in at least one day off without pay for the officer and all officer-involved shootings. The Auditor's Independent Police Review is a voting member of the Police Review Board, which is internal to the Police Bureau.
2. The Police Chief and Police Commissioner are not obligated to reach the same decisions or follow the disciplinary recommendations made by commanders and the Police Review Board.
3. Complainants have the option to have the Citizens Review Committee, a group of community volunteers, review a Commander's violation decision to determine if it was reasonable based on the evidence. This option is not available for Police Bureau employees who file a complaint against an officer.
4. Complaints that involve allegations of less serious misconduct and will not result in discipline follow a separate process.