



P O R T L A N D
CITY AUDITOR
Mary Hull Caballero

July 28, 2020

RE: Assessment of police oversight Charter amendment proposal scheduled for July 29, 2020

The proposed Charter changes and accompanying resolution set worthy goals and make sweeping statements that many Portlanders are sure to support, including that there is a critical need to reject violence and discrimination in policing, ensure independent police oversight, and make the voices of communities most impacted by disproportionate policing and systemic racism heard in the City's police accountability system.

The proposal, however, includes promises the City alone cannot keep and may cause voters to reject elements of the existing police oversight system that work well as a result of years of taxpayer investment and community involvement. Creating a new oversight Board and saying that it has broad powers does not mean that the Board will, in fact, be able to exercise those powers – or that the reform will result in “a transparent, empowered and independent police oversight system.”

Instead of a community discussion on how Portlanders want to be policed and who should make decisions on how officers are held accountable, a referral to the ballot will offer only a “yes-no” choice on a hasty proposal developed with invitation-only input. The proposal leaves existing problems unsolved, may create others, and leaves open a multitude of questions, such as:

Why a change in Charter as opposed to City Code?

- Council already has the power to reform the police oversight system without a Charter change. Why opt for a Charter change, which removes the option for mid-course corrections without going back to voters?
- How long will it take to satisfy bargaining obligations, establish a Commission to make recommendations, and develop the new system and related Code alignments? If it will take one or two years, what is the benefit of rushing to the ballot in November?
- If Council adopts an implementing ordinance and Code changes to establish the Board, does Council have the power to dissolve the Board? If so, why put the Board in Charter? If not, what happens if the Board is unsuccessful or the community is unhappy with its work?
- Has the Council considered alternative approaches or Charter proposals?

Will the Board be “truly” independent?

- Will the Board have its own systems for human resources, technology, legal, procurement, accounting, as does Prosper Portland? Or will it give up true independence and use the City's? How long will it take to set up these systems?

- Will the Board be assigned to a Commissioner's portfolio? If there will still be a Police Commissioner, what will that role be in the new system?
- Will the Board be subject to financial and performance audits? Complaint investigations, such as those conducted by the Ombudsman or in response to Fraud Hotline tips? Any other oversight? Who evaluates the performance of the Board?
- How can the Board be truly independent of an elective office in the Commission form of government? Council will have authority to adopt and amend the Code provisions governing the Board. To achieve true independence, the Board would need to have elected officers and its own tax revenue source. Otherwise, it will be less independent than Independent Police Review being in the elected Auditor's Office while the Police Bureau likely will continue to belong to the elected Mayor/Police Commissioner.
- How will the City ensure that the process for selecting Board members for Council consideration is fair and in keeping with the Board's independence? Who will select and nominate Board members for Council consideration?
- If Council can remove Board members for cause, does this limit the Board's independence? What constitutes cause? When was the last time Council removed a board member for performance or conduct reasons? Who puts removal items on the agenda?
- If Board members can only be removed for cause, shouldn't that same protection extend to the Director position, which is explicitly made "at-will" in the proposal?

How will the Board impose discipline?

- Is the desire for more community input and oversight in discipline decisions or is the goal to change who makes final decisions? Either way, why not achieve that by amending existing Code?
- Discipline processes are a mandatory subject of bargaining. Will committing in Charter to change discipline processes weaken the City's position when negotiations resume in January?
- The recently passed SB 1604 prohibits an arbitrator from changing the level of discipline imposed if it is consistent with a discipline guide. Will the Board's discipline be based on such a guide as adopted by the Police Bureau after bargaining?
- Will appeal rights for complainants and officers continue? If so, how will that work? Who will hear them if the Board's decisions are appealed?

How will the investigative powers of the Board be an improvement on the current system?

From the text of the Resolution: *The "parameters of this Board's authority will remedy past police oversight systems' work that has been impacted by an inadequate ability to collect evidence, interview witnesses, effect police policies and directives, and include sufficient transparency."*

- **Note:** The excerpt mischaracterizes the current system. Independent Police Review collects evidence, interviews witnesses, and makes recommendations on polices. Issues with direct access to sensitive data systems and confidentiality will exist for the model under consideration as well.

- Independent Police Review currently has subpoena powers and Police Bureau officers are required to attend and cooperate with interviews.
- City Code allows Independent Police Review to access to all Police Bureau records. What it lacks is *direct* access. Barriers to direct access include state and federal restrictions on access to law enforcement data and the City’s contractual obligations (RegJIN), which will apply to any oversight system whether it exists in Code or Charter.
- State law, labor contracts, and complainant privacy concerns likewise will shroud the proposed oversight model in secrecy unless they are changed.

What will doubling the cost of the current system – guaranteed in Charter – buy for the taxpayer?

From the text of the Charter proposal: *“Funding for the Board shall be proportional to be no less than 5% of the Police Bureau’s Annual Operational Budget.”*

- The term “operational budget” is not defined in the proposal. Does this mean the total budget, which may include federal and other grant funds? The General Fund appropriation only? Some other sum?
- The Police Bureau’s General Fund appropriation was \$238.2 million in FY2019-20. That amount multiplied by 5 percent would guarantee \$11.9 million for the Board. The General Fund appropriation for Independent Police Review and Internal Affairs combined was about \$6.5 million. Shouldn’t there be a detailed justification for that level of increase, especially given the uncertain fiscal environment cause by COVID-19?
- Does attaching the Board’s funding level to the Police Budget threaten its future stability if, as discussed, future cuts will be made to pay for non-police response policy options?
- Will the Board members be paid? If so, who establishes their compensation? Will they be benefits-eligible City employees?
- Will Council have line-item authority over the Board’s budget?

From the Fiscal Impact Statement: *“[T]he passage of this referral to voters would not have any impact on financial or budgetary impacts. No budgetary commitments will be made without future action by Council.”*

- Does this mean that there would be no budget to support the work of the Commission that will be formed to “craft the details of how this new oversight system would work?”
- Will the Commission have any paid administrative support?
- Will there be funds available to help remove barriers to community member participation?

Did the community get a meaningful opportunity to weigh in on the proposal?

- Select community groups were invited to participate in crafting the proposal by invitation only. This proposal was not provided during a town hall meeting on July 9, though a separate concept was made available in writing to participants.
- Commissioner Hardesty has not spoken to the Auditor or Independent Police Review managers about her proposal even though the Auditor’s Office is preparing proposed amendments to Code and state law to improve the existing system.

- The Auditor and Independent Police Review, who know the system best, were not included in discussions until after this proposal was developed and other elected officials' staff asked that the Auditor's Office be consulted.

What will happen in the interim to the complaint intake and investigation functions? The volunteer oversight and advisory committees?

Note: Commissioner Hardesty's repeated public mischaracterizations of Independent Police Review's role specifically and the oversight system generally, combined with the uncertainty of the unanswered questions in the Charter language, may contribute to premature employee and volunteer departures.

- How will the City attract competent replacements to take temporary positions?
- How will the City ensure the oversight system runs effectively until the Board is established and operational, including meeting the investigation deadlines required by the settlement agreement with the U.S. Department of Justice?
- What will be the employment status of current investigative staff and management? Will they be transferred to the Board? Will their office equipment be transferred to the Board?
- What does this mean for the Citizen Review Committee, the Portland Committee on Community-Engaged Policing, and the Training Advisory Council, which were created by Code, Council resolution, or are required by the settlement agreement? Will they continue? Does this proposal affect the Mayor's promise to codify and support the Portland Committee on Community-Engaged Policing? How should new volunteers be recruited when current members leave?
- Those committees are made up of a cross-section of the community and in some cases are expected to save a seat at the table for people who have experienced mental illness. What happens to those voices?