

The Portland Compliance Officer/Community Liaison

C O C L

Technical Assistance Statement: Police Accountability Commission Recommendations



October 2023

Introduction

In 2020, Portland residents were presented with a ballot measure that would overhaul the police accountability system in the City of Portland by establishing a new Office of Community-Based Police Accountability (OCPA)¹ to replace the Independent Police Review (IPR) and Internal Affairs (IA)². On November 3, 2020, Portland voters passed Ballot Measure 26-217 to create the OCPA by an 82% majority. As described in the ballot measure³, the OCPA will act as an independent body that has the authority to administratively:

- Investigate all deaths in custody and uses of deadly force
- Investigate all complaints of force that result in injury, discrimination against a protected class, or violations of federal or state constitutional rights
- Investigate other complaints or incidents of misconduct as they see fit, or as mandated by City Code
- Subpoena, gather, and compel documents and all evidence, including the ability to compel statements from witnesses and officers
- Compel sworn members of the PPB and supervisors to participate in investigations
- Make policy recommendations to the PPB and City Council, and
- Impose discipline, including termination.

To establish the OCPA, the City Council created a Police Accountability Commission (PAC, or “Commission”) in July of 2021. The PAC comprised 20 community members appointed by City Council and was tasked with further developing the OCPA and submitting a proposal to the City Council for final approval. In September 2023, the PAC presented its final report and proposed City Code language to the City Council. Building up to their final report, the PAC developed fourteen (14) deliverables, each focused on important factors in developing the OCPA. These fourteen deliverables included:

- Areas of Agreement⁴:
 - Barriers to Police Accountability, and Best Practices, in Portland
 - Proposals to Consider, and to Avoid from Subject Matter Experts
 - Best Practices, and Practices to Avoid, from Other Jurisdictions
 - Access to Information
 - Officer Accountability
 - Structural Oversight
 - Board Membership
 - Oversight Staff
 - Reporting and Transparency

¹ In the original Charter amendment, this was referred to as the Community Police Oversight Board (CPOB). However, the PAC has recommended the term Office of Community-Based Police Accountability (OCPA) and we therefore use that term throughout this document.

² IA would continue to investigate minor internal matters which do not involve community members.

³ <https://www.portland.gov/sites/default/files/2021/portland-ballot-measure-26-217-11-03-2020.pdf>

⁴ <https://www.portland.gov/police-accountability/key-documents-and-information/decisions-pac>

- Broader System
- Board and Bureau Name
- Definitions (including Accountability and Independent Judgement)
- Transition Plan
- Code Package Recommendations

As a result of the PAC's work and submission, the City Council is now within a 60-day review period, which will conclude in mid-November. After this, the City will "propose amendments to City Code to address the Commission's proposal, and corresponding amendments to this Agreement, subject to the United States' and the Court's approval, to ensure full implementation of the Oversight Board and effective police accountability, consistent with the requirements of this Agreement" (Par. 195). To assist the City Council during this review period, the COCL provides the following comments on the PAC's process and their resulting proposal to the City Council as it relates to the City's ability to comply with the Settlement Agreement.

PAC's Efforts

We begin by commenting on the PAC's effort, thoughtfulness, and diligence in accomplishing its goals. We note that the task they were charged with was not simple – provide recommendations for the design and operations of a new civilian-led accountability system in the City of Portland. To achieve this, the Commission "held 128 public meetings and hearings, held 23 community engagement events, met with dozens of experts and affected parties, conducted hundreds of hours of research and drafting, engaged with over 1,500 community members, [and] collaborated within and outside of the City government."⁵ Through these efforts, the PAC gathered perspectives on the how parameters and guidelines should be set for the new Oversight Board. The culmination of this effort was the submission of a final report, detailing the PAC's efforts to develop a system that they believed was 1) logistically feasible, 2) equitable and representative, 3) fair and impartial, 4) able to address and minimize or overcome barriers to accountability, and 5) able to maintain best practices from the current system and integrate best practices and proposals from around the country.⁶ Since the creation of the PAC, COCL has been present in their meetings and engagements and additionally spoke with commissioners and their city staff support throughout the process. Through our engagements and observations, we have seen PAC members allot their time to meet with subject matter experts, community members, and city decision-makers to develop their vision for a fair and just system for all stakeholders. The COCL team commends the PAC for those efforts.

Maintenance of Settlement Agreement Processes

Our comments here focus only on the elements of the OCPA that have direct ties to the Settlement Agreement paragraphs. Upon review of the PAC's recommendations, we see that many groups or functions currently governed by Settlement Agreement language will remain in the proposed system, including timelines, appeal boards, disciplinary boards, the Corrective Action Guide, and protocols to

⁵ <https://www.portland.gov/police-accountability/documents/pac-final-report/download>

⁶ See PAC Presentation to City Council on September 21, 2023

ensure transparency with the complainant. In some instances, these processes have been enhanced, such as using “complaint navigators”, which further increases transparency by having a person serve as the constant point of contact for complainants. In other instances, the PAC specifically identified processes related to the Settlement Agreement as constituting best practices, such as the work of the Citizen Review Committee, IPR’s transparency and regular reporting with language accessibility, civilian staff involvement, qualifications of investigators, investigative review and rigor, and case outcomes that go beyond discipline or corrective action (i.e., mediation and supervisory investigation). The PAC advised that they worked to integrate the best practices identified into the new oversight system proposed, and we support this approach.

PAC Recommendations with Settlement Agreement Implications

While the PAC made many recommendations that we support, we identified several other recommendations that we believe, if not clarified or carefully monitored, may impact the City’s ability to comply with paragraphs in Section VIII of the Settlement Agreement. For instance, one area that raised concerns for some community and City Council members was the language surrounding the ineligibility of any person associated with law enforcement to serve on the OCPA. At present, the Charter drives the inclusion of these ineligibility criteria, which are commonplace in other oversight and investigatory boards we have seen. However, we note that the exclusion criteria focus solely on law enforcement and contains no criteria for people with demonstrable biases against police ineligible. The idea behind excluding those associated with law enforcement (or even those associated with the criminal justice system more broadly) from serving on the board is to ensure impartial and unbiased practices by staff. Whereas the current approach may prevent potential “pro-police bias,” there is no similar counterbalance to exclude “anti-police bias”. As the Charter creates a floor with regard to ineligibility criteria, we suggest the City Council consider other types of associations that may render an individual unable to serve in an impartial and unbiased manner.⁷

Furthermore, while still abiding by the language of the Charter, the City Council should explore other ways to ensure the involvement of persons associated with law enforcement, particularly given the PAC’s recommendations that members have lived experience with “law enforcement practices; law enforcement oversight; police accountability; [and] investigative procedures” (see 35B.101 Oversight Board Membership, Section 3). More broadly, we question how the exclusion of persons associated with law enforcement will allow the OCPA to achieve a membership that is truly “representative of Portland’s diverse population, drawn from different socio-economic backgrounds and racial, ethnic, gender identify, and age groups” (35B.101). One way that the City could address this issue is through the regular use of law enforcement (including but not limited to PPB) as subject matter experts and consultants on complex cases. During the 9/21/23 City Council presentation, PAC representatives indicated their intent to do just this. However, the City Council should consider how this intent might be memorialized in city code, including whether it would be mandatory in certain circumstances.

⁷ See Section VIII (Officer Accountability) Introduction: “PPB and the City shall ensure that all complaints regarding officer conduct are fairly addressed.”

We also suggest that the City Council compare the background requirements listed in the PAC's recommendations against the background requirements to access Criminal Justice Information Services (CJIS) data as well as other State requirements. As currently envisioned in the PAC's recommendations, the OCPA could grant a waiver to allow an ineligible person to access sensitive law enforcement data and information. However, this could put PPB's CJIS certification in jeopardy and prevent the City and PPB as a whole from accessing data necessary to function as a law enforcement agency. As we are not experts in State law, we are not stating a legal opinion though would recommend this component be thoughtfully deliberated and a definitive legal opinion sought before jeopardizing the functionality of the PPB.

Finally, we suggest the City Council consider whether the proposed system improves upon the efficiency of the current system considering both the Department of Justice and COCL have found the current system does not reliably resolve administrative investigations within 180 days (see Par. 121). In their report, the PAC provides an "Officer Accountability Timeline" that identifies stages of investigation in the proposed system and indicates that investigations will remain within the 180-day timeline. However, the proposed system includes new, time-intensive processes and, while PAC has removed some administrative stages to account for the timeline, these stages have historically not been the time-intensive parts of the investigative process. For example, the PAC's recommendations include a full board hearing, which is adversarial in nature (in the legal sense) and includes the ability to call witnesses, cross-examine, make opening and closing arguments, and introduce exhibits. However, these hearings traditionally also have some type of discovery process and other preparatory tasks that require additional administrative processes and time. We have seen these types of hearings successfully used in other cities and we are not critiquing the concept but rather raise it as one example of an added step that may impact case timelines. With a Settlement Agreement that requires "final approval of recommended findings" within 180-days, we suggest the City ensure that the system's structure can continue to facilitate these timelines.