

MEASURE 26-217 - Police Oversight

Official Title: Amends Charter: Authorizes new, independent community police oversight board.

Question: Shall the City Charter be amended to authorize a new, independent community police oversight board to investigate complaints against Portland police and impose discipline?

Financial Impact: The amendment requires board funding to be no less than 5% of the Police Bureau's annual operational budget (about \$11.5 million, based on this year's budget). Nothing in the measure requires any particular source of funding.

Probable Results of "Yes" Vote: A "Yes" vote would change the City Charter to include a new community police oversight board with new powers and responsibilities. City Council would be authorized and required to adopt an ordinance creating this board.

Probable Results of "No" Vote: A "No" vote would leave in place the City's current police oversight system, which is a shared responsibility between the Auditor and the Mayor.

Background: This measure comes before voters in the midst of calls for greater police accountability. For decades, groups of concerned community members have called for the creation of an independent police review board with power to compel testimony and provide stronger community oversight. Data from the Portland Police Bureau show that 29 percent of the cases of police use of force are against African Americans, although African Americans make up less than 6 percent of Portland's population. This has led to concerns about racial disparities in policing and mistrust between the police and public.

In the City of Portland, complaints of police misconduct are received, processed and investigated by two separate agencies, the Independent Police Review (IPR) and the Portland Police Bureau's Internal Affairs (IA).

The City of Portland has had some form of civilian oversight of the Portland Police Bureau (PPB) since 1983. Currently the primary independent oversight agency is Independent Police Review (IPR), a division of the City Auditor's office. With a current budget of \$2.8 million, IPR has a staff of 16 employees, including a director and eight investigators. If IPR determines a complaint requires investigation, it can conduct the investigation or refer it to the Police Bureau's Internal Affairs (IA) to do so. IPR monitors all IA investigations. In its investigations of police officers accused of misconduct, IPR is authorized to subpoena non-officer witnesses and documents. In addition, IPR conducts policy reviews and recommends changes to Police Bureau policies in published reports. It also maintains a publicly available data dashboard of misconduct information.

IPR is not authorized to investigate officer-involved shootings or in-custody deaths, although it monitors all of them, beginning with on-scene observations. IPR also cannot directly access Police Bureau files, and it cannot subpoena officers or compel them to testify. (City Code does require Police officers to participate in IPR interviews. They also receive a written directive from the Police Chief at the beginning of the interview that participation in an investigation is a job requirement.) According to its annual report, last year, IPR received 408 complaints and closed 155 after a preliminary assessment, while it investigated 92.

The Citizen Review Committee (CRC) is a volunteer board that meets publicly; it is appointed by City Council and advisory to IPR and Internal Affairs. CRC is supported by the staff at IPR. When people

whose misconduct cases have been investigated disagree with Police Bureau command decisions on whether misconduct occurred, the CRC conducts appeal hearings to determine if the decisions were reasonable, based on the evidence. CRC also has the authority to make policy recommendations to the Police Bureau and City Council.

However, the CRC is only authorized to review some types of cases of police misconduct. It is not authorized to hold appeal hearings on officer-involved shootings or in-custody deaths. In the cases it can review, CRC cannot overturn disciplinary decisions, which ultimately are made by the Police Commissioner or the Police Chief, although it can challenge the commander's findings and recommend that they be changed. If the Police Chief disagrees with the CRC's recommendation in a misconduct case, City Council holds a hearing and makes the final call.

If an investigation may result in suspension or involves use of force that appears to involve misconduct, it goes through the Police Review Board, which is an internal Police Bureau advisory body that makes recommendations to the Police Chief. A representative of IPR is a voting member of the Police Review Board. The Police Review Board is normally made up of five members. In cases of officer-involved shootings or with allegations of use of force, the Board expands to seven members: a CRC volunteer and a second peer officer are added as voting members in "use of force cases," changing the board membership to three civilians and four police personnel (a majority). The Board's meetings are not open to the public. The IPR 2019 annual report notes that the Police Review Board recommended (and the police chief affirmed) discipline in 32 cases: 13 officers received command counseling or a letter of reprimand; 6 were suspended for one or two days; 3 were suspended for a week without pay; 1 was demoted; and 5 resigned or retired pending a decision.

Several factors affect the status of civilian oversight of police officer conduct, including State law, City Code, and the City's contract with the Portland Police Association (the police officers' labor union). The contract between the City and the Portland Police Association governs the interactions and limits the authority of oversight boards and City Council with respect to Bureau members. The current agreement expires in 2021 and will be renegotiated between passage and implementation of this measure. Additionally, State law authorizes a private arbitrator to review and overturn disciplinary decisions in certain narrow contexts when an officer files a grievance. The State arbitration law has been updated once in 2020 and remains under review by legislators.

Finally, since 2012, the City and the Police Bureau have been subject to the terms of a court-supervised settlement agreement entered into with the United States Department of Justice, because of a pattern of disproportionate harm to persons experiencing mental illness. This settlement agreement required several changes to oversight, including requirements that cases be investigated and decided by the Chief within 180 days. It also required a volunteer board called the Portland Committee on Community-Engaged Policing be formed to work with the Police Commissioner, the Police Bureau, and diverse constituencies to achieve equitable policing and improve community engagement.

In order to take the first steps towards creating a new civilian oversight board with authority to discipline Police Bureau officers and managers, and to compel officer testimony and evidence, City Council voted unanimously to refer the measure to voters. The measure is silent concerning the existing oversight boards, committees, and divisions (at the Auditor's office or internal to the Police Bureau) that would be affected, and does not change related State laws, City Code, or the City's labor union contract.

Summary of Measure: The measure adds a new section to the City Charter authorizing an independent body to:

- investigate complaints against police employees;
- investigate all deaths in custody, uses of deadly force, complaints of force that result in injury, discrimination against protected classes, violations of constitutional rights;
- impose discipline deemed appropriate by the Board;
- recommend policy changes, which may go to a full, public vote of the City Council if the Police Bureau does not adopt them.

If the measure passes, City Council would appoint a commission that would have 18 months to engage the community in working out the system's details and submit a proposal to City Council for adoption. When the commission's work is complete, members of the oversight board will be appointed by the City Council and would include representation from diverse communities. The measure explicitly calls for members of the new board to come from groups experiencing racism or mental health concerns; law enforcement employees and immediate family members would not be eligible for board service. The oversight board will appoint a director who would serve at the pleasure of the board and who would hire professional staff and investigators.

Supporters Say:

- The measure is needed to give civilian oversight teeth and make the police accountable to the public. Passage of the measure will lead the City to advocate for the necessary changes in state law and union contract.
- This new system is designed in such a way to empower the board to conduct thorough and independent investigations, including the ability to compel officer testimony and issue subpoenas, and will be adequately funded so that it can independently complete its work.

Opponents Say:

- The barriers to more accountability are in State law, City Code, and the current union contract with the Police Bureau, not with the current oversight system. Officers in the proposed system will be held to the same work rules that exist today until they are changed, and the same legal protections for officers will apply.
- The measure is unvetted and it will take years before the commission contemplated by Council figures out the details and works out the policy, legal, and contractual issues.

