Draft Memo on CRC Priorities recommended to City Council

MEMORANDUM

DATE: September 12, 2011

TO: Mayor Sam Adams & Portland City Council and Police Chief Mike Reese

FROM: Citizen Review Committee Chair, Jamie Troy

SUBJECT: CRC's Priorities from the Police Oversight Stakeholder Committee Report

We appreciate the opportunity to revisit with Council the recommendations from the Stakeholder Committee Final Report dated September 21, 2010. As Council may recall, significant Ordinance changes were passed in 2010 to address certain aspects of the police oversight system in this city. Notably absent from those changes were any provisions related to the Citizen Review Committee. We view additional changes to be important to the overall system's functioning, and would like to revisit them with you here. We understand that the Stakeholder report made many recommendations, many of which we agreed with. The purpose of this memo is not to revisit the entire report, but rather relay to Council those provisions that the CRC views as priorities, for which action be taken post haste. We urge Council to take the next step and make further necessary changes to improve police oversight in Portland.

There are nine members of the CRC. We have nine priorities to recommend. Some of these require Council action and some require the Chief of Police take action. They are listed below and reference the numbering within the Stakeholder Report in an effort to assist the reader in following along.

PRIORITY 1

Stakeholder Report Section II. A: Change the definition of "supported by the evidence" as that term is used in *Portland City Code 3.21.160 Hearing Appeals*. The definition should change from the "reasonable person" standard defined in *3.21.020 Definitions* to a "preponderance of the evidence" standard, per the discussion in the Luna-Firebaugh report.

Committee discussion recommendation: General consensus. This recommendation was supported by the committee with no opposition stated.

PRIORITY 2

Stakeholder Report Section II. B: Give CRC the authority/permission to make policy recommendations directly to PPB.

Specifically, that Portland City Code 3.21.090 Powers and Duties of the Committee section (A)(3) be modified to read: "Recommend policy changes. To help the Director identify specific patterns of problems and to participate in the development of policy recommendations."

Committee discussion recommendation: General consensus. The committee voted to endorse this recommendation with no opposing votes, a majority in favor, and a limited number of staff abstentions.

PRIORITY 3

Stakeholder Report Section II. C: Increase the length of term for CRC members from two years to three years.

Specifically, that Portland City Code 3.21.080(B)(2) be modified to read: "Each serve a term of two three years, subject to reappointment by Council. Upon expiration of the term, a committee member shall serve until re-appointed or replaced."

Committee discussion recommendation: General consensus. The committee voted to endorse this recommendation with no opposing votes, a majority in favor, and a limited number of staff abstentions.

PRIORITY 4

Stakeholder Report Section II. E: Clarify CRC authority to present directly to Council (**Ballot survey item 13**). Ensure that the CRC has the authority to make its own presentations in cases that go to Council for resolution when the CRC and Bureau do not reach agreement on findings in an appealed case. Specifically: Modify Portland City Code 3.21.160.C. to include the sentence: *The Committee shall present its recommendations before Council*.

Ballot recommendation. Of those who participated in the voting, all 18 voted in favor — a unanimous vote in favor. *Voting in favor:* A.M.A. Coalition, ACLU of Oregon, Basic Rights Oregon, Michael Bigham, Jo Ann Bowman, TJ Browning, Dorothy Elmore, (I'm) Everyday People, James Kahan, League of Women Voters of Portland, NAMI Multnomah, Native American Youth and Family, Oregon Action, Portland Copwatch, Portland National Lawyers Guild, Sisters Of The Road, Damon Isiah Turner, Pat Walsh.

PRIORITY 5

Stakeholder Report Section II. F & G:

Council needs to revise the City Ordinance on Appeals. Section 3.21.160 currently requires City Council Appeals whenever CRC recommends changing a finding, even if the Bureau agrees to the changes. The ordinance is, therefore, not being followed. CRC does not believe Council Appeals are needed if the Bureau agrees to CRC's recommended findings.

There needs to be finality in the appeal process. Part of the concern from community members are that they do not trust the police to police themselves. Some community members are

unwilling to discuss their concerns with Internal Affairs investigators and prefer to discuss their concerns with IPR investigators. Some community members may not even trust IPR and may wish to bring their concerns directly to the CRC at an appeal. While this may appear to be bringing "new evidence" to an appeal, there is ultimately no way to avoid that in certain cases and an appeal should be allowed to proceed nonetheless.

Proposals in the report at II.F and II.G offer certain strategies for dealing with this issue. Regardless of how we get there, the current Ordinance provision on Appeals is broken and must be fixed.

PRIORITY 6

Stakeholder Report Section II. L: Provide dedicated staff to support the CRC (Ballot survey item 20). Specifically: Change Portland City Code 3.21.090.A. to include a new numbered paragraph that would read: *Direct committee staff. To direct a staff person assigned to the Committee to provide staff support for the powers and duties outlined in this chapter.*

Ballot recommendation. Of those who participated in the voting, 15 voted in favor, 1 opposed, and 2 abstained. *Voting in favor:* A.M.A. Coalition, ACLU of Oregon, Michael Bigham, Jo Ann Bowman, TJ Browning, Dorothy Elmore, (I'm) Everyday People, League of Women Voters of Portland, NAMI Multnomah, Native American Youth and Family, Oregon Action, Portland Copwatch, Portland National Lawyers Guild, Sisters Of The Road, Damon Isiah Turner. *Voters who opposed:* Pat Walsh. *Voters who abstained:* James Kahan, Basic Rights Oregon.

PRIORITY 7

Stakeholder Report Section III. A: Develop categories of findings regarding the specific allegation that includes four categories, instead of the current three. While some committee members envision these categories as exonerated/in policy, unfounded/not supported, insufficient evidence and sustained/out of policy (along with the currently-in-use with/without debriefing qualifiers), there is not a full consensus on using those terms specifically. There is, however, a General Consensus Recommendation regarding the need to achieve the fourth category by separating the current category of "unproven" into categories approximately equivalent to the technical understanding of the terms "unfounded" (meaning that the evidence does not, in fact, support the allegation) and "insufficient evidence" (meaning that there is simply not enough evidence to draw a conclusion as to whether the allegation is true or not). The distinction is one that is understood to be important in the mind of complainants, because the former is, roughly speaking, a finding in the officer's favor, while the latter is simply a statement that the investigation is inconclusive. The specific definitions recommended to accomplish the above did not reach a full consensus and were voted on in the final ballot, with the following recommendation resulting:

Use the following definitions specified for the four-category finding method (Ballot survey item 8). Definitions for separating the current three categories of findings into four categories (a concept that the committee has already agreed on), should be as follows: **Unfounded/Not supported:** Over 50% of the evidence shows that the officer did not do what the complainant

alleges (the evidence does not support this allegation). **Exonerated/In policy:** Over 50% of the evidence shows that the officer did what the complainant alleges, but it was within Bureau policy. **Insufficient Evidence:** There is not enough evidence to show either (a) whether the officer did what was alleged or (b) whether the officer's actions were within Bureau policy. **Sustained/Out of policy:** Over 50% of the evidence shows that the officer did what the complainant alleges, and it was not within Bureau policy. All of the above could be qualified by "**With debriefing:**" While the officer was not necessarily out of policy, a supervisor will discuss ways the incident could have been handled better.

Ballot recommendation. Of those who participated in the voting, 17 voted in favor, none opposed, and 1 elected not to vote on this question. *Voting in favor:* A.M.A. Coalition, ACLU of Oregon, Basic Rights Oregon, Michael Bigham, Jo Ann Bowman, Dorothy Elmore, (I'm) Everyday People, James Kahan, League of Women Voters of Portland, NAMI Multnomah, Native American Youth and Family, Oregon Action, Portland Copwatch, Portland National Lawyers Guild,14 Sisters Of The Road, Damon Isiah Turner, Pat Walsh. *Voters who chose not to vote on this question:* TJ Browning.

PRIORITY 8

Stakeholder Report Section III. E: Make it easier for complainants to get publicly available records (Ballot survey item 21). Direct IPR and PPB to establish an interagency agreement that would allow the Director discretion to release case-specific records that are already generally available to the public to complainants or their representatives. (*Background:* The concept is to allow complainants a greater likelihood of being able to gain publicly-available information about their cases at one location — IPR in this case — rather than having to physically wait for service at both IPR and the Police Bureau Records Division for complete information.)

Ballot recommendation. Of those who participated in the voting, 17 voted in favor and 1 opposed. *Voting in favor:* A.M.A. Coalition, ACLU of Oregon, Basic Rights Oregon, Michael Bigham, Jo Ann Bowman, TJ Browning, (I'm) Everyday People, James Kahan, League of Women Voters of Portland, NAMI Multnomah, Native American Youth and Family, Oregon Action, Portland Copwatch, Portland National Lawyers Guild, Sisters Of The Road, Damon Isiah Turner, Pat Walsh. *Opposed:* Dorothy Elmore.

PRIORITY 9

Stakeholder Report Section III. J. Require prompt explanation for decisions that differ from the Police Review Board's recommendations (Ballot survey item 28). Require the Chief or Commissioner to explain in writing, publicly, the basis for their decision when it differs from the PRB's recommendation and to do so in 30 days.

Ballot recommendation. Of those who participated in the voting, 17 voted in favor, none opposed, and 1 voted "no opinion." *Voting in favor:* A.M.A. Coalition, ACLU of Oregon, Basic Rights Oregon, Michael Bigham, Jo Ann Bowman, TJ Browning, (I'm) Everyday People, James Kahan, League of Women Voters of Portland, NAMI Multnomah, Native American Youth and Family, Oregon Action, Portland Copwatch, Portland National Lawyers Guild, Sisters Of The Road, Damon Isiah Turner, Pat Walsh. *Voting "no opinion:"* Dorothy Elmore.