ORDINANCE No.

*Amend City Code to establish the Independent Police Review Division. (Ordinance, replace Code Chapter 3.21.)

The City of Portland ordains:

Section 1. The Council finds:

1. The City is committed to hearing concerns and complaints from our citizens about police services and responding in such a way that services are improved and trust in government is restored.

2. The complaint handling system can be a critical element of a community policing program, ensuring effective communication between citizens and members of the Police Bureau.

3. It is important that a complaint handling system is accessible to the community at large, and perceived as fair by participants and the community.

4. Improvements can be made to the current practices of handling complaints against the police, and these improvements can result in better police services.

5. That an independent police review division, under the authority of the City Auditor, empowered to investigate and recommend appropriate changes towards the goals of holding police accountable and promoting higher standards of City police services is in the best interest of the citizens of Portland.

6. The City is committed to ensuring that policies relevant to police shootings and deaths in police custody are examined for possible improvement.

7. That appeals of complaints will be delayed until a new complaint handling system is operating.

NOW, THEREFORE, the Council directs:

a. PCC Chapter 3.21 is replaced as provided by Exhibit 1.

b. The auditor is to propose code by December 31, 2001 for reviewing police shootings and deaths in police custody.

Section 2. In order to provide adequate time for the auditor to establish the Independent Police Review Division an emergency exists and the effective date of this ordinance shall be July 1, 2001.

Passed by the Council:

GARY BLACKMER
Auditor of the City of Portland

Auditor Gary Blackmer

By

Deputy

Exhibit 1
(With highlighted amendments resulting from May 24, 2001 Council Session)

Chapter 3.21

CITY AUDITOR'S INDEPENDENT POLICE REVIEW DIVISION

(Chapter replaced by Ordinance No. _____, effective July 1, 2001.)

Sections:

3.21.010 Purpose.
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3.21.180 Increasing Public Access.
3.21.190 Response of Chief.
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3.21.010 Purpose.

The City hereby establishes an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to act on complaints against Police Bureau personnel for alleged misconduct, and recommend appropriate changes of Police Bureau policies and procedures toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the provision of community policing services. This office shall be known as the Independent Police Review Division.

3.21.020 Definitions.

In this chapter:

A. "Appellant" means either:

1. A person who has filed a complaint with IPR and subsequently requested review by the Committee of the investigation or

2. A member about whom a complaint has been filed with IPR and who has subsequently requested review by the Committee of the investigation.

B. “Bureau” means the Bureau of Police of the City of Portland, Oregon.

C. “Chief” means the Chief of the Bureau.

D. "Citizen" means any person who is not an employee of the Bureau.

E. “Commissioner In Charge” means the Commissioner In Charge of the Bureau.

F. “Committee” means the IPR Citizen Review Committee, which is appointed by City Council members to assist the IPR in the performance of its duties and responsibilities pursuant to this Chapter.

G. “Complaint” means a complaint by a citizen of alleged member misconduct.

H. "Complainant" means any person who files a complaint against an employee of the Portland Bureau.

I. "Director" means the director of the Independent Police Review Division.

J. "Finding" a conclusion reached after investigation.

K. "Early Warning System" means the Bureau's method of identifying officers exhibiting a pattern of behavior that signals potential problems for both the Bureau and public, as explained in General Order 345.00.

L. “IAD” means the Internal Affairs Division of the Bureau, whose responsibilities and procedures are described in Section 330.00 of the Manual of Rules and Procedures of the Bureau, as amended from time to time.

M. "IPR Investigator" means the investigator of the Independent Police Review Division.

N. "IPR" means the Independent Police Review Division.

O. "Member" means a sworn employee of the Bureau about whom a complaint has been submitted to IPR.

P. "Misconduct" means conduct by a member during an encounter with a citizen, which conduct violates Bureau regulations or orders, or other standards of conduct required of City employees.

Q. "Request for Review" means a request by an appellant that the Committee review an IAD or IPR investigation of alleged member misconduct.

R. "Supported by the Evidence." A finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.

3.21.030 Independent Police Review Division.

There is established by the City Council the Independent Police Review Division within the Auditor's Office.

3.21.040 Director Selection.

The City Auditor shall select the Director of the IPR in accordance with any applicable civil service regulations and other laws. The Director shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of administration, and public policy, and shall have a working knowledge in criminal justice commensurate to the powers and duties of the office.

3.21.050 Staff and Delegation.

A. The Director may appoint other personnel necessary to carry out the provisions of this chapter, when in keeping within the adopted budget for the IPR.

B. The Director may delegate to his or her staff members any of his or her duties, unless otherwise specified in this chapter. The IPR Investigator shall succeed to all duties and responsibilities of the Director, including those specified by ordinance, when he or she is serving as the acting Director.

3.21.060 Office Facilities and Administration.

A. The City shall provide suitable office facilities for the Director and staff in a location convenient for the public but separate from the Bureau.

B. The IPR office shall be located within the City Auditor's office, and be accountable to the City Auditor. The Director shall comply with City purchasing procedures but shall have sole discretion in choosing consultants to assist with investigations.

3.21.070 Powers and Duties of IPR.

The Director's powers and duties are the following:

A. Intake**.** To receive complaints and select the appropriate manner to address the complaint.

B. Report on complaint activities. To track and report on the disposition of complaints to the public, IAD, the Chief, and the Council; to monitor and report measures of activity and performance of IAD and IPR.

C. Monitor and conduct investigations. To identify complaints which merit additional involvement of the Director; to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the initial investigation.

D. Communicate with Complainants. To be the primary contact with the complainant regarding the status and results of the complaint; to assist IAD in communicating with the Member.

E. Arrange hearings of appeals**.** To explain the appeal options to complainants and schedule hearings before the Committee and Council.

F. Recommend policy changes**.** To evaluate complaint and other information and investigation practices to make recommendations to the Chief to prevent future problems.

G. Outreach**.** To widely distribute complaint forms in languages and formats accessible to citizens, educate them on the importance of reporting complaints, and hold public meetings to hear general concerns about police services.

H. Notwithstanding any other provision of City law, to have access to and to examine and copy, without payment of a fee, any bureau records, including records which are confidential by city law, subject to any applicable state or federal laws. The Director shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney clients. The Director shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.

I. To adopt, promulgate, amend and rescind rules and procedures required for the discharge of the Director's duties, including policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations.

However, the Director may not levy any fees for the submission or investigation of complaints.

3.21.080 Citizen Review Committee

A. The Committee shall consist of nine citizens. The Committee members shall be appointed as follows:

1. The Director shall solicit applications from the Office of Neighborhood Involvement, the seven Neighborhood Coalition offices, Mayor and commissioners' offices, PPB advisory committees, and the general public.

2. The Director and the Committee shall select the appropriate number of nominees to fill impending vacancies. During the transition until the first Committee is appointed, the Citizen Advisors of the Police Internal Investigations Auditing Committee shall serve in this role.

3. Selection criteria shall include an established record of community involvement, passing a criminal background check performed by an agency other than the Bureau, and absence of any real or perceived conflict of interest. The Mayor and commissioners may each submit an applicant who may be given preference over others of equivalent background and qualifications.

4. The Director shall forward the nominees to Council for appointment.

5. In the event a majority of the Council fails to appoint a person recommended under the provisions of City Code Section 3.21.080 the Director and Committee shall initiate the process again within 30 days after the Council action.

6. In selecting Committee members, consideration shall be given to the current composition of the Committee and appointments should be made that will cause the group to best reflect the demographic make-up of the community.

B. The Committee members shall:

1. Participate in orientation and training activities that may include review of Bureau and IPR procedures, attending the Bureau Citizens' Academy, ride-alongs with officers, and training on investigative practices.

2. Each serve a term of two years, subject to reappointment by Council. Upon expiration of the term, a committee member shall serve until re-appointed or replaced.

3. Attend committee meetings or provide an explanation in advance for an absence.

4. Serve staggered terms to better ensure continuity. Four members of the Committee shall be appointed to one year terms in July 2001.

5. Select a chair from among their members. Adopt such operating policies and procedures as necessary to carry out their duties.

3.21.090 Powers and Duties of the Committee

A. The Committee's duties and powers are the following:

1. Conduct meetings. To schedule and conduct at least four meetings per year for the purpose of exercising the authority delegated to it in this chapter. Quarterly meetings and hearings conducted pursuant to the Chapter shall be subject to the Oregon Public Meetings Law, ORS 192.610 through 192.710. The number of Committee members required for a quorum shall be five.

2. Gather community concerns. To participate in various community meetings to hear concerns about police services.

3. Recommend policy changes. To help the Director identify specific patterns of problems and to participate in the development of policy recommendations

4. Advise on operations. To review methods for handling complaints and advise on criteria for dismissal, mediation, and investigation.

5. Hear appeals**.** To hold hearings of complainant or member appeals as defined in City Code Section 3.21.160; to recommend referral to a final hearing before Council; to publicly report its findings, conclusions and recommendations.

6. Outreach to public. To advise and assist the Director to disseminate information about IPR and Committee activities to organizations in the community; to present reports to Council.

7. Nominate Committee members**.** To nominate to fill vacancies on the Committee as defined in City Code Section 3.21.080.

8. Create other committees. To create special purpose subcommittees or committees including other citizens to address particular short-term issues and needs.

3.21.100 Council Role

A. Council shall review applications of nominees to the Committee and vote whether to approve each appointment.

B. Council shall hear final appeals as specified in 3.21.160.

3.21.110 Intake

A. The Director shall receive complaints from any source concerning alleged member misconduct. The Director shall make reasonable accommodation when complainants cannot file their complaint at the IPR office.

B. The Director shall not investigate matters currently in litigation; where a notice of tort claim has been filed; where a grievance or other appeal under collective bargaining agreement or City personnel rules has been filed; or employee or applicant discrimination complaints.

C. The Director, when requested, shall protect the confidentiality of complainants, members or witnesses consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Director to carry out his or her duties, or to comply with applicable collective bargaining agreements, or the disclosure of records is directed by the District Attorney. When considering a request for public records, the Director shall consult with appropriate Bureau personnel and obtain approval from the Bureau prior to disclosure of records under the Oregon Public Records Law.

3.21.120 Handling Complaints

To ensure appropriateness and consistency in handling complaints the Director shall work with the Committee to establish procedures for taking action based upon the characteristics of the complaint.

A. Mediation. The complainant, the Member, and Bureau administration must all agree before a mediation can be conducted. A complaint that undergoes mediation shall not be investigated. A mediation may be suspended if, in the opinion of the mediator, there is no reasonable likelihood of reaching resolution.

B. IAD Investigation. The IPR shall gather information from the complainant and forward it to the IAD. The IPR shall monitor timeliness and disposition of the investigation.

To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.

In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

C. IAD Investigation with IPR Involvement. The Director may determine that an IAD investigation should also involve IPR personnel. When forwarding the complaint to IAD the Director shall notify the IAD Commander of the extent that IPR personnel must be included in the investigation. IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.

When Bureau personnel are being interviewed IPR personnel shall direct questions through the IAD investigator. The IAD investigator may either repeat the question to the employee or direct the employee to answer the question.

IPR personnel shall have an opportunity to review and comment on draft reports regarding an IAD investigation in which they participated to ensure accuracy, thoroughness, and fairness.

D. IPR investigation with IAD involvement
The Director may determine that IPR should investigate a complaint. If the Director concludes that IAD has not done an adequate job investigating complaints against a particular member, the Director may determine that IPR should investigate a complaint against the member. If the Director concludes that IAD has not done an adequate job investigating a particular category of complaints, the Director may determine that IPR should investigate a complaint or complaints falling in that category. If the Director concludes that IAD has not completed its investigations in a timely manner, the Director may determine that IPR should investigate some complaints. IPR investigations shall be conducted in conformance with legal and collective bargaining provisions.

The Director shall notify the IAD commander that IPR has undertaken an investigation and the reason. The IAD commander shall appoint a liaison

investigator from that office within two working days to arrange and participate in interviews. When Bureau personnel are being interviewed IPR personnel shall direct questions through the IAD investigator. The IAD investigator may either repeat the question or direct the employee to answer the question.

The Director shall provide the IAD commander and the Police Chief with a report on the investigation. The Director shall provide the IAD commander and the Police Chief with a report on the investigation, and present the IPR findings to the Chief or designee to assist the Chief in determining what, if any, action is appropriate. At the completion of the investigation and any appeal process the records of the investigation shall be transferred to the IAD offices for retention.

Complainants and members wishing to appeal an investigation by IPR or the findings shall appeal to the Committee as described in City Code Section 3.21.160 A.2.

E. Referral. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

F. Dismissal. The Director may dismiss the complaint for the following reasons:

1. the complainant could reasonably be expected to use, or is using, another remedy or channel or tort claim for the grievance stated in the complaint;

2. the complainant delayed too long in filing the complaint to justify present examination;

3. even if all aspects of the complaint were true, no act of misconduct would have occurred;

4. the complaint is trivial, frivolous or not made in good faith;

5. other complaints must take precedence due to limited public resources;

6. the complainant withdraws the complaint or fails to complete necessary complaint steps.

3.21.130 Communications

The IPR shall ensure that the complainant and member complained about are informed of the progress and status of the complaint or appeal. Communication may be accomplished orally or by first class mail.

3.21.140 Filing of requests for review

A. Any complainant or member who is dissatisfied with an investigation of alleged member misconduct may request a review.

B. The request for review must be filed within 30 days of the complainant or member receiving IPR's notification regarding disposition of the case. The Director may adopt rules for permitting late filings.

C. A request for review must be filed in writing personally, by mail or email with the IPR Office, or through other arrangements approved by the Director.

D. The request for review shall include:

1. The name, address, and telephone number of the appellant;

2. The approximate date the complaint was filed (if known);

3. The substance of the complaint;

4. The reason or reasons the appellant is dissatisfied with the investigation.

E. The complainant or member may withdraw the request for review at any time.

3.21.150 Reviews and Supplementary Investigations

A complaint resulting in an investigation may be reviewed or supplemented with additional investigative work as a result of an appeal. The IPR will act in accordance with applicable provisions of the collective bargaining agreements covering Bureau personnel when it participates in an IAD investigation, or when it initiates an investigation. The Director shall conduct a preliminary review of IAD's investigation and may conduct an investigation to supplement IAD work. The Director shall decide:

A. If no further investigation and consideration of evidence is warranted the Director shall inform the complainant or member of the basis for the decision and the opportunity for a hearing before the Committee or,

B. If additional investigation and consideration of evidence is warranted the Director shall request IAD reconsider its efforts and results. The Director shall review the additional work of IAD and may conduct supplemental investigation. The Director shall schedule the appeal for a hearing before the Committee.

3.21.160 Hearing Appeals

A. Appeal hearings may be conducted either at the following points:

1. When a complainant or member appeals the finding the Committee shall decide:

a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Committee's decision and close the complaint; or

b. If the finding is not supported by the evidence. The Committee shall inform the complainant, member, IAD and the Chief of what finding should have been made. The Director shall schedule a hearing before Council for final disposition. The Committee shall select one of its members to represent the Committee's viewpoint before Council.

2. In its hearing the Council shall decide:

a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint; or

b. If the finding is not supported by the evidence. The Council shall decide what the finding is. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint.

B. In reviewing the investigation, the Committee may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Committee may receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen. The complainant or member may appear with counsel.

C. In reviewing the investigation, the Council may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD**.** The Council

may receive any oral or written statements volunteered by the complainant or the member about whether or not they believe the finding is or is not supported by the evidence in the record. No new evidence may be introduced in the hearing. The complainant or member may appear with counsel.

D. Witnesses.

1. The Committee and Council may require within its scope of review the investigators and Commander of IAD and the Director to appear and answer questions regarding the investigation and may also require the responsible Bureau Commander to answer questions regarding the basis and the rationale for a particular decision.

2. Other Witnesses. Other witnesses shall not be required to appear involuntarily before the Committee.

3. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and other evidence. The power to compel the attendance and testimony of witnesses in accordance with City Code Section 3.21.160 C.3. shall not be delegated by the Council to the Committee.

3.21.170 Monitoring and Reporting

A. The Director shall develop a data system to track all complaints received, develop monthly reports to inform IAD and the Chief regarding IAD workload and performance, and inform complainants and members regarding the status of complaints and appeals.

B. The Director shall use complaint and Bureau of Risk Management data to support the Bureau's Early Warning System.

C. The Director shall work with the Committee to develop recommendations to modify Bureau policies and procedures in order to prevent problems, improve the quality of investigations, and improve police-community relations.

D. The Director shall work with the Committee to develop quarterly and annual summary reports for the Chief, Commissioner in Charge, Council and public on IPR and IAD activities, policy recommendations, and Bureau follow-through on recommendations. The report may include

analysis of closed files which were not appealed, but it is not the intent that the files be reopened.

3.21.180 Increasing Public Access

A. The Director shall work with the Committee to make complaint forms available in formats and locations to reach as many community members as possible.

B. The Director shall work with the Committee to develop programs to educate the public about the IPR and the importance of reporting problems.

C. The Director shall work with the Committee to develop programs to educate Bureau personnel on the complaint process, mediation, and IPR activities. Bureau personnel shall be informed that the IPR is the primary means for citizens to file complaints.

D. The IPR, Committee and Bureau shall develop guidelines for situations when a commander or supervisor in a precinct is directly contacted by a complainant with a complaint. In general, they may intervene and attempt to resolve the complaint themselves, but they must also inform complainants that they can still file with IPR if they do not achieve satisfaction.

3.21.190 Response of Chief.

A. The Chief, after reviewing a report provided by the IPR under City Code Section 3.21.170, shall respond promptly to IPR in writing, but in no event more than 60 days after receipt of the report. The response shall indicate what, if any, policy or procedural changes are to be made within the IAD or the Bureau.

B. If the Chief fails to respond within 60 days after receipt of the Committee Report, the Auditor shall place the matter on the Council Calendar, for consideration by City Council, within 15 days thereafter.

3.21.200 Limitation on Power.

The Committee and Director are not authorized to set the level of discipline for any member pursuant to any request for review made under this Chapter. However, this Section shall not be construed to limit the authority granted to City Council by the City Charter, City Code, state statutes, and other applicable law.