

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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## Work Session: Police Auditor Ordinance Review Committee Report

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Meeting Date: March 9, 2009  
Department: Central Services/CMO  
*www.eugene-or.gov*

Agenda Item Number: B  
Staff Contact: Sarah Medary  
Contact Telephone Number: 682-6877

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### ISSUE STATEMENT

The purpose of this work session is to provide the City Council with the final report of the Police Auditor Ordinance Review Committee and the City Manager's recommendation on how to proceed with revisions to the civilian oversight system of the Eugene Police Department.

On November 17, 2008, the council appointed a 15-member committee to review 18 proposed revisions to Ordinance 20374 (Attachment A). The committee was asked by the council to return by March 11 with a recommendation on how to proceed with any and/or all of the 18 proposals. The committee has completed and included recommendations for 12 of the 18 items. The council is being asked to consider the amendments as recommended and give direction on next steps towards revising the ordinance.

### BACKGROUND

#### Previous Council Action and History

On November 17, 2008, the council voted to create a committee to review 18 issues related to the police auditor ordinance, as well as other issues that the committee members believed should be reviewed. The council directed the committee to report back to the council by March 11, 2009, with recommendations on amendments to the police auditor ordinance. The council further requested that the committee receive input from the public on any proposed revisions before coming back to the council.

#### Status of Committee

The committee quickly formed agreements around decision-making, how to best hear from the public and a process for discussing, evaluating and eventually adopting revisions to the ordinance. While they invested a significant amount of time researching, preparing and deliberating over the list of 18 items, they ultimately ran out of time and were not able to address all of the items. In their final report, there is a recommendation that the council consider re-convening the committee to continue work on six remaining items: appeals, the auditor's role in training, discipline and hiring, subpoena power and the role of the CRB in evaluating the auditor.

The committee's full report is included as **Attachment B**.

## **RELATED CITY POLICIES**

Some of the recommendations being considered may require bargaining with the Eugene Police Employees' Association.

## **COUNCIL OPTIONS**

1. Accept the committee's report and take no further action.
2. Accept the committee's report and schedule an additional work session to discuss next steps.
3. Accept the committee's report, revise the ordinance language to reflect alternative language proposed by the City Manager, and move forward with a public hearing.
4. Accept the committee's report and move forward with a public hearing on the proposed revisions.

## **CITY MANAGER'S RECOMMENDATION**

The City Manager recommends Option 2: Accept the committee's report and schedule an additional work session to discuss next steps. This option would allow the council to hear from the committee, to identify best outcomes, and then to come back at a future work session to consider alternatives that achieve those best outcomes.

If the council decides at this point to move forward with a public hearing, the City Manager recommends that the council include the following revisions in the proposed ordinance before sending it to a public hearing (many of the reasons for these recommendations are outlined in Attachment C):

- Revise concurrency section (2.456(2)(c)) to reflect the earlier recommendation to the committee that the Municipal Court Judge make the final decision on whether to postpone any or all of an administrative investigation when the Police Auditor and Police Chief are in disagreement.
- Revise 2.454(5), allegations against the chief, to state: "If the auditor receives an allegation that the police chief has violated the provisions of EC 2.450 – 2.456, the auditor shall forward a copy of the allegation to the city manager. The city manager shall investigate the allegation. Upon completion of the investigation, but prior to the finalization of the investigation report, the city manager shall provide the auditor with a draft of the report. The auditor may review the draft and provide comments about the draft to the manager within 7 days of receiving the draft. The manager shall consider any comments received from the auditor within that 7-day period. Once the city manager issues a decision on the allegation, the manager shall inform the council of the nature of the allegation and the manager's decision related to the allegation."
- Direct the City Manager and Police Auditor to work together on a joint recommendation regarding an appeals process and return to the council after receiving input and feedback from the Civilian Review Board, Police Commission, members of the PAORC and other interested parties.
- Consider ordinance revisions related to subpoena power and the auditor's role in discipline after a permanent auditor and chief have been hired and given some time to work together to evaluate ongoing improvements.

## **SUGGESTED MOTION**

I move that the council accept the committee's report and schedule an additional work session to discuss next steps.

**ATTACHMENTS**

- A. List of 18 Items
- B. PAOR Committee Report
- C. City Manager's Written Comments to PAOR Committee
- D. Ordinance Revisions

**FOR MORE INFORMATION**

Staff Contact: Sarah Medary  
Telephone: 682-6877  
Staff E-Mail: sarah.j.medary@ci.eugene.or.us

## List of 18 Items to Consider

1	The Police Auditor shall have exclusive authority to classify and route complaints, as well as to reclassify complaints if upon further investigation and additional information, no available at the time of intake, the Auditor finds reclassification if warranted.
2	Investigation of complaints shall commence upon classification of the complaint by the Police Auditor or as soon as possible thereafter, and no investigation shall occur before the Police Auditor has received, classified, and routed the complaint.
3	Upon the opening of a case file, and any time thereafter including closed cases, the Police Auditor shall have complete, unrestricted, and direct access to all records, evidence, documents, and all material the Police Auditor deems relevant to the complaint.
4	Administrative investigations shall proceed concurrently with any related criminal investigation; administrative investigations shall not be suspended, delayed, or postponed, while criminal proceedings involving complainants and witnesses are resolved.
5	The Police Auditor shall have complete, unrestricted, and direct, access to the necessary Eugene Police Department offices; the same as Internal Affairs staff. In addition the Police Auditor shall have complete, unrestricted, and direct access to Internal Affairs PRO database the same as the program coordinator and the Internal Affairs PRO supervisor.
6	The Police Auditor shall maintain strict name confidentiality wherever warranted or legally required. Upon classification of the complaint, the Police Chief may request the Police Auditor provide name confidentiality on a specific case, and the Police Auditor shall comply, but the identifications of any involved parties shall not be withheld from the Police Auditor.
7	There shall be an opportunity for appeal of the Police Chief's adjudication to the City Manager for final determination (on the existing record). Appeal shall be available in cases of misconduct upon the request of the Police Auditor, the Civilian Review Board, or the complainant in cases where there is disagreement between the Police Auditor and the Police Chief and/or the Civilian Review Board and to the Police Chief.
8	Risk claims shall be forwarded to Internal Affairs and the Police Auditor for classification and processing as a complaint.
9	The Police Auditor shall review random selections of Service Complaints.
10	The definition for "police employee" shall include the Police Chief by adding "including the Chief who answers to the City Manager."
11	The Police Auditor's budget shall be sufficient to accomplish all of the duties and responsibilities of the office including the sufficient and readily available funds to contract for external investigations.
12	Update Section 2.456(2)(c)(d) for consistency with the Charter.

ATTACHMENT A

	<b>Next Step Recommendations:</b>
13	Authority for the Police Auditor to determine final adjudication
14	Authority for the Police Auditor to recommend discipline
15	Subpoena power for the Civilian Review Board and Police Auditor
16	The Police Auditor's role in training of police employees
17	The Civilian Review Board's role in evaluating and overseeing the Police Auditor
18	Authority for the Police Auditor to participate in hiring processes for EPD, including the Chief of Police

**Police Auditor Oversight Review  
Committee Report to the  
Eugene City Council**

**Proposed Amendments to  
Ordinance 20374 and  
Recommendations for Eugene's  
System of Civilian Oversight**

**March 9, 2009**

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## **I. Introduction and Background**

The Police Auditor Ordinance Review Committee (PAORC) is a Council appointed committee resulting from a November 17<sup>th</sup>, 2008 Council adopted motion which read (in part):

“...to review the issues raised by Councilor Bettman’s November 10<sup>th</sup> motion, as well as other issues that the committee members believe should be reviewed, and to report back to the City Council by March 11 with recommendations on amendments to the police auditor ordinance. The committee shall be composed of two members of the Civilian Review Board (to be designated by the CRB), two members of the Police Commission (to be designated by the Police Commission), two individuals designated by Citizens United for Better Policing, two members of the Eugene Police Employees Association (designated by EPEA), the Police Auditor, the Police Chief, the Mayor, two councilors appointed by the Mayor, and two community members at-large appointed by the Mayor.”

The committee began its deliberations on January 5<sup>th</sup> and has met eight times, including a Public Forum held on Thursday, February 19<sup>th</sup> from 5:30 p.m. – 8:00 p.m. in the Bascom-Tykeson Room of the Eugene Public Library. Public comment was also welcomed at each PAORC meeting at both the beginning and the end of the meetings, and electronically.

At its January 5<sup>th</sup> meeting PAORC agreed to organize its work to consider the proposed amendments of November 10<sup>th</sup> (identified as Items 1-12) first, then to next consider the proposed amendments of 17<sup>th</sup> (identified as Items 12-18), and finally to consider other relevant items should time permit.

Initially PAORC consisted of fifteen members. However, after the second meeting the Eugene Police Employees’ Association representatives decided to withdraw due to concerns related to bargaining with the City. Since that time the active membership of PAORC has consisted of thirteen.

## **II. Executive Summary**

The eighteen proposed amendments from the adopted Council motions [see Attachment A] fall into six general areas of Eugene’s oversight system:

- Intake and Classifications [Items 1, 6, 8 & 10]
- Investigations [Items 2, 4, & 11]
- Complaint Monitoring [Items 3, 5 & 9]
- Complaint Adjudications [Items 13 & 14]
- Opportunities for Appeal [Item 7], and
- Other Considerations [Items 12, 15, 16, 17 & 18]



PAORC is proposing to Council eighteen distinct amendments (including additions and deletions) to the language of Ordinance 20374 as well as other recommendations to improve Civilian Oversight in Eugene. In the end we were able to consider and act upon twelve of the eighteen items from the Council meetings of November 10<sup>th</sup> and 17<sup>th</sup>, 2008. Of those on which we acted (Items 1-6 and Items 8-13) all but one (Item 13) involve revisions to the ordinance. Those revisions are incorporated into the ordinance in Attachment B at the end of this report.

In contrast, the committee did not feel that Item 13 – “Authority for the Police Auditor to determine final adjudication” was appropriate and voted unanimously not to forward a recommendation for change to the existing ordinance in that regard.

In the end, there were six items the committee did not feel it had time to adequately address: Item 7 – Appeal (although discussed); Item 14 – Discipline; Item 15 – Subpoena Power; Item 16 – Training; Item 17 – CRB Oversight of the Auditor; and Item 18 – the Auditor’s participation in hiring. Nonetheless, the members of PAORC voted unanimously to recommend to Council these items were suitable topics for further discussion, and to inform Council of the members’ willingness to spend the additional time necessary to deliberate on these topic should that be the Council’s wish. We did not feel, however, that the compressed timeframe within which we were working allowed us to thoughtfully and thoroughly deliberate on these issues.

### **III. Ordinance Revisions**

Ordinance 20374 was adopted by the Council in late 2006, and the Auditor began intake of complaints in the fall of 2007. During the community’s first year of experience with the operation of Eugene’s oversight system, concerns developed regarding the functioning of the office and in July of ’08 the Council decided to place a second Charter Amendment on the ballot for the November 4<sup>th</sup> general election. The measure made mandatory Council actions in hiring a Police Auditor and appointing a Civilian Review Board. After passage of the measure, the Council established the Police Auditor Ordinance Review Committee to review and recommend revisions related to eighteen proposed ordinance changes resulting from Council adopted motions on November 10<sup>th</sup> and 17<sup>th</sup> of last year. POARC has reviewed and is proposing ordinance language changes, recommendations, or no action on those items as follows.

#### **a) – Intake and Classification [Items: 1, 6, 8 and 10]**

**Proposed Revisions:** The committee’s language revisions in this area were all specific to the intent behind these items indicated in the Council-adopted motion of November 10<sup>th</sup>. The revisions are intended to: 1) clarify the Auditor’s role as the “exclusive authority to classify and route complaints” [2.456(1)(d)]; 2) ensure confidentiality [2.456(3)(a)]; 3) review claims for damages against the City arising out of actions of the Eugene Police Department for performance concerns that might give rise to complaints [2.456(1)(c)]; and 4) address complaints involving the Chief of Police [2.454(5)].

**Committee Discussion and Votes:** In general the committee was largely in agreement on the proposed revisions. The primary exception to this position was the concern voiced

by Chief Kerns, resulting in his subsequent vote in opposition, to the proposed language revisions in 2.454(5)(b). In this regard the Chief felt that it was inappropriate for one department head to be monitoring complaint investigations against another department head. The Chief also expressed concerns that ambiguity in added language in Section 2.454(5) could result in allegations against the Chief for carrying out administrative functions of the office.

**b) – Investigations [Items: 2, 4, 11]**

**Proposed Revisions:** These revisions relate to the Auditor’s ability to: 1) ensure the timeliness of complaint investigations [2.456(2)(b)]; 2) require concurrent related administrative and criminal investigations when the Auditor (after consultation) deems it necessary [2.456(2)(c)]; and 3) adequate budget allocations to the Auditor’s office to arrange for outside investigations [2.450(5)].

**Committee Discussion and Votes:** Again, the committee was largely in agreement on the proposed ordinance revisions. Nonetheless, particular exception was taken by Chief Kerns regarding concurrent investigations because he felt, on rare occasions, administrative investigations that occur before the completion of criminal prosecutions might jeopardize the outcome of a criminal or prosecution. He also stated that he believed the decision to undertake an investigation should rest with the person who is responsible for conducting the investigations.

**c) – Monitoring Complaints [Items: 3, 5 and 9]**

**Proposed Revisions:** The committee is proposing three language revisions to Ordinance 30274 relating to the Auditor’s in role monitoring complaints. All the revisions in this area are intended to clarify and enhance the auditor’s ability to ensure fair, thorough, complete and unbiased complaint handling. These revisions concern the following: 1) access to IA records [2.456(3)(a)]; 2) access to the IA database [2.450(6)]; 2.456(3)(a); and 3) review of service complaints [2.452; 2.454(1)(e)]

**Committee Discussion and Votes:** The committee discussion on these revisions resulted in different language options being discussed and evaluated. Ultimately, the committee unanimously agreed on the revisions.

## **IV. Item Recommendations**

Over the course of its work, PAORC discussed a variety of issues related to Ordinance 20374, the office of the Police Auditor, and the implementation of civilian oversight in Eugene. While some of the committee’s discussions resulted in proposed revisions to the ordinance, others were felt to be more appropriately expressed as recommendations:

**d) – Adjudicating Complaints [Item 13]**

**Committee Discussion and Votes:** Item 13 from the Council adopted motion of November 17<sup>th</sup> proposed that the authority to determine “final adjudication” of complaints be given to the Auditor. The committee had a brief discussion and voted unanimously against recommending language to accomplish this change.

**e) – Opportunity for Appeals [Item 7]**

**Committee Discussion and Votes:** The committee had an extensive discussion regarding Item 7 over two meetings. Some of the PAORC members expressed the view that appeals were likely inevitable in Eugene. Committee members (as well as members of the public who spoke to the committee) expressed urgency in addressing this issue. In the end, PAORC adopted the following motion at February 10<sup>th</sup> meeting:

*Ms. Piercy, seconded by Ms. Sifuentez, moved to make a strong recommendation to the City Council to put an appeals process into place and that the City Council do whatever it deemed necessary to make that happen.*

The motion passed, 9:4; Mr. Pryor, Mr. Ahlen, Mr. Chase, and Chief Kerns voting in opposition. The minutes of the meeting indicate Mr. Pryor, Mr. Ahlen and Chief Kerns opposed the motion because of a belief that the committee did not have sufficient information to make a recommendation that would address the issue, while Mr. Chase was opposed because he felt the committee was “punting” on the issue and the PAORC should more directly address appeals.

**f) – Consistency in Ordinance Language to the Charter [Items 12]**

**Committee Discussion and Votes:** Specifically, this item from the November 10<sup>th</sup> Council adopted motion refers to Section 2.456(2)(c)(d). The committee was a bit unclear as to the intent behind this item and, in particular, what was required for “consistency.” PAORC decided to review Item 12 after our work on the other revisions to language had been completed to determine if we had addressed the item. In the end we decided that the changes we have proposed are consistent with the expressed intent of this item.

However, we would note to the Council that maintaining consistency between the Charter and the Ordinance will continue to be somewhat of an ‘organic’ process, and the need for additional revisions will likely to be necessary as Eugene’s experience with civilian oversight matures. We fully expect the Council will revisit the ordinance in the future to make adjustments.

**g) – Other Considerations [Items 7, 14, 15, 16, 17 and 18]**

**Committee Discussion and Votes:** In the end, there were six items the committee did not feel it had time to adequately address.: Item 7 – Appeal (although discussed); Item 14 – Discipline; Item 15 – Subpoena Power; Item 16 – Training; Item 17 – CRB Oversight of the Auditor; and Item 18 – the Auditor’s participation in hiring. PAORC was unanimous (12-0) in recommending to Council the following motion (as amended):

*Ms. Piercy, seconded by Ms. Syrett, moved to direct that the committee should hand in its responses to the first 13 items and then make a recommendation to the City Council that the committee continue working on [Items 7, 14, 15, 16, 17 and 18] after that date.*

In their discussion the members expressed their willingness to spend the additional time necessary to deliberate on these topics should that be the Council’s wish.

## **V. System Recommendations**

### **Cooperation between the Police Auditor and the Chief of Police**

Civilian oversight in Eugene will work most effectively when there is a good working relationship and professional cooperation between the offices of the Chief of Police and the Police Auditor. While such cooperation is currently apparent between the Interim

Police Auditor and Acting Chief of Police, the committee emphasized the need for an oversight system that functions well in all circumstances. To that end, PAORC recommends to the Council and the City Manager that they make explicit their desire that the Auditor and Chief develop cooperative and collaborative policies and procedures for effective oversight based upon the principles of fairness, thoroughness, appropriate transparency, and a lack of bias in processing and investigating complaints.

### **Review of the Council's Supervision of the Police Auditor**

The committee wishes to express to Council that the 'day to day' supervision of the Auditor's office should reside with a small subcommittee of the Council; for example, the Council Officers. This would allow the Council to be proactive instead of reactive as issues arise. We believe that the current circumstance makes it difficult for the full Council to give the attention and direction that the Auditor's office needs.

## **VI. Conclusions and Next Steps**

The work of the Police Auditor Ordinance Review Committee has been focused on the proposed amendments from the November 10<sup>th</sup> and 17<sup>th</sup> Council meetings from 2008. Our work with these amendments is part of the larger work of the Council, the City, and the community in achieving a successful civilian oversight system for Eugene. As previously noted, PAORC did not feel it had sufficient time to thoughtfully and thoroughly deliberate on all of the items included in its charge, and is willing to reconvene should the Council wish it to continue its work on the remaining items.

It comes as no surprise to PAORC members that civilian oversight is an involved and multi-faceted system requiring attention and adjustment as time passes and our model matures. We feel our proposed revisions to Ordinance 20374 and the recommendations we have made are in keeping with the charge we received from the Council. It is our hope that the Council will consider implementing these revisions and recommendations in the spirit with which they are presented. These suggestions are intended for improvement with the ultimate goal of the success of civilian review, and increased community confidence and appreciation of policing in Eugene.

**ATTACHMENT 'A'**

**Eugene City Council Motions regarding Ordinance 20374**  
**Office of Police Auditor**

**November 10, 2007**

Move/second: Bettman/Zelenka

I move to direct the City Manager to bring back Ordinance No. 20374 to a public hearing on December 8, 2008, amended as follows:

1. The Police Auditor shall have exclusive authority to classify and route complaints, as well as to reclassify complaints if upon further investigation and additional information, not available at the time of intake, the Auditor finds reclassification if warranted.
2. Investigation of complaints shall commence upon classification of the complaint by the Police Auditor or as soon as possible thereafter, and no investigation shall occur before the Police Auditor has received, classified, and routed the complaint.
3. Upon the opening of a case file, and any time thereafter including closed cases, the Police Auditor shall have complete, unrestricted, and direct access to all records, evidence, documents, and all material the Police Auditor deems relevant to the complaint.
4. Administrative investigations shall proceed concurrently with any related criminal investigation; administrative investigations shall not be suspended, delayed, or postponed, while criminal proceedings involving complainants and witnesses are resolved.
5. The Police Auditor shall have complete, unrestricted, and direct, access to the necessary Eugene Police Department offices; the same as Internal Affairs staff. In addition the Police Auditor shall have complete, unrestricted, and direct access to Internal Affairs PRO database the same as the program coordinator and the Internal Affairs PRO supervisor.
6. The Police Auditor shall maintain strict name confidentiality wherever warranted or legally required. Upon classification of the complaint, the Police Chief may request the Police Auditor provide name confidentiality on a specific case, and the Police Auditor shall comply, but the identifications of any involved parties shall not be withheld from the Police Auditor.
7. There shall be an opportunity for appeal of the Police Chief's adjudication to the City Manager for final determination (on the existing record). Appeal shall be available in cases of misconduct upon the request of the Police Auditor, the Civilian Review Board, or the complainant in cases where there is disagreement between the Police Auditor and the Police Chief and/or the Civilian Review Board and to the Police Chief.
8. Risk claims shall be forwarded to Internal Affairs and the Police Auditor for classification and processing as a complaint.
9. The Police Auditor shall review random selections of Service Complaints.

10. The definition for "police employee" shall include the Police Chief by adding "including the Chief who answers to the City Manager."

11. The Police Auditor's budget shall be sufficient to accomplish all of the duties and responsibilities of the office including the sufficient and readily available funds to contract for external investigations.

12. Update Section 2.456(2)(c)(d) for consistency with the Charter.

## **November 17, 2008**

### **Move/second: Pryor/Clark**

In lieu of the public hearing scheduled for December 8, 2008, I move that the council create a committee to review the issues raised by Councilor Bettman's November 10th motion, as well as other issues that the committee members believe should be reviewed, and to report back to the City Council by March 11 with recommendations on amendments to the police auditor ordinance. The committee shall be composed of two members of the Civilian Review Board (to be designated by the CRB), two members of the Police Commission (to be designated by the Police Commission), two individuals designated by Citizens United for Better Policing, two members of the Eugene Police Employees Association (designated by EPEA), the Police Auditor, the Police Chief, the Mayor, two councilors appointed by the Mayor, and two community members at-large appointed by the Mayor.

**The following friendly amendments to the main motion were accepted:**

- The committee will first review the issues raised in Councilor Bettman's November 10 and November 17 motions;
- Then other issues, if time permits, that the committee members believe should be reviewed;
- Obtain public input;
- And report back to the council by March 11.

**Items from failed November 17 motion that are identified in friendly amendment for committee to address:**

13. authority for the Police Auditor to determine final adjudication;
14. authority for the Police Auditor to recommend discipline;
15. subpoena power for the Civilian Review Board and Police Auditor;
16. the Police Auditor's role in training of police employees;
17. the Civilian Review Board's role in evaluating and overseeing the Police Auditor; and
18. authority for the Police Auditor to participate in hiring processes for EPD, including the Chief of Police.

**ATTACHMENT 'B'**

**AGENDA**

**Public Forum on Police Auditor Ordinance Revisions  
February 19, 2009**

- |  |               |
|--|---------------|
| 5:30-5:40 Welcome  | Mayor Piercy  |
| 5:40-5:55 Background of PAORC work   | John Ahlen    |
| 5:55-7:20 Discuss the Auditor's authority<br>in each phase of the complaint process: <ul style="list-style-type: none"><li>○ Receive and classify</li><li>○ Investigate</li><li>○ Monitor</li><li>○ Adjudicate</li><li>○ Appeal</li><li>○ Other concerns</li></ul> | Ellen Teninty |
| 7:20-7:30 BREAK  |               |
| 7:30-7:55 Six Stations set up around the room. Public can discuss ordinance language or general concerns with committee members and can write on comment cards to be used verbatim by PAORC and as an addendum to the report to City Council.                      |               |
| 7:55-8:00 Wrap up  | John Ahlen    |

# Police Auditor Ordinance Review Public Forum

February 19<sup>th</sup>

5:30-8:00 pm

Bascom-Tykeson Room

## Police Auditor Ordinance Review Public Forum Agenda

- 5:30-5:40 Welcome and Introductions
- 5:40-5:55 History and Context of Police Oversight in Eugene
- 5:55-7:30 Full Group Dialogue
- 7:30-7:55 Small Group Discussions
- 7:55-8:00 Wrap Up



## Timeline of Police Oversight 1<sup>st</sup> Ballot Measure

- 1997 Original PERF (EPD review) report
- Feb 1998 ERAC report
- 2000 Hobson (staffing) report
- Mar 2004 Chief of Police requests the Police Commission review police oversight
- Jun 2004 Police and Human Rights Commissions, CUBP begin reviewing the police complaint system
- 140+ public meetings held to discuss oversight
- Mar 2005 ICMA-PERF (City recommendations) report
- Jul 2005 Police Commission report
- Nov 2005 1<sup>st</sup> Oversight Ballot measure passes at 57%

## Timeline of Police Oversight 2<sup>nd</sup> Ballot Measure

- 80+ public meetings held to discuss implementation of charter amendment
  - Oct 2006 Office of the Auditor established
  - Oct 2007 Civilian Review Board established
  - Nov 2008 2<sup>nd</sup> Oversight Ballot measure passes at 65%
  - Nov 2008 City Council forms PAORC, forwards 12 possible ordinance amendments and 6 additional issues for review
  - Jan 2009 PAORC begins
  - Feb 26<sup>th</sup> Next meeting at 5pm McNutt Room
  - Mar 9<sup>th</sup> Next City Council meeting on proposed recommendations
- \*City Council will hold an additional public hearing before changes to the ordinance are made\*

## Timeline of a Typical Complaint

- A complaint is received by the auditor.
- The complaint is classified as a service complaint or allegation of misconduct.
- Allegations of misconduct are usually investigated by Internal Affairs at EPD.
- The auditor monitors the investigation, and requires additional investigation as necessary.
- The auditor and a supervisor recommend an outcome to the Chief of Police.
- The Chief of Police determines the final outcome of the case.
- The Civilian Review Board may choose to review the completed case.

## Topics/Stations

- (A) Receiving and Classifying Complaints
- (B) Investigations
- (C) Monitoring Complaints
- (D) Adjudications (Outcomes)
- (E) Appeals
- (F) Other Considerations

## Police Auditor Ordinance Review Public Forum

Thank you for participating!

Please make sure to leave all of your comment cards with Staff, they will be compiled and included in the final report to the City Council.

The next opportunity for public comment will be Feb. 26<sup>th</sup>, 5pm in the McNutt Room

**PUBLIC FORUM**  
Police Auditor Ordinance revisions  
February 19, 2009

One thing not mentioned tonight is how important an effective Police Review is for the credibility of our police—critical for their effective performance. I want to strengthen the police force and this external auditor would be the single best thing that could happen to move this effort forward in support of the police work.

\*\*\*\*\*

- I support a robust and aggressive police auditor system. Specifically, I support your recommendations for the first 11 or 12 items, and further I support items 14-18 as well.
- Whenever possible, give final authority to the independent auditor, esp. in relation to the Chief.

\*\*\*\*\*

Very important that Police embrace the need for an independent auditor with power and authority.

(Marcy Cauthorn)

\*\*\*\*\*

The auditor should have subpoena power; should not be impeded from investigation in any way the by the city manager.

\*\*\*\*\*

- In my circles of influence, I've seen a loss of trust in this process due to perceived & actual weakening of the Auditor's jurisdiction, especially over the Police Chief; the actions of a series of Chiefs have shown bad faith with lack of adequate transparency.
- If the Amendment says flat out that the auditor shall have access to all the information, what is this talk about a "compromise position" as referred to by Claire Syrett? Another breach of trust?
- I feel encouraged the Committee's support of the appeal option.

(Lisa-Marie DiVincent [lmdv@efn.org](mailto:lmdv@efn.org))

\*\*\*\*\*

(A) Receiving and Classifying Complaints

I favor the language, "The definition for 'police employee' shall include the Police Chief." Otherwise, this first slide looks good. It is likely that citizens in passing the charter thought of the Police Chief as an employee of the department.

(C) Monitoring Complaints

(issue #3) Auditor needs access – the highest level of access to internal affairs records and access to database.

(E) Appeal

There should be an appeal process that does not involve the city manager. So the CRB or an Administrative Judge or some other external person or group needs to be used.

(Bob O'Brien, 3525 Gilham Rd, Eugene 97408)

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Item 14 & 15. The PD has a natural and reasonable tendency to protect its members. This is a given. The PD is by its role a closed society whose members risk their lives. Like any profession, they tend to resist interference in their work from outside their ranks. Because police can be corrupt, and violent, it is necessary to have independent oversight. If the auditor, after investigation, can do no more than hand a finding to the city manager or chief, with no recommendation for action, essentially, the same structure that protects the police takes it from there, which makes the finding toothless. Similarly, with no subpoena power makes stonewalling by the EPD can similarly make the auditor toothless. This won't get it.

(C) Monitoring Complaints

- The auditor **MUST** have access to the information needed to do the job. The auditor is no less a public servant than the chief.
- Remove the exceptions.
- The auditor should **NOT** be involved in training, except as the dept. believes would be useful. It is not the auditor's job.
- Input to training that comes out of the auditor's office is a very good idea, though.

\*\*\*\*\*

A. Regarding Issue #10 2.252(5) - Receiving and Classifying Complaints

For purposes of community review of police conduct, the chief of police must be subject to the same review as other police employees by the police auditor. The purpose of the auditor is to bring 'sunshine' and dialogue – leaving police chief review to the city manager is simply insufficient. Review of the chief, only by the city mgr., lacks the 'gravity' necessary to communicate community concerns to the police community. Section 15-A(2)(a) of the 'charter' clearly states, "complaints filed against sworn police officers." If the police chief isn't a "sworn police officer," what are the requirements of that role? As supported by the community, the police chief must be subject to police auditor review. Whatever challenges related to PA review of the police chief should be resolved in another form, under the PA.

### B. Investigations

PA and CRB and IA must have subpoena power to be effective. The charter, as an expression of public home rule, requires sufficient budget, determined by the PA, for investigations. PA complaint review must not be derailed by a criminal investigation—facts are facts and a review and investigation can and must proceed concurrently (cooperatively). If the criminal investigation is appropriate, there should be no conflict.

### C. Monitoring Complaints

The PA's role, as presented by the Charter, is to provide community participation in police management—specifically around the issue of police misconduct! PA must have open access to all relevant data at all times. If necessary, the Charter must supersede any 'contracts' regarding PA data access. Reasonable approach is to hold PA to confidentiality standard regarding law enforcement data.

### D. Adjudications

PA does not have to have authority to determine final adjudication provided civil suits are available to complainants. The city would be fiscally prudent to pay close attention to PA recommendations. Charter clearly provides PA authority to recommend discipline.

### E. Appeals

Why is an appellate process (administrative) required for PA 'recommendations'? Appeals are typically for parties suffering material impact. Sunshine is not a material impact. I reserve the right to seek further PA power requiring appellate review, if police misconduct continues.

### F. Other Considerations

- A police force in tune with its community will definitely incorporate PA recommendations and report into police training to the benefit of the community.
- PA is subject to review by City Council. City Council may wish to consult w/CRB for PA review.
- Checks and balances suggest PA should not participate in EPD hiring.

General comment – Public Safety is important, but the police undermine law enforcement in the community by acting outside the public interest. Folks in the community rare reluctant to cooperate with the police when they feel they may become a victim of police misconduct. The Charter is an opportunity for the police to step up to community unity. I would welcome that.

(markld)

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- Citizens' board from each neighborhood
- Beat cop
- Agencies all looked at by a big auditor
- Palo Alto - community church affiliates mission phones, return to location for communication and status of complaint.

(Cheri S. 607-2823)

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Comments submitted by Bonny Bettman to be included in Forum comments. Her comments are in CAPITALS:

**PROPOSED REVISION; (5)** The city manager shall include in his/her recommended budget an allocation sufficient for the operations of *auditor and the auditor’s office to carry out their duties and responsibilities under the Eugene Charter of 2002 and the Eugene Code, including sufficient funds to contract for external investigations.*

RECOMMENDATION; [Amendment #11: “The Police Auditor’s budget shall be sufficient to accomplish all of the duties and responsibilities of the office including the sufficient and readily available funds to contract for external investigations.”]

AGAIN, THE LEGAL FIRM IS NOT CALLED OUT FOR THIS TREATMENT AND THEIR BUDGET IS NOT NEGOTIABLE.

I ADVOCATE MY ORIGINAL LANGUAGE BECAUSE IT JUST SAYS THERE WILL BE THE MONEY, AS OPPOSED TO THIS LANGUAGE WHICH SAYS THE AUDITOR'S BUDGET SHALL BE PROPOSED - ONLY. THIS REVISED LANGUAGE LEAVES THE FUNDING AS NEGOTIABLE, AND GIVES THE CITY AN AVENUE TO RESTRAIN THE OFFICE THROUGH THE BUDGET.

THAT AVENUE DOES NOT EXIST FOR FUNDING CONTRACTS OR FOR THE CITY MANAGER'S LEGAL FIRM.

.....  
.....

*PROPOSED REVISION, LAST SENTENCE; (6) The physical location of the auditor’s office shall be separate from the police department, but in close proximity so as to facilitate a close working relationship with others involved in the complaint investigation process, and easily accessible to the public. The auditor shall have complete, unrestricted and direct access to the internal affairs area during office hours.*

RECOMMENDATION; [Amendment #5, first sentence: “The Police auditor shall have complete, unrestricted, and direct access to the necessary Eugene Police Department offices; the same as Internal Affairs staff.” The second sentence in Amendment #5 is covered below in section 2.456(3).]

AGAIN, ASK YOURSELF WHY THE EPD AND THE LAWYERS WANT TO PUT ADDITIONAL LIMITATIONS ON THE AUDITOR; AND IF THEY ARE NECESSARY; AND IF THEY HAVE UNINTENDED CONSEQUENCES. LIMITING ACCESS TO "DURING OFFICE HOURS" IS RESTRICTIVE. EVEN IA OFFICERS AND STAFF ARE THERE ON HOLIDAYS OR AFTER AN "INCIDENT." THE AUDITOR SHOULD NOT BE EXCLUDED WHEN OTHER STAFF HAVE ACCESS.

MIIGHT IA STAFF DECIDE TO CONDUCT INTERVIEWS IN THE CHIEF'S OFFICE AND THEREFORE THWART THE AUDITOR'S AUTHORITY TO PARTICIPATE?

COMPLETE, UNRESTRICTED, AND DIRECT, MEANS THE AUDITOR DOES NOT HAVE TO GO THROUGH A THIRD PARTY OR KNOCK ON THE DOOR, OR ASK FOR AN APPOINTMENT. IT MEANS THE AUDITOR HAS AN ACCESS CARD THAT GETS THEM IN WHEN AND WHERE THEY THINK IT IS WARRANTED. THE STAFF IN EPD'S OFFICES AND THE AUDITOR ALL HAVE THE SAME BOSS - THE PUBLIC- AND THEY ARE ALL DOING THE PUBLIC'S BUSINESS. THE AUDITOR SHOULD NOT NEED PERMISSION TO FREQUENT THE POLICE DEPARTMENT OFFICES NECESSARY TO CONDUCT OVERSIGHT.

SO THE REVISION IS VERY DIFFERENT THAN THE RECOMMENDATION WHICH GIVES COMPLETE ACCESS; "SAME AS" INTERNAL AFFAIRS, NOT "TO" INTERNAL AFFAIRS. DISABUSE THE ASSUMPTION THAT THE AUDITOR IS SOMEHOW LESS DESERVING OR TRUSTWORTHY THAN EPD EMPLOYEES AND ENSURE THAT THE AUDITOR HAS "EQUAL ACCESS."

.....  
.....  
*PROPOSED REVISION; Service complaint. A complaint about police employee performance or demeanor, customer service and/or level of police service.*

*[This definition complements use of the term in "service complaint" in the additional provision in EC 2.454(1)e, which implements Amendment #9. The definition comes from the POM.]*

*THIS LOOKS OK.*

.....  
.....  
*PROPOSED REVISION LAST SENTENCE; (e) Receive and process complaints concerning police employees; and monitor the complaint investigation and review process as set forth in sections 2.456(1) and (2); and review a random selection of service complaints.*

*[Amendment #9: "The Police auditor shall review random selections of Service Complaints."]*



THIS SHOULD INCLUDE LANGUAGE SPECIFYING THAT THE AUDITOR SELECTS THE SERVICE COMPLAINTS THAT WILL BE REVIEWED, NOT THE EPD.

.....  
.....  
*RECOMMENDED REVISION; Except as provided in this subsection (5), the auditor shall treat an allegation against the police chief the same as a complaint against a police employee. For purposes of this subsection, an "allegation" is a report or claim that the police chief has committed a crime, violated any provision of EC 2.240 to 2.246 or 2.450 to 2.456, violated a person's civil rights, or failed to perform the police chief's duties in accordance with applicable professional law enforcement standards, including those standards and rules applicable to a sworn officer.*

*(a) If the auditor receives an allegation against the police chief, the auditor shall notify the city manager and shall classify the allegation and determine whether further investigation is necessary in order to ascertain material facts concerning the allegation.*

*((b) If the auditor determines that further investigation is necessary, the auditor shall refer the allegation to the city manager, who shall conduct or arrange for an investigation on terms that allow the auditor to actively monitor the investigation to the same extent as provided in EC 2.456 (2)(d) and (e) for investigations of other complaints.*

[Amendment #10: "The definition for 'police employee' shall include the Police Chief by adding 'including the Chief who answers to the City Manager.']

BOY IS THIS CONVOLUTED. BUT ALL THE EXTRA WORDS DO NOT HIDE THE FACT THAT THE OUTCOME IS A SHIFTING OF AUTHORITY FROM THE AUDITOR TO THE MANAGER. YOU CAN JUST EDIT OUT EVERYTHING BEYOND;

*"5), the auditor shall treat an allegation against the police chief the same as a complaint against a police employee.'*

DO YOU KNOW WHY THE ALLEGATIONS AGAINST THE CHIEF ARE SO SPECIFICALLY DEFINED IN THE LAWYERS RECOMMENDED LANGUAGE?

ARE THERE UNINTENDED CONSEQUENCES, WHAT SPECIFIC ALLEGATIONS MIGHT BE OMITTED AND WHY IS THERE AN ASSUMPTION THAT THE AUDITOR COULDN'T HANDLE THOSE? IT IS THE AUDITOR THAT SHOULD HAVE THE AUTHORITY TO CONTRACT FOR AN "INDEPENDENT" INVESTIGATION OF THE CHIEF, IF THERE IS EVER A SITUATION WHERE AN INVESTIGATION IS WARRANTED. THE PUBLIC WANTS ALL INVESTIGATIONS OF EPD WRONGDOING TO BE INDEPENDENT AND EXTERNAL TO THE CHIEF'S CHAIN OF COMMAND. I BELIEVE TRANSFERRING THE AUTHORITY TO CONTRACT THE INVESTIGATION (THE MANAGER, UNDER THE RECOMMENDED REVISION, WOULD NOT HAVE TO CHOOSE TO GO OUT OF HOUSE FOR AN INVESTIGATION, HE COULD ASK THE DA TO DO IT) TO THE MANAGER, IS CONTRARY TO THE CHARTER. THE AUDITOR IS IN THE BEST POSITION TO GUARANTEE AN UNBIASED INVESTIGATION.

.....  
.....  
*PROPOSED REVISION SECOND HALF OF PARA; (dc) The auditor's office conducts the preliminary investigation of all complaints lodged with the auditor's office or internal affairs to appropriately classify and route the complaint and any accompanying information accordingly. The auditor has exclusive authority to classify and route complaints as well as to reclassify complaints if, upon further investigation and receipt of additional information that was not available at the time of intake, the Auditor finds reclassification is warranted.*

*[Amendment #1: The Police Auditor shall have exclusive authority to classify and route complaints, as well as to reclassify complaints if upon further investigation and additional information, no available at the time of intake, the Auditor finds reclassification if warranted.]*

QUESTION; DOES ANYTHING IN THIS LANGUAGE CREATE AN OBSTACLE OR ADDITIONAL HOOP TO JUMP THROUGH FOR THE AUDITOR?

THIS NEEDS TO HAVE "RECEIVE" ADDED TO IT. THE AUDITOR HAS EXCLUSIVE AUTHORITY TO 'RECEIVE, CLASSIFY, AND ROUTE COMPLAINTS ETC. JUST LIKE THE CHARTER SAYS.

.....  
.....

**PROPOSED REVISIONS; (2) Complaint Investigations.**

*(a) Except as provided in paragraph (b) below, administrative investigations of complaints shall not commence until after the auditor has received, classified and routed the complaint. The investigation shall commence upon classification or as soon as possible after classification.*

*(b) Paragraph (a) shall not preclude preliminary investigations by the auditor's office, or a police supervisor's attempt to resolve a service complaint, provided that the supervisor prepares and forwards to the auditor within 24 hours a report identifying the complainant and contact information for the complainant, and explaining the nature of the service complaint and the outcome of the supervisor's conversation with the complainant.*

*[Amendment #2: "Investigation of complaints shall commence upon classification of the complaint by the Police Auditor or as soon as possible thereafter, and no investigation shall occur before the Police auditor has received, classified, and routed the complaint."]*

*IN SECTION (b) AFTER "shall not preclude preliminary investigations by the auditor's office".....*

*THE REMAINDER OF THAT PARAGRAPH SHOULD BE DELETED. THAT PARAGRAPH ALLOWS THE POLICE SUPERVISOR TO RESOLVE A SERVICE*

*COMPLAINT ; IT CIRCUMVENTS THE AUDITOR'S AUTHORITY TO RECEIVE AND CLASSIFY AND ROUTE THE COMPLAINT. IT IS GIVING EPD THE ABILITY*

*TO RECEIVE AND CLASSIFY A COMPLAINT BOTH FROM THE PUBLIC AND/OR AN INTERNAL COMPLAINT. THAT IS BLATANTLY UNDERMINING THE CHARTER. AND IT WAS ONE OF THE BIGGEST CONTRIBUTING FACTORS TO THE PROLIFERATION OF 6 YEARS OF SEXUAL PREDATORY CRIMES HAPPENING UNDER THE NOSES OF OFFICERS BECAUSE THEY CONSISTENTLY DISMISSED COMPLAINTS, OR MISCONSTRUED COMPLAINTS AGAINST MAGANA/LARA. IN ONE CASE THEY CLAIMED IT WAS OK BECAUSE THE VICTIM DID NOT FILE A "FORMAL" COMPLAINT OR GO THROUGH THE PROPER CHANNELS. PLEASE DON'T DO THIS.*

*EVEN THOUGH EPD WILL NOTIFY THE AUDITOR WITHIN "24 HOURS" THAT THE COMPLAINT WAS RESOLVED, ITHERE IS NO TRANSPARENCY TO INVESTIGATION, AND WITNESSES COULD HAVE ALREADY BEEN COMPROMISED, AND IT IS INCONSISTENT WITH THE CHARTER.*

.....  
.....  
*RECOMMENDED REVISION; (c) After consultation with the chief of police and the appropriate prosecutor, the auditor is authorized to require an administrative investigation to proceed concurrently with a related criminal investigation and prosecution.*

*[Amendment #4: "Administrative investigations shall proceed concurrently with any related criminal investigation; administrative investigations shall not be suspended, delayed or postponed, while criminal proceedings involving complainants and witnesses are resolved.]*

*I LOOKED UP CONSULTATION AND IT IS "A MEETING WHERE ADVICE, AND OR POINT OF VIEWS ARE EXCHANGED." IF THAT IS THE INTENT, AND THERE IS NO BINDING EFFECT ON THE AUDITOR'S DISCRETION -THEN THERE IS STILL THE PROBLEM THAT THE DA AND CHIEF COULD THWART THE AUDITOR BY REFUSING TO MEET OR REFUSING TO DISCUSS THE CASE. WHICH IS NOT SUCH A FAR-FETCHED PROBLEM BECAUSE IT ALREADY HAPPENED. I WOULD PHRASE IT SO THAT AS LONG AS THE AUDITOR PROVIDES THE OPPORTUNITY TO CONULT WITH THE PROSECUTOR AND DA, THE AUDITOR CAN THEN REQUIRE THE INVESTIGATION TO PROCEED.*  
.....

*RECOMMENDED REVISION; (fc) The police auditor will not be directly involved in any criminal investigations, but shall be kept apprised of the status of such investigations involving police employees. The police auditor shall have access to the case file relevant to the administrative portion of such investigations.*

*DELETED SECTION; Following the conclusion of any criminal investigation or within 60 days after the date of the incident, the auditor has the authority to initiate an internal investigation unless the police auditor receives written notice from the District Attorney, United States Attorney, or City Prosecutor that the internal investigation would jeopardize the criminal investigation and prosecution.*

*[This deletion makes the subsection consistent with subsection(c) of this section as amended.]*

THIS WHOLE SECTION NEEDS TO BE DELETED, NOT JUST THE SECOND HALF, BECAUSE THE ORDINANCE CANNOT REMOVE OR LIMIT AUTHORITY GRANTED BY THE CHARTER.

LIKE IT OR NOT, (AND EPD DOES NOT LIKE IT, IT IS PROBABLY THEIR BIGGEST OBJECTION) THE CHARTER DOES NOT DIFFERENTIATE BETWEEN CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS, IT SAYS "ALL COMPLAINT INVESTIGATIONS" AND ALL "INTERNAL INVESTIGATIONS." THEREFOR TO THE EXTENT A CRIMINAL INVESTIGATION IS ATTACHED TO A COMPLAINT (OR VICE VERSA) AND AS LONG AS THERE ARE NO STATE OR FEDERAL PROHIBITIONS, THE AUDITOR HAS THE SAME DISCRETION TO OVERSEE MONITOR AND PARTICIPATE IN THOSE CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS WITH A NEXUS TO A COMPLAINT.

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**PROPOSED REVISION; (3) Access to Records and Materials.**

(a) *Except to the extent that a specified state or federal law provides to the contrary, or where information resides on a restricted database governed by a contract that does not allow access beyond certain law enforcement employees, (i) the auditor shall have complete and unrestricted access to all complaints, investigative records and information obtained or developed by the internal affairs investigator related to an administrative investigation of a complaint, whether the information exists in electronic format or hard copy including information stored on an internal affairs database, (ii) the auditor shall be provided any other information identified by the auditor that is relevant to a complaint and (iii) the identity of any individual involved in an event giving rise to a complaint shall not be withheld from the auditor. When legally required or requested by the police chief, the auditor shall keep confidential the name of any such individual involved in a complaint and other information leading to the name of the individual.*

WHAT ARE THE UNINTENDED CONSEQUENCES OF ALL THESE CAVEATS? WHAT WILL, AND WHAT WON'T, THE AUDITOR HAVE ACCESS TO?

DID YOU KNOW PART OF THE REASON MAGANA WAS HARD TO PIN DOWN WHEN HE WAS WITH RDU IS BECAUSE THEY HAD THEIR OWN SECRET "CHANNEL" FOR COMMUNICATING? (I WILL FORWARD THE PLAINTIFF'S RESPONSE FROM CIVIL RIGHT'S ATTORNEY MICHELLE BURROWS, IT IS LENGTHY, BUT IT DOES SOME OF WHAT AN ADMINISTRATIVE INVESTIGATION SHOULD HAVE DONE, REVEALS THE FLAWS IN THE SYSTEM LEADING TO

*THE TRAVESTY THAT ENDURED FOR 6 YEARS. WE SHOULD LEARN FROM THOSE MISTAKES.) THE AUDITOR SHOULD HAVE EQUAL ACCESS TO ALL DATA AND MATERIAL, JUST LIKE IA AND JUST LIKE THE CHIEF. PERIOD, NO CAVEATS. WHOEVER THE AUDITOR -ITHEY NEED THE HIGHEST SECURITY CLEARANCE TO DO THE JOB. THERE ARE UNTOLD WAYS THE ABOVE CAVEATS CAN BE CONSTRUED TO BEGGAR THE AUDITOR'S AUTHORITY AND EFFECTIVENESS. REMEMBER IT IS ALL ABOUT TRANSPARENCY.*

PROPOSED DELETION; <<The police auditor shall have complete and unrestricted access to all complaint and investigative records and materials, and any other information necessary for the performance of his/her specified duties. >>

PUT THE ABOVE PROPOSED DELETION BACK INTO THE ORDINANCE!  
YOU'VE GOT TO BE WONDERING WHY THEY WANT TO TAKE IT OUT!

As provided in section 2.456(2)(d f), the police auditor shall not have access to a criminal investigation file until the conclusion of any such criminal investigation.

DELETE THIS, THE AUDITOR SHALL HAVE ACCESS TO THE FILE AT ANY TIME DURING THE INVESTIGATION. OTHERWISE HOW CAN IT BE MONITORED?  
. JUST INCLUDE AMENDMENT #3 AS WRITTEN BELOW.

[Amendment #3: "Upon the opening of a case file, and any time thereafter including closed cases, the Police auditor shall have complete, unrestricted, and direct access to all records, evidence, documents, and all material the Police Auditor deems relevant to the complaint."

[Amendment #5, second sentence: "In addition, the Police Auditor shall have complete, unrestricted, and direct access to Internal Affairs PRO database the same as the program coordinator and the Internal Affairs PRO supervisor."

[Amendment #6: "The Police Auditor shall maintain strict name confidentiality wherever warranted or legal required. Upon classification of the complaint, the Police Chief may request the Police auditor provide name confidentiality on a specific case, and the Police Auditor shall comply, but the identifications of any

involved parties shall not be withheld from the Police Auditor.”]

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..

DEAR COMMITTEE MEMBERS, AND COUNCIL;

*IF YOU HAVE THE TIME TO REVIEW THE BRIEF, I WILL SEND ALONG UNDER DIFFERENT SUBJECT, YOU WILL SEE HOW ADAMANTLY THE LEGAL FIRM DEFENDED THE CITY AND MAGANA. THEIR STANCE WAS NECESSARY IN LIGHT OF THEIR CONTRACT WITH THE MANAGER AND THE LEGAL POSTURE THE CITY MANAGER CHOSE TO TAKE. BUT THE POINT REMAINS THAT THEY HAVE A CONFLICT NOW, IN THIS PROCESS, DUE TO THEIR INVOLVEMENT IN THAT PROCESS. THEY HAVE A CONFLICT NOW, WITH THIS PROCESS, DUE TO THE ROLE THEY PLAY IN LABOR ISSUES. I STRONGLY ENCOURAGE YOU TO CONSIDER SKEPTICALLY AND SCRUTINIZE ANY RECOMMENDATIONS OF LANGUAGE THEY HAVE TOUCHED OR OPINED UPON.*

## MINUTES

Eugene Police Auditor Ordinance Review Committee – Public Discussion Forum  
Bascom-Tykeson Room—Downtown Library  
100 West 10<sup>th</sup> Avenue

February 19, 2009  
5:30 p.m.

PRESENT: John Ahlen, Vice Chair; Joe Alsup, Kitty Piercy, Chris Pryor, Dawn Reynolds, Chief Pete Kerns, Rick Brissenden, Ron Chase, Angie Sifuentez, Claire Syrett, , members; Sarah Medary, Assistant City Manager; Jerry Lidz, City Attorney, Ellen Teninty, Facilitator.

ABSENT: Tim Laue, Chair, Alan Zelenka, Norton Cabell, members.

[RECORDER’S NOTE: Due to the town hall nature of the forum, and that individuals did not state their names. the Facilitator and Assistant City Manager, suggested that all names of the community members offering comments at the February 19, 2009 PAORC public discussion forum meeting be redacted. ]

Ms. Piercy called the meeting to order at 5:36 p.m.

### **1. Introduction and Public Discussion Forum**

Ms. Piercy gave a brief statement thanking the participants and describing the overall goals and history of the PAORC and police oversight process in the City of Eugene. Ms. Piercy added that the primary goal of the committee was to develop a legal framework for police oversight that was “personality proof and continues to build trust in our community.”

Ms. Piercy introduced the members of the committee noting that Chair Tim Laue would be unable to attend the meeting due to a previous commitment.

Mr. Ahlen provided a brief historical context and timeline of the police auditor process in the City of Eugene with the aid of a PowerPoint presentation entitled *Timeline of Police Oversight 1<sup>st</sup> Ballot Measure*. Mr. Ahlen supplemented his presentation of the police auditor process with a slide entitled *Timeline of a Typical Complaint*.

Mr. Ahlen continued to provide an overview of the basic police auditor process as it had historically been applied in the City of Eugene. He noted that the system currently in practice was not perfect and was in need of serious review and revision.

Mr. Ahlen noted that there were currently 12 proposed amendments to the City’s police auditor ordinance, as well as 6 supplemental issues for future consideration regarding the ordinance, for a total of 18 topics under six different categories to be discussed at the meeting. He added that the public comments from the February 19 and 26 meetings would be compiled for the PAORC’s report to the Eugene City Council on March 9, 2009.

Ms. Teninty opened the public dialogue and noted that the discussion would be broken up into the six categories previously noted by Mr. Ahlen.



## Topics & Stations

### **A. Receiving and Classifying Complaints (issues 1, 6, 8 and 10)**

Ms. Reynolds gave a detailed analysis of the nature of the issues under the Receiving and Classifying Complaints classification for the benefit of the public and committee members. She further noted that item ten, which amended the ordinance definition of the term “police employee,” would be a significant departure from previous City policies.

[NAME REDACTED] noted their concern that presenting the 18 amendment issues under discussion under the six listed categories rather than in sequential order would be confusing to the public. They further clarified that the actual draft language of Item 10 was to "change the definition of EPD employee to include the chief of police" and that the section of the ordinance to which the item referred to should be explicit in its direction of authority to the police auditor, and that the current ordinance language circumvented the intent of the City Charter.

[NAME REDACTED] thanked the committee for their efforts, but hoped that the PAORC would more adequately have mapped its approach to finding solutions. They felt the process was affected by a “political merry-go-round, that the limited number of public hearings was insufficient, and that the City’s police commission meetings and civilian review board meetings should be broadcast to the public in the same manner as the City Council meetings. They further related personal experiences with the EPD that had affected their perceptions of police oversight in the community. They advocated for the creation of an audio archive that might allow the public to investigate unresolved police issues.

Ms. Teninty encouraged the community members present to fill out and submit comment cards so that their concerns might be more accurately passed along to staff and committee members.

[NAME REDACTED] felt it was important that the chief of police was subject to the same oversight as EPD employees and was concerned that such complaints were the purview of the City Manager rather than the police auditor. They were similarly concerned that police oversight concerns were addressed more by City staff than by the City’s elected representatives.

[NAME REDACTED] hoped the City would adopt a police auditor ordinance with the “greatest amount of teeth possible” and agreed with the position that the chief of police be subject, without caveats, to the same oversight as EPD employees.

[NAME REDACTED] was interested in a continuing dialogue regarding effective police oversight and agreed with the position that the chief of police be subject without caveats to the same oversight as EPD employees.

Mr. Ahlen noted that the PAORC had been carefully reviewing the language and intent of Item 10 with the intent of simplifying it. He looked forward to further discussion on the item at the next PAORC meeting.

Mr. Brissenden clarified that the primary difference in the manner in which complaints against the police chief had been handled as opposed to those complaints against sworn officers was that they had been investigated by the city manager’s office and not the EPD’s internal affairs division.

Ms. Syrett noted that the PAORC’s discussions had primarily dealt with the dynamics of the City government with respect to how one administrator or executive entity would investigate another.

She noted that the drafted ordinance amendments would allow the police auditor to still monitor the investigation performed by the city manager.

[NAME REDACTED] was glad that the PAORC had addressed the distinctions between the police chief and regular sworn officers with respect to police oversight matters. They noted that the pertinent question now concerned who would be in charge of contracting any external oversight agencies. They expressed that the police auditor must be an autonomous entity with the ability to contract for an external investigation in whatever manner they saw fit.

[NAME REDACTED] believed it was highly important to restore the morality of the community through an improved police oversight process, and that the police auditor should also have the power to make retroactive investigations in order to address any complaints that might still be unresolved.

[NAME REDACTED] asked Mr. Lidz specifically how the PAORC had conducted discussions regarding the different legal interpretations of the City Charter that had arisen out of the police auditor ordinance amendment discussions. They noted that there seemed to be significant differences of opinion regarding the Charter and asked for clarification.

Ms. Syrett stated her recollections were that a discussion of varying legal interpretations of the Charter had not been a part of the committee's conversations.

Mr. Lidz agreed that there were differences of opinion regarding what actually changed in the Charter last fall, but noted that those varying opinions had not impacted the PAORC discussions.

[NAME REDACTED] noted that regardless of the different interpretations of certain sections of the Charter, it was explicit in that it granted the police auditor the power to contract out for external investigations. They noted that the old Charter language had been drafted in such a manner that the city manager's authority would be unchallenged with respect to any police oversight procedures involving the police chief which was one of the reasons problems with police oversight matters had arisen in the first place. They further expressed concern that many of the audits of complaints conducted by the city manager's office regarding the Magana rampage had been carefully constrained and kept confidential.

[NAME REDACTED] felt that the previous Charter amendments were an attempt by the citizens of Eugene to tell the City that they wanted an independent police auditor, but that the City's execution of the directives of the Charter had in essence resulted in a substitution of the police auditor with a city manager who operated without transparency or accountability.

Ms. Reynolds maintained that the previous Charter amendments contradicted Section D of the ordinance which stated that "the auditor's office conducts the preliminary investigation of all complaints lodged with the auditor's office or internal affairs to appropriately classify and route the complaint."

Mr. Ahlen reiterated that the intent of Item 10 was to treat complaints involving the chief of police the same as regular police officers. He noted there were subtleties in the chain of command that needed to be addressed and refined.

[NAME REDACTED] expressed that the citizens of Eugene wanted to see the police auditor's powers expanded as part of a city-wide effort to monitor and audit the efforts of all City employees, including the city manager. Another community member responded that there were

processes in place for complaints made against City executives that had significant involvement by the City Attorney's office.

**B. INVESTIGATIONS (issues 2, 4, 11, 15)**

Mr. Alsup gave a detailed analysis of the nature of the four issues under the Investigations classification for the benefit of the public and committee members.

[NAME REDACTED] noted that granting the police auditor effective subpoena powers was an essential part of the police oversight process and that the issue of the auditor's lack of subpoena power had been left unresolved by previous Charter amendments. They further noted that the police auditor's subpoena power would ideally be used very carefully and sparingly.

Mr. Chase noted that a number of revisions would be necessary in order to grant the auditor effective subpoena powers and that the granting of such authority would require extensive restructuring of the goals and strategies of both the police auditor and the civilian review board. He added that the PAORC had not substantively engaged in any discussions regarding the revisions that would be necessary to grant subpoena powers to the police auditor.

[NAME REDACTED] advocated that the 12 initial draft ordinance revision should be the priority of the PAORC and that the remaining six issues should be taken care of later as they dealt with long-standing unresolved police oversight issues.

[NAME REDACTED] noted that Item 2 had been drafted in response to an incident where a complaint investigation had been completed before the police auditor had even been properly notified. They felt that this incident indicated a general lack of transparency in the police oversight process and that it was important to make the responsibility of complaint classification the police auditor's and not any sworn police officers who might be involved in the complaint process. They further maintained that providing EPD officers the discretion to classify and address service complaints undermined the City's charter.

Ms. Piercy, following up on a comment made regarding the manner in which the ordinance motion items were presented, clarified that the initial directive of the PAORC had been only to deal with those 12 items and to address the friendly amendment items if time and resources permitted.

Ms. Syrett noted she was sympathetic to public concerns about the discretion of police auditors to classify service complaints but further noted that the language of the Charter had consistently specified that the auditor retained the authority to reclassify complaints after any determinations made by EPD officers.

Mr. Kerns assured the public that the EPD was not resolving or closing any complaint cases before the auditor had an opportunity to review them, and confirmed that the authority to classify complaints ultimately resided with the police auditor. He stated that all complaints were eventually reviewed by the auditor regardless of classification; a practice he hoped would be maintained. He noted that the term investigation was used very broadly with respect to complaint investigation which had often resulted in significant confusion around the police oversight process. He suggested that rephrasing the charter language in that regard might be advisable.

Ms. Reynolds maintained that it was good to have more police talking to people with respect to addressing the public's concerns and fielding possible complaint issues. Regarding the issue of

subpoena power, Ms. Reynolds noted that the police auditor's office wanted to have EPD internal affairs investigators granted subpoena power as well.

Mr. Chase agreed with previous public comments regarding the discretionary authority of EPD officers, but worried that removing that authority altogether would make many members of the public less likely to file complaints.

Mr. Lidz commented that it was very difficult to draft a comprehensive policy regarding subpoena power for the police auditor and/or internal affairs investigators due to the wide range of circumstances involved.

[NAME REDACTED] did not feel it would be prudent to completely remove the discretionary authority of EPD officers to classify complaints and that asking members of the public to "take it to my boss" might be received poorly by the public. They noted that the police commission often received complaints that were dismissed for the lack of evidence that often occurred when a complainant would take their concerns to the auditor rather than addressing them through an EPD officer.

[NAME REDACTED] felt that the ordinance motion item regarding the police auditor's budget and the friendly amendment item regarding their subpoena power were inextricably linked and that granting discretionary authority to EPD officers increased their ability and desire to act in an over-reaching investigative capacity.

[NAME REDACTED] felt that it was unsafe that the police auditor's office was separate from the police offices at City Hall, and asked why it was taking the PAORC and City Council so long to determine and implement an effective police oversight process. Mr. Chase responded that the PAORC, the City Council, and the City staff were more concerned with getting the process done properly and effectively than getting it done quickly.

Mr. Pryor felt that the public's comments were very helpful and commented that the PAORC's discussions regarding police oversight issues essentially broke down to questions regarding: What's an effective and fair process for police complaints? Who should be doing what within that process and where does each person's authority reside? And where is the transparency in the police oversight process? He noted that those questions were indicative of the shared interests of the public and the PAORC.

[NAME REDACTED] noted that subpoena powers for the police auditor were essential to the police oversight process and that such powers could be used to bring police complaints to the public's attention. They further believed that any funding decisions made regarding the police auditor's budget would by their very nature be political decisions.

[NAME REDACTED] asked for an explanation as to why the police unions had been so resistant to the public's insistence on effective police oversight. Ms. Teninty indicated that they would attempt to answer that question during the Adjudication section of the meeting.

### **C. MONITORING COMPLAINTS (issues 3, 5, 9, 16)**

Mr. Pryor gave a detailed analysis of the nature of the four issues under the Monitoring Complaints classification for the benefit of the public and committee members.

[NAME REDACTED] disagreed with Mr. Pryor's earlier estimation of the police oversight process and maintained that the only question for any entity to consider was, "What does the

Charter say?" particularly with respect to any issues involving the police auditor's authority or access. They noted that divergent interpretations of the Charter had undermined the police oversight process from the very beginning and further urged the PAORC members to carefully consider the comments the public had submitted in that regard.

[NAME REDACTED] asked Ms. Reynolds and Mr. Kerns how an effective police oversight system would help improve City and police policies and worried that current police policies engendered an adversarial relationship between police officers and the public.

Mr. Kerns commented that the police oversight system in Eugene was actually very young and as such there were occasional discrepancies between the adjudications from the chief of police and the recommendations of the police auditor and/or the CRB...He believed that while the findings of those three entities were sometimes different, there might be practical ways of reconciling the disparate views of those entities. He agreed that the police auditor and the CRB should have a role in shaping police policy.

Ms. Syrett commented that the police oversight mechanisms needed to be created in a stronger way and carried forward in a manner that would make divergent interpretations of the police auditor's functions and authority less likely. She noted that the police auditor system was designed to have the power to intake complaints and oversee the investigation of those complaints, not to act as the manager of the police department.

Ms. Piercy commented that there was a policy direction regarding police oversight that came from Council based on law or interpretation of the law.

Mr. Alsup commented that the language of the charter and the amendments had been subject to a wide variety of interpretations.

[NAME REDACTED] asked Ms. Syrett which of the initial 12 ordinance motion items seemed to indicate that they would require the police auditor to manage the police department as Ms. Syrett had previously indicated. Ms. Syrett answered that her previous comment did not refer to the 12 items but rather the specific language of the Charter.

Ms. Syrett commented that while she agreed that significant access to police personnel and data materials were essential to the police oversight process there were, any challenges or restrictions upon that access must be based in established federal, state or local laws.

Ms. Reynolds, responding to a question from a community member, noted that in addition to the complaint materials which she had thoroughly reviewed she had reviewed several random service complaints during her tenure as police auditor.

[NAME REDACTED] stated that they had not been properly served by the police auditor's office in response to a complaint they had filed and further asked what entity or persons had investigated the police during the Magana scandal. Mr. Kerns replied that the EPD had internally investigated the Magana matter in conjunction with the Lane County District Attorney's office.

#### **D. ADJUDICATIONS (issues 13, 14)**

Ms. Syrett gave an analysis of the nature of the two issues under the Adjudications classification for the benefit of the public and committee members and as a supplement to her statement provided a brief overview of the police auditor's adjudication process.

## **E. APPEALS (issue 7)**

Mr. Brissenden gave a detailed analysis of the nature of the issue under the Appeals classification for the benefit of the public and committee members. He noted that there had in the past been incidents where the police auditor and the chief of police disagreed on the outcome of an allegation of misconduct and that the appeals issue had been a topic of extensive discussion for the PAORC members.

Ms. Piercy noted that the PAORC was intent on communicating to the City Council that an appeals process was crucial to effective police oversight process.

## **F. OTHER CONSIDERATIONS (issues 16, 17 and 18)**

Ms. Piercy gave a detailed analysis of the nature of the three issues under the Other Considerations classification for the benefit of the public and committee members.

[NAME REDACTED], speaking with regard to issues 7 and 14, felt that public support of the police auditor and the police oversight process was essential to law enforcement and public safety concerns in the area, and also believed that the voters in Eugene might not have been fully aware that the previous votes regarding external police review allowed the chief of police to retain the ultimate authority with respect to any complaints or allegations of misconduct.

[NAME REDACTED], speaking with regard to issue 14, expressed that enabling the police auditor to make recommendations for discipline without the authority to enforce those recommendations would weaken the police oversight process. They noted that a review of other police oversight models such as ones in effect in the City of Portland might be useful.

[NAME REDACTED] asked how the PAORC's efforts to improve police oversight might directly benefit or otherwise affect the homeless population in Eugene. Ms. Reynolds appreciated the community member's concern for the homeless, but noted that such policy issues were not directly considered under the guidelines of the PAORC's directives.

Ms. Reynolds, responding to a request for clarification from Ms. Teninty, noted that the police auditor did not currently make discipline recommendations but rather made recommendations as to whether an allegation should be sustained, considered unfounded, considered to be within policy, or determined to have insufficient evidence. She noted that any disciplinary measures and decisions to adopt the auditor's recommendations were currently left up to the chief of police.

Ms. Reynolds maintained that passing of some portion of the 18 ordinance amendment items under discussion would help strengthen the police oversight system in Eugene.

[NAME REDACTED] agreed with a previous public comment maintaining that there was nothing in the charter amendments that required the chief of police to have the final say with respect to complaints or allegations of police misconduct and further maintained that the police oversight system and any related institutional practices should be part of an independent process from start to finish.

Ms. Syrett noted that the police auditor had the authority to initiate an investigation of their own volition regardless of whether or not the investigation was the result of a citizen complaint.

Ms. Syrett, responding to an earlier public comment, noted that the police auditor's office was not attached to the police station so that members of the public would not feel intimidated to go visit that office to register a complaint.

[NAME REDACTED] noted that it was important within the police oversight system to carefully track any complaints that were dismissed due to insufficient evidence.

[NAME REDACTED] commended the PAORC for considering the appeals process with respect to police oversight issues and wished them luck.

[NAME REDACTED] averred that the police auditor's authority needed to be backed up by subpoena powers and that the auditor needed to be feared by the police as if they were an IRS auditor.

Ms. Syrett, responding to the previous public comment, noted that any limits on the police auditor's data access to records and materials were part of the contract with the City's database provider and not part of any police union contracts.

[NAME REDACTED] asked who had signed the contracts with the City's database provider. Ms. Reynolds responded that while the City's database materials allowed the police auditor and police officers to review almost anything, there were sometimes confidentiality issues that needed to be addressed.

[NAME REDACTED] hoped that the PAORC's efforts to improve the police oversight system might benefit the homeless population of the City.

[NAME REDACTED] believed that the police auditor's adjudicative powers had not been explicitly stated in the charter because of the City's Managers sole power to deal with personnel and that the City Council had the authority to grant the police auditor adjudicative powers if they chose to. They further noted their concern that the ordinance currently prohibited any active monitoring authority in criminal investigations for the police auditor. The community member noted that they had written an email to City staff regarding the issue of the police auditor's investigative and monitoring authority as it pertained to criminal investigations. Ms. Teninty noted that the email would be entered into the public record as well as the committee's notes regarding the comments that would be communicated to the City Council.

[NAME REDACTED] submitted written comments into the record and hoped that an improved external police review process would foster improved relations between the EPD and the members of the public.

Mr. Ahlen thanked the members of the public for their comments and input and assured them their concerns would be taken into consideration as they made their recommendations to the City Council.

Mr. Ahlen concluded the public forum portion of the meeting at 7:54 p.m., noting that the members of the public were welcome to stay and informally discuss police oversight issues with the remaining PAORC members in smaller groups.



# MEMORANDUM

**Date:** March 3, 2009  
**To:** Mayor Piercy and City Council  
**From:** Pete Kerns, Interim Chief of Police, 682-5102  
**Subject: Consideration: Police Auditor Ordinance Review Committee Recommendations**

The work of the Police Auditor Ordinance Review Committee (PAORC) has come to a close with a set of recommendations scheduled for a council work session on March 9, 2009. The committee has worked very hard to address a challenging and complex topic in a relatively short period of time, and I'm grateful to have been part of this process. I have supported most of the recommended changes to the City ordinance that created our civilian oversight system and I believe that the changes will in some places codify existing procedures and in others will improve our system. There are several recommendations that I believe need further discussion. These are primarily related to resolving differences of opinion between the chief of police and the police auditor in the adjudication (settlement or resolution) of allegations of misconduct and concurrent criminal and administrative investigations.

I understand the circumstances that have led to many of the recommendations before the ordinance review committee. The challenges of starting our new system did result in friction between the police and the police auditor. I am concerned though, that not all of the recommendations considered by the PAORC need to be resolved immediately. Some procedures and reporting processes will benefit from discussion and negotiation between the new police chief and the new police auditor. Attempting to resolve all questions and issues right now - that predictably have arisen during the development of our new, complex system - may have unintended results. Some of the issues before the PAORC need more analysis to ensure we understand the effect the changes will have. We could benefit from better understanding the systems of the many communities with civilian oversight programs that are more mature; where they have already adjusted procedures to meet the needs of their community and law enforcement systems.

## **Civilian Oversight and Police Department Internal Affairs Functions**

Our civilian oversight system was engineered to monitor and report on the work of the Eugene Police Department's (EPD) internal affairs function. It has the additional, and I would submit an equally important responsibility, of identifying employee performance trends that are of concern and to work with the Police Department to focus attention on changes that can be made through policy and training.

It is critical to understand the difference between the employment environment and the justice system. Civilian oversight and the Police Department's internal affairs function were never intended to assist in legal and law suit processes for an aggrieved party. The civilian oversight system and the department's internal affairs functions are intended to ensure that employees are held accountable to policies and procedures. When a reporting party informs the Police Auditor's Office that an employee misbehaved, they are in effect alerting the Police Department to an employee who may have violated department policies. It is the work of the Police Department's Internal Affairs program to determine, through



investigation, if that allegation is true. The reporting party and the community then rely on the civilian oversight and police internal affairs systems to ensure employees are held accountable for their actions through the established employment processes of progressive discipline.

## **DISCUSSION: PAORC RECOMMENDATIONS**

### **1. Concurrent Criminal and Administrative Investigations**

At times an administrative investigation will interfere with a criminal investigation and prosecution. Ensuring that our employees are held accountable to policy is important and highly valued, but at times this action should be secondary to the fair and impartial administration of justice. Having an immediate administrative review that may satisfy the initial interest of the public and will at the most extreme result in employee termination, could jeopardize a criminal case where the sanctions are much greater and more serious.

In most internal affairs cases, the criminal and administrative investigations can occur at the same time. Portland's Independent Police Review system has learned that allowing the criminal case to run its course before completing the administrative investigation often results in a better administrative case. In most circumstances, the criminal justice processes gather information that can be useful to the administrative case, and can in some ways do so more effectively. Members of the PAORC learned from Interim Police Auditor Reynolds that other well established oversight systems are silent on the issue of concurrent investigations.

Generally, the chief of police should choose to run administrative and criminal investigations concurrently. In rare cases, the chief will need to find a balance between the State's effective prosecution of an important case and a timely internal process that holds employees accountable to policy. A dilemma of this kind will typically involve the prosecution of violent offenders and other high profile cases.

The "Broadway Plaza/Anti-Pesticide Rally" case nearing trial is an example of an incident that has attracted considerable community interest. In this case the chief weighed the importance of effectively prosecuting several defendants who were subject to potential penalties which included protracted incarceration and multi-thousand dollar fines, against immediately investigating an employee performance complaint that could result in discipline for a violation of policy. EPD and the community are equally invested in seeing justice served and, as Portland Assistant Auditor Pete Sandrock said during our PAORC meetings, the criminal justice process is uniquely suited to getting at the truth in such matters. The criminal justice process will effectively and formally gather information critical to the administrative investigation. This is not a choice where we have to ask if we want a good criminal investigation rather than a good administrative investigation. In this case we can run consecutive, thorough and objective investigations, while maintaining the integrity of each.

The decision as to when to conduct investigations concurrently or consecutively should reside with the chief of police because both criminal and administrative investigations are the chief's responsibility, and because criminal investigations are *exclusively within the responsibility of the chief of police*. The police auditor's responsibility is to monitor internal affairs functions, not to make decisions for the chief that may change the outcome of one of the Police Department's core functions: the investigation, enforcement and prosecution of criminal conduct. The rare incident of unnecessarily postponing an administrative investigation is preferable to undermining the prosecution of a case that is carried out under rules established by the constitutions of the United States of America and the State of Oregon.

The system established by the City Manager in October, 2008 works. In it, the police auditor may notify the City Manager that he or she objects to the chief's decision to temporarily postpone the completion of an administrative investigation. The city manager would hear both positions and make the final

determination. I propose that if either party is in disagreement with the city manager's decision, the question could be appealed to the Municipal Court presiding judge for a binding determination.

## **2. Appeals**

Our civilian oversight system was intended to monitor internal affairs functions, report on the observations of the auditor and the Civilian Review Board to the City Council, and to help the Police Department improve the quality of its work. An appeals process that changes the chief's decisions will undermine his or her leadership authority, employees' trust in civilian oversight, and effective long-term organizational health.

An appeal process will harden our focus on mistakes and thwart the healthy evolution of the organization. The effect of the enormous energy and interest in the outcome of individual complaints against employees will be a less effective agency with a culture more interested in avoiding mistakes than improving services. Portland's elected Auditor Gary Blackmere and Portland's former Independent Police Review Director Leslie Stevens, have both said that an agency can not effectively discipline its way to improvement.

Our systems of civilian oversight, police auditor function and internal affairs have struggled to move beyond merely monitoring investigations and recommending adjudications. The advice from Portland's experience is that the focus of civilian oversight should be to improve policing services by identifying trends and improving on quality through policy and training.

## **3. Continuing the Work of the PAORC**

I agree that some of the items not addressed by the Police Auditor Ordinance Review Committee should be studied further. I do not believe PAORC should perform that work. The committee was established with a certain membership, which has changed over time, to address issues in a short-term process. It has done an excellent job of completing the work assigned within that schedule. Our committee was not envisioned as a longer-term body to be added to the oversight system. I am confident that when a new police auditor and a chief of police are hired, they will work collaboratively and productively together to make systematic and deliberative changes when needed. This will help our oversight system mature into a robust and effective program of which all of Eugene can be proud.



City of Eugene  
777 Pearl Street, Room 105  
Eugene, Oregon 97401-2793  
(541) 682-5010  
(541) 682-5414 Fax  
www.eugene-or.gov

# MEMORANDUM

**Date:** February 25, 2009  
**To:** PAORC Committee Members  
**From:** Jon R. Ruiz, City Manager  
**Subject:** Comments on Proposed Ordinance Revisions

Thank you for the opportunity to provide comments on the revisions you have been working on and for the invitation to meet with you tomorrow. I understand that this is your last meeting and I appreciate being given some of your valuable time.

I am a strong supporter of Eugene's independent police oversight system. Although some controversy associated with the system's implementation continues, I believe that this is expected and common in communities that have initiated oversight systems of this type. I am very hopeful for the future as the system matures and as our organization's culture adapts to an oversight model that is fully intended to build community trust and enhance our public safety system.

I am encouraged by the feedback we have received from Portland where the oversight system has been in place much longer. My understanding is that with a larger body of knowledge, they are better able to identify trends and focus efforts on prevention. I share a strong desire to focus efforts on the prevention side of the equation and will continue to reflect this in all of my comments. While I believe resolving complaints is very important, I think we could all be proud of an overall system that reduced them.

I would first like to address your invitation to comment on complaints against the Chief of Police. I am generally supportive of the revisions being proposed by the Committee and am very supportive of the overall need for accountability of the Chief. I encourage the language that allows a complaint to be filed and classified with the Auditor. I do believe that forwarding the complaint to the City Manager for investigation is appropriate. I also propose that the ordinance make explicit that after the City Manager has adjudicated the complaint, the Manager shall forward the final decision to the Police Auditor. Potential add to the language:

*(c) The city manager shall inform the auditor of the city manager's decision on the allegation.*

I understand that to some the City Manager's involvement does not seem "independent" enough; however, the City Manager and Police Auditor are both ultimately responsible to the City Council and share a desire to build community trust in the Eugene Police Department.

I continue to have some concerns about the potential conflicts of concurrent administrative and criminal investigations. Your background materials state that I issued a written directive to Interim Chief Kerns regarding this issue in which he was to review all cases and re-open all investigations that did not jeopardize a criminal investigation or prosecution. As you know from your deliberations, this issue is difficult to capture in ordinance language. In most jurisdictions with a police audit function, the issue of concurrency does not appear in the code. Ideally, these issues would be resolved between the Chief and Auditor case by case. Consequently, I understand that the intent of the motion and the work of the Committee are to create a framework that is "personality proof". The language currently being considered does not fully meet that goal as the final authority rests with the Auditor. The Committee could consider an alternate process that would allow the final decision to rest with the Municipal Court Judge. Potential substitute language:

*If the chief of police determines that all or a part of an administrative investigation should be postponed in order to avoid jeopardizing a criminal investigation or prosecution, the police chief shall request the auditor's agreement on postponement. If the auditor and police chief are unable to agree on the postponement, then they shall present in writing their respective positions to the municipal court judge, who shall then decide whether all or part of an administrative investigation will be postponed.*

Although this proposal places additional process on time-sensitive issues, I believe that the number of times the Auditor and Chief will be in a disagreement necessitating the Judge's professional opinion would be minimal and that we will continue to see improvements in the overall oversight process and associated procedures.

I understand that the Committee did not have sufficient time to address all 18 items proposed for review in Council's motions. Of the items remaining, I will request that the City Council direct the Police Auditor and me to evaluate an appeals process and provide a joint recommendation to Council after review with stakeholders including the Civilian Review Board, the Police Commission and individuals such as you. In addition, I expect that the Auditor's role in the training and hiring of EPD employees be clarified and implemented by the Chief and the Auditor. Improvements of that nature do not need to be in ordinance language and can happen immediately.

Three items could potentially change the framework of Eugene's existing oversight model: the Auditor's authority to adjudicate, recommend discipline, and subpoena power. My recommendation will be to pursue these items as soon as we have a regular Auditor and Chief and have allowed them sufficient time to recommend further improvements. As I stated before, I believe that the system will continue to achieve overall improvements by focusing more energy on the prevention of issues.

In closing, I thank you again for your time. I know the issues you have been discussing are multi-dimensional and require careful consideration. The work you are accomplishing and the recommendations you will forward are important steps in improving City services and in building community trust. I look forward to meeting with you on Thursday evening for more discussion on the details of your recommendation to the City Council.

**Key: Changes to the current police auditor ordinance are shown in red. Deletions are shown in strike-through; additions are in underlined italics.**

**In brackets underneath each amended section, we set out the number of the proposal that the new language would implement and quote from the proposal in the city council's November 10 motion.**

**2.450 Office of Police Auditor – Established.**

- (1) The office of the police auditor, hereafter auditor's office, is hereby established to provide an independent location to lodge complaints involving police employees, monitor internal investigations to ensure objective, thorough and high quality investigations, and develop recommendations to improve police services.
- (2) The auditor's office shall be headed by a full-time professional police auditor who is hired by and accountable to the city council. The city council shall hire, supervise, and specify the salary of the independent police auditor, who shall serve at the pleasure of the city council. All city council decisions regarding the auditor will be made by a simple majority vote of the city council.
- (3) The independent police auditor shall have exclusive authority to hire, supervise, and to make all other employment decisions regarding the auditor's support staff. No change relating to the authority to hire and supervise the auditor's staff shall be made without formal action of the city council.
- (4) Any findings, recommendations and actions taken shall reflect the police auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the police auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.
- (5) The city manager shall include in his/her recommended budget an allocation sufficient for the ~~operations of~~ auditor and the auditor's office to carry out their duties and responsibilities under the Eugene Charter of 2002 and the Eugene Code, including sufficient funds to contract for external investigations.

[Amendment #11: "The Police Auditor's budget shall be sufficient to accomplish all of the duties and responsibilities of the office including the sufficient and readily available funds to contract for external investigations."]

- (6) The physical location of the auditor's office shall be separate from the police department, but in close proximity so as to facilitate a close working relationship with others involved in the complaint investigation process, and easily accessible to the public. The auditor shall have

complete, unrestricted and direct access to the internal affairs area during office hours.

[Amendment #5, first sentence: “The Police auditor shall have complete, unrestricted, and direct access to the necessary Eugene Police Department offices; the same as Internal Affairs staff.” The second sentence in Amendment #5 is covered below in section 2.456(3).]

(76) It is intended that sections 2.450 through 2.456 and 2.240 through 2.246 will provide a system of independent oversight of the police complaint process and implement section 15-A of the Eugene Charter of 2002 as adopted by the city electorate on November 8, 2005.

(Section 2.450 added by Ordinance No. 20374, enacted December 13, 2006, effective January 12, 2007.)

**2.452**        **Office of Police Auditor – Definitions.** Words and phrases used in sections 2.240 through 2.246 and 2.450 through 2.456 have the following meanings:

Chief of police. The person designated by the city manager as the chief of police.

Community impact case. A complaint involving sworn police officer(s) that alleges excessive force, bias, disparate treatment or violation of constitutional rights, which the police auditor determines should be reviewed by the civilian review board in accordance with section 2.244(3) and 2.244(4) of this code.

Complaint. An expression of dissatisfaction, allegation of misconduct, or question about a police employee’s conduct, police services provided or not provided, or police department policies or practices in general.

Conclusion of any criminal investigation or conclusion of any such criminal investigation. A criminal investigation is deemed concluded when the appropriate criminal prosecutor decides either to press charges or to not press charges.

Critical incident. An occurrence involving a significant police action including, but not limited to, a civil disturbance or riot, an officer-involved shooting, or other action by a sworn police officer resulting in serious physical injury or death.

Facilitated conversation. A discussion guided by a third party, trained facilitator, between the complainant and a department representative, most often the named employee’s supervisor or internal affairs staff.

Immediate family member. A person's spouse or domestic partner, a parent, step-parent, grandparent, child, stepchild, grandchild, sibling, half-sibling or step-sibling of the person or of the person's spouse or domestic partner.

Internal affairs. The police employees designated by the chief of police to investigate allegations of misconduct against police employees.

Mediation. A voluntary, confidential complaint resolution option that is an alternative to the investigation, adjudication and disciplinary process. It is a structured process guided by a neutral, third-party, professionally-trained mediator enabling direct communication between the complainant and employee.

*Police auditor. Police auditor or designee if authorized by the auditor to undertake a certain function.*

Police employee. A city employee who reports directly or through others to the chief of police.

Preliminary investigation. As used in section 2.456(1)(c), an initial inquiry by the police auditor or the auditor's designee into the facts and circumstances of a complaint for purposes of deciding how to classify and route the complaint.

*Service complaint. A complaint about police employee performance or demeanor, customer service and/or level of police service.*

[This definition complements use of the term in "service complaint" in the additional provision in EC 2.454(1)e, which implements Amendment #9. The definition comes from the POM.]

Substantial evidence. Evidence that, considering the record as a whole, a reasonable person would rely upon to conclude that something is true. For purposes of section 2.244(4), an adjudication is supported by substantial evidence when the civilian review board reasonably could reach the same finding after considering all the evidence in the record, whether or not the board actually agrees with the adjudication.

Sworn police officer. A police employee who is also certified and employed as a peace officer under the laws of this state.

*(Section 2.452 added by Ordinance No. 20374, enacted December 13, 2006, effective January 12, 2007.)*

#### **2.454 Office of Police Auditor – Powers and Duties.**

- (1)** The police auditor is the administrative head of the auditor's office and shall:

- (a) Oversee the operations of the auditor's office, establish program priorities and objectives, and manage the implementation and evaluation of work programs;
- (b) Develop and maintain operating procedures for the auditor's office, including protocols for handling complaints and monitoring investigations;
- (c) Establish standards of professional conduct and provide necessary training for staff in the auditor's office.
- (d) Act as liaison and provide staff support to the civilian review board. In collaboration with the civilian review board, the police auditor shall:
  - 1. Establish and maintain policies, procedures and operating principles for the civilian review board's functions; and
  - 2. Conduct education and outreach activities to inform the community about the process for filing complaints and commendations about police employees, and develop and disseminate information and forms regarding the police complaint handling and review system.
- (e) Receive and process complaints concerning police employees; ~~and~~ monitor the complaint investigation and review process as set forth in sections 2.456(1) and (2); and review a selection of service complaints.

[Amendment #9: "The Police auditor shall review random selections of Service Complaints."]

- (f) Perform a quality assurance function with the goal of identifying systemic changes that will improve police services to the community. These activities include:
  - 1. Analyzing complaint trends and recommending changes to police policy, practices and training;
  - 2. Reviewing risk and tort claims and developing recommendations to reduce risk and liability;
  - 3. Reviewing and reporting trends in completed police employee disciplinary decisions.
- (g) Provide status reports to the civilian review board and city council and provide recommendations relevant to police policies and practices to the police commission.
- (h) Develop and present to the civilian review board and city council annual public reports describing the activities of the auditor's office, its findings and recommendations, the police department's response to its recommendations, and any other information pertinent to assessing the performance of the auditor's office.
- (i) Provide the city council with any other reports deemed necessary or requested by the city council. All public reports shall strive to protect the privacy of all individuals and shall not contain the names of parties to a complaint (employees, complainants and/or witnesses) not previously disclosed.



- (j) Determine whether applicants for the civilian review board meet the requisite qualifications in section 2.242(1)(a)1. and 2.242(1)(d).
- (2) The police auditor shall receive timely notification of critical incidents to enable him/her, or a qualified designee, to report to the scene of critical incidents. The police auditor and chief of police shall develop necessary protocols for summoning the police auditor to the incident for purposes of first-hand observation.
- (3) The police auditor shall participate in use of force review boards.
- (4) All case adjudication and employee discipline decisions shall be made by the chief of police. The police auditor may develop adjudication recommendations, but is not authorized to recommend the level of discipline for police employees.
- (5) Except as provided in this subsection (5), the auditor shall treat an allegation against the police chief the same as a complaint against a police employee. For purposes of this subsection, an "allegation" is a report or claim that the police chief has committed a crime, violated any provision of EC 2.240 to 2.246 or 2.450 to 2.456, violated a person's civil rights, or failed to perform the police chief's duties in accordance with applicable professional law enforcement standards, including those duties normally associated with sworn officers.

(a) If the auditor receives an allegation against the police chief, the auditor shall notify the city manager and shall classify the allegation and determine whether further investigation is necessary in order to ascertain material facts concerning the allegation.

(b) If the auditor determines that further investigation is necessary, the auditor shall refer the allegation to the city manager, who shall conduct or arrange for an investigation in a timely fashion on terms that allow the auditor to actively monitor the investigation to the same extent as provided in EC 2.456 (2)(d) and (e) for investigations of other complaints.

(c) The city manager shall inform the auditor of the city manager's decision on the allegation and provide a written rationale for the decision in a timely fashion.

[Amendment #10: "The definition for 'police employee' shall include the Police Chief by adding 'including the Chief who answers to the City Manager.']

(Section 2.454 added by Ordinance No. 20374, enacted December 13, 2006, effective January 12, 2007.)

## **2.456 Office of Police Auditor – Complaint Processing.**

- (1) Complaint intake.**

- (a) Any person may lodge a complaint or commendation with the auditor's office about the conduct of, or services provided by, a city police employee;
- (b) The auditor's office is the intake center for all community complaints about police employees. City employees may choose to lodge complaints against another employee through either internal affairs or the auditor's office. The auditor's office shall document all contacts and complaints received from any source. The auditor's office may refer a complainant to another department in the city or another agency that would be more appropriate to address the complaint.

(c) If the city receives a claim for damages that alleges that a police employee caused the damage, a copy of the claim shall be forwarded to the auditor's office for a determination as to whether the claim should also be classified and processed as a complaint.

[Amendment #8: "Risk claims shall be forwarded to Internal Affairs and the Police Auditor for classification and processing as a complaint."]

- ~~(de)~~ The auditor's office conducts the preliminary investigation of all complaints lodged with the auditor's office or internal affairs to appropriately classify and route the complaint and any accompanying information accordingly. The auditor has exclusive authority to classify and route complaints as well as to reclassify complaints if, upon further investigation and receipt of additional information that was not available at the time of intake, the Auditor finds reclassification is warranted.

[Amendment #1: The Police Auditor shall have exclusive authority to classify and route complaints, as well as to reclassify complaints if upon further investigation and additional information, not available at the time of intake, the Auditor finds reclassification is warranted.]

(e) If a complaint is received that alleges criminal conduct on the part of the employee, the police auditor shall forward the complaint and any associated information to the chief of police.

- ~~(fd)~~ The auditor's office may determine whether a complaint is appropriate for mediation or facilitated conversation, and upon the voluntary agreement of the involved parties and approval of the chief of police, shall coordinate the resolution of such cases.
  1. Mediation is an alternative to the investigation, adjudication and disciplinary process; if the parties agree to mediation, the investigation, adjudication and disciplinary process will end.

2. A facilitated conversation may, but does not necessarily, result in termination of the investigation, adjudication and disciplinary process.
- (ge) The auditor's office classifies complaints that will be treated as community impact cases and provides support to the civilian review board in its review of those cases and other cases accepted by the civilian review board.
- (hf) The auditor's office shall provide timely updates on the status of a complaint and notification to the complainant of its final disposition.
- (ig) The auditor's office may dismiss a complaint if upon review, it meets criteria that the auditor has established for such action, including reporting delays and/or insufficient information from which to take further action.
- (hA) The auditor may review and process a complaint not filed directly with the auditor's office if the auditor determines that concerns have been expressed about conduct of a police employee(s).
- (ki) Except for good cause, complaints of minor misconduct involving courtesy, communications, and minor rules violations that might be handled as service complaints shall be filed within 60 days of the incident.
- (lj) Except for good cause, complaints of serious misconduct including, for example, excessive force that causes substantial physical injury, egregious acts of disparate treatment, or major rules violations shall be filed within 6 months of the incident.

(2) Complaint Investigations.

- (a) Except as provided in paragraph (b) below, administrative investigations of complaints shall not commence until after the auditor has received, classified and routed the complaint. The investigation shall commence upon classification or as soon as possible after classification.
- (b) Paragraph (a) shall not preclude preliminary investigations by the auditor's office, or a police supervisor's attempt to address a service complaint, provided that the supervisor prepares and forwards to the auditor within 24 hours a report indentifying the complainant and contact information for the complainant, and explaining the nature of the service complaint and the outcome of the supervisor's conversation with the complainant.

[Amendment #2: "Investigation of complaints shall commence upon classification of the complaint by the Police Auditor or as soon as possible thereafter, and no investigation shall occur before the police auditor has received, classified, and routed the complaint."]

- (c) After consultation with the chief of police and the appropriate prosecutor, the auditor is authorized to require an administrative

*investigation to proceed concurrently with a related criminal investigation and prosecution.*

[Amendment #4: “Administrative investigations shall proceed concurrently with any related criminal investigation; administrative investigations shall not be suspended, delayed or postponed, while criminal proceedings involving complainants and witnesses are resolved.]

- (d) The police auditor shall actively monitor internal investigations to ensure a thorough, objective, and timely investigation, and is authorized to:
1. Participate in complainant, employee and witness interviews;
  2. Require the city to undertake additional investigation.
- ~~(eb)~~ The police auditor may require, and is authorized to contract for, an external investigation when the police auditor determines that an external investigation is appropriate.
- ~~(fe)~~ The police auditor will not be directly involved in any criminal investigations, but shall be kept apprised of the status of such investigations involving police employees. The police auditor shall have access to the case file relevant to the administrative portion of such investigations. ~~Following the conclusion of any criminal investigation or within 60 days after the date of the incident, the auditor has the authority to initiate an internal investigation unless the police auditor receives written notice from the District Attorney, United States Attorney, or City Prosecutor that the internal investigation would jeopardize the criminal investigation and prosecution.~~
- [This deletion makes the subsection consistent with subsection(c) of this section as amended.]
- ~~(ge)~~ All case files shall be provided to the police auditor upon conclusion of the investigation for review and a determination that the investigation was thorough and complete. Once the investigation is deemed complete, the involved employee’s immediate supervisor will confer with the police auditor and develop a case adjudication recommendation that will be forwarded through the chain of command to the chief of police for final adjudication. If the police auditor disagrees with the supervisor’s recommendation, his/her disagreements and comments will be documented and forwarded to the chief of police as well. The immediate supervisor and police auditor will use their best efforts to complete this process in a timely manner and without unreasonably delaying the final adjudication of the case. If the investigation reveals evidence of criminal conduct not previously known, the auditor may refer the matter to the appropriate criminal prosecutor for his/her consideration.
- ~~(he)~~ The auditor’s office will make every reasonable effort to notify the complainant that an investigation has been conducted, summarize

the case findings, and provide an opportunity for the complainant to comment or ask questions about the process.

- (f) The auditor's office shall return all case file materials to internal affairs for retention, but shall have subsequent access to closed cases.
- (g) The police auditor shall maintain an on-going status report on the work of the auditor's office and case investigations and shall share it with the civilian review board.

(3) Access to Records and Materials.

- (a) Except to the extent that a specified state or federal law provides to the contrary, or where information resides on a restricted database governed by a contract that does not allow access beyond certain law enforcement employees, (i) the auditor shall have complete and unrestricted access to all complaints, investigative records and information obtained or developed by the internal affairs investigator related to an administrative investigation of a complaint, whether the information exists in electronic format or hard copy including information stored on an internal affairs database, (ii) the auditor shall be provided any other information identified by the auditor that is relevant to a complaint and (iii) the identity of any individual involved in an event giving rise to a complaint shall not be withheld from the auditor. When legally required or requested by the police chief, the auditor shall keep confidential the name of any such individual involved in a complaint and other information leading to the name of the individual. ~~The police auditor shall have complete and unrestricted access to all complaint and investigative records and materials, and any other information necessary for the performance of his/her specified duties.~~ Except as ~~As~~ provided in section 2.456(2)(~~ef~~), the police auditor shall not have access to a criminal investigation file until the conclusion of any such criminal investigation.

[Amendment #3: "Upon the opening of a case file, and any time thereafter including closed cases, the Police auditor shall have complete, unrestricted, and direct access to all records, evidence, documents, and all material the Police Auditor deems relevant to the complaint."]

[Amendment #5, second sentence: "In addition, the Police Auditor shall have complete, unrestricted, and direct access to Internal Affairs PRO database the same as the program coordinator and the Internal Affairs PRO supervisor."]

[Amendment #6: "The Police Auditor shall maintain strict name confidentiality wherever warranted or legally required. Upon classification of the complaint, the Police Chief may request the Police auditor provide name confidentiality on a specific case, and

the Police Auditor shall comply, but the identifications of any involved parties shall not be withheld from the Police Auditor.”]

- (b) The police auditor shall supervise the development and implementation of a case management system to track all complaints received in coordination with the internal affairs unit, report case statistics and trends, and provide performance indicators to evaluate the effectiveness of the auditor’s office.
- (c) The chief of police and police auditor shall develop cooperative interdepartmental procedures and any necessary infrastructure to coordinate the flow of information and communication between the auditor’s office and the police department.

*(Section 2.456 added by Ordinance No. 20374, enacted December 13, 2006, effective January 12, 2007.)*