

City of Eugene  
Ad Hoc Committee on Police Policy  
Subcommittee on Community Oversight  
Information Packet

Meeting Date: December 16, 2020

Meeting Time: 6:00 – 8:00 pm

Location: Zoom

AGENDA  
AD HOC POLICE POLICY COMMITTEE  
**Monday, November 30, 2020**  
**Zoom meeting\***  
6:00 p.m. – 8:00 p.m.

- |                         |  |
|-------------------------|--|
| <b>6:00 – 6:10p.m.</b>  | <b>1. Welcome/Opening remarks: Proposed Subcommittee process</b><br>(Kaz Zaidi, staff) |
| <b>6:10 – 6:20 p.m.</b> | <b>2. Statements from Subcommittee members (if requested)</b>                          |
| <b>6:20 – 7:00 p.m.</b> | <b>3. Review Previous Motions sent back by Ad Hoc Committee</b><br>(Kaz Zaidi, staff)  |
| <b>7:00 – 7:55 p.m.</b> | <b>4. Discuss new motions to propose to Ad Hoc Committee</b><br>(Kaz Zaidi, staff)     |
| <b>8:00 p.m.</b>        | <b>5. Adjourn</b>  |

---

\*Due to Governor Kate Brown’s Stay Home, Save Lives Executive Order to combat the spread of Covid-19, this meeting will be held remotely using virtual meeting technology. Information about online or other options for access and participation will be available at <https://www.eugene-or.gov/3360/Webcasts-andMeeting-Material>

**Agenda Item #1: Welcome/Opening remarks: Proposed Subcommittee process**

As a reminder, the Ad Hoc Committee established the following ground rules to guide the discussions:

- Maintain awareness of our power differentials
- Community members will get priority, City Councilors here to listen, learn, ask questions
- Share time and contribute proportionally
- Share your own experience, default to confidentiality with others’ experiences
- Listen actively and fully
- Avoid generalizing and assumptions
- Remember intent AND impact matter
- Value dissenting opinions
- Maintain goal of dialogue, not debate
- Be curious
- Practice accountability
- Limit use of chat box to procedural and informational items only

Members are asked to limit themselves to 3 minutes each time they speak.

Members may speak again once any other speakers in the line have spoken.

Since the first Community Oversight Subcommittee meeting on November 4, City Councilors have requested that Ad Hoc Committee members use the following format to guide their deliberations:

- What is the issue that the community is experiencing and which communities in Eugene experience this problem most strongly?
- What, specifically and clearly, is your recommended change (motion)?
- How do you think that the recommended change will achieve the desired result?

What this Subcommittee needs to achieve today:

1. Review previous motions sent back by the Ad Hoc Committee
  1. Identify issues contained in 21<sup>st</sup> Century Policing and Campaign Zero that committee members wish to discuss
  2. Identify EPD policies that correspond with these policy issues
  3. Discuss potential changes and/or additions to EPD policy
  4. Revise previous motions accordingly
2. Discuss new motions to propose to Ad Hoc Committee
  1. Identify issues contained in 21<sup>st</sup> Century Policing and Campaign Zero that committee members wish to discuss
  2. Identify EPD policies that correspond with these policy issues
  3. Discuss potential changes and/or additions to EPD policy
  4. Agree topic areas for motions to be drafted and designate committee members to draft those motions

**Agenda Item #2: Statements from Subcommittee members (if requested)**

No background information is provided for this agenda item.

**Agenda Item #3: Review previous motions sent back by Ad Hoc Committee**

The following motions were sent back to the Community Oversight Subcommittee for revision:

- **Motion on giving CRB Subpoena Power (Motion passed 4-1) TABLED BY FULL COMMITTEE pending a 2<sup>nd</sup> meeting of the community oversight subcommittee**  
Proposed: Brian Michaels  
Seconded: Daniel Borson  
That the CRB should have power of subpoena

Brian Michael and Rick Roseta submitted the following comments pertaining to the motion:

**Testimony from Rick Roseta (Community Oversight Sub-Committee Member)**

3. CRB Subpeona power. I voted against this motion in the subcommittee meeting for two reasons:

1. The Auditor already has the power to obtain all information, including video, statements under oath and police investigation; and
2. A subpoena in this setting is not authorized by law. Rule 55 of the Oregon Rules of Civil Procedure provides the sole basis for the issuance of a subpoena. The ability to subpoena is limited to matters where there is a case of some kind filed in court. If there is a case filed, an attorney can issue a subpoena or the Judge can issue the subpoena. No other subpoena exists in Oregon law. In order to

impose this right upon the CRB, the legislature would have to pass legislation to enable the CRB to have the right. If that took place, there would be no case for use in determining the relevance of the subpoena, and no Judge to rule on the scope of the subpoena.

5. Spoliation - I voted against this motion because it misstates and misinterprets the law of evidence relating to spoliation. Spoliation is a rule of evidence that was created by the courts, pertaining to cases before a court, in which there is a permissible inference that the party who is in control of the evidence that could have been introduced at trial, can be disregarded by the trier of fact, if the trier of fact decides to do so. The inference is not a mandatory inference in which the trier of fact is directed to ignore the evidence that is no longer available. It is a permissible inference that would result in an instruction being given to the trier of fact by the Judge, that they may view the evidence submitted as being less favorable to the party that had custody of the evidence or the ability to protect it prior to trial. Using the rule in the motion is an improper use of the case law on the subject. There is no case pending in these situations, where the Judge could make rulings on the appropriateness of the application of the inference. Certainly, if there is a criminal trial involving a police employee as a defendant the rule could come into play. This rule is too vague and cannot be applied because there is no tribunal to apply it.

6. Omnibus motion to change the CRB into an investigative and judiciary body.

My concerns can be broken into several parts:

1. The motion states that the CRB "should adjudicate". I oppose this because it seeks to give a judicial function to the CRB. It is inappropriate for the CRB to be the investigator (prosecutor) and the judge of the facts. This approach smacks of the inquisition, where the prosecutor was the judge of the facts. That combines the roles, unfairly prejudicing the police officer against whom an allegation has been made. For the investigator to be the judge and jury violates basic notions of due process.
2. In this system, the CRB would be removed from the legislative function and made prosecutor and fact finder.
3. This motion would essentially transform the Auditor and his/her staff into "staff" for the CRB, doing the investigative work and recommending the ultimate conclusion to be reached regarding guilt or innocence. There is no way that a volunteer board could take charge of the investigative and judicial function.
4. Ultimately, I believe that the position of the CRB on a matter should be given consideration by the Chief in imposing discipline, but the Chief should not be mandated to go along with the findings of the CRB
5. If there is a matrix, it would have to be negotiated with the EPEA as part of the collective bargaining agreement, because such a change would violate Articles 35 and 36 of the agreement between the City and the Union..
6. It is my belief that the Chief is the professional in the discipline equation and should not be mandated on such decisions by the CRB. The Chief has many purposes for discipline, including education, mentorship, control of the troops and political concerns. Decisions about these issue should be accounted for when the Chief is given his job reviews, and not imposed without his/her judgment. I believe that discussion concerning a matrix is a subject for consideration by itself and not included into an omnibus motion. If there is a matrix, it should be advisory, not mandatory.

**Testimony from Brian Michael (Community Oversight Sub-Committee Member)**

Please accept this as a quickly drafted response to Mr. Rosetta, as I just now had an opportunity to review his testimony.

**Subpoena power**

Technically, Mr. Rosetta is correct, as this is not a recommendation for a judicial subpoena with judicial enforcement. It is to have the CRB obtain any and all information from the police it requests, similarly to auditor, though it places the investigation process in the CRB.

So, subpoena may be a shorthand word to be replaced with the code cited by Mr. Rosetta, replacing CRB with auditor: "The **CRB** has the power to obtain all information, including video, statements under oath and police investigation."

### **1. Spoliation**

Mr. Rosetta has submitted a memorandum against the use of spoliation as a legal principle. We all know the police have a history with body cameras and in car videos becoming unavailable –often by failing to turn on the video, or lost the video, or malfunctioned at a critical time, and so forth. All three body cams became unavailable for viewing at the incident where the woman and her son were beaten after calling for CAHOOTS. Because Eric Richardson, then president of the NAACP now Executive director, is the brother and uncle of these two individuals he was there witnessing the events unfold. When telling his story, he was called a liar.

This proposal called spoliation is attempting to correct these sorts of problems.

### **2. Omnibus motion to change the CRB into an investigative and judiciary body.**

This response can be summed up by Mr. Rosetta's No. 6 in his testimony, first line:

"It is my belief that the Chief is the professional in the discipline equation and should not be mandated on such decisions by the CRB."

History simply does not support that belief. We did not see that belief in the killing of Brain Babbs, we did not see that belief in the killing of the Latino homeless man, about which the NAACP president and I authored a published Op-Ed. (you all have a copy of that Op-Ed.) The chief came out publicly saying the killing was justified and the officer's grabbing of a man walking down the street minding his own business, not bothering anyone, was just fine, even de-escalating behavior. I submit the grabbing of a person is the very trigger of escalating behavior

Although the chief then was Pete Kearns, the auditor and all civilian review activities failed my client miserably. Perhaps she can come to the full committee and explain all that.

In sim, this was quickly crafted, with blushing ideas and quirky syntax. Please to forgive.

Thank you for your attention and courtesy.

BRIAN MICHAELS, OSB #925607

- **Motion on Spoliation (Motion passed 4-1)**

Proposed: Brian Michael

Seconded: Daniel Borson

If a body worn camera recording is recklessly, intentionally or negligently destroyed or unavailable, officer testimony on the events contained in the recording should not be admissible.

Please refer to the above-mentioned testimony from Rick Roseta and Brian Michael regarding Spoliation.

- **Motion on Making the Citizen Review Board an Investigative Body (Motion passed 5-0) TABLED BY PROPOSER pending a 2<sup>nd</sup> meeting of the community oversight subcommittee**

Proposed: Daniel Borson (PLEASE NOTE THIS MOTION HAS BEEN WITHDRAWN BY DANIEL BORSON AND REPLACED WITH A SERIES OF NEW MOTIONS TO PROPOSE TO THE AD HOC COMMITTEE. THE NEW MOTIONS ARE INCLUDED BELOW IN AGENDA ITEM #4)

Seconded: Rick Rosetta

The CRB should adjudicate cases involving excessive use of force, abuse of authority, unlawful arrest unlawful stop, unlawful searches, discourtesy or disrespectful behavior use of offensive language, theft and discriminatory behavior.

CRB should have the authority to conduct independent investigations and at the heart of such authorities must be the ability to subpoena witnesses and documents including internal police disciplinary documents, medical records, surveillance footage and other materials relevant to an investigation. Once the CRB's professional staff completes its thorough investigation and the board substantiates an allegation of misconduct the board's findings of fact will be binding on the head of the police department who will then determine discipline based on those facts and guided by a pre-negotiated disciplinary matrix.

Please refer to the above-mentioned testimony from Rick Roseta and Brian Michael regarding CRB investigative authority.

- **Motion on Reviewing Civilian Oversight Structures (Motion passed 5-0)**  
Proposed: David Saez  
Seconded: Daniel Borson

Recommend that the city council engage community in evaluating the existing form and structure of civilian oversight and defining the appropriate system for this community

**Agenda Item #4: Discuss new motions to propose to Ad Hoc Committee**

Please see the following testimony provided by Betsy Davis:

**Testimony from Betsy Davis (LULAC)**

I've attached the current EPD Policy 402, which used to be the Police Contact policy, it is now the STOP policy. They have merged traffic stops with pedestrian stops, but the policy muddles this distinction.

There is also a general caveat in the policy that may allow officers not to report all pedestrian stops. These are the stops that are frequent (e.g., what are you doing here), are distressing thereby impacting long-term health, and I'm not sure they are required to be reported.

This is the policy where the card system that was approved will probably be considered. However, with that general caveat in the policy, it may render the card system less effective (i.e., "Nothing in this policy requires an officer to document a contact that would otherwise not require reporting). Can we ask the EDP training person what this statement in the policy pertains to? How do they, or do they, train officers to make the distinction of what should or should not be reported?

Also, there is a gap in the way the card system recommendation from Campaign Zero, 21<sup>st</sup> Century, that may result in the outcome not being as strong as we would like. That gap should probably be addressed as well in our recommendation.

**THE FOLLOWING IS SUBMITTED BY DANIEL BORSON TO REPLACE HIS MOTION THAT HAS BEEN WITHDRAWN:**

**Community Oversight Subcommittee - Additional motions on the Civilian Review Board (with explanations)**

Submitted by Daniel Borson, Human Rights Commissioner

**1) The CRB should adjudicate cases involving excessive use of force, abuse of authority, unlawful arrest unlawful stop, unlawful searches, discourtesy or disrespectful behavior, use of offensive language, theft and**

**discriminatory behavior. The CRB may accept complaints from residents and assign those cases to the Police Auditor's office to be investigated. The CRB's ruling on the facts of a case shall be the final adjudication of that case.**

Several of the articles linked from Campaign Zero recommend a multi-pronged approach to police oversight.

"No single form of civilian oversight is the best response to the problem of police misconduct. Any civilian oversight body that stands alone is likely to fail over time when faced with resistance from the police department it oversees. The failure of first generation civilian-oversight bodies has led to the creation of "stronger" external-investigative agencies in such cities as New York and Chicago and the creation of multiple civilian oversight bodies in such cities as Denver, Seattle, and Portland. Attempts to reform civilian oversight by installing the "right" form of oversight ignore the fact that no one type of civilian oversight is necessarily less likely to fail over time. Consequently, the creation of multiple oversight bodies is a more promising pathway for reform." [Columbia Journal]

As such, strengthening the CRB by granting it additional authority would help to fill the gaps that several cases in the past have exposed.

**2) A minimum of a quorum of members of the CRB shall be nominated by groups representing marginalized people.**

Since marginalized communities are more likely to be affected by police misconduct, relative to their proportion of the population, it is important to have broad community representation on the CRB. Requiring marginalized communities to be represented by a minimum of a quorum on the CRB will ensure fair treatment and adjudication of cases for all residents of Eugene.

"The nominees should have a demonstrated commitment to the well-being of the city where they live, and a strong understanding of the importance of upholding civil rights and civil liberties in policing. They should also believe in a police department that operates in a transparent and accountable manner. No member of the board should be a current or former employee of the police department that the board oversees, and a majority of board members should not have a law enforcement background." [Getting It Right]

**3) No member of the CRB should be a current or former employee of the police department that board oversees, and a majority of board members should not have a law enforcement background.**

While it is important to have knowledgeable people on the CRB, the primary purpose of the CRB is to review police actions through the experience and perspective of Eugene's residents, and not to view police actions through the lens of the police. What is considered reasonable among general Eugene residents should be the standard, and not what is or has been considered reasonable from within police department culture.

**4) The CRB shall have the power to request and obtain all evidence (documents, medical records, surveillance footage, and other materials) relevant to an investigation and to request testimony from witnesses and participants in a case.**

Sometimes in a case, evidence or witnesses might be incomplete, or the CRB may wish for answers to additional questions. The Columbia Journal article specifically calls out a civilian external investigative model as a "superior form of civilian oversight."

"By conducting investigations in a manner that makes them appear to be procedurally fair, external-investigative bodies can establish their legitimacy and bridge the credibility gap that a low substantiation rate inevitably creates." [Columbia Journal]

**5) The CRB shall have the power to request and hear testimony from witnesses and participants at the time that they hear the case.**

Currently, the CRB is barred from hearing from those directly affected by an allegation of police misconduct, and as such, miss out on an opportunity to put the facts of the case in context. Also, the impact of the misconduct should be a factor in determining the nature and severity of the misconduct. Note that this would require revision to the bargaining agreement with the union.

**6) The CRB shall be able to consider the entire event, not just the immediate events leading up an incident of possible misconduct, including specifically whether the officer(s) involved initiated or escalated the incident.**

Frequently, there is escalation prior to a use of force, but the CRB is often restricted to the more immediate events and must ignore any ways that a police officer escalated or neglected to de-escalate a situation before the events under review begin. All actions must be put into their proper context if a fair finding is to be made.

**7) CRB members shall receive a stipend for their work.**

One barrier to many in marginalized communities from serving on a time-intensive position, such as on a CRB, is the cost associated with their time. Unlike more economically privileged members of our community, they cannot always afford the time, especially if childcare is required. Certainly remote meetings helps in this effort, but the CRB requires a great deal of work to review and analyze cases prior to meetings. A modest stipend would remove the barrier for many who would otherwise have a lot to contribute to the CRB.

**8) Once the CRB substantiates an allegation of police misconduct, the board's finding of fact will be binding on the Chief of Police who will then determine discipline based on those facts and guided by a pre-negotiated disciplinary matrix. This matrix will have a range of disciplinary actions for each policy violation.**

The purpose of this is to provide more transparency into the discipline process. Currently, the Police Chief determines the discipline independently, and as that information is confidential to the employee's file, the public has no way of knowing that an officer found guilty of misconduct was punished appropriately, according to community standards. Under the matrix system, the public will not know the specific disciplinary action that was taken, but they will at least know the minimum and maximum action that would have been taken, based on the specific misconduct.

**9) The expiration period for a complaint after the incident shall be extended to one year for non-lethal cases and two years for cases involving lethal use of force. The CRB may also reach out to victim's families to inform them about and guide them through the process.**

While there are a handful of cases that currently are dismissed for timeliness, the current 60 days is not reasonable, especially for people from marginalized communities, who often have a more difficult time navigating bureaucracy. Also, people may often require enough time to heal from the trauma caused that by the time they're emotionally ready to file a complaint, the time has expired. This is especially true for families that are grieving a death at the hands of police.

**10) That after the Subcommittee has voted on these motions, all passing motions shall be combined into one motion to present to the Ad Hoc Committee.**

Taking roll call votes eats up a huge amount of time in our meetings. By combining these into one motion, we could have more time for discussion, which generally gets short shrift in our meetings.

**In addition, please refer to the following information (attached as PDF's) provided by Daniel Borson:**

1. Ofer, U. (2016). Getting it Right: Building effective civilian review boards to oversee police. *Seton Hall Law Review*, 46, 1033-1062.
2. Clarke, S. (2009). Arrested oversight: A comparative analysis and case study of how civilian oversight of the police should function and how it fails. *Columbia Journal of Law and Social Problems*, 43(1), 1-49.
3. Attard, B. (2010). Oversight of law enforcement is beneficial—both inside and out. *Pace Law Review*, 30, 1548-1561.