

Portland Police Association



Officer Brian Hunzeker, PRESIDENT
Officer Jim Habkirk, SECRETARY TREASURER

November 5, 2020

Deputy Chief Chris Davis
Portland Police Bureau
1111 SW 2nd Ave
Portland, OR 97204

RE: Grievance No. 2020-12 (Ballot Measure Discipline Process & Standards)

Dear Deputy Chief Davis:

Please find enclosed PPA Grievance No. 2020-12 (Ballot Measure Discipline Process & Standards). The PPA is submitting the grievance to you at Step I of the grievance procedure under Article 22.2 of the labor agreement.

Sincerely,

Brian Hunzeker
President
Portland Police Association

Enclosure

Copy: Portland City Council
Portland City Attorney's Office
Chief Charles Lovell
IPR Director Ross Caldwell
Jerrell Gaddis
Marquis Fudge
Anil Karia

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P.O. Box 11314, Portland, OR 97211
503.225.9760 | ppavigil.org

Portland Police Association



Officer Brian Hunzeker, PRESIDENT
Officer Jim Habkirk, SECRETARY TREASURER

GRIEVANCE

Grievance Number: 2020-12

Date Filed: November 5, 2020

Person Receiving Grievance: Deputy Chief Chris Davis via Email & U.S. Mail

Employee's Name: Portland Police Association

Precinct or Division: Bureau Wide

Statement of Grievance: On or about November 3, 2020, through the enactment of Ballot Measure 26-217, the City unilaterally changed standards of employment related to mandatorily negotiable working conditions without first reaching agreement with the PPA, in violation of Article 3. The mandatorily negotiable working conditions include but are not limited to discipline, discipline standards, discipline procedures, job security, fundamental fairness, due process, employee rights during criminal and administrative investigations, personnel files, and privacy. In addition, the City unilaterally changed past practices related to those same mandatorily negotiable working conditions under Articles 15, 17.1, 20, 21, 22, 61, and 62.

In particular and without limitation, the City unilaterally and impermissibly changed mandatorily negotiable existing conditions and past practices related to the discipline process through a City Charter Change that empowers the new City of Portland Community Police Oversight Board to:

- Investigate complaints;
- Subpoena documents;
- Access police records;
- Compel witness statements, including from police officers;
- Impose discipline, including termination; and

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- Recommend policies focused on community concerns to Police Bureau, City Council.

See Attachment A at p. 9 (Board Powers & Duties under Ballot Title).

The City's conduct in seeking to evade its contractual obligations through voter enacted Charter changes is repetitive and egregious. Indeed, the City is well-aware that it cannot escape its bargaining obligations by sending mandatorily negotiable subjects, such as a new disciplinary system for PPA members, to voters for a Charter change without first reaching agreement with the PPA over those changes.

In 2010, the ERB rejected the City's attempt to evade its bargaining obligations by sending mandatorily negotiable collective bargaining matters to voters. *PPA v. City of Portland*, ERB Case No. UP-05-08, 23 PECBR 856 (2010). The analogy used by the ERB in that case related to pension benefits applies with equal force in this case related to discipline: Could the City send to the voters a City Charter amendment that established a new disciplinary body and system for PPA members, and thereby eliminate the City's obligation to negotiate over discipline standards and procedures with the PPA? "The concept is so antithetical to long-standing law under the PECBA as to border on the absurd; yet, the City's argument in this case is precisely to this effect." The City cannot avoid its PECBA responsibilities by vesting voters with decision-making over mandatory bargaining subjects. *Id.* at 870 n9.

Again in 2016, the City needed reminding of that basic labor law principle. A labor arbitrator that was mutually selected by the City and the PPA overturned a voter-enacted Charter change to the City's pension system. In that case, the arbitrator (herself a former elected official) ruled that the City violated the PPA collective bargaining agreement by sending a Charter change to the voters related to mandatorily negotiable subjects without first reaching agreement with the PPA. The arbitrator wrote, "To put an issue as important as pension benefits before the voters without a full and honest explanation of the effect of the change is unconscionable. And to put an issue that is a mandatory subject of bargaining before the voters without first reaching agreement with the unions constitutes bad faith." *PPA and City of Portland (27th Pay Period Grievance)* at 17-18 (Skratek 2016). That sentiment rings equally true with the City's comprehensive change to the Police Bureau's disciplinary system, which had to

be bargained to agreement with the PPA before being sent to voters for approval.

Articles of Contract Violated: Articles 3, 15, 17.1, 20, 21, 22, 61, and 62.

Remedy Requested: That the City cease and desist from making any changes to existing conditions and past practices regarding the investigation, discipline, and policy making processes without first reaching agreement with the PPA; that the City restore the *status quo*; that the City make all current, former, and retired PPA members whole in all ways, plus interest; that the City close any investigations opened by the new Board, rescind any discipline issued by the new Board, and rescind any policy recommendations made by or imposed in response to the new Board; that the City pay the PPA's attorneys fees and costs for the City's repetitive and egregious contract violations; and that such other relief be awarded as may be appropriate under the circumstances.



Brian Hunzeker, President

Attachment A



Auditor Mary Hull Caballero

Promoting open and accountable government

More Contact Info (<http://www.portlandoregon.gov/auditor/article/564229>)

November 2020 City-Referred Measures

(<http://www.portlandoregon.gov/>)CITY REFERRED MEASURES FOR NOVEMBER 3, 2020 GENERAL ELECTION

Measure 26-217 (<http://www.portlandoregon.gov/#Police>)(Proposed Charter change, Authorizes new, independent police oversight board)

Measure 26-213 (<http://www.portlandoregon.gov/#Parks>) (Local option tax levy, Restore recreation programs, parks, nature, water through five-year levy)

Measure 26-219 (<http://www.portlandoregon.gov/#Water2>) (Proposed Charter change, Authorizes new Water Fund spending; addresses land use)

(<http://www.portlandoregon.gov/>)MEASURE 26-217 PROPOSED CHARTER CHANGE

Important Documents:

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

Resolution No. 37499 (<http://www.portlandoregon.gov/auditor/article/764413>) As amended

[Proposed Charter Change](http://www.portlandoregon.gov/auditor/article/764411) (<http://www.portlandoregon.gov/auditor/article/764411>)

Final Ballot Title (<http://www.portlandoregon.gov/auditor/article/765599>) (as issued by Mult. Co. Circuit Court Judge Lavin)

Final Explanatory Statement (<http://www.portlandoregon.gov/auditor/article/765598>) (as drafted by City of Portland)

Challenge and prior documents:

Original Ballot Title (<http://www.portlandoregon.gov/auditor/article/764412>)(drafted by City Attorney's Office)

Ballot Title Challenge (<http://www.portlandoregon.gov/auditor/article/764900>) (Received from petitioner Gregory Horner)

Status:

7/29/20: Resolution passed by City Council to refer measure to November 3, 2020 General Election ballot.

7/30/20: Ballot title filed with City Elections Office. Seven-day ballot title challenge period begins.

(<http://www.portlandoregon.gov/auditor/article/764409>) An elector may file a petition for review of the ballot title with the Multnomah County Circuit Court no later than 5:00 p.m. on August 10, 2020.

8/10/20: Elections Office receives ballot title challenge (<http://www.portlandoregon.gov/auditor/article/764900>)from registered voter. Schedule of Multnomah County Circuit Court hearing on petition to be determined.

8/31/20: Final stipulated order of ballot title (<http://www.portlandoregon.gov/auditor/article/764412>)issued by Multnomah County Circuit Court Judge Lavin to City and final explanatory statement (<http://www.portlandoregon.gov/auditor/article/765598>)filed with City Elections Office.

9/1/20: City Elections Office filed measure with Multnomah County Elections Office to appear on Nov. 3, 2020 General Election ballot. County certifies measure to ballot and assigned measure 26-217.

(<http://www.portlandoregon.gov/>)MEASURE 26-213 LOCAL OPTION TAX LEVY

Important Documents:

Ballot Title Caption: Restore recreation programs, parks, nature, water through five-year levy

Resolution No. 37498 (<http://www.portlandoregon.gov/auditor/article/764115>)

Ballot Title (via City Attorney) (<http://www.portlandoregon.gov/auditor/article/764117>)

All Exhibits (<http://www.portlandoregon.gov/auditor/article/764121>)

Status:

7/22/20: Resolution passed by City Council to refer measure to November 3, 2020 General Election ballot.

7/23/20: Ballot title filed with City Elections office. Seven-day ballot title challenge period begins

(<http://www.portlandoregon.gov/auditor/article/764134>). An elector may file a petition for review of the ballot title with the Multnomah County Circuit Court no later than 5:00 p.m. on August 3, 2020.

8/4/20: No challenges to the ballot title were received by the deadline. Notice of Measure Election (<https://multco.us/file/91375/download>) filed with Multnomah County Elections to appear on the November 3, 2020 ballot and assigned measure number 26-213.

(<http://www.portlandoregon.gov>)MEASURE 26-219 PROPOSED CHARTER CHANGE

Important Documents:

Ballot Title Caption: Authorizes new Water Fund spending; addresses land use.

Resolution No. 37495 (<http://www.portlandoregon.gov/auditor/article/764112>)

[Proposed Charter Change](http://www.portlandoregon.gov/auditor/article/764114) (<http://www.portlandoregon.gov/auditor/article/764114>)

Final Ballot Title Order (<http://www.portlandoregon.gov/auditor/article/765691>) (via Mult. Co.Circuit Court)

Explanatory Statement (<http://www.portlandoregon.gov/auditor/article/765693>)(as drafted by City)

Challenge and prior documents:

Ballot Title (<http://www.portlandoregon.gov/auditor/article/764113>) (original as drafted by City Attorney)

Ballot Title Challenge Received (<http://www.portlandoregon.gov/auditor/article/764758>) (via petitioners Jones, Craford, and Fruits)

Status:

7/22/20: Resolution passed by City Council to refer measure to November 3, 2020 General Election ballot.

7/23/20: Ballot title filed with City Elections office. Seven-day ballot title challenge period begins

(<http://www.portlandoregon.gov/auditor/article/764135>). An elector may file a petition for review of the ballot title with the Multnomah County Circuit Court no later than 5:00 p.m. on August 3, 2020.

8/4/20: City Elections Office receives ballot title challenge (<http://www.portlandoregon.gov/auditor/article/764758>) from registered voters. Schedule of Multnomah County Circuit Court hearing on petition to be determined.

9/1/20: City Elections Office receives final ballot title as ordered by Multnomah County Circuit Court Judge Souede.

9/2/20: City Elections Office receives explanatory statement (<http://www.portlandoregon.gov/auditor/article/765693>)from City Attorney and Commissioner Fritz.

9/3/20: City Elections Office files measure to appear on November 3, 2020 General Election ballot with Multnomah County Elections. County

certifies measure and assigns measure 26-219. (<https://multco.us/file/91724/download>)

RESOLUTION No. **37499 As Amended**

Refer a Charter Amendment to voters at the November 3, 2020 General Election to authorize a new police oversight system. (Resolution)

WHEREAS, the cry for and community interest in independent police accountability has never been more clearly heard than in the past 60 days of protesting; and

WHEREAS, we have a historic opportunity to reject violence and discrimination in policing through a transparent, empowered and independent police oversight system; and

WHEREAS, the mission of the City of Portland Community Police Oversight Board (Board) is to independently investigate Portland Police Bureau sworn employees and supervisors thereof promptly, fairly, and impartially, to impose discipline as determined appropriate by the Board, and to make recommendations regarding police practices, policies and directives to the Portland Police Bureau and with a primary focus on community concerns; and

WHEREAS, the communities most impacted by disproportionate policing and systemic racism, and those who have experienced mental illness, addiction, or alcoholism, have oftentimes been excluded from the systems designed to hold police accountable and it is of critical importance that this new system put the voices of these communities at the forefront, and current and former law enforcement officers have historically been overrepresented on these boards; and

WHEREAS, to conduct the critically important work of this Board a mandatory floor for its budget is essential to ensure it can successfully execute its mission; and

WHEREAS, the ability to exercise independent judgment from other city government bureaus and elected officials is essential to the fairness and objectivity of the Board's proceedings; and

WHEREAS, the parameters of this Board's authority will remedy past police oversight systems' work that has been impacted by an inadequate ability to collect evidence, interview witnesses, effect police policies and directives, and include sufficient transparency; and

WHEREAS, certain actions of sworn members of the Portland Police Bureau and their supervisors are of paramount importance and concern to the community. Furthermore, many of the most harmful actions by police have disproportionately impacted some communities more than others. Thus it is critical that the Board is tasked with investigating and reviewing actions involving deadly force, bias, violations of federal and state constitutional rights, complaints of force that result in injury, and other matters the Board deems of great consequence for them to investigate.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council will submit a Measure for an Act creating Section 2-1000 of the City Charter to authorize a new police accountability system in accordance with language in Exhibit A, to the voters of the City of Portland in Multnomah County, Clackamas County and Washington County at the November 3, 2020 General Election; and

BE IT FURTHER RESOLVED THAT the City Council submits the ballot title contained in Exhibit B, consisting of a caption, question and summary, to be contained in the November 3, 2020 General Election Ballot; and

BE IT FURTHER RESOLVED THAT the City Council directs the Auditor to publish the ballot title as shown in Exhibit B in accordance with City Code; and

BE IT FURTHER RESOLVED THAT the sponsoring elected officials may submit an explanatory statement to the City Auditor for publication in the voters pamphlet; and

BE IT FURTHER RESOLVED THAT the City Auditor is directed to forward to the County Elections Office all material necessary to place this measure on the November 3, 2020 Election Ballot.

Adopted by the Council: **July 29, 2020**

Commissioner: Jo Ann Hardesty

Prepared by: D. Bradley

Date Prepared: 7/29/2020

Mary Hull Caballero

Auditor of the City of Portland

By *CPhillips*

Deputy

EXHIBIT A**Proposed Charter Changes****PREAMBLE****Chapter 2: Government****Article 10: Community Police Oversight Board**

Section 2-1001. City of Portland Community Police Oversight Board. A Board is hereby authorized and shall be established upon compliance with any legal obligations the City may have under the Public Employees Collective Bargaining Act, other state and federal laws, and upon adoption by City Council of an implementing Ordinance. The mission of the City of Portland Community Police Oversight Board (Board) is to independently investigate Portland Police Bureau sworn employees and supervisors thereof promptly, fairly, and impartially, to impose discipline as determined appropriate by the Board, and to make recommendations regarding police practices, policies and directives to the Portland Police Bureau and with a primary focus on community concerns. The final name of this Board will be established by City Code.

Section 2-1002. Nature of the Board. Board members shall be appointed by approval of Council to a term of years established in City Code. Members may not be removed from the Board prior to the completion of their term except for cause. Successors to an unexpired term shall be appointed by approval of Council for the remainder of the term. The Board shall make provisions to ensure its membership includes representation from diverse communities including those from diverse communities and with diverse lived experiences, particularly those who have experienced systemic racism and those who have experienced mental illness, addiction, or alcoholism.

Section 2-1003. Restrictions on Board Membership. People currently employed by a law enforcement agency and their immediate family members are not eligible for service on the Board. People who were formerly employed by a law enforcement agency are not eligible for service on the Board.

Section 2-1004. Budget of the Board Funding for the Board shall be proportional to be no less than 5% of the Police Bureau's Annual Operational Budget.

Section 2-1005. Professional Staff of the Board The Board shall hire a Director to manage the professional administrative staff and professional investigators, and to make operational and administrative decisions. The Director is a "Bureau Director" for purposes of Charter section 4-301 and shall be appointed by, and serve at the will and pleasure of, the Board. Professional staff of the Board, other than the Director, shall be appointed by and serve under the direction of the Director as classified employees.

Section 2-1006. Independent Authority The Board shall have authority to exercise independent judgment in performing all legally assigned powers and duties. The Mayor, City Council, Auditor, and City departments, bureaus and other administrative agencies shall not interfere in the exercise of the Board's independent judgment. The physical office of the Board shall be located outside of a Portland Police Bureau facility.

Section 2-1007. Powers of the Board

- (A) The Board shall have the power to the full extent allowed by law to receive and investigate complaints including the power to subpoena and compel documents, and to issue disciplinary action up to and including termination for all sworn members and the supervisors thereof within the Portland Police Bureau.
- (B) The Board shall have the authority to make policy and directive recommendations to the Portland Police Bureau and City Council. The Portland Police Bureau shall consider and accept or reject all policy or directive recommendations made by the Board. If the Portland Police Bureau rejects a policy or directive recommendation, then at the request of the Board, City Council must consider and vote to accept or reject the policy recommendations received from the Board. Council's decision will be binding on the Portland Police Bureau.
- (C) The Board shall have the authority and ability to gather and compel all evidence, to access all police records to the extent allowed by federal and state law, and the ability to compel statements from witnesses including officers. The Board shall make provisions for regular and open meetings, public transparency, and reporting on the Board's activities. One of the goals of the Board will be to remove barriers for Board members to fully participate in the work of the Board.
- (D) The Board shall have the power to compel sworn members of the Portland Police Bureau and their supervisors to participate in investigations and to completely and truthfully answer all questions. Refusal to truthfully and completely answer all questions may result in discipline up to and including termination.

Section 2-1008. Duties of the Board. The board shall have the authority to investigate certain Police actions, including but not limited to;

- (A) All deaths in custody and uses of deadly force.
- (B) All complaints of force that result in injury, discrimination against a protected class, violations of federal or state constitutional rights.
- (C) The Board may investigate other complaints or incidents of misconduct as they see fit or as mandated by City Code.

Section 2-1009. Severability. For the purpose of determining constitutionality, every section, subsection and subdivision thereof of this Section, at any level of subdivision, shall be evaluated separately. If any section, subsection or subdivision at any level is held invalid, the remaining sections, subsections and subdivisions shall not be affected and shall remain in full force and effect. The courts shall sever those sections, subsections and subdivisions necessary to render this Section consistent with the United States Constitution and with the Oregon Constitution. Each section, subsection and subdivision thereof, at any level of subdivision, shall be considered severable, individually or in any combination.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GREGORY HORNER,
Petitioner,

Case No. 20CV27395
The Honorable Andrew Lavin

v.

ORDER

TRACY REEVE, City Attorney for the
City of Portland, a municipal corporation,
Respondent.

This matter came before the Court by briefing of the parties. Petitioner Gregory Horner appeared *pro se*. Respondent appeared by and through its attorney, Caroline Turco. The parties, having conferred and stipulated to the following language, requests the Court sign this Order allowing for such language to be used on the ballot.

Ballot Title

Community Police Oversight Board

CAPTION

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

QUESTION

Shall Charter be amended to authorize new, independent community police oversight board to investigate complaints against Portland Police, impose discipline?

SUMMARY

The measure adds a Charter section authorizing an independent police oversight board appointed by City Council.

Board Membership:

- Members from diverse communities, particularly those with lived experience of systemic racism and those who have experienced mental illness, addiction, or alcoholism.
- Shall not include current law enforcement employees and immediate family members or former law enforcement employees.
- Board size, members' terms, term limits to be determined by City Code.

Board Budget:

- Shall be no less than 5% of the Police Bureau's operating budget.

1 Board Staff:

- 2 • Board shall appoint a Director who serves at the pleasure of Board and who appoints staff and investigators.

3 Board Powers and Duties:

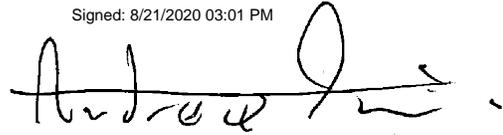
- 4 • Investigate all deaths in custody, uses of deadly force, complaints of force causing injury, discrimination against protected classes, constitutional rights violations
- 5 • Investigate complaints
- 6 • Subpoena documents
- 7 • Access police records
- 8 • Compel witness statements, including from police officers
- 9 • Impose discipline, including termination
- 10 • Recommend policies focused on community concerns to Police Bureau, City Council
- 11 • Powers restricted by State, Federal laws
- 12 • Remove barriers for members' participation

13 Other provisions to be established by City Code.

14 **The Court, having been advised of the positions of the parties, HEREBY ORDERS**

15 **that the parties' proposed language as outlined in this Order may be used on the ballot.**

Signed: 8/21/2020 03:01 PM



16 **Circuit Court Judge Andrew M. Lavin**

17 Presented by:

18 /s/ Caroline Turco

19 Caroline Turco, OSB No. 083813
20 Deputy City Attorney
21 Office of the City Attorney
22 1221 SW 4th Avenue, Suite 430
23 Portland, OR 97204
24 Tele: (503) 823-4047

1
2 **CERTIFICATE OF SERVICE AND COMPLIANCE WITH UTCR 5.100**

3 I hereby certify that I served the foregoing RESPONDENT CITY OF PORTLAND'S

4 ORDER on:

5 Gregory Horner
6 *weneedainquisitor@protonmail.com*
7 *Pro Se Petitioner*

8 on August 19, 2020, by causing a full, true and correct copy thereof to be delivered by the
9 following method, and there is no objection to this order under UTCR 5.100(1)(b):

- 10 by e-filing using the court's Odyssey File and Serve system.
- 11 by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal
12 Service in Portland, Oregon.
- 13 by **hand delivery**.
- 14 by **facsimile transmission**.
- 15 by **email**.

16 DATED: August 19, 2020

17 Respectfully submitted,

18
19 /s/ Caroline Turco
20 Caroline Turco, OSB No. 083813
21 Deputy City Attorney
22 Email: caroline.turco@portlandoregon.gov
23 Of Attorneys for Respondent
24
25
26

If passed by voters, this ballot measure would add a section to the City Charter that authorizes the creation of a new police oversight board. The proposed measure sets forth the powers of the new board including the authority, to the full extent of the law, to investigate complaints and to issue disciplinary action against sworn police officers and their supervisors, independence from elected offices and city bureaus, and a budget guarantee to assure resources are available to complete the board's work. The proposed oversight board would also be authorized to directly influence the police bureau's policies and directives.

If passed, the ballot measure would create a framework in the City Charter for the new oversight board. However, the steps below would need to be completed before the board could begin operations.

1. The City Council would adopt an implementing ordinance to create a commission charged with fleshing out the new board's operations.
2. The commission would complete a variety of tasks – after incorporating community feedback and consistent with the framework in the City Charter – including drafting: a) administrative rules for the board; b) an organizational chart for the board; and c) a plan to transition from the City's existing Independent Police Review to the new board.
3. The commission would then summarize its work in a series of proposed City code changes and send those changes to the City Council for adoption. The commission would then be dissolved.
4. The City will comply with any legal requirements it may have.
5. The new police oversight board could begin operations.