

Order 143A-17/18

Motion to amend by dividing Civil Service Amendment from Amendments relating to the Police Citizen Subcommittee (new Order 143A): 9-0 on 2/5/2018

Passage of Amendments relating to the Police Citizen Review Subcommittee as an Emergency:
2/5/2018 Effective

2/5/2018

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
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CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
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NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 2 ADMINISTRATION
RE: POLICE CITIZEN REVIEW SUBCOMMITTEE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 2, Article IV., Sections 2-48, 2-49, 2-54, and 2-76 of the Portland City Code are hereby amended to read as follows:*

Sec. 2-48. Composition.

(a) The Civil Service Employment Subcommittee of the Civil Service Commission shall consist of three (3) commissioners and one (1) alternate who shall serve in the absence of any commissioner.

(b) The police citizen review subcommittee shall consist of seven (7) commissioners ~~and one (1) alternate~~ who shall serve in the absence of any commissioner.

Sec. 2-49. Qualifications.

(a) *Qualifications of commissioners.* Every civil service commissioner and alternate shall be a resident of the City of Portland ~~and shall be of good moral character~~. In addition, the following persons shall not be eligible for appointment to, or service on the Commission:

- (1) Any present or former employee of the city, who was employed by the city within the previous ten (10) years;

(2) Any present or former member of the City Council, who has held that position in the previous ten (10) years;
or

(3) Any civil service commissioner who has completed three (3) consecutive full terms of three (3) years as provided in Chapter 2, Article III.

(b) Additional subcommittee eligibility requirements:

(1) *Employment subcommittee.* The following persons shall not be eligible to serve on the employment subcommittee:

any relative of a present member of the police or fire departments.

(2) *Police Citizen Review Subcommittee.* In order to ensure an objective and unbiased audit of the police department's internal affairs investigation process, any applicant for service on the citizen review subcommittee shall be disqualified from serving on said subcommittee if:

a. any member of the applicant's immediate family is or has been a Portland police officer in the previous ten (10) years;

b. the applicant or any member of his or her immediate family has been arrested by any member of the Portland police department within the previous ten (10) years, or has had the final disposition of any criminal proceedings resulting from such an arrest within the previous ten (10) years, whichever is longer;

~~e. the applicant or any member of his or her immediate family has filed a complaint with the internal affairs unit of the Portland police department alleging excessive force, civil rights violations or conduct on the part of a police officer that would constitute a criminal offense within the previous ten (10) years; and~~

d. the applicant or any member of his or her immediate family has brought suit against the

City of Portland, the Chief of Police, the police department or any individual police officer for a cause of action arising out of an officer's performance of his or her duties; within the last ten (10) years, or has had such a suit finally disposed of within the previous ten years, whichever is longer.

- e. "Immediate family" as used herein shall mean and include spouse, domestic partner, children, grandchildren, parents, grandparents, and siblings.

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Sec. 2-54. Officers.

Each subcommittee of the civil service commission shall annually elect one (1) of its members as the chair. Each subcommittee may, at its option, also elect one (1) of its members as the vice chair, to serve in the absence of the chair. The Director of Human Resources or his or her designee shall serve as secretary to the employment subcommittee and shall furnish any necessary administrative assistance. The corporation counsel or his or her designee shall serve as secretary to the police citizen review subcommittee and shall furnish any necessary administrative assistance to that subcommittee.

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Sec. 2-76. Functions and duties.

(a) *Duties.* The duties of the police citizen review subcommittee are as follows:

- (1) To determine whether police investigations into citizens' complaints by members of the public against police officers are thorough, objective, fair and timely by auditing the police department's internal affairs' unit investigative methods and procedures;
- (2) To report in writing to the City Manager periodically, but no less than annually beginning in January 2003, as follows:
 - a. on the subcommittee's determination as to the

thoroughness, objectivity, fairness and timeliness of the police internal affairs' investigation of citizen complaints against police officers;

b. a statistical analysis of all cases reviewed, including an analysis of trends and patterns of complaints or results of investigations of complaints; and

cb. any recommendations and/or proposals for improvements or modifications in the police internal affairs investigative process, policies or training, and for enhancing public confidence in the methods and process of investigation of citizen complaints against police officers.

(3) To hold a public hearing at least annually to receive comments upon the police citizen complaint process.

(4) Although it shall have access to individual internal affairs reports in order to review investigative methods and procedures, all reports of the subcommittee shall be done in such a manner that particular complainants, witnesses and officers are not personally identifiable.

(5) Reports of the subcommittee shall be made available to the public to the extent consistent with the State Freedom of Access Act, 1 M.R.S.A. Sec. 401 et.seq.

(6) To make suitable procedural rules, from time to time, for the conduct of its duties. Proposed rules shall be submitted to the City Council and shall become effective only when approved by the City Council. All such rules shall be recorded in the office of the City Clerk.

~~(b) — Complaints to be reviewed. Effective with complaints completed, as defined in subsection (3) immediately below, on or after January 1, 2002, the subcommittee shall review the internal affairs investigation of the following citizen complaints against police officers:~~

1. complaints alleging excessive force;

2. complaints alleging civil rights violations;

3. complaints alleging conduct that would constitute a criminal offense; and

~~4. any other complaint which the subcommittee deems necessary to review in order to carry out its duties hereunder.~~

In addition to the foregoing, the subcommittee shall review any complaint upon request of the complaining party, subject to the January 1, 2002 completion date.—The subcommittee shall review all completed internal affairs investigations of citizen complaints.

(c) Timing of review. All subcommittee reviews of citizen complaints shall take place only after final disciplinary action has been taken and all appeals exhausted or the case has been finally closed with no disciplinary action taken.

(d) Notification of review. The subcommittee shall notify the citizen complainant, in writing, of the subcommittee's review and any findings made by the subcommittee regarding the thoroughness, objectivity, fairness and timeliness of the internal affairs investigation.

(e) Scope of authority. The subcommittee shall conduct its duties solely to determine the thoroughness, objectivity, fairness and timeliness of the police department's internal affairs' methods and procedures in regard to citizen complaints against police officers, and the subcommittee shall have no power or authority to subpoena or call witnesses nor to impose or modify any disciplinary action, or lack of action, against any police officer. The subcommittee shall make no recommendations nor offer any findings or comments relative to any disciplinary action, or lack of action, against any officer.

(f) Training. Prior to assuming their duties hereunder, subcommittee commissioners shall attend training by city staff as to the subcommittee's duties and responsibilities, applicable state and local law and regulations, issues relevant to the conduct of the citizen review function, accepted police practices and the department's internal affairs investigation process. Such training shall be provided by the city at no cost to the subcommittee members.

(g) Resources. To facilitate the effectiveness and objectivity of the police citizen review subcommittee, the city shall make available to the subcommittee the services of a

technical advisor, as needed by the subcommittee. The technical advisor may be used for the purposes of training; briefing the subcommittee on accepted police practices, applicable law and issues relevant to the discharge of the citizen review function; and educating the subcommittee on aspects of the internal investigation process. The advisor shall be retained by the City Manager after consultation with the Chief of Police, representatives of the police unions and the subcommittee chairperson. Any person who presently maintains any business or professional affiliation with the police department shall be disqualified from serving as technical advisor.

The city shall further make available all internal affairs investigation reports and police documents relevant to such investigations which are necessary for the subcommittee to conduct its duties hereunder. In no case shall the subcommittee have access to police officers' personnel records except to the extent that they are part of an internal affairs investigation report or are considered a public document under the state Freedom of Access law.