



Community Oversight Advisory Board Meeting
Thursday, January 28, 2016
5:30-8:30 PM
Ambridge Event Center
Sellwood Room
1333 NE MLK Jr. Blvd.
Portland, OR 97213

Draft Minutes

In attendance:

Paul Meyer
Bud Feules
Tashia Hager
Philip Wolfe
Jimi Johnson
Ime Kerlee
Sharon Meieran
Tom Steenson
Michele Hughes
Myrlaviani Rivier
Rochelle Silver
Rabbi Michael Cahana – arrived 5:57pm
Catherine Gardner (via livestream)

Meeting commenced at 5:30 PM

1. Welcome, housekeeping

2. General Public Comment

Dan Handleman wanted everyone to watch his public testimony.

Kif Davis was upset that Barry Joe Stahl was still in jail. Kif was frustrated with how Kathleen responded to his public testimony on 01/11/16.

Nancy Newell supports the work of Kif and photo journalism in general.

Philip announced that he will be stepping down from the Data Systems, Use of Force, and Compliance Subcommittee (DSUFCS) so he can join the Accountability Subcommittee.

Tom Steenson said the COAB passed a recommendation to eliminate the 48-hour rule. Since then the union has eliminated the 48-hour rule in their contracts for lieutenants. OIR has also recommended that PPA eliminate the 48-hour rule. He urged the City and the Portland Police Bureau (PPB) to reconsider their position.

Myrlaviani said she is leaving the Mental Health Crisis Response Subcommittee (MHCRS) to join DSUFCS and is looking forward to working with that group again.

3. Policy Recommendations

The recommendations are not meant to be policy but rather to guide and inform policy.

- **102215-5—SPECIFIC PROHIBITIONS ON THE USE OF FORCE: Prohibitions against the use of specific types of force should be explicitly spelled out, both for absolute prohibitions and prohibitions except in very limited circumstances.**

Public comment:

Dan said to make sure not to leave language too vague.

Kif backed up what Dan said. He has had experiences with police officers using force against him for filming homeless sweeps. He suggested creating policy to protect local citizen journalists.

Discussion:

Tom highlighted two points where there has been opposition from COAB police advisors:

1. Concerning section D - Intentional strikes to body parts: Current policy prohibits impact strikes without some kind of justification. An officer's feet, knees, elbows shouldn't be included. COAB added these because body parts can be just as lethal as using baton.

Opposition: Impact weapon is something picked up; it's not a body part. Yes, a kick to the head could cause deadly results. But what about considering the size of an officer and the size of the suspect? It's important to take in the totality of the circumstances; the recommendation glosses over this.

2. Section H: use of neck holds, chokeholds, etc. – absolute prohibition. PPB doesn't teach the use of these. Since it isn't taught and it's deadly, absolute prohibition is recommended.

Dr. Meieran thought the descriptions were somewhat limiting. Totality of the circumstances does take into account contextual details. Seems this would be more inclusive than a specific list. They think the totality of circumstances is more protective of people and a fairer way to approach the standard.

Rochelle noted that sometimes after an encounter there is only the officer left to tell the story; officers can couch totality of circumstances any way they want.

Dr. Meieran agreed, but in an investigation the totality of circumstances will most likely provide additional objective findings.

Philip didn't think the size of the officer matters; the recommendation is about the community. Officers can use totality of circumstances to escalate.

Paul had conversations with officers in Seattle and New Orleans, which confirmed the cons Paul wrote up.

Rabbi Cahana's issue is with the word "intentional". It prohibits an officer from protecting themselves. With this recommendation, there is almost nothing left they can do.

Tom said there has been no misrepresentation of what other jurisdictions have done. New Orleans specifies body parts. With James Chasse, there were 23 fractions total – no weapons were used. Not a single officer was subjected to discipline for excessive use of force.

Tashia explained she is a 5'4" police officer. She explained that if she were told not to use body parts, she would have to use something and that would probably end up being her gun. This recommendation isn't good policy. It is not safe for some officers, or the community. Totality of circumstances is the legal standard. Our policy is more restrictive than the legal standard. There has to be some way that policy addresses differences in an officer's ability to use force.

Rochelle noted that in policy, feet, knees, etc. can be used when deadly force is in play but not when deadly force isn't justified.

Tashia said she was talking about something that escalated prior to the point of it reaching deadly force. For example, if an officer can use a fist to resolve an incident before it gets to a deadlier point, everyone benefits.

Sharon agreed and pointed out that a kick in the groin is unlikely to be deadly.

Michele pointed out that the Oregon Statute does not list the human body as a weapon.

Paul, concerning pages 38-39: any use of these tools is a use of deadly force. What's more dangerous than deadly force? If this is the only opportunity someone has to protect someone else's life, he thinks it is irresponsible to take this option away.

Myrlaviani said that in a deadly force situation, she would think there is not a lot of time to make decisions. She would like to learn more about decisions made during conflicts and the time it takes.

Paul said it could be a microsecond.

Myrlaviani said the totality of circumstances means an officer would do whatever they needed to do in a deadly force situation.

Paul agreed. This recommendation prohibits the use of these actions in the majority of cases.

Myrlaviani said they could see the “except when” in the language and it seems like officers are covered. The level of review in a deadly force incident will be extensive.

Sharon Meieran offered a amendment (considered unfriendly by Tom Steenson) in section D: Strike “or with an officer’s feet, knees or elbows.”

Rabbi Cahana seconded the motion.

d.) Intentional strikes to the head, neck, throat, heart, kidney, groin and spine with any authorized impact weapon, such as a baton, ~~or with an officer’s feet, knees, fists, and elbows~~ can be deadly force. Therefore, such intentional strikes are prohibited, except when under the facts and circumstances deadly force is authorized.

Yes: Cahana, Feules, Johnson, Meieran, Gardner

No: Rivier, Silver, Steenson, Wolfe

Abstained: Kerlee

Motion fails 5-4 with one abstention. (This amendment was considered a major action and therefore a quorum of the COAB was needed for it to pass.)

Philip clarified that although the friendly amendment failed, the board could still vote on the original recommendation.

Kathleen asked if anyone wanted to discuss section h):

The use of neck holds, choke holds, and carotid holds. This is an absolute prohibition.

Rochelle, concerning neck holds, etc.: if isn’t taught, it shouldn’t be used.

Motion to accept original recommendation 102215-5 made by Philip Wolfe

Seconded: Myrlaviani Rivier

Yes: Bud Fueless, Jimi Johnson, Ime Kerlee, Myrlaviani Rivier, Rochelle Silver, Tom Steenson, Philip Wolfe, Catherine Gardner

No: Rabbi Cahana, Sharon Meieran

Motion passes 8-2

- **102215-6—ANTECEDENTS TO THE USE OF FORCE: Before any use of force, an officer must, if time, safety, and the facts and circumstances permit, provide a verbal warning of the type of force to be used. If such a verbal warning is issued, the officer must provide the subject with time to comply.**

Tom was unopposed.

Public Comment/Discussion:

Kif Davis had lots of comments about police protecting themselves. He thinks they should be trained to not have to use their guns.

Charles Johnson, concerning “antecedents to use of force.” There needs to be an evaluation of risk to the public – is this kind of force being used on someone who has just bought a pack of skittles and ice tea? Or is this being applied to someone who is suspected of murder?

Tom felt it was covered in the recommendation.

Motion to accept recommendation 102215-6 made by Philip Wolfe.

Seconded: Rochelle

Yes: Bud Fueless, Jimi Johnson, Ime Kerlee, Myrlaviani Rivier, Rochelle Silver, Tom Steenson, Philip Wolfe, Catherine Gardner, Rabbi Cahana, Sharon Meieran

Motion passes 10-0

- **102215-7—OTHER REQUIREMENTS: Each officer present at an encounter where the use of force is possible or underway has the responsibility of making an individual determination regarding the use of force.**

Tom said the provisions are best practices. Two thirds of these already appear in PPB’s policy; they were compiled in a clearer format and incorporate language objectively reasonable and proportionate from previous recommendations.

Public Comment/Discussion:

Charles Johnson thought that officers should be prohibited from using force in general; language implies that some officers think their job is to show up and apply force. He thought

there is a need to frame the recommendation in the general conversation of service; high violence crimes are relatively rare; people in distress are more common. How are officers service providers rather than force providers? It is important to frame the discussion in terms of public service.

Tom and Kathleen agreed with Charles.

Motion to accept recommendation 102215-7 made by Jimi Johnson.

Seconded: Myrlaviani Rivier

Yes: Bud Fueless, Jimi Johnson, Ime Kerlee, Myrlaviani Rivier, Rochelle Silver, Tom Steenson, Philip Wolfe, Catherine Gardner, Rabbi Cahana, Sharon Meieran

Motion passes 10-0

- **102215-8—MISCELLANEOUS (See packet for further explanation; details specific word change recommendations and clarifications.)**

Public Comment/Discussion:

Tom explained that the last sentence, about supervisors suggesting to officers what language might help them comply with policy, might skew the officer's version of what might be true. It should be a general recommendation, no specific language.

Bud asked if COAB could make the definition of what is objectively reasonable in PPB policy.

Tom said COAB wasn't concerned with the law necessarily; the board looks at best practices and what would be best for City of Portland.

Paul mentioned that COAB needs to be careful what it limits – if the U.S. Supreme Court has said Portland must do something, then they need to comply.

Rochelle said this language is in the New Orleans policy, which was approved by the U.S. Department of Justice (DOJ). In part, that language was taken from New Orleans policy.

Rabbi Cahana asked for clarification on language.

Myrlaviani asked if the DOJ would comment.

Jared Hager, Assistant Attorney for the DOJ, said the totality of circumstances would consider facts and circumstances.

Tom said the subcommittee used "facts and circumstances" as that's the language of the

Supreme Court.

Bud thought the difference was about perception, which fits into totality of circumstances, not facts and circumstances.

Sharon said she didn't see a significant difference.

Public Comment:

Dan Handelman said policies can be more specific than what the court says. This means police can be held accountable in terms of policy, not just the law.

Charles Johnson was glad to see the term "aerosol restraints" – instead of "weapons". It would be great to have an honest discussion on pepper spray and if it's a weapon. On training: importance of maintaining good public records in police reports. He hopes COAB will engage around issues concerning what community thinks is an effective police report.

Philip said putting facts and circumstances together is more inclusive. Hunches and such could be incorrect.

Motion to accept recommendation 102215-8 made by Phillip.

Seconded: Rabbi Cahana

Yes: Bud Fueless, Jimi Johnson, Ime Kerlee, Myrlaviani Rivier, Rochelle Silver, Tom Steenson, Philip Wolfe, Catherine Gardner, Rabbi Cahana, Sharon Meieran

Motion passes 10-0

- **111215-1—All Directives Related to Use of Force... should be revised to be clear, comprehensive and consistent with the COAB's anticipated recommendations regarding Directive 1010.00 (Use of Force) and previous recommendation regarding Directive 1010.10 (Post Deadly Force Procedures). (See packet for further explanation.)**

Tom said this is a housekeeping recommendation. Current policies are confusing, and suggests they change.

Public Comment:

Charles Johnson warned that if public sentiment is growing in suspicion, he hopes PPB reconsiders language like "electronic control system" for Tasers. Relations would be improved if PPB used different language.

Nancy said the public is only now learning about what Tasers do to people.

Tom said COAB is asking for a comprehensive up-to-date list of weapons.

Motion to accept recommendation 111215-1 made by Phillip Wolfe.

Seconded: Sharon Meieran

Yes: Bud Fueless, Jimi Johnson, Ime Kerlee, Myrlaviani Rivier, Rochelle Silver, Tom Steenson, Phillip Wolfe, Catherine Gardner, Rabbi Cahana, Sharon Meieran

Motion passes 10-0

- **111215-2—Revise Directive 1030.00, Baton Use, to Clarify When the Use of Police Batons Is Authorized (See packet for further explanation.)**

Tom said the alternative language is broader. He thinks COAB should vote on the recommendation as is and let the DOJ see the two alternatives.

Paul suggested being consistent with what Seattle does. Portland is nowhere near the size, but he recommends keeping things simple so community members aren't confused.

Philip said, concerning page 57, that the deaf community doesn't use the term "hearing impaired." It is considered a pathological, derogatory term. It is more appropriate to use "deaf" or "hard of hearing" and he would like that language to be changed.

Tom agreed, saying it would be more than a friendly amendment, and apologized for using the term.

Friendly amendment: Substitute "deaf or hard of hearing" for "hearing impaired."

Public Comment:

Charles Johnson said he was leaning towards passing this with as many clarifications and informative points as possible.

Rochelle said COAB isn't writing the recommendations. The PPB will, in consultation with the DOJ. She just wants to be sure that ideas here are incorporated in policy then.

Tom thinks batons are only issued on special occasions. The Data Systems, Use of Force, and Compliance Subcommittee (DSUFCS) has not looked at those weapons.

Paul specified PPB uses a straight stick baton in crowd control situations.

Motion to approve recommendation 111215-1 by Sharon Meieran.

Seconded: Philip Wolfe

Yes: Bud Fueless, Jimi Johnson, Ime Kerlee, Myrlaviani Rivier, Rochelle Silver, Tom Steenson, Philip Wolfe, Rabbi Cahana, Sharon Meieran

Abstained: Catherine Gardner

Motion passes 9-1-0

(Sharon Meieran left at 8:09 PM.)

- **111215-3—Revise Directive 1040.00, Aerosol Restraints, to Clarify When the Use of Aerosol Restraints [Pepper Spray] Is Authorized (See packet for further explanation.)**

Kathleen asked what the difference is between aggressive versus aggravated resistance on the use of force continuum.

Aggressive resistance: actively attacking the officer aggravated. Their acts cause the officer to fear for imminent death or injury to themselves or others. This is the most serious threat to law enforcement or another person.

Paul said that if used in crowd control, a supervisor must approve first. They are used when there is a threat of physical injury.

Myrlaviani asked if the Multnomah County is bound by PPB policy.

Paul did not know.

Myrlaviani asked if this covers the possibility of a child being sprayed.

Tom said there are two different local law enforcement agencies. A Multnomah County sheriff has different policies than a PPB officer.

Paul said there will be one officer in charge of all officers on the scene; they have a discussion beforehand on what types of force would be used.

Tom said there is policy on crowd control COAB has not yet reviewed, but that would be the place to do make changes.

Philip suggested that if another agency's officer arrives to support PPB, then PPB policy should be followed by all involved.

Myrlaviani proposed a friendly amendment: if and when an officer from a different jurisdiction

arrives to help an officer from a different agency, then the latter's policy would be used.

Rochelle pointed out there may already be an intergovernmental agreement signed. Maybe before COAB puts this in the pepper spray recommendation, it should look into that first.

Myrlaviani removed the friendly amendment.

Public Comment:

Charles mentioned the 1999 World Trade Organization march in Seattle. Does Portland know what is in their pepper spray? It took a law suit and ten years to get the ingredients used in Seattle. Does PPB know what they're purchasing and what's in it?

Dan said chemicals in pepper spray have been known to contribute to death. Some can be flammable. A prohibition against using pepper spray on vulnerable individuals isn't in this directive; might be good to add that.

Laura said the State of Oregon has an obligation to the US Constitution. Citizens have the right to demonstrate, air grievances, and express outrage. It's outrageous to pepper spray children and families. Police officers need to do the right thing.

Charles said chemical weapons should not be used on anyone. He suggested deferring this issue for now. COAB could improve its public engagement by working with DOJ, Citizen Review Committee, Independent Police Review, etc. to bring forth a Portland convention on the use of chemical weapons. Maybe don't approve this recommendation until the community can have more of a discussion.

Philip moves to extend the meeting to 9:00 PM – 2 opposed.

Myrlaviani suggested COAB forego this recommendation until there is a greater community consensus on the issue.

Rochelle said the DSUFCS took this very seriously. Look at New Orleans, which banned pepper spray. Now their electronic control weapons use has gone up dramatically. She is concerned PPB would end up trading one weapon for another. COAB should look into the most efficient way to minimize pepper spray use.

Tom thanked Charles for bringing attention to this issue. Tom said he will commit to going back and looking at this issue.

Recommendation shelved for further review.

Meeting adjourned at 9:00 PM.