

ORDINANCE NO. 20374

AN ORDINANCE CONCERNING THE POLICE AUDITOR AND CIVILIAN REVIEW BOARD; AMENDING SECTION 2.013 OF THE EUGENE CODE, 1971; ADDING SECTIONS 2.240, 2.242, 2.244, 2.246, 2.450, 2.452, 2.454 AND 2.456 TO THAT CODE; AND PROVIDING AN EFFECTIVE DATE FOR IMPLEMENTATION.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Subsection (1) of Section 2.013 of the Eugene Code, 1971, is amended by adding the following entry for “Civilian Review Board” in alphabetical order therein, to provide as follows:

2.013 City Council - Boards, Commissions and Committees.

(1) Except for boards, commissions or committees established pursuant to ordinance, state statute, or intergovernmental agreement, the following are the presently constituted boards, commissions and committees of the city with the number of members and names of the appointive authority indicated thereafter, together with the term and the authority for such board, commission or committee:

Civilian Review Board

No. of Members:	5 or 7 Members
Appointment Process:	Council appoints
Term:	3 years, except for initial members, which shall be: If 5 members: 2 years for 3 initial members and 3 years for 2 initial members If 7 members: 2 years for 4 initial members and 3 years for 3 initial members
Authority:	EC 2.240

Section 2. Sections 2.240, 2.242, 2.244 and 2.246 are added to the Eugene Code, 1971, to provide as follows:

2.240 Civilian Review Board – Established.

- (1) There is hereby established a civilian review board of not to exceed seven members, whose goal shall be to increase the transparency of, and public confidence in, the police complaint process. In general, the civilian review board shall evaluate the work of the independent police auditor, and may review completed complaint investigations involving sworn police employees to provide comment, from a civilian perspective, about whether the complaint was handled fairly and with due diligence.
- (2) It is intended that sections 2.240 through 2.246 and 2.450 through 2.456 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.
- (3) Except where the context requires otherwise, the definitions contained in section 2.452 of this code govern the words and phrases used in sections 2.240 through 2.246 of this code.
- (4) The civilian review board shall serve as an advisory body to the city council.

2.242 Civilian Review Board – Qualifications and Appointments.

- (1) Qualifications.
 - (a) Members of the civilian review board shall be volunteers appointed by the city council, who immediately prior to appointment shall be:
 - 1. A resident of the city;
 - 2. Of the age of 18 years or older; and
 - 3. Able to pass a background investigation consistent with investigations conducted for other city volunteers who have similar access to police records and/or facilities.
 - (b) The following characteristics shall be considered by the city council when appointing members to the civilian review board:
 - 1. A demonstrated ability to be fair, impartial and unbiased;
 - 2. An absence of any real or perceived bias, prejudice or conflict of interest;
 - 3. A record of community involvement;
 - 4. An ability to build working relationships and communicate effectively with diverse groups; and
 - 5. A demonstrated commitment to the purpose of sections 2.240 through 2.246 and 2.450 through 2.456.
 - (c) Appointments to the civilian review board shall not be made on the basis of constituency or representation of any particular group. A candidate selection process that includes a community panel to review applications and recommend qualified candidates for city council consideration shall be developed by the mayor, in

- consultation with the police auditor, to help achieve a balanced membership.
- (d) Members of the civilian review board shall neither be a current employee of the city nor an immediate family member of a current city police employee.
 - (e) Civilian review board members shall participate in a training program to be developed by the police auditor.
 - (f) Members of the civilian review board shall agree in writing to a Statement of Principles and Code of Conduct, to be developed by the police auditor and reviewed and maintained in collaboration with the civilian review board.
 - (g) It is the intent that civilian review board members be free from personal liability for acts taken within the course and scope of carrying out their official duties and functions. The city will therefore defend and indemnify members to the maximum extent permitted under the Oregon Tort Claims Act and other applicable law.
- (2) Terms and Vacancies. Initial appointments shall be staggered as follows: If there are seven (7) members appointed, four (4) members shall be appointed to serve for two (2) years and three (3) members shall be appointed to serve for three (3) years; if there are five (5) members appointed, three (3) members shall be appointed to serve for two (2) years and two (2) members shall be appointed to serve for three (3) years. Except for the initial appointment, the term of each member of the civilian review board shall be three (3) years. No member shall serve more than three (3) consecutive terms. A vacancy that occurs during the term of a member shall be filled in the same manner as the original appointment, and the appointee shall serve for the remainder of the unexpired term.
- (3) Removal from Office.
- (a) A member of the civilian review board may be removed from office by the city council prior to the normal expiration of his/her term for consistent failure to perform civilian review board member duties, or violation of the Statement of Principles/Code of Conduct.
 - (b) Membership on the civilian review board shall terminate automatically if a member ceases to meet the qualification requirements as described in (1)(a)1, (1)(a)3, and (1)(d) above subsequent to his/her appointment.

2.244 Civilian Review Board – Powers and Duties.

- (1) In collaboration with the police auditor, the civilian review board shall establish policies, procedures and operating principles for the civilian review board.
- (2) The civilian review board may review the completed investigation and adjudication of complaints filed against sworn police officers at the

request of a complainant, upon the recommendation of the police auditor, or at its own discretion upon a majority vote of its members.

- (a) The civilian review board shall develop criteria to decide whether to accept a case for review. However, the civilian review board may not accept a completed case that was previously reviewed as a community impact case as described in subsection (4) below.
 - (b) All materials concerning the completed investigations of cases the civilian review board has selected to review shall be made available to members for their confidential review.
 - (c) The civilian review board shall, at one of its regularly scheduled meetings, report on such case(s), which may include comments on the handling of the complaint, the fairness and thoroughness of the investigation, and the reasonableness of the adjudication.
 - (d) The comments and any related policy or procedural issues identified by the civilian review board in the course of its case review shall be provided to the police auditor for further consideration.
- (3)** The civilian review board may review a random selection of closed cases.
- (4)** Upon the adjudication of a complaint that the police auditor has identified and the civilian review board has accepted as a community impact case, members of the civilian review board shall be provided all materials concerning the case for their confidential review. Within 14 days of receiving the case, the civilian review board shall meet to discuss and present its determinations on the case. Within 30 days of receiving the case the civilian review board shall do one or more of the following:
- (a) Concur with the case adjudication;
 - (b) Develop recommendations regarding the handling of the complaint and the investigation process, and/or identify other relevant policy or procedural issues for further consideration;
 - (c) Require the city to reopen the investigation if it finds either:
 - 1. The investigation was incomplete or inadequate, and the civilian review board has reason to believe that additional investigation is likely to reveal facts that could change the case adjudication; or
 - 2. The adjudication reached by the city is not supported by substantial evidence.

When the civilian review board has voted to re-open a community impact case, the police auditor shall inform the civilian review board of the subsequent investigation conducted and the final adjudication decision.

- (5)** The civilian review board shall notify complainant(s) and involved employee(s) of its decisions on whether to accept a case for review, and shall inform the complainant of its conclusions on the case.

- (6) The civilian review board shall review trends and statistics of complaints against sworn police officers and civilian police employees and may develop recommendations to improve the complaint intake and handling process.
- (7) The civilian review board shall evaluate the work of the auditor's office. In that regard the civilian review board:
 - (a) Shall establish criteria by which to evaluate the work of the police auditor;
 - (b) Shall review, comment on, and assist in maintaining policies, procedures and operating principles for the auditor's office and the civilian review board;
 - (c) Shall monitor status reports from the police auditor; and
 - (d) May conduct periodic evaluations of the complaint intake and handling system to identify process improvements and/or ensure complaints are being treated fairly and with due diligence.
- (8) The civilian review board may provide a forum to gather community concerns about incident-specific police actions and may receive and forward complaint information to the auditor's office for processing.

2.246 Civilian Review Board – Officers, Meetings, and Procedures.

- (1) The civilian review board shall annually elect from among its membership a chairperson and a vice-chairperson who shall serve in that position for no more than three (3) consecutive one-year terms.
- (2) The civilian review board shall nominate one of its members to serve jointly on the civilian review board and the police commission, which nomination shall be subject to the approval or rejection of the city council.
- (3) The auditor's office shall be liaison to, and provide staff support for, the civilian review board.
- (4) The civilian review board may appoint from its membership committees as necessary to perform its duties.
- (5) The civilian review board shall hold regular meetings with an opportunity for public comment at least quarterly, and the civilian review board and its committees may hold additional meetings as necessary. No business of the civilian review board shall be conducted at a meeting without at least a quorum of three (3) members on a five (5) member board or four (4) members on a seven (7) member board present. All actions of the civilian review board shall be made upon a simple majority vote of the members present.
- (6) Meetings of the civilian review board shall be open to the public except when executive sessions are authorized by law and the civilian review board has determined an executive session is necessary or desirable in order to carry out its business. To facilitate the transparency of the civilian review board's activities, the police auditor will develop and present case summaries and status reports in a manner that allows

review and discussion in open session, to the maximum extent practicable.

- (7) The civilian review board shall prepare and present an annual report to the city council that:
 - (a) Summarizes the civilian review board's activities, findings and recommendations during the preceding year;
 - (b) Assesses the performance of the police auditor consistent with section 2.244(7); and
 - (c) Evaluates the work of the auditor's office, including whether the auditor's office is functioning as intended.
- (8) The civilian review board may develop additional reports deemed necessary by it, or as requested by the city council. All reports generated by the civilian review board 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. The city council shall review and take appropriate action on reports submitted by the civilian review board.
- (9) In collaboration with the auditor's office, the civilian review board may conduct education and outreach activities to inform the community about the process for filing complaints and commendations about police employees. The civilian review board and police auditor shall work together to develop and disseminate information and forms regarding the police complaint handling and review system.
- (10) The civilian review board, or its individual members, may not:
 - (a) Investigate complaints or incidents involving police employees;
 - (b) Issue subpoenas or call witnesses;
 - (c) Review employee discipline decisions except in the context of reviewing trend reports from the auditor's office consistent with section 2.454(1)(f)3.; or
 - (d) Incur city expenses or obligate the city in any way without the prior authorization of the police auditor or city council.

Section 3. Sections 2.450, 2.452, 2.454, and 2.456 are added to the Eugene Code, 1971, to provide as follows:

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 the auditor's office. 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.
- (6) 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.

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 charged 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 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.

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.

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).
- (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.

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) 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. 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.
 - (d) 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.
 - (e) 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.
- (f) The auditor's office shall provide timely updates on the status of a complaint and notification to the complainant of its final disposition.
 - (g) 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.
 - (h) 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).
 - (i) 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.
 - (j) 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) 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.
 - (b) 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.
 - (c) 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.
 - (d) 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.

- (e) 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) 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. As provided in section 2.456(2)(d), the police auditor shall not have access to a criminal investigation file until the conclusion of any such criminal investigation.
 - (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 4. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971 to the provisions added, amended or repealed herein.

Section 5. Notwithstanding the effective date for this Ordinance as provided in the Eugene Charter of 2002, the Police Auditor and Civilian Review Board may postpone implementation of powers and duties described in this Ordinance for such reasonable time, not to exceed six months from the effective date of this Ordinance, as they determine is necessary to develop and adopt policies, criteria and protocols for the proficient, fair and efficient implementation of their powers and duties.

Passed by the City Council this

13th day of December, 2006

/s/ Mary H. Feldman

City Recorder

Approved by the Mayor this

13th day of December, 2006

/s/ Kitty Piercy

Mayor