



Testimony of Kimberly McCullough, Legislative Director
Proposed Ordinance Regarding Collective Bargaining Agreement and Body Camera Policy
Portland City Council – September 28, 2016 – Item No. 1065

Mayor Hales and Commissioners:

Thank you for the opportunity to testify regarding Item No. 1065, which sets out the terms of a collective bargaining agreement (CBA) and Portland Police Bureau's (PPB's) body worn camera policy. We urge you not to pass this ordinance at this time or in its current form.

As an initial matter, the ACLU of Oregon is disappointed that negotiations over the CBA have been held entirely behind closed doors. Many of the terms of the CBA will significantly impact our City, yet the public has been shut out of the process and given very little time to review, evaluate, and respond to the terms of the CBA.

This disappointment is even greater as it relates to closed-door negotiations over PPB's body camera policy. As we stated in testimony to this Council on May 12, 2016 (attached), we believe the Oregon legislature intended for body camera policies to be crafted in each jurisdiction through a collaborative and meaningful process of community engagement. We supported HB 2571 under what we thought was a mutual understanding among stakeholders, including the City, that such a process would follow at the local level.

Police body cameras have the *potential* to serve as a police oversight tool, but for the technology to provide oversight, reduce police abuses, and increase community trust, it is vital that they be deployed with good policies to ensure those goals are accomplished. Without good policies, body cameras risk becoming just another police surveillance device—and one with very real potential to invade privacy. Especially important are policies governing when the cameras are turned on, and who has access to the footage under what conditions.

We are particularly concerned that the policy states that police officers can review footage *before* writing their reports. We strongly oppose this because, among other concerns, it can taint or distort an officer's testimony. Please note that we are in the process of thoroughly reviewing the body camera policy, since we are just now seeing it for the first time this week. In the meantime, we invite you to review our body camera policy recommendations, a copy of which is attached.

While the agreement states that further public input *may* lead to additional changes to the body camera policy, this gives us little solace. If ratifying this agreement will not impede further changes to the body camera policy, then what purpose is served by

including an explicit agreement about the policy in this ordinance at all? And why then is the policy attached to the same ordinance as a collective bargaining agreement that relinquishes the City's right to argue that certain provisions of the policy (officer viewing of footage) should be subject to permissive, rather than mandatory, negotiation?

A track record of insufficient opportunity for community involvement during over a year of negotiations with PPA has damaged our faith in the possibility of post-ratification changes to the policy. An initial draft appears to have been crafted over a year ago, and the policy has apparently been in its current form since at least as early as May 6, 2016.¹ Yet the public was not given an opportunity to view the draft policy or any of its provisions until this week, *after* PPB and PPA entered into a tentative agreement. Further, "public forums" hosted to solicit general input were not publicized well enough to draw a crowd.² The City should question the effectiveness of its promotion when community forums are sparsely attended on an issue of such great concern to our community.

A request for general input in an online form is no substitute for actual feedback and dialogue on written policy provisions. Without being able to see which policy proposals are being considered or the wording that is used to craft specific provisions, it is extremely difficult to effectively make comments. In addition, when a conversation flows entirely one-way without response, meaningful dialogue simply does not occur.

On behalf of our 10,000 members who live, work, or visit in the City, we offered to work with the mayor's office and this council to help craft a better body camera policy, but we were not invited to the table. In May of 2016, we urged the City to commit to meaningful engagement with the community and we requested direct involvement the policy vetting process. We followed up with email and phone offers for conversations with City staff on multiple occasions. Only this Monday, two days before proposed ratification of an agreement setting out the terms of the policy, an invitation was extended to meet with City staff. While we appreciate being contacted now and look forward to collaboration, this does not alleviate our present concerns.

¹The Agreement states that the policy is dated May 6, 2016, but the policy itself is dated July 1, 2015. This suggests that a draft policy was created at least as early as July 1, 2015. How can the City, PPB or PPA argue that this process has truly involved the community when they were deprived an opportunity to even see a *draft* policy for over a year into its existence?

² While the agreement states more than six forums were hosted on this issue over the last twelve months as a demonstration of "substantial...public input," we can only find evidence of three forums in Fall/Winter 2015, with promotion for only two of these right before they occurred. Word about the other referenced forums was clearly not spread far when we could not even find evidence of them in the news or anywhere online.

For an issue of such importance to the community, a workgroup of stakeholders should be convened to discuss the terms of a draft policy before any agreement is reached or ratified. These are complicated and novel issues that require additional discussion and collaboration between *all* stakeholders. Police reform advocates and the public at large deserve to have a meaningful say in the creation of policies that govern police body cameras.

There is still ample time for CBA and body camera negotiations if this ordinance is not passed today. The City and PPA's current CBA is in effect until June 30, 2017. If PPA or PPB is uncomfortable entering into a CBA until the body camera policy is finalized, the CBA should simply not be ratified at this time. This would also give the public adequate opportunity to comment on the terms of the CBA which are not merely employment matters, but also have an impact on public safety, accountability, and transparency.

In a time when community trust in law enforcement is unfortunately quite eroded, Portland deserves better. ACLU of Oregon urges each of you to put the brakes on this agreement and open the door for meaningful community engagement.

Thank you for your time and consideration. Please reach out with any questions, concerns, or opportunities for further dialogue on these matters.