



COUNCIL ORDINANCE NUMBER 20435

COUNCIL BILL NUMBER 4998

**AN ORDINANCE CONCERNING THE POLICE
AUDITOR AND AMENDING SECTIONS 2.450, 2.452,
2.454 AND 2.456 OF THE EUGENE CODE, 1971**

ADOPTED: August 10, 2009

SIGNED: August 11, 2009

PASSED: 8/0

REJECTED:

OPPOSED:

ABSENT:

EFFECTIVE: September 11, 2009

ORDINANCE NO. 20435

AN ORDINANCE CONCERNING THE POLICE AUDITOR AND AMENDING SECTIONS 2.450, 2.452, 2.454 AND 2.456 OF THE EUGENE CODE, 1971.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 2.450 of the Eugene Code, 1971, is amended 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 auditor and the auditor's office to carry out their duties and responsibilities under the Eugene Charter of 2002 and the Eugene Code, including sufficient funds to contract for external investigations.
- (6) 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. The auditor shall have

complete, unrestricted and direct access to the internal affairs area during office hours.

- (7) 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.

Section 2. Section 2.452 of the Eugene Code, 1971, is amended by adding definitions for "Police auditor" and "Service complaint" to the list of definitions in alphabetical order to provide as follows:

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:

Police auditor or auditor. Police auditor or designee if authorized by the auditor to undertake a certain function.

Service complaint. A complaint about police employee performance or demeanor, customer service and/or level of police service.

Section 3. Sections 2.454 and 2.456 of the Eugene Code, 1971, are amended to provide as follows:

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; monitor the complaint investigation and review process as set forth in sections 2.456(1) and (2); and review a selection of service complaints.
- (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.

- (5) For purposes of this subsection, an “allegation” is a report or claim that the chief of police has committed a crime, violated any provision of sections 2.240 to 2.246 or 2.450 to 2.456, violated a person’s civil rights, or failed to perform non-administrative duties in accordance with professional law enforcement standards applicable to Eugene’s sworn officers.
- (a) If the auditor receives an allegation against the chief of police, the auditor shall forward a copy of the allegation to the city manager. The city manager shall notify the council, and investigate the allegation. The manager shall keep the auditor informed of the progress of the investigation.
 - (b) Upon completion of the investigation, but prior to the finalization of the investigation report, the city manager shall provide the auditor with a draft of the report. The auditor shall review the draft report and provide comments about the draft to the manager within seven days of receiving the draft. The manager shall consider any comments received from the auditor and finalize the report within seven days. Once the city manager issues a decision on the allegation, the manager shall inform the council of the manager’s decision related to the allegation.

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) If the city receives a claim for damages that alleges that a police employee caused the damage, a copy of the claim shall be forwarded to the auditor’s office for a determination as to whether the claim should also be classified and processed as a complaint.
 - (d) 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. The auditor has exclusive authority to classify, route and reclassify complaints. The auditor may reclassify a complaint if, upon further investigation and receipt of additional information that was not available at the time

of intake, but before the completion of the investigation, the auditor finds reclassification is warranted.

- (e) 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.
 - (f) 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.
 - (g) 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.
 - (h) The auditor's office shall provide timely updates on the status of a complaint and notification to the complainant of its final disposition.
 - (i) 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.
 - (j) 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).
 - (k) 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.
 - (l) 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) Except as provided in paragraph (b) of this subsection, administrative investigations of complaints shall not commence until after the auditor has received, classified and routed the complaint. The investigation shall commence upon classification or as soon as possible after classification.
 - (b) Paragraph (a) of this subsection shall not preclude preliminary investigations by the auditor's office, or a police supervisor's

attempt to address a service complaint, provided that the supervisor prepares and forwards to the auditor within 24 hours a report identifying the complainant and contact information for the complainant, and explaining the nature of the service complaint and the outcome of the supervisor's conversation with the complainant.

- (c) If the chief of police determines that all or a part of an administrative investigation should be postponed in order to avoid jeopardizing a criminal investigation or prosecution, the chief of police shall request the auditor's agreement on postponement. If the auditor and chief of police are unable to agree on the postponement, then they shall present in writing their respective positions to the municipal court judge, who shall then decide whether all or part of an administrative investigation will be postponed.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The auditor's office will make every reasonable effort to notify the complainant that an investigation has been conducted, summarize

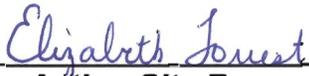
the case findings, and provide an opportunity for the complainant to comment or ask questions about the process.

- (i) The auditor's office shall return all case file materials to internal affairs for retention, but shall have subsequent access to closed cases.
 - (j) 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) Except to the extent that a specified state or federal law provides to the contrary, or where information resides on a restricted database governed by a contract that does not allow access beyond certain law enforcement employees:
 - 1. The auditor shall have complete and unrestricted access to all complaints, investigative records and information obtained or developed by the internal affairs investigator related to an administrative investigation of a complaint, whether the information exists in electronic format or hard copy, including information stored on an internal affairs database;
 - 2. The auditor shall be provided any other information identified by the auditor that is relevant to a complaint; and
 - 3. The identity of any individual involved in an event giving rise to a complaint shall not be withheld from the auditor.
 - (b) When legally required or requested by the chief of police, the auditor shall keep confidential the name of any such individual involved in a complaint and other information leading to the name of the individual.
 - (c) Except as provided in section 2.456(2)(f), the police auditor shall not have access to a criminal investigation file until the conclusion of any such criminal investigation.
 - (d) 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.
 - (e) 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 consent 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.

Passed by the City Council this

10th day of August, 2009



Acting City Recorder

Approved by the Mayor this

11th day of August, 2009



Mayor