

CIVILIAN REVIEW BOARD WORK GROUP MEETING SUMMARY

Friday, October 2, 2020

Members Present: Deputy Mayor Ellen Hesen, Co-Chair, Councilwoman Paula McCraney, Co-Chair, Kendall Boyd, Jim Burch, Raoul Cunningham, Drew Fox, Eric French, Ingrid Geiser, Jessie Halladay, Brenda Harral, Chris Hartman, Amy Hess, Councilman Bill Hollander, Chandra Irvin, Josh Judah, Representative Nima Kulkarni, Rev. Roosevelt Lightsey, Jr., Kim Moore, Senator Gerald Neal, Erwin Roberts, Judy Schroeder, Anthony Smith, and Imani Smith.

I. Introduction and Roll Call

Deputy Mayor Ellen Hesen welcomed members to the 8th meeting of the Civilian Review Board Work Group. She invited Mayor Fischer and President James to share any comments or remarks with members. Mayor Fischer expressed his appreciation to the Co-Chairs, members and everyone involved for participating in the work group and noted the importance of this work. This is a transition point for the city, and anything that can be done to increase trust in government is valuable. He thanked everyone for the thoughtful deliberations over the past few months and for creating a product that will move the city forward. President James echoed the Mayor's remarks and expressed appreciation to Councilwoman McCraney and Deputy Mayor Ellen Hesen for their work. He noted that Councilwoman McCraney has been working very hard to create a Civilian Review Board, and he said that he is very proud of her.

Deputy Mayor Hesen provided a brief overview of the agenda that was emailed to all members in advance. She advised that Hollie Hopkins and Alice Lyons with the Jefferson County Attorney's Office (JCAO) will go through the ordinance draft and answer any questions members may have. She reminded members that after the last meeting the Co-Chairs worked with the JCAO to answer any questions that were left hanging and removed the bubbles. The goal is to file the ordinance draft with the Metro Council this month.

2. Review of the Draft Proposed Ordinance

Ellen introduced Hollie Hopkins, Jefferson County Attorney's Office, and asked her to provide an overview of the revised draft ordinance. Hollie reminded members that since the last meeting she and Alice Lyons worked with the Co-Chairs to revise the draft to include member feedback and suggestions. She noted that the draft has been restructured, and the sections dealing with the Civilian Review Board now open the legislation. The Office of Inspector General sections now follow the CRB sections. The draft is now free of bubbles and blanks since choices have been made with member feedback and in consultation with the Co-Chairs. She began walking through the draft and pointing out specific areas. She asked members to use the chat function to ask specific questions. Hollie asked Alice to begin presenting areas where there were significant changes.

Alice began by noting that there were no significant changes in Sections I and II. She

brought members attention to Section III (A) (3) which delineates the organizations for the four at-large CRB Board positions and noted that with the Co-Chairs feedback the ordinance names seven organizations that will submit up to three names to the Mayor for selection.

Alice moved to Section IV Qualifications for nomination and membership to Civilian Review & Accountability Board. She noted that subsection (D) includes language that Board nominees are subject to a state criminal background check and there are certain categories of crimes that would disqualify an applicant from being selected for the Board. She explained the categories are high-level felonies or offenses against a minor. She noted that changes were made in Section V Removal of Civilian Review & Accountability Board members, and vacancy. She explained that previously that section was drafted for the Mayor to initiate the removal, and the revised draft includes a three-part system for removal of members. A simple majority of the Board can recommend removal to the Mayor, with ratification by Metro Council if the Mayor proceeds. She noted that the same structure is also included in the section dealing with Removal of the Inspector General.

Alice noted that Section VII Confidentiality is a new section that was added and requires members to sign and adhere to a confidentiality agreement regarding ongoing investigations and reviews. The section also allows the Board chair to speak for the Board and any member who speaks publicly, including to the media, about any ongoing investigation or review by the Inspector General or the Board without prior written approval of the Chair may be removed. Alice spoke about changes made to Section VIII Training and explained that the previous draft included specific course titles to be included in the training for members. To avoid technology changes or changes in best practices that would require the ordinance to be amended, Section (A) (1) was revised to remove the titles of specific training courses. Training for members includes 16 hours over two days, including but not limited to the basic legal and constitutional issues in policing, LMPD units and operations, internal policies and procedures, standard police equipment, simulated weapons training, and use of force tactics; and a minimum of eight hours accompanying LMPD officers on patrol.

Alice moved to the Inspector General sections of the ordinance and reminded members that there will be a national search. Section XI was restructured so that the Chair of the Civilian Review & Accountability Board and the President of Metro Council are involved in the search and selection process. Alice noted that Section XIII outlines the provisions to removal the Inspector General which includes a recommendation by two-thirds vote of the Civilian Review & Accountability Board members present for that vote, followed by the concurrence of the Mayor, and the subsequent approval by a majority vote of Metro Council members; or a recommendation by the Mayor, followed by the concurrence of two-thirds vote of the Civilian Review & Accountability Board members present for that vote, and the subsequent approval by a majority vote of Metro Council members.

Alice noted that a new section was added related to the Inspector General conducting non-complaint investigations. She brought attention to Section XVI Non-complaint reviews and investigations by the Inspector General and explained that the Inspector General does not need approval of the CRB to examine and review operations within

LMPD. Complaint driven investigations would need to be presented to the Board for approval. Additional changes in Section XVI were made related to reporting requirements.

Alice asked Carmen Moreno-Rivera to lead members through the questions raised in the chat box. Carmen began by reading a comment in the chat related to adding the Interdenominational Ministerial Coalition as an organization to submit nominees since there are no faith-based organizations included. She noted that the next few questions are related to if ex-offenders that have completed their sentence are eligible to serve on the CRB. A few members commented that formally incarcerated individuals should be eligible to serve however one member raised concerns that someone convicted of assaulting a police officer would be eligible to serve. Hollie reminded members that in previous meetings, members expressed that ex-offenders that have completed their sentence, had rights restored, etc. should be allowed to serve. She noted that some other jurisdictions do not allow ex-offenders to serve. The Co-Chairs discussed it and ultimately decided on the language that is included in the ordinance which includes some limitations as it relates to the higher-level felonies.

Rev. Lightsy noted that he understands concerns by the police of permitting an ex-offender convicted of a violent offense against an officer to serve. Carmen read a suggestion in the chat by Colonel Josh Judah to exclude anyone convicted of Assault in the 3rd degree against a police officer, and several members agreed with that. Kendall Boyd asked if any of the structure currently in place as it relates to “Ban the Box” could be used. Ellen responded that the Co-Chairs and JCAO did look at that and it didn’t seem to fit quite as well. Councilwoman McCraney noted that she is open to other suggestions and due to a technical glitch, she didn’t hear Colonel Judah’s suggestion and asked him to repeat it. Colonel Judah explained that he agrees that the CRB would be missing out on an important perspective if most ex-offenders were excluded. He also suggested that Assault in the 3rd degree is an assault against a police officer and to be convicted of that you would have to be proven that you hit, attacked, spit, or caused physical injury to a police officer which is a Class D felony. He suggested excluding that offense in order to build legitimacy with the police. Chris Hartman reminded members that there is a vetting process and nominees will be approved by the Metro Council and are nominated by organizations. He suggested that we should trust the process instead of creating a specific list of exclusionary criteria. Kim Moore added that if the city is to move forward then ex-offenders must be included. Councilwoman McCraney noted that she likes the suggestion by Chris Hartman, and to allow the normal vetting process to work. She noted that the list was not created to exclude anyone, but to make the process legitimate to include everyone except for those that have been convicted of egregious acts of violence. She thanked members for the conversation and advised that she is okay with not having any exclusions and allow the vetting process to work. Anthony agreed that people that have been formerly incarcerated should not be excluded from the process.

Keturah reminded members that a bill related to the Restoration of Voting Rights was filed in the 2020 session but unfortunately due to COVID-19, the bill didn’t get to the Senate. The bill allowed for rights to be restored after the completion of serving their sentence unless it was voter fraud, or a crime related to voting. She agreed with Chris to allow the process to work. Chandra Irvin noted a real-time strategic change principle

that says, "Act now as you want to be in the future." She echoed what many other members have said and if we are to be the place that we want to be, we need to start now. Chandra noted that we should welcome those that have been incarcerated and have paid their time so they can be restored into our community. Chandra asked a question related to training for CRB members, and suggested including topics related to social justice, racial justice and anti-racism. Councilwoman McCraney agreed that some specific training topics should be included so members get the basic training such as implicit bias and suggested weaving it back into the draft. She said the draft can be sent back out to members for review.

Carmen raised a comment in the chat about retired or former LMPD serving on the CRB and posed a question if that should be expanded to include all law enforcement and not just LMPD. Chris Hartman added that he believes it should be expanded to include all peace officers. Hollie clarified the provision in Section IV includes a "pause period" of three years so there is a break in service before they would be allowed to serve on the CRB. In response to a question from Councilwoman McCraney, Ellen noted that the language is included in the Inspector General section and Hollie added that it can be added to the CRB section, so it is more broadly defined as peace officers and not just specific to LMPD. Carmen raised another suggestion from the chat related to adding mental health expertise to the list of organizations to page 4. Ellen thanked everyone for helping to synthesize all the perspectives and for creating a product to hand over to the Metro Council.

3. Legal Overview

Ellen noted that Hollie and Alice will talk about various legal issues that will impact the CRB as it relates to Open Records and Open Meetings. Senator Neal and Representative Kulkarni will summarize some of the legislative issues to be considered in the 2021 session. Hollie began by explaining what the laws are and how they apply to the CRB and Inspector General. She noted that the Open Records Act requires the production of documents that would apply to the CRB and the IG. The Open Meetings Act would apply to the CRB and requires business to be conducted in public.

Hollie explained that each of those laws come with a list of exemptions. The Open Meetings Act has 14 exemptions and the Open Records Act contains 13 exemptions. The Inspector General's work can be done in confidence, but the issue is the interface between the Inspector General and the CRB. The CRB is a public agency and meetings have to be conducted in public unless an exemption applies. But the ordinance requires them to work together to do their work and if an exemption does not apply then they will have to figure out how to work together. The confidentiality is important to their work because they will do their work at the same time as PIU and PSU investigations are conducted.

Hollie noted that state statute carves out protections for similar bodies. For example, the Child Fatality Review Panel which reviews child fatalities of children and the Domestic Violence Fatality Review Committee have statutes that provide for confidentiality of their work and materials. Similar legislation could be an option for civilian review panels and Inspectors General to protect the integrity of investigations. Hollie noted that another area for specific legislative change is the need for subpoena power. Senator Neal

acknowledged that his involvement in this work was compromised over the last four weeks, however he noted that he had been working with Representative Kulkarni on draft legislation related to subpoena power. He noted that he sent the draft to Councilwoman McCraney today. He suggested having a discussion with the Co-Chairs on the draft legislation. He added that another item that it is important from a state perspective to look at is the patterns and practices and the way we solicit and process data. He suggested having a meeting to discuss the technical aspects of the legislation to make sure everything is included and that we don't inadvertently change something that wasn't intended. Ellen thanked him and Representative Kulkarni for helping to advance the subpoena power legislation. She noted that the Open Meetings Act and Open Records Act may also need some tweaks as it relates to the CRB. She advised that another issue to address is that currently the Chief of Police is the sole disciplinarian for all the police department, and they do not have the ability to delegate that responsibility. She stated that it slows down the process when only the Chief can review all the disciplinary cases, issue the discipline and then must sit at the table in a Merit Board hearing that could last for several days. There may need to be a proposal to add a delegee to this role. The statute has to be changed before the collective bargaining agreement can be changed. Representative Kulkarni agreed that we need to look at the technical aspects of the draft first and suggested that it is all figured out before we go into session. Senator Neal suggested involving the LRC staff in a technical meeting.

4. Next Steps & Closing

Ellen provided a few updates related to the RFP process to hire a search firm to conduct a national search for the Inspector General. Althea Jackson, Boards and Commissions, will use the Metro website to solicit applications for the CRB. Councilwoman McCraney advised that all the organizations included in the ordinance will be contacted so they know that they can submit nominations.

Councilwoman McCraney thanked everyone for their commitment and participation to this work. She extended appreciation to Ellen for her commitment to the process as well. She added that the work group process was inclusive, and they listened to everyone's voice and have produced a remarkable product. She explained that the ordinance will go to Metro Council new business on October 19th, and then will be assigned to a Committee. The Committee will discuss the ordinance and can either table it for further discussion, approve/recommend to the full Metro Council, or it can advance to the full Council without a recommendation. If the ordinance advances out of Committee, then it will be on the Metro Council agenda on November 5th. Once the Mayor signs the ordinance, it will become law and the IG search and CRB appointment process can begin. Councilwoman McCraney thanked members for participating in the meetings and Ellen noted that it has been a pleasure to serve as Co-Chair. Members were advised that a final draft of the ordinance will be circulated before it is filed with the Council.