

CIVILIAN REVIEW BOARD WORK GROUP MEETING SUMMARY

Friday, July 31, 2020

Members Present: Deputy Mayor Ellen Hesen, Co-Chair, Councilwoman Paula McCraney, Co-Chair, Kendall Boyd, Raoul Cunningham, Councilwoman Keisha Dorsey, Drew Fox, Eric T. French, Sr. Reginald Glass, Councilwoman Jessica Green, Jessie Halladay, Brenda Harral, Chris Hartman, Keturah Herron, Amy Hess, Councilman Bill Hollander, Paul Humphrey, Chandra Irvin, Ricky Jones, Rev. Roosevelt Lightsey, Jr., Rep. Nima Kulkarni, Edgardo Mansilla, Kim Moore, Senator Gerald Neal, Ryan Nichols, Sadiqa Reynolds, Erwin Roberts, Judy Schroeder, and Anthony Smith.

1. Introduction and Roll Call

Deputy Mayor Hesen called the meeting to order and went through roll call of members. She thanked members for participating in the virtual Civilian Review Board Work Group meeting and provided a brief overview of the agenda that was emailed to all members. She reminded members that the public is watching via Facebook Live. She recapped the progress the Work Group has made to date and reviewed the scheduling changes agreed upon at the July 31st meeting. She noted that at today's meeting, the work group would be hearing from Amy Kurland, former Inspector General for Philadelphia, among other presenters today. She then introduced Maria Gurren with the Criminal Justice Commission [CJC] to provide a quick overview for the CJC and its Board's functions.

2. Overview of the Criminal Justice Commission

Maria Gurren pointed out that the CJC was created in 1967, making it the longest continuously operating Justice Council in the nation. The CJC serves an advisory role and is designed to offer a neutral platform in order to discuss policies and issues related to criminal justice. Maria described the small staff hierarchy, the Board's make-up as ascribed in Ordinance, as well as provided multiple examples for the many projects and community committees or programs that the CJC participates in for Louisville or offers support to [e.g. creation of Louisville's 911 system, drug court, mental health court, Juvenile Justice Advisory Committee, re-entry and re-entry services, etc.]. The Board recently adopted bi-laws in 2018, and has three committees – an executive committee, a legislative committee, and a jail policy committee. Over time, Maria explained how the CJC has brought to Louisville over \$50M in various grant funding awards.

Before formal Q&A, Ellen asked Maria to speak to the time and type of support the CJC provides to the Police Accountability Board, and Maria explained that the CJC's time and resources are calendared and that Faith Augustine provides primary support, however, if there is not a new use of force incident to review, the routine meetings are often canceled. That particular group partners closely with PIU due to the matters involved, and CJC's role is mainly clerical in nature.

3. Presentation by Former Philadelphia Inspector General Amy Kurland

Ellen thanked Maria for her time and then introduced the next speaker, Amy Kurland, who was previously Philadelphia's longest serving Inspector General and is now a Consultant for Bloomberg Associates in the Municipal Integrity Practice Section.

Ms. Kurland mentioned that last year she provided a similar presentation to Atlanta when they were considering a potential IG role. Ms. Kurland provided a brief history for Philadelphia's well-known corruption history, but following an FBI bust for a pay-to-play scheme from a past Philadelphia mayor, at the time newly-elected Mayor Nutter began to install reformative change in Philadelphia's local government.

Ms. Kurland chose to explore expanding the IG role in Philadelphia, which established a Chief Integrity Officer. The Philadelphia IG was created by Executive Order and can only investigate executive branch officials, personnel, and those organizations [private and non-profit] doing business with the city. The Philadelphia IG has subpoena authority, and the Executive Order requires all city personnel to comply with the requests of the IG [disciplinary actions available for those who refuse to comply]. City personnel are also required to report misconduct, and through the IG, it must stay confidential.

The Philadelphia IG mission is to boost confidence in government. Arrests and discipline happen naturally on some cases and investigations, but the intent is for such transparency on rooting out fraud and corruption that is enhances the community's trust in their government. The Philadelphia IG budget is slightly more than \$1.4M and the office has a staff of 20 currently. Ms. Kurland provided an overview for Philadelphia's "Honest Government" structure, as well as explained how the IG role works. Initially, criminal matters were not referred to the FBI, police or other law enforcement agencies, because the administration felt it was important to police themselves. Near the end of an IG's criminal investigation that appeared to be ending with needed indictments, that is when partnership with other law enforcement agencies would begin.

For administrative investigations, these are fully carried out by the Philadelphia IG, including disciplinary recommendations; following the IG's final report, the individual the employee reports to has 30-days to respond and act on the IG's recommendations. Philadelphia's IG also has a non-profit initiative, contract compliance, pension disqualifications, and so forth. Integrity Officers for the IG's office swear an oath, and these individuals coordinate and work with the IG on ethical reporting for various city agencies. Misconduct prevention remains a focus for the IG's office, and policy recommendation reports attempt to provide preventative evaluations, as well as general education, outreach, and training for city personnel and those doing business with the city. The Philadelphia IG also performs intentional positive reinforcement acts by providing annual Integrity Awards and Honest Employee Letters for city personnel. Since the creation of Philadelphia's IG, Ms. Kurland explained how confidence in government has been growing, and city employee complaints are increasing as they have more trust actions will occur.

Carmen Moreno-Rivera then facilitated questions and discussion for Ms. Kurland's presentation. The first question about if it is or was a separate ordinance[s] that set out the disqualification for criminally charged and dismissed employees from their pension, to which Ms. Kurland replied that it is a state law. The next question was about the Philadelphia's IG authority and whether it was more or less with the police department than with any other department, and specifically about use of force cases with the police department. Ms. Kurland explained Philadelphia's obstacles on such matters was based

on sheer numbers. Although police officers are city employees, technically falling within the IG's jurisdiction, there were 25,000 city employees and nearly the same amount of police officers so it was simply near impossible for the staff at the IG's office. When asked if the Philadelphia IG model had only been focused on the police department, Ms. Kurland replied yes, that as an independent agency, it could have been solely focused on police misconduct.

4. Overview of the Police Merit Board

Carmen introduced Mark Dobbins, who serves as Counsel for the Police Merit Board. Mark explained that pre-Merger, the Board functions were applied within the Civil Service Board, but with the Merger the Board became a separate and new function all on its own. Mark explained how the Board is organized by law, not according to discipline, and how the make-up is designed. Civilian members to the Board are appointed by the Mayor, approved by the Metro Council, and can be removed by Metro Council for cause. Police officer elected members who are members of the Board, which is why recently, Mr. Hankison remained on the Board until he was terminated and ceased being a police officer, only then being disqualified based on the requirements that the police officer elected members are active officers.

Mark explained how personnel support the Board with a variety of clerical and administrative duties. Among staff is Mr. Steve Wilkins who serves as Chief Examiner to the Board. The Board is required by law to accept and hear appeals for any regular employee, and in context to recent events, Mr. Hankison following his termination has filed for an appeal and that hearing will be in a pending status following whatever transpires in the potential criminal matters involved. Mark provided an overview for how hearings generally work and to whom they can and do apply, including differences between police employees and fire employees. Hearings often function similar to trials and almost always last longer than a single day. Mark indicated that the Board has the ability to stay or decrease penalties, but cannot enhance or increase a penalty, so often civilian complaints are not adjudicated to civilian satisfaction.

Carmen again facilitated questions and discussion for Mark's presentation, and the first question he received was about term limits for Board members and regardless of term limits, how often do typical Board members serve. Mark responded that the term limits are 4-years for civilian members and 2-years for police members and there is a two term limit maximum and that most civilian members serve 8-years. Additionally, there are political party affiliation balance requirements, as well as residency and age requirements for Board members.

Due to some technical difficulties, Ellen asked the next question about the Board having the ability to reduce recommended penalties, to which Mark clarified that the Board can reduce penalties, vacate penalties or stay, but it cannot increase or enhance penalties.

5. Overview of the Police Officer's Bill of Rights

Ellen thanked Mark for his presentation and introduced Alice Lyon from the Jefferson County Attorney's Office for a brief overview of the Police Officer's Bill of Rights. Alice spoke to two areas of Kentucky state law that apply the Police Officer's Bill of Rights

language; one portion of the law was created in 1980 [KRS 15.520], and in 2015 that law was amended and KRS 67C.326 was created and carved out for Louisville Metro's use only. The law outlines how complaints occur and are handled.

Alice explained how the first version of this law was introduced in the U.S. House of Representatives in 1971, and since, nearly every congressional session a similar bill for the Police Officer's Bill of Rights has been introduced, but none have been successfully enacted. They are lobbied for by the National and various State FOP chapters. To date, 16 states have enacted a Police Officer's Bill of Rights law, and half of those instances, the state law only applies to state police, not local departments. Kentucky is in the other half, however, where the law applies to both state and local police. Alice explained how each state has tailored the law and some oversee civilian complaints only, while others receive civilian and interdepartmental complaints. Some states the law applies to both police and fire personnel.

For Kentucky's laws, Alice explained the intricacies of the Police Officer's Bill of Rights, including how general civilian and officer line of questioning can occur, when written notifications of complaints are to be administered to officers, and until a final disposition or adjudication is made, no one can speak to the details of the complaint and/or ongoing investigation. Alice explained the timing expectations and constraints for the complaint, and hearing process. Although the title of the KRS Chapter speaks to only citizen complaint processes, Alice explained how a 2014 Supreme Court case clarified that it also applies to interdepartmental complaints as well.

Carmen facilitated the discussion for Alice's presentation and the first question was about public statement ability and that although individuals are restricted from speaking to the allegations, however they could speak to facts, by example the releasing of body camera footage. Alice indicated that although the statute is not that specific, she was not comfortable saying one way or the other that the statute does or does not restrict one's ability in speaking to such matters publicly.

6. Brief Overview of Legal Opinion Regarding Subpoena Power

Carmen thanked Alice for her presentation and introduced Hollie Hopkins from the Jefferson County Attorney's Office to speak next. Hollie reminded the work group that during the first meeting, it was discussed that subpoena power must be granted by statute via the state legislative process, and that the Metro Council's subpoena power through the Government Oversight and Audit committee [GOAC], it is to be delegated to the ethics commission for very specific purposes in statute. In follow up to a question posed recently about whether the GOAC could work collaboratively with an IG on use of subpoena authority, Hollie on further review and examination does not feel legally it is feasible based on the specificities of GOAC's use of subpoena authority. Hollie went through the points that led to this opinion, and discussed the ongoing TARC investigation as a current example for a circumstances wholly contained within Metro Council.

7. State Legislative Needs and Processes

Carmen introduced State Sen. Gerald Neal and State Rep. Nima Kulkarni to discuss the

state legislative needs and process. Sen. Neal indicated that previous speakers covered well the restrictions in state law related to subpoena authority. Sen. Neal explained the various hurdles one must undergo to achieve state legislative change, and on this specific matter, it will require leadership in both chambers to be involved because otherwise the bill could be filed, but the Chair of the committee it is assigned to could simply not call it for a hearing. A bill draft will have to address multiple obstacles related to subpoena authority. Rep. Kulkarni explained that currently there is no legislative activity for bills to be heard until January 2021. She then walked through the general timeline for how a bill can be drafted, filed, and the overall process it would undergo in order to become law.

Carmen asked the first question from the work group about given the difficult process, what would Sen. Neal and/or Rep. Kulkarni recommend. Sen. Neal said that the conversation of how the state law should be drafted, and the strategy with leadership in the House and Senate should happen now. There will need to be support and building of understanding for the issue prior to session beginning in January. Sen. Neal mentioned that it could be considered to carve out legislation for a City of the 1st Class so the rest of Kentucky cities do not feel threatened or imposed upon, but that even then, there are complications that may still occur. Sen. Neal and Rep. Kulkarni have already been working with those putting the bill together for strategy, and Rep. Kulkarni echoed Sen. Neal's comments for deliberate efforts to achieve buy-in and support. Sen. Neal suggested reaching out to stakeholders throughout the state would additionally help the process.

8. Next Steps & Closing

Councilwoman Paula McCraney thanked the presenters today and the value of understanding the complexities involved. She reminded members that the next meeting would be August 14th and the agenda will include finalizations and discussion for remaining sections of the Draft Ordinance. CW McCraney encouraged members to be prepared at the next meeting to delve into these remaining Ordinance sections. At the meeting scheduled for August 28th, the full Ordinance would be discussed again and hopeful for buy in and sign off by this work group for handing over to Metro Council by August 31st.

Dep. Mayor Heslen additionally thanked members and echoed the importance of their review of these important presentations the past couple of weeks in order to move forward.