

# **CIVILIAN REVIEW BOARD WORK GROUP MEETING SUMMARY**

**Friday, August 14, 2020**

**Members Present:** Deputy Mayor Ellen Hesen, Co-Chair, Councilwoman Paula McCraney, Co-Chair, Kendall Boyd, Raoul Cunningham, Councilwoman Keisha Dorsey, Drew Fox, Reginald Glass, Ingrid Geiser, Councilwoman Jessica Green, Jessie Halladay, Brenda Harral, Chris Hartman, Keturah Herron, Amy Hess, Councilman Bill Hollander, Paul Humphrey, Chandra Irvin, Josh Judah, Representative Nima Kulkarni, Kim Moore, Senator Gerald Neal, Sadiqa Reynolds, Erwin Roberts, Judy Schroeder, and Anthony Smith.

## **I. Introduction and Roll Call**

Deputy Mayor Ellen Hesen 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. Deputy Mayor Hesen called the roll of members. She noted that there were a few follow-up items from the last meeting including a question from Brenda Harral related to the subpoena power by the Police Merit Board. Hollie Hopkins explained that the statute grants the Merit Review Board, through its chair, the power to issue subpoenas to gather documents or testimony it feels is necessary for deciding the case. The chair may also, “upon a showing or proper need”, issue subpoenas for other testimony or documents that either the officer of the police chief requests for purposes of the Merit Board proceedings. Ellen noted that any loose ends will be posted on the Civilian Review Board Work Group website.

## **2. Section by Section Review, Discussion, and Q&A**

Deputy Mayor Ellen Hesen introduced Carmen Moreno-Rivera to facilitate the Section by Section Review of the DRAFT ordinance. Carmen reminded members that the draft ordinance was sent to members in advance. She explained that the ordinance will be reviewed section by section and members will have the opportunity to provide feedback and ask questions. Hearing no feedback or questions from members on sections one through four, she moved on to section five. In response to a question from Councilwoman McCraney regarding if the Inspector General (IG) is a member of the Civilian Review Board (CRB) would the CRB also have the authority to remove along with the Mayor with a majority vote of the Metro Council. Councilman Bill Hollander explained that when the language was originally written, the Atlanta model was reviewed and the IG is the Executive Director of the CRB staff, so it probably should be revised. Carmen said that she would make a note of it.

As it relates to section VI, Sadiqa Reynolds asked a question related to item (5), “Investigate complaints as determined under Section VII of this Act.” Hollie Hopkins noted that the language includes “may” to provide discretion for the IG and CRB to determine if the complaint is worthy of investigation. If the language is changed to shall, then the CRB’s role in deciding would be eliminated. Carmen called on Major Paul Humphrey who noted that the Kentucky State Police is going to begin working officer

involved shootings and the Mayor's Office is exploring a regional shooting investigation team. He asked how those changes will impact the IG investigations since other agencies may not be bound to cooperate with the IG the same way PIU/PSU will. Hollie noted that state law prevails over local ordinance, and Ellen noted that she didn't think there would be any impact.

Jessie Halladay raised concerns that the IG office may not be equipped efficiently with everything that it will be required to do according to the proposed ordinance and reminded members that Philadelphia had a staff of 15. Major Humphrey reminded her that the IG will have discretion to determine if the complaint is worthy of investigation. Anthony Smith suggested that over time the IG Office could be built out to be able to investigate everything it deems appropriate. Carmen raised a question included in the chat from Sadiqa which asked if the proposed model is closer to Atlanta or Philadelphia. Alice Lyons responded that it seems to be the Atlanta model with the IG as Executive Director. In response to a question in the chat, Carmen noted that the PowerPoint presentation provided by Major Jamey Schwab includes data related to the number of PIU and PSU investigations. Major Humphrey reported there were 99 PIU investigations and 124 PSU investigations in 2019. In response to a question from Sadiqa regarding the number of staff within the IG office, Councilman Hollander reminded members that the funding was modeled from the Office of internal Audit which includes six or seven staff.

Carmen moved on to Section VII, Investigations by Inspector General. Councilman Bill Hollander raised a question if the language in (A) of Section VII should be changed from "may" to "shall", although he noted that there would be additional concerns about capacity. He also suggested that some of the items included in Section (A) could be "shall" but not all of them. Councilwoman McCraney suggested that critical violations that are most meaningful to the community could be changed to "shall," and the financial crimes could be "may." Keturah Herron noted that if additional capacity is required in the IG Office, then divesting from police should be considered to build trust with the community. Sadiqa suggested the language "shall ensure" and noted that perhaps the IG is not doing the investigation but can ensure that it is addressed. Ellen asked if there was consensus to change the language to "may investigate or ensure." Reginald Glass suggesting removing discrimination from the list because the Human Relations Commission (HRC) handles discrimination complaints. Kendall explained the process used by the HRC related to the ombudsman assisting in taking the complaint but explained that HRC does not have authority to investigate the complaint. Mr. Glass asked if the complaints taken include officer to officer, or officer to public, and noted there can be internal complaints. Hollie noted that she thought it was discrimination complaints raised from a member of the public against an officer. Councilwoman McCraney suggested that the language be more specific or clear. Hollie noted that the preamble says "the IG may investigate incidents involving any member of the LMPD that involve these types of conduct..." but suggested that it can be more specific. In response to an issue raised by Drew Fox regarding discrimination against an officer, Kendall noted that some jurisdictions include police officers as a protected class therefore it is covered in state law. Sadiqa responded that this group was not created to address those types of issues, and Senator Neal agreed that it would be an unwise path to go down. Councilwoman McCraney reminded members that this group was charged with creating a process for civilian review and she appreciates the healthy discussion.

Carmen circled back to Section VII (B), and a member posted a question in the chat related to the ability of the IG to receive complaints from other sources other than what is included in the ordinance A through E. Ellen said language could be added that says "including but not limited to." Hollie explained that when the draft was compiled, they looked at what complaints already come into government and the provision for a direct complaint. She said "including but not limited to" could be added but was unsure what other sources it would include. Carmen said a member posted in the chat that other referrals may include the County Attorney's Office or the Commonwealth's Attorney. She also noted that Kendall included in the chat that the HRC experience shows that requiring people to file formal complaints with specific sources, helps weed out frivolous complaints. Ingrid noted that the County Attorney's Office does not have immunity to investigate so the County Attorney must rely on an investigative body to conduct the investigation. She noted that if a citizen comes to the County Attorney and wants to file a criminal charge against a police officer, they refer them to the LMPD PIU to have the investigation completed. Erwin Roberts agreed and said the Commonwealth's Attorney would refer the citizen to the CRB or the IG. Members agreed to include the language "including but not limited to" in Section VII (B).

Carmen asked if there are other comments related to Section VII. She read a question from the chat related to the IG's power to take a sworn statement from a civilian. Hollie asked Kendall if the HRC requires a sworn complaint. Kendall said that they require the citizen to file a formal complaint and HRC investigates it pursuant to the process. Hollie asked if there is ordinal language that includes the authority to require a sworn complaint, and Kendall noted that the ordinance includes the language that it must be a sworn complaint. Sadiqa noted that when she was IG some people were afraid or fearful of filing a formal complaint, so that should be considered. Kendall responded that there are many people afraid to file a complaint against an officer, landlord, etc but unfortunately if there are no other witnesses or evidence to consider then the complaint can't move forward. Alice noted that the Police Bill of Rights says that if the complaint alleges criminal activity it may be investigated without a sworn statement if it alleges an abuse of internal rules or authority, then it requires a sworn statement. Drew Fox noted that the officers do appreciate the body camera program and the ability to pull up the footage to see it almost instantly. Josh Judah noted that under LMPD's current investigative procedures the Chief has the authority to initiate investigations based upon allegations. The IG or CRB could refer complaints to the chief to initiate. Ellen added in that the Ethics Commission takes sworn complaints, but the Commission can move forward if they choose to if someone doesn't give a sworn complaint and there is other evidence to go forward. Ellen asked if the HRC had a process to prevent against frivolous filings or repeat filings. Kendall responded that it is discretionary, but generally if people come in and file complaint after complaint, they are told that the new complaint must include separate and new evidence for HRC to take the complaint.

Sadiqa asked if the ordinance allows for a self-generated investigation by the IG. Ellen said the CRB can authorize the IG to investigate. Councilman Hollander noted that there are multiple ways for the IG to initiate an investigation on its own, with approval by the CRB, directed by the Mayor or the Metro Council which is keeping with the Atlanta model. Hollie said as the ordinance is currently drafted it would require investigation if requested by a majority vote of Council or by the Mayor, so the IG would have no

discretion in that regard. Councilman Hollander summarized that the IG can be mandated to investigate by the CRB, the Mayor, or the majority vote of the Metro Council, but cannot do an investigation on its own without the approval of the CRB. He raised the question if the IG should have the ability to investigate without approval of the CRB. Ellen agreed and noted the importance of the check and balance in that regard. Sadiqa reminded members that she was an IG and spoke about some of the complications encountered with having to get approval to investigate because that approval allows people to know what you are investigating. Further, she expressed concerns and said that there are times that the IG may need to investigate on its own without approval. Generally, IGs have the autonomy and can conduct investigations uninterrupted and there are going to be times when the IG needs to investigate. In response to a question from Councilwoman Keisha Dorsey, Sadiqa suggested that the IG should have the flexibility to investigate without approval because there are always going to be people attempting to influence the IG. Councilwoman Paula McCraney suggested that the IG should report to at least the Civilian Review Board Chair to investigate without approval. Councilwoman Keisha Dorsey stated that she liked the suggestion made by Councilwoman Paula McCraney. In response to a question from Councilwoman McCraney, Sadiqa said it was a good compromise. After further discussion, members agreed that the IG could investigate on its own with notification to the CRB Chair.

Hollie read Ingrid's question that was posted in the chat related to the level of approval required by the CRB for an investigation and asked for the work group's suggestion. Members agreed that a simple majority would be required by the CRB. Moving to Section VII (C) related to the IG having the ability to issue subpoenas, Councilman Hollander noted that the IG will not have subpoena power without a change in state law and reminded members that the Atlanta CRB rarely uses subpoena power. He spoke about the last time that there was a civilian oversight system in Louisville approved by the Board of Aldermen it was challenged by the FOP on the grounds that it granted subpoena power and an injunction was issued. The injunction was overturned on appeal because a subpoena had never been issued. He asked if eventually the ordinal language should be changed if state law is changed to grant subpoena power so the CRB is not back in the same issue as before or should the language be changed. Hollie noted that the language has been in the draft since the very beginning because it is an aspirational goal that no one wanted to lose sight of, but the language would probably need to be modified to include "when authorized by the Kentucky General Assembly the IG will have subpoena power." Hollie said the next draft will be modified so it doesn't appear that the ordinance is giving the Council the power to do something that it doesn't have the power to give. She added that the language currently says "to the extent as may be authorized by state law" but will take another look at the language to make sure.

#### **4. Next Steps & Closing**

Councilwoman Paula McCraney thanked everyone for their participation and feedback today. She reminded members that the next meeting is August 28<sup>th</sup> at 2:00pm. She asked members to go through the rest of the ordinance and write down any desires you may have and send them to the Co-Chairs so the feedback can be incorporated into the draft before the next meeting.