



## Ad Hoc Committee to Study Police Oversight

June 9, 2004

The Ad Hoc Committee to Study Police Oversight met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on June 9, 2004 at 4:07 p.m.

### COMMITTEE PRESENT

Dennis Kavanaugh, Chairman  
Lynda Bailey  
Mike Campbell  
Henry Castillo, Jr.  
Sharon Corea  
Linda Flick  
Graciela Herrera  
Michael Hughes  
Phil Lowry  
Pat Pomeroy  
Ken Salas  
Mary Lou St. Cyr  
Janie Thom  
Claudia Walters

### COMMITTEE ABSENT

Kevin Kotsur

### STAFF PRESENT

Mike Hutchinson  
Chief Dennis Donna  
Mary Berumen  
Eric Norenberg  
Pat Granillo

### OTHERS PRESENT

Mayor Keno Hawker

#### 1. Approval of minutes of the May 12, 2004 meeting.

It was moved by Committeemember St. Cyr, seconded by Committeemember Lowry, that the minutes of the May 12, 2004 meeting be approved.

Chairman Kavanaugh declared the motion carried unanimously by those present.

#### 2. Discuss and consider the draft final report.

Chairman Kavanaugh reported that at the May 12, 2004 meeting, staff was directed by the Committee to work with the Mesa Police Department to encapsulate the suggestions and recommendations of the members into a draft final report. He explained that the purpose of this agenda item is to provide the Committee with an opportunity to review the report, make revisions, if necessary, and hopefully obtain the members' approval to present the Committee's findings to the City Council at a Study Session later this summer.

Chairman Kavanaugh commented that after reading the report, he became aware of the fact that it failed to mention that the implementation of a Use of Force Review Board (with citizen participation) would require a Charter change. He stated that City Attorney Debbie Spinner is expected to issue a legal opinion regarding this matter, which would accompany the report, and stressed the importance of including language in the report indicating that the Committee was advised of the Charter change requirement.

Special Assistant to the City Manager Eric Norenberg provided the Committee with a brief synopsis of the draft final report. He stated that relative to the Committee's recommendation that the Police Department's current Board of Inquiry be modified to allow two citizens to serve on the Board, in ongoing discussions between himself and Police Chief Dennis Donna, Chief Donna concluded that it would be more appropriate to create a separate Use of Force Review Board; that the Board would be charged with a defined mission and specific situations under which it would convene; that it was Chief Donna's opinion that the Board of Inquiry is convened for a specific purpose and that it should remain in that role; and that the Phoenix model was used as a basis for Mesa's Use of Force Review Board.

Chairman Kavanaugh suggested that the report more clearly define the composition of the Use of Force Review Board. He explained that it was his understanding of the Committee's recommendations that two citizens would be added to the Board of Inquiry, which included three Department representatives, for a total of five members, and added that the citizen members would not constitute a majority of the Board.

In response to Chairman Kavanaugh's comments, Chief Donna clarified that per Departmental policy, Mesa's Board of Inquiry is composed of a minimum of three members (although it currently consists of five members) and that Phoenix's Use of Force Review Board consists of three staff members and two citizens. He also stated that the draft final report purposely left the composition of the proposed Use of Force Review Board somewhat open and suggested that the issue could be addressed in the future pending approval by the Council and the voters to create such a Board.

Committeemember Pomeroy referred the Committee to the following recommendation as contained on Page 4 of the draft final report:

1. The Mesa Police Department should create a Use of Force Review Board. The Board would conduct a review of cases:
  - Any time a person is injured or killed by an employee's firearm discharge.
  - Any time an attempt is made to injure a person by discharging a firearm.
  - Any time serious injury is inflicted upon a person by means other than a firearm. (Excludes vehicular accidents.)
  - Any time a person dies while in the custody of an MPD employee.
  - Any incident involving use of force as directed by the Chief of Police.

Committeemember Pomeroy questioned what type of incidents would be included under bullet No. 3, the necessity of including it as a separate item, and proposed that it may be appropriate to include it as part of bullet No. 5.

Discussion ensued relative to the fact that the language in bullet No. 3 was taken directly from the Phoenix Use of Force Review Board policy; that bullet No. 5 addresses incidents of a high-profile nature to the community, but not necessarily "serious injury;" that it has always been the intent of the Committeemembers that the Police Chief would have the ability to make a final determination relative to whether an incident should be referred to a Use of Force Review Board; and that bullet No. 5 would encompass the items outlined in bullet No. 3.

It was moved by Committeemember Pomeroy that bullet No. 3 be deleted from Recommendation No. 1 as contained in the draft final report.

Committeemember Walters stated that the benefit of including bullet No. 3 as part of bullet No. 5 is that it would eliminate the need to define "serious injury," something that she is unqualified to do.

In response to a question from Committeemember Walters, Chief Donna clarified that he would be comfortable with the elimination of bullet No. 3 and explained that "serious injury" is a term defined by law. He further commented that bullet No. 5 allows leeway in the Phoenix policy for the Chief of Police to decide whether there may be some incident less than a serious injury or death that he wishes to refer to the Use of Force Review Board for consideration.

Committeemember Thom seconded the motion.

In response to a question from Committeemember Hughes relative to the current motion before the Committee, Chief Donna clarified that there are and would continue to be incidents in which bullet No. 3 applies. He stated that if the Committee were contemplating the creation of a Use of Force Review Board, incidents would continue to be sent to the Board for review if they involved a serious injury not caused by a firearm (i.e., another tool that could result in a serious injury).

Committeemember Walters expressed support for including bullet No. 3 as part of bullet No. 5 and giving Chief Donna the discretion to assess the term "serious injury." She also stated that because the term is somewhat broad, giving Chief Donna this discretion may eliminate the public perception that the Police Department is keeping someone from bringing their case before a Use of Force Review Board because, in his or her opinion, they deemed the incident to constitute a serious injury.

Further discussion ensued among the Committeemembers relative to the pros and cons of Committeemember Pomeroy's motion; that bullet No. 3 is more restrictive because of the manner in which the Arizona code defines "serious injury" and that it would be necessary to refer such incidents to the Use of Force Review Board; that bullet Nos. 1 through 4 are mandatory referrals for convening a Use of Force Review Board; that bullet No. 5 is a "catchall" that would allow Chief Donna certain discretion if there were a unique circumstance that he believes would serve the needs of the community or the Department if a Board was convened; and that the proposed elimination of bullet No. 3 would be considered a policy decision, unlike the creation of a Use of Force Review Board, which would require a Charter change (the Committee's Recommendation No. 2 relative to education and community outreach is an independent recommendation and would not require a Charter change).

In response to a series of questions from Committeemember Thom, Chairman Kavanaugh clarified that if the Council approved the draft final report, including the recommendation for the creation of a Use of Force Review Board, that presumably, the Council would implement the necessary steps to refer the issue of repealing the City Charter's prohibition of such a board to the ballot. He explained, among other things, that the Council could draft an ordinance that would be conditional upon voter approval; that several years ago, the Charter was amended to permit an Ethics Code for Elected Officials, and in that instance, the Council passed an ordinance that went into effect when the voters approved the Charter changes; and that in this case, the Council would have similar discretion to review and accept the report, but would still be required to take a separate action in referring a Charter change to the voters.

Upon tabulation of votes, it showed:

AYES - Bailey-Campbell-Castillo-Flick-Herrera-Hughes-Pomeroy-Salas-Thom-Walters  
NAYS - Corea-Kavanaugh-Lowry-St. Cyr  
ABSENT- Kotsur

Chairman Kavanaugh declared the motion carried by majority vote of those present.

Chairman Kavanaugh inquired whether the Committeemembers had any additional suggestions and/or revisions to the draft final report.

Committeemember Thom highlighted the following entry listed on Page 4 of the report:

Creation of the Pool of Citizens for the Use of Force Board:

- a. A pool of 15-20 citizens appointed by the Mayor with concurrence of the City Council should be established by the City Manager's Office.

Committeemember Thom commented that the above-referenced notation is the same procedure currently utilized by the City for citizen appointments to various boards and committees. She stated that she would prefer that an alternative selection process be considered and suggested that perhaps a pool of citizens could be selected by the Neighborhood Services Department, the Housing and Human Services Board or the Council Police Committee as opposed to the City Manager's Office. Committeemember Thom also urged that language be included in the report that would disallow citizens serving on other City boards and committees from serving on the Use of Force Review Board.

Committeemember Walters respectfully disagreed with Committeemember Thom's comments and stated that she is comfortable with the current policy of the Mayor appointing citizens to various boards and committees, with the concurrence of the City Council. She noted that she is more concerned that the prospective members of a Use of Force Review Board complete the stringent training program prior to the commencement of their service. She also voiced opposition to excluding citizens from participating on the Use of Force Review Board who have gained expertise and training while serving on other boards and committees.

Committeemembers Corea, St. Cyr and Hughes concurred with Committeemember Walters' comments.

Committeemember Thom clarified her prior comments by noting that she did not mean that the appointments would not be made by the City Manager and concurred by the Council, but rather that she was merely suggesting that the applicants for the Board be derived from another source.

Discussion ensued relative to the process undertaken by the City Manager's Office regarding the recruitment of citizens to serve on City boards and committees; that the City attempts to draw from a diverse cross-section of the community and will continue to do so; the various components of the Citizens Police Academy; and the fact that the citizen members of the Use of Force Review Board would be required to complete a comprehensive training program prior to beginning their service on the Board.

Chairman Kavanaugh commented that although Committeemember Thom's suggestion has not received the support of the Committee, the discussion has been helpful in that the Committee is unanimous in its desire to attract citizens from a wide section of the community and also to alert potential volunteers that they will be expected to participate in an extensive training process.

Committeemember Walters stated that regarding a potential Charter change in order to establish a Use of Force Review Board, she suggested the drafting of a new amendment to the Charter which would state, for example, "It is permissible for the Council to create a Use of Force Review Board as long as it does not consist of a majority of citizens." She explained that she has received input from members of the community regarding this matter and commented that language which merely repeals the existing amendment would not address that item.

Chairman Kavanaugh concurred with Committeemember Walters' comments and suggested the following verbiage: "The City Council may establish a Use of Force Review Board that includes citizen representation for advisory recommendations. The composition of such Board shall not be a majority of citizens."

Committeemember Hughes stressed that throughout the Committee's tenure, it has always been the consensus of the members that the Police Department has done a good job and that they did not want to create a situation in which citizens would be in control of the Use of Force Review Board.

It was moved by Committeemember Pomeroy, seconded by Committeemember Lowry, that Recommendations 1 and 2 of the Ad Hoc Committee to Study Police Oversight be forwarded on to the City Council.

Committeemember Thom questioned whether it would be appropriate to vote separately on each of the recommendations due to the fact that Recommendation No. 1 requires a Charter change and Recommendation No. 2 does not.

Chairman Kavanaugh stated that the vote could be separated if it was agreeable with the motion maker to do so.

Committeemember Pomeroy stated that he would amend his motion so that Recommendation No. 1 and Recommendation No. 2 would be considered and voted on separately.

Committeemember Lowry expressed opposition to the amended motion and withdrew his second to Committeemember Pomeroy's first motion.

Committeemember Thom seconded Committeemember Pomeroy's amended motion.

Chairman Kavanaugh clarified that the current motion before the Committee is that Recommendation No. 1 be forwarded on to the City Council.

Upon tabulation of votes, it showed:

AYES - Kavanaugh-Bailey-Campbell-Castillo-Corea-Flick-Herrera-Hughes-Lowry-  
Pomeroy-Salas-St. Cyr-Walters  
NAYS - Thom  
ABSENT - Kotsur

Chairman Kavanaugh declared the motion carried by majority vote of those present.

It was moved by Committeemember Pomeroy, seconded by Committeemember Thom, that Recommendation No. 2 be forwarded on to the City Council.

Committeemember Hughes commented that in his opinion, the most important language in Recommendation No. 2 is: "The Police Department should strengthen public relations and implement a communications plan to create more interaction between Police and citizens." He stated that it was his understanding that the Committee was more concerned with the actual strengthening of public relations between the Police Department and the community as opposed to the implementation of a specific plan by which that could be accomplished. He added that there might be alternative options available in order to achieve this goal other than those items contained in the report.

Chairman Kavanaugh suggested that Recommendation No. 2, following the first sentence as read by Committeemember Hughes, could state: "The Committee identified the following examples to assist in accomplishing this recommendation." (The bullets currently identified in the report would remain as part of the text.)

It was moved by Committeemember St. Cyr, seconded by Committeemember Corea, to modify the language in Recommendation No. 2 as previously stated by Chairman Kavanaugh.

Chairman Kavanaugh declared the motion carried unanimously by those present.

Chairman Kavanaugh clarified that the Committeemembers are now considering the previous motion that Recommendation No. 2 be forwarded on to the City Council.

Chairman Kavanaugh declared the motion carried unanimously by those present.

It was moved by Committeemember Hughes, seconded by Committeemember St. Cyr, that the draft final report of the Ad Hoc Committee to Study Police Oversight be forwarded on to the full Council for approval and also that the Committee present their findings to the Council at a future Study Session.

Committeemember Flick expressed appreciation to her fellow Committeemembers for their hard work and dedication and stated that everyone should be very proud of the work that the Committee has accomplished throughout this process.

Chairman Kavanaugh concurred with Committeemember Flick's comments and noted that it has been a pleasure for him to serve with all of the talented Committeemembers. He stated that throughout this process, the Committee's discussions have been fair, objective, impartial and with the best interest of the City of Mesa at heart. Chairman Kavanaugh added that the Committee is a fine representation of why Mesa utilizes citizen boards and committees to assist in the shaping of policies for the community.

Chairman Kavanaugh declared the motion carried unanimously by those present.

### 3. Presentation and remarks by Mayor Hawker.

Mayor Hawker presented each Committeemember with a City of Mesa pen as a token of his appreciation for their efforts and hard work during their tenure on the Committee. He commented that the members represent a diverse cross-section of the community and stated that the draft final report is a concise and well-written document. Mayor Hawker indicated that there might be individuals, such as him, who may disagree with certain elements of the report. He noted, by way of example, that he supports the concept of having the ability to recall an individual from office if he or she does something that is not in the best interest of the municipality, and he questioned whether a citizen appointment would provide such power.

Mayor Hawker expressed support for the Police Chief having the ability to render a final determination regarding whether an incident should be referred to a Use of Force Review Board. He stated, however, that with Mesa's current form of government, the Police Chief is appointed by the City Manager and the Council does not have the ability to confront the Police Chief, without first going through the City Manager, if he acts in a manner that is contrary to the beliefs of the Council.

Mayor Hawker concluded his remarks by stating that the Committee was formed in an effort to respond to certain police incidents that occurred last year and also to reevaluate the manner in which the Police Department responded to those events. He stated that now that the Committee has completed its charge and its recommendations are being forwarded on to the Council, the Council would either move the Charter change issue forward to place it on the ballot or alternatively, citizens may gather signatures for the same purpose.

Chairman Kavanaugh expressed appreciation to Mayor Hawker for attending the meeting and added that he is confident that Mayor Hawker would carefully consider the Committee's consensus recommendations which have the full support of Chief Donna.

Committeemember Flick thanked Chairman Kavanaugh for his leadership during the Committee's tenure. She also commended him for his fairness and objectivity in allowing the Committeemembers to offer their input and suggestions throughout the entire process.

### 4. Items from Citizens Present.

There were no items from citizens present.

5. Adjournment.

Without objection, the meeting of the Ad Hoc Committee to Study Police Oversight adjourned at 5:08 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Ad Hoc Committee to Study Police Oversight meeting of the City of Mesa, Arizona, held on the 9<sup>th</sup> day of June 2004. I further certify that the meeting was duly called and held and that a quorum was present.

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BARBARA JONES, CITY CLERK

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