

POLICE COMMITTEE MINUTES

October 2, 2003

The Police Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on October 2, 2003 at 10:20 a.m.

COMMITTEE PRESENT

Rex Griswold, Chairman
Janie Thom
Claudia Walters

COUNCIL PRESENT

None

STAFF PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

1. Discuss and consider recommending a process to examine possible mechanisms for civilian oversight of selected police activities.

City Manager Mike Hutchinson addressed the members of the Committee relative to this agenda item. He reported that as a result of four officer-involved shootings in the community recently, there has been a great deal of discussion regarding the establishment of a civilian police review board. Mr. Hutchinson explained that staff provided the Committee with a report highlighting the historical background of the issue, as well as an overview of the four primary types of civilian oversight of law enforcement agencies currently utilized in the United States. (See Attachment.) He stressed that because of the complexity of the issue, the establishment of a citizen police review board must be conducted in a careful and thorough manner to ensure the public's confidence in the outcome.

Mr. Hutchinson stated that it is the recommendation of staff that an ad hoc committee be formed that would be charged with evaluating whether or not to consider some form of civilian oversight for the police department and then identifying the most appropriate oversight model for the City. He further recommended that the 12-15 member ad hoc committee be comprised of the three members of the Police Committee, representatives from various minority groups, neighborhood and business leaders, a member of the 1967 Charter Board of Freeholders, representatives from the Police Department, and also that the City Attorney's Office actively participate in the process.

In response to a question from Committeemember Walters, Mr. Hutchinson clarified that because of the ad hoc nature of the committee, it would be appropriate to include a member of a citizen oversight body from a neighboring community to participate in the process as well.

Committeemember Walters commented that she has spoken recently with at least two of the original members of the Board of Freeholders concerning the fact that the first City Charter contained a provision which prohibited the creation of a civilian police review board. She questioned staff whether the Freeholders' intent to include such a provision in the Charter would mean anything in terms of whether or not they need to have a Charter change.

In response to Committeemember Walters' comments, City Attorney Debbie Spinner clarified that it would be difficult to rely on just individuals' recollections of what was the intent of the Freeholders. She explained that when interpreting the City Charter, if the language in the document is clear, you do not go beyond that language; however, if there is ambiguity and there is the existence of some type of document, for example, minutes, that illustrate the Freeholders' true intention, such items can be utilized to assist in the interpretation of the Charter provision.

Committeemember Walters further stated that in her conversation with the original members of the Board of Freeholders, they had commented that they did not want a group to make an "end decision." She noted that she had suggested to them that if a board were advisory to the City Council and the final decision rested with the Council, but the advice the Council was given came about as a result of that committee's findings, potentially the Council would consider that information in its determination of whether or not a Charter change is required.

In response to Committeemember Walters' comments, Ms. Spinner advised that staff will have to determine the definition of a "civilian police review board," and that it will seek to determine if there is any documentation which would show the intent of the Board of Freeholders at the time the Charter provision prohibiting the creation of a civilian review board was first drafted. She added that it is also the recommendation of staff that the ad hoc committee first determine the responsibilities and scope of a recommended program type and then conduct legal evaluation of the model to determine the steps required for implementation, including whether a change in the City Charter will be required.

Discussion ensued relative to the composition of the committee and City Manager Mike Hutchinson stated the opinion that 12 members would be manageable and allow interested people to become involved in the process.

Committeemember Walters stated that one of the reasons why she would like the ad hoc committee to include a member of a citizen oversight body from a neighboring community is the fact that instances have occurred of "de-policing," whereby police officers become fearful of doing the wrong thing and therefore do nothing by staying out of certain areas of the community. She stressed that she would not like this to occur in Mesa and added that it would be a tremendous disservice to the residents in the community. Committeemember Walters commented that it is imperative that the City promote citizen trust with regard to this issue and noted that the recent events have been extremely challenging not only for City staff and Mesa residents, but also for the Councilmembers in their efforts to respond appropriately to a myriad of inquiries from throughout the community.

Committeemember Walters expressed support for proceeding forward with staff's recommendation. She added that although staff's proposal for the specific group members may be controversial, it is important for the public to understand that the City is making its best efforts in this regard. She cautioned against forming an ad hoc committee that is so large that it is unable to accomplish its important tasks.

Police Chief Dennis Donna addressed the Committeemembers and stated that the Mesa Police Department is not resistant to an outside review process or whatever format with which the City Council and the citizens of Mesa wish to proceed. He added, however, that his department would like to provide input into the process, as reflected by the inclusion of representatives from the department on the ad hoc committee.

Committeemember Thom cited various sections of the City Charter related to this issue. She expressed appreciation to Chief Donna for his comments and stated that she recognizes the fact that he has effectively communicated with the community during this difficult and emotionally charged time. Committeemember Thom voiced opposition to staff's recommendation and stated the opinion that the most appropriate thing to do at this time is to "let the system work" and not to give a "knee-jerk" response to an emotional situation that has not entirely subsided. She added that the City may wish to reconsider this issue in the future, but not until such time as the current officer-involved shooting investigations have been completed.

Chairman Griswold commented that since the City Charter was written in 1967, Mesa has become a major metropolitan area and is now faced with many "big city" challenges. He expressed support for the creation of an ad hoc committee to consider various police review board models and to identify the one best suited for the City. Chairman Griswold also questioned his fellow Committeemembers as to whether they are willing to participate in this lengthy process.

It was moved by Chairman Griswold, seconded by Committeemember Walters, to recommend to the Council that an ad hoc committee be formed (with representatives from various groups as outlined in the staff report), to begin a citizen review process for evaluating options for civilian oversight of selected police activities.

Committeemember Thom questioned whether it would be appropriate to postpone the creation of the ad hoc committee until such time as the current investigations have been completed.

Chairman Griswold stated the opinion that the two processes are separate and distinct, and because it is anticipated that the committee's evaluation process will be lengthy, he would prefer that the Police Committee proceed with this agenda item.

Mr. Hutchinson noted that although he is unsure when the ongoing police investigations will be completed, if this matter is brought forward by the Police Committee, it is anticipated that the full Council will consider the issue at the October 13, 2003 Regular Council meeting. He added that pending Council approval of the item, he would expect a time lag of several months before the ad hoc committee members are selected and the first organizational meeting takes place.

Committeemember Walters concurred with Chairman Griswold's comments and said that it is important to focus on what makes good policy for the City rather than on a specific incident.

Committeemember Thom noted that she has served on the Council since June 2nd of 2002 and has not received a single telephone call or e-mail relative to the formation of a citizen police review board until the day of the first officer-involved shooting. She stated the opinion that if the City establishes an ad hoc committee for this purpose, it is reacting to pressure from either interest groups or the press.

Further discussion ensued relative to the current status of the ongoing police investigations.

Committeemember Walters advised that the issue of a citizen police review board has been around for many years and commented that the City of Mesa should not be afraid to revisit this topic again.

Upon tabulation of votes, it showed:

AYES - Griswold-Walters
NAYS - Thom

Chairman Griswold declared the motion carried by majority vote.

Chairman Griswold thanked staff for the presentation.

2. Discuss current penalties that exist for malicious paint ball shootings.

Police Chief Dennis Donna and Police Commander Fred Ruhland addressed the Committee relative to this agenda item.

Commander Ruhland provided a brief overview of the Criminal Investigations Division's (CID) normal procedure for handling incidents involving paint ball gun pellet usage. He reported that although the CID receives very few cases related to this issue, like all property crime cases, it depends on the solvability factors that are present to determine if the case will be assigned to a detective. Commander Ruhland explained that if the incident involves the defacing of property with a paint ball gun, such a case would be considered as a misdemeanor criminal damage and referred back to the district for follow-up investigation by either the reporting officer or the Community Action Team (CAT). He also stated that if a paint ball gun pellet strikes an individual, depending on the extent of the injuries, the perpetrator could be charged with either a misdemeanor or felony assault or aggravated assault.

Commander Ruhland further commented that because the CID generally concentrates its efforts on felony criminal damage cases such as burglary and major theft, it must therefore prioritize its resources. He said that the Maricopa County Attorney's Office does not have any charging standards specifically related to the use of paint ball guns and added that it currently designates any criminal damage under \$2,000 as a class one misdemeanor, which is thereby adjudicated through the City Court.

Chairman Griswold related incidents when citizens and/or their property have been struck by paint ball gun pellets including restaurant patrons dining in the outdoor patio of a local restaurant and also elderly homeowners who reside along Broadway Road. He stated that although it may be hard to prosecute the offenders of these crimes, it is becoming a problem which could result in serious injuries.

In response to Chairman Griswold's comments, Commander Ruhland emphasized the importance of citizens reporting paint ball gun incidents to the Police Department as soon as they occur. Chief Donna reiterated that when victims report such crimes, the Department is often able to accumulate a number of reports, detect patterns and react to those patterns to find the culprits.

Committeemember Walters commented that if and when a victim reports a paint ball gun incident and a perpetrator is identified and convicted, such a conviction might assist the victim in filing a civil suit for damages.

Committeemember Thom thanked staff for the informative presentation.

3. Update on the Domestic Violence Enforcement Response Team (DVERT).

Police Chief Dennis Donna and Police Lieutenant Doug Kline addressed the Committee relative to this agenda item. Chief Donna reported that one of the Police Department's priorities this year has been to enhance its response to domestic violence cases throughout the community. He explained that in an effort to address this issue, members of the Department's Center Against Family Violence unit have developed the Domestic Violence Enforcement Response Team (DVERT).

Lieutenant Kline provided a statistical overview of domestic violence cases in the City of Mesa and advised that it is the most prevalent persons crime committed in the community; that only 20% of the cases are reported, and that domestic violence cases assigned to the Criminal Investigations Division (CID) have increased 191% from 1999 to 2002.

Lieutenant Kline stated that currently, when a domestic violence case is reported to the Department, a beat officer responds to the call, assesses the scene and makes a determination as to whether the batterer should be sent to jail. He commented that if the suspect has left the scene prior to the officer's arrival, a report is written and the case is forwarded on to the Center Against Family Violence where it is assigned to a detective. Lieutenant Kline noted that if the detective determines there is probable cause, an attempt will be made to arrest the suspect or, alternatively, the paperwork is submitted to the appropriate court to obtain a warrant. He further explained that this scenario usually results in the case being added to a backlog of warrants waiting to be served, thereby resulting in a severe time lag before the suspect is arrested. He added that it is imperative that a suspect is arrested as quickly as possible to ease the victim's feelings of helplessness and hopelessness.

Lieutenant Kline commented that in 2000, the Department established the Stopping Abuse in Families (SAIF) team, a grant-funded program that paired a police officer and civilian special services individual, who were deployed to a portion of the Dobson District. He advised that in addition to the traditional response to a domestic violence call, the team assessed reports and implemented various strategies including referrals, crisis intervention, education and enforcement components as well. He explained that the team received a very favorable response from the victims and their families and noted that in assessing the SAIF team, the most important aspects of the process included the timeliness of the investigation, enforcement of the domestic violence laws, and the education and understanding of those laws not only for the public, but the officers as well.

Lieutenant Kline further stated that in an effort to improve upon the SAIF team concept, the Center Against Family Violence unit wanted a more rapid response and intervention approach to ensure a more timely issuance of orders of protection and the serving of warrants, a comprehensive community education program and enhanced in-service training. He noted that specially-trained CAT officers (DVERT officers) will now review domestic violence cases as they come into the Department, interact with the officers in the district and take immediate action

when appropriate, including locating and arresting the suspect, making follow-up calls to the victim, family members and witnesses, serving orders of protection, and when the suspect cannot be found, filling out the complaint paperwork and forwarding it on to the Center Against Family Violence. He stressed that if the case cannot be handled within the district in approximately one-week's time, it will be sent to the Center Against Family Violence as has been the process in the past.

Lieutenant Kline concluded his remarks by noting that it will be important for the Department to measure the effectiveness of the DVERT program and also to evaluate various outcomes, including what happens to the victim and the suspect. He added that after the first quarter of 2004, it is the goal of the Department to have all the districts participating in the DVERT program.

Chairman Griswold commended staff for their efforts and hard work relative to this issue and commented that it is imperative that the Police Department sends a clear message to the community that domestic violence is unacceptable behavior.

Discussion ensued relative to the fact that orders of protection can be served by a police officer or a processor; that it will not be necessary to hire additional personnel for the implementation of the DVERT program, and that the Department will not incur additional expenses with regard to the 40 hours of special training for the DVERT officers or the continuing education classes for the entire Police force relative to this matter.

Committeemember Walters expressed her appreciation for the DVERT program and stated that she was shocked by the low percentage of domestic abuse cases that are reported to the Police Department. She added that although it is impossible to eliminate domestic violence entirely, the DVERT program will hopefully make great strides in that direction.

Committeemember Thom advised staff that the Arizona Society for the Prevention of Cruelty to Animals (ASPCA) has a program whereby if a domestic violence situation occurs in a household and the victim or children leave the home, the ASPCA can place the family pet in a foster home until such time as any problematic issues have been resolved. She urged staff to take advantage of the program and added that it is at no cost to the City.

4. View video on the Police Department Vision and Mission.

The members of the Committee viewed a brief video on the Police Department's Vision and Mission.

5. Adjournment.

Without objection, the Police Committee meeting adjourned at 11:20 a.m.

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I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Police Committee meeting of the City of Mesa, Arizona, held on the 2nd day of October 2003. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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Attachment

City Council Report

Date: September 29, 2003
To: City Council
Through: Mike Hutchinson
From: Eric Norenberg
Subject: Process for Evaluating Options for Civilian Police Oversight
"Citywide" Issue

Purpose and Recommendation

The purpose of this report is to receive City Council direction establishing a process for evaluating options for civilian oversight of selected police activities.

Background

In 1967, the Mesa voters approved the first Mesa City Charter. Section 501, as recommended by the Board of Freeholders, prohibited creation of a civilian police review board. In 1992, Mayor Wong formed an ad hoc committee to review policies and practices in the Police Department. The committee included the three Councilmembers serving on the Police Committee and citizens. The committee recommended that "the current disciplinary review process should be revised to allow for independent citizen input". The recommendations were considered by the City Council in December 1992, but the majority of Councilmembers were opposed to pursuing the issue any further and no additional action was taken on this recommendation.

The 1993 Charter Review Committee considered removing the civilian police review board prohibition, but ultimately voted against that change in the Charter.

Discussion

Recent officer-involved shootings have once again raised the issue of civilian review of police. Research shows that there are four primary types of civilian oversight of law enforcement agencies in the United States:

Type 1: Citizen Review Board. Citizen complaints are reviewed and investigated, and recommendations for disciplinary or policy action are made by a board comprised wholly of citizens. The board may or may not have subpoena power. Under this model, a citizen review board handles each step of the process from original complaint through review, investigation and recommendations for sanctions. This is the most independent citizen review model. Examples of this type include the Civilian Review Authority in Minneapolis, MN and the New York City Civilian Complaint Review Board.

Type 2: Police Review/Citizen Oversight. Complaints are reviewed and investigated by law enforcement officers, who make recommendations for disciplinary or policy action. A civilian or citizen board provides oversight of each case. Under this model, the police department handles the steps in the complaint process. A board of citizen reviewers, or a single individual, reviews those actions/determinations. Since law enforcement conducts the initial fact-finding investigation, the Type 2 model is considered less independent than Type 1. Examples of this type include the Police Internal Investigations Auditing Committee and Citizen Advisors of Portland, OR, and Charlotte, NC Police Review Program Community Relations Committee.

Type 3: Police Review/Citizen-Police Appeal Board. Complaints are reviewed and investigated by law enforcement officers in the Internal Affairs Unit, which recommends disciplinary action to the chief. Complainants who are not satisfied with outcomes of investigations can appeal for review to a board composed of both citizens and sworn officers. Under this model, the police department handles the complaint process. If a complainant is not satisfied with the outcome of his or her case, a board that includes police officers undertakes review of how the case was originally investigated. Citizen participation is limited to appeal review only. An example of this type is the Los Angeles, CA Board of Police Commissioners.

Type 4: Independent Citizen Auditor/Monitor. An independent civilian auditor or monitor reviews the law enforcement agency's internal complaint review process and makes recommendations as needed. Under this model, the complaint process is fully in the hands of the police. However, an auditor/monitor has access to that process and reviews it for effectiveness and accuracy of findings, making recommendations to improve the process as needed. The auditor/monitor reviews completed complaint cases and contacts complainants to assess satisfaction with outcome. The cities of San Jose, CA and Austin, TX and the Los Angeles County Sheriff's Department use this type of review.

In addition to these basic types, there are many communities using hybrids or variations of the above types (for example, combining a civilian review board with an independent monitor) and/or including other programs (such as mediation) to the selected review method.

Evaluating whether or not to consider some form of civilian oversight for the police department and then determine the appropriate form of oversight may be a lengthy process. Based on the experience of other communities, the following steps could be taken in Mesa's process:

- Form a citizens task force that will operate under clearly defined City Council direction to complete the following steps, with support from an internal staff team:

- o Hear from local and national experts and from other communities using forms of civilian review that will achieve the desired outcomes
- o Gather public input (possibly through surveys, focus groups, "town hall" meetings, etc.)
- o Determine the desired outcomes
- o Determine the appropriate model to achieve the outcomes
- o Determine responsibilities and scope of recommended program type
- o Conduct legal evaluation of recommended program type to determine steps required for implementation (i.e., Will a change in the City Charter be required?)
- o Determine the structure and process

It is difficult to estimate how much time this process will take, because it is essential that a careful, thorough process be conducted to ensure the public's confidence in the outcome. In Mesa's case it is expected that if a task force is appointed to examine options for civilian oversight, the task force will assess the mandate given it by the City Council and determine its own timeline.

If the City Council chooses to begin a citizen process to evaluate civilian oversight options and make recommendations to the City Council it is proposed that a Civilian Oversight Task Force be formed with representatives from the following groups:

- Council Police Committee (three members)
- A Human Relations Advisory Board Representative
- A member of the Mesa Association of Hispanic Citizens
- Representatives of the African American communities and/or other minority populations
- Representatives of the police department
- A representative from a neighboring community's civilian review board
- A member of the 1967 Charter Board of Freeholders
- A Mesa business leader
- A Mesa neighborhood leader

In addition to the representation described above, the task force would need to have appropriate gender balance and geographic representation. It is expected that the total number of task force members would be 12-15.

Because of the high level of interest about this issue from all sectors of the community, it is recommended that the City Council form a task force as outlined above with the mission of receiving public input, assessing the need, for civilian oversight of law enforcement in our community, and recommending an appropriate model for the City Council to consider implementing.

Alternatives

Option A: Continue current practice of investigation of complaints by the Police Department.

Option B: Begin the process as outlined above, but with the Council Police Committee serving as the review task force.

Fiscal Impact

If a citizen task force to evaluate civilian oversight of the police department is assembled, it is projected that the task force would incur costs for printing, translation services, meeting room rental, advertising, and travel/accommodations for out-of-town experts to meet with the task force.

Concurrence

Chief Dennis Donna, City Attorney Debbie Spinner, and Diversity Officer Mary Berumen participated in preparing this report.

Eric Norenberg, Special Assistant
to the City Manager

Mike Hutchinson, City Manager