



Ad Hoc Committee to Study Police Oversight

April 28, 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 April 28, 2004 at 4:00 p.m.

COMMITTEE PRESENT

Dennis Kavanaugh, Chairman
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

Lynda Bailey
Mike Campbell
Kevin Kotsur

STAFF PRESENT

Mike Hutchinson
Mary Berumen
Chief Dennis Donna
Pat Granillo
Eric Norenberg
Debbie Spinner

Chairman Kavanaugh excused Committeemembers Lynda Bailey and Mike Campbell from the meeting.

1. Approval of minutes of the March 24, 2004 meeting.

It was moved by Committeemember Walters, seconded by Committeemember Thom, that the minutes of the March 24, 2004 meeting be approved.

Chairman Kavanaugh declared the motion carried unanimously by those present.

2. Hear and discuss a presentation on the Phoenix Police Department's Use of Force Review Board.

City of Phoenix Assistant Police Chief John Buchanan conducted a Power Point presentation in the Council Chambers and provided a brief overview of this agenda item. He reported that the primary purpose of the Phoenix Police Department's Use of Force Board is to make administrative recommendations to the Police Chief subsequent to reviewing use of force incidents. He explained that in this regard, the Board conducts hearings relative to police

shootings, in-custody deaths and any use of force incident designated by the Police Chief. Chief Buchanan noted that the Board could also recommend policy changes and additional training, if deemed appropriate.

Chief Buchanan informed the Committee that a mandatory review by the Use of Force Board is required when a person is injured or killed by a firearm discharged by an officer, when an officer attempts to injure a person by discharging a firearm, and the infliction of serious injury by means other than a firearm (non-vehicular). He noted that the Board Chairperson assesses the following non-mandatory use of force incidents to determine whether they should be screened by the Boardmembers: any unintentional discharge of a weapon without injury; intentional shooting or attempted shooting of an object or animal; any intentional or unintentional discharge of a stunbag shotgun; or the occurrence of a death while in police custody.

Discussion ensued relative to the history of the Board; the fact that until the 1980s, only the Police Chief reviewed use of force incidents; that in 1984, a Use of Force Board was established consisting of the Special Operations Division Chief, two Captains and no citizens or peers; that as a result of a high-profile shooting in 1984, former Phoenix Police Chief Ruben Ortega added one citizen and one peer member to the Board; that in 1991, a second citizen was added to the Board; that in 1994 and 1995 as a result of two high-profile incidents, an Advisory Board was established to assess the use of force review process and training; that in 1995, a third citizen was added to the Board per the recommendation of the Advisory Board; that from 1995 to the present, the Board consisted of a Chairperson (an Assistant Chief), one Commander, one employee peer, three Phoenix residents, and non-voting advisory members; and the terms of the various Boardmembers.

Chief Buchanan commented that the citizen Boardmembers (who are solicited by the Police Department at its Citizen Police Academy, Advisory Boards and recommended by various precinct Commanders) are appointed by the City Manager. He stressed that it is important that the composition of the citizen members is ethnically and culturally reflective of the community. He also stated that the members must attend training prior to the commencement of their service on the Board. Chief Buchanan added that there are a number of non-voting staff members who provide specialized assistance (legal, technical, tactical) during the Board hearings.

Further discussion ensued relative to the Board protocol; the fact that four members must be present for a quorum (no alternates); that the officer accused of the use of force incident and his/her supervisor must attend the hearing; that a Police union representative remains a passive, non-voting observer during the proceedings; that the Professional Standards investigator makes a detailed presentation regarding the investigation and circumstances surrounding the case; that the Boardmembers are required to read the investigation materials prior to the commencement of the hearing; and the presentation sequence during the hearing.

In response to a series of questions from the Committeemembers, Chief Buchanan clarified that since the inception of the Use of Force Board, Phoenix residents have been generally accepting of the process. He explained that the Police Department's credibility within the community has increased since the formation of the Board, and commented that in a recent citizen survey, the Department received an overall performance rating of excellent or good by 78% of the community. Chief Buchanan further commented that the Police Chief has the authority to

change the Board's recommendations; that the Use of Force Board hearing is the culmination of the Internal Affairs investigation of an incident; that there are administrative costs associated with the Board process; that the Phoenix City Charter does not prohibit the creation of a Citizen Review Board and that no Charter changes were required to implement the Use of Force Board. He also discussed the citizen Boardmember selection process and said that it can take at least six to nine months after a use of force incident occurs before the case is brought before the Board for review.

In response to a question from Committeemember Pomeroy, Mesa Police Chief Dennis Donna advised that in 2001, the City of Mesa conducted its most recent citizen survey with regard to the effectiveness of City services. He explained that at that time, the Mesa Police Department received an approval rating of approximately 80%. Chief Donna added that he would distribute copies of the survey to the Committeemembers for their perusal.

Chairman Kavanaugh expressed appreciation to Chief Buchanan for his informative presentation.

(Committeemember Ken Salas left the meeting at 5:00 p.m.)

(Chairman Kavanaugh declared a brief recess at 5:02 p.m. The meeting resumed at 5:12 p.m.)

3. Hear and discuss a presentation on the Tempe Police Department's Citizen Review Board.

City of Tempe Police Commander Brenda Van Amburg and Bureau Manager Brenda Buren introduced themselves to the Committee and provided a brief overview of this agenda item.

Commander Van Amburg, a liaison to the Tempe Police Department's Citizen Review Board, displayed graphics in the Council Chambers and reported that Tempe initially implemented a citizen oversight process as a proactive means by which to partner with the community under the auspices of community policing and also to enhance accountability throughout the Police Department organization. She explained that Tempe established citizen oversight in July 1999 via the adoption of an ordinance, and the Citizen Review Board panel, which was selected in November 1999, reviewed its first case in August 2000.

Commander Van Amburg highlighted the general parameters of the panel and commented, among other things, that the panel consists of 15 citizen members and three Police Department members; that each incident is reviewed by a sub-panel that includes five citizen panel members and three Police Department members; and that incidents are reviewed by a sub-panel prior to being forwarded to the Police Chief for review.

Discussion ensued relative to the fact that the sub-panels review any incidents involving an officer who has discharged a firearm or used direct physical force resulting in the serious injury or death of an individual (excluding accidental discharges and animal shootings); that if a citizen complainant is unhappy with the results of an Internal Affairs investigation, he/she can request that the case be presented before the Citizen Review Board; and that the sub-panels will also review any incident at the request of the Police Chief.

Commander Van Amburg further commented that the sub-panel is required to review the record of a case and make recommendations to the Police Chief. She said the recommendations could include, for example, agreeing or disagreeing with the findings of the Police Department investigation, advising that further investigation is warranted, making a further finding regarding whether a use of force incident was or was not within Department policy, and recommending further training.

Further discussion ensued relative to the citizen panel member selection process; that mandatory training is required prior to citizen members being appointed by the Mayor and City Council to the panel; that the citizen panel members could serve two two-year terms; that the Police panel member selection is determined by a vote of the Police union members; and that Commander Van Amburg currently recommends the citizen panel members to the City Manager who makes the ultimate decision.

Commander Van Amburg stated that with regard to the incident review process, the panel members are required to review the case information with a member of the Internal Affairs staff. She commented that in addition, the panel members are also provided an overview of the incident and must review the investigative materials prior to the panel convening.

Commander Van Amburg concluded her remarks by noting that once a quorum of five panel members is assembled to review the incident, the Internal Affairs Sergeant who investigated the case makes a formal presentation to the panel, responds to questions and then departs the hearing room. She added that further discussion occurs among the panel, and pending its decision, five affirmative votes are required to support a recommendation and all members must sign a document outlining their decision.

Ms. Buren referred to her Ph.D. dissertation entitled "An Evaluation of Citizen Oversight in Tempe, Arizona Police Department" and provided a brief statistical analysis of portions of the data contained therein.

Chairman Kavanaugh requested that staff provide the Committeemembers with copies of the Phoenix and Tempe Power Point presentations.

Chairman Kavanaugh thanked Commander Van Amburg and Ms. Buren for their presentations.

(Committeemember Hughes left the meeting at 5:45 p.m.)

4. Hear and discuss a report on feedback received from Town Hall meetings and the web-based survey.

Due to time constraints, this item was continued to the May 12, 2004 meeting.

5. Discuss and consider legal issues.

City Attorney Debbie Spinner reported that she was requested by Chairman Kavanaugh to provide the Committeemembers with a framework relative to options they may wish to recommend to the City Council regarding Police oversight issues and whether such recommendations would or would not require a change to the City Charter.

Ms. Spinner explained that the last sentence in Section 501 (A) Boards and Commissions of the City Charter states, "A civilian Police Review Board is prohibited by this Charter." She commented that because of limited legislative history regarding a specific definition of "civilian Police Review Board," she is looking outside the definition relative to a general meaning of the term.

Ms. Spinner stated that in regards to the establishment of certain parameters for the Committee, in her opinion, the above-referenced Charter language does not mean that Mesa citizens could not provide any feedback to the Police Department, and specifically the Police Chief, relative to departmental incidents. She cautioned, however, certain limitations would exist. Ms. Spinner noted, as an example, that if a civilian board was created to investigate the conduct of an officer and to determine whether the individual had complied with department policies, and the panel subsequently made recommendations regarding discipline to the Police Chief, in her opinion, that would constitute a civilian Police Review Board. She commented that the two examples she cited would appear to be the opposite ends of a spectrum and that the Committee may wish to reach a more moderate option regarding what it could recommend to the City Council which would not require a change to the Charter. She added that in the alternative, if the Committee wished to pursue recommendations beyond that, it could indeed recommend a Charter change to the Council.

Ms. Spinner further opined that the Committee could recommend to the Council that citizen feedback to the Police Chief be permitted relative to broad issues that would not violate the Charter. She cited examples of such feedback including how the Police Department could more effectively disseminate information to the public, as well as recommendations for additional training or policy revisions.

Ms. Spinner advised that she would be uncomfortable if the Committee were to recommend to the Council, as an illustration, that the Council adopt some type of incident-specific review process (including determining if an officer complied with Department policy and recommending disciplinary action) without first making a change to the Charter. She stated that the Committee could recommend to the Council, if deemed appropriate, that the Council propose a Charter amendment to strike the above-referenced language regarding the prohibition of a civilian Police Review Board. She noted that if Mesa voters approved the Charter amendment, the Council could subsequently consider further recommendations of the Committee.

Committeemember Walters commented that in listening to the Phoenix and Tempe presentations, it was her impression that the Phoenix model "did not feel" like a citizen review board due to the fact that the panel was not composed of a majority of citizens. She stated that the Tempe model, in comparison, was comprised of a preponderance of citizens and limited Police members.

Committeemember Pomeroy concurred with Committeemember Walters' comments and added that the Phoenix Use of Force Board permits the Police Chief to override the recommendations of the Board and that the Council does not participate in the process in any manner. He questioned Ms. Spinner's analysis of this matter with regard to the City of Mesa.

In response to Committeemembers Walters and Pomeroy's comments, Ms. Spinner stated that in her opinion, she does not believe that the Mesa Police Chief could establish a committee that constitutes a civilian Police Review Board. She stated that although the "civilian Police Review Board" language is contained in a provision in the Charter that is generally discussing the Council's establishment of boards and commissions, it doesn't say that the Council cannot establish such a board. It simply states, "A civilian Police Review Board is prohibited by this Charter." She commented that they would be "skirting around" the language of the Charter if the Council didn't establish a civilian Police Review Board, but the Police Chief could.

Committeemember Walters stated that she and Ms. Spinner have somewhat differing viewpoints regarding the definition of a civilian Police Review Board. She noted that in her opinion, a board that includes "a couple of citizens" does not necessarily constitute a civilian Police Review Board. Committeemember Walters also questioned at what point it becomes a civilian Police Review Board when, for instance, the Police Department utilizes its current practices to review a use of force incident and one or two citizens are added to a board which already includes five Police panel members.

Ms. Spinner concurred with Committeemember Walters' concerns. She reiterated that there is no clear definition of a civilian Police Review Board and that she is struggling with specific recommendations to make to the Committeemembers regarding this matter. She added that she is simply guessing at this point what the Committee might be interested in recommending to the Council and that she envisions an ongoing dialogue between herself and the members in an effort to resolve the matter.

Discussion ensued relative to the fact that neither Phoenix nor Tempe's City Charters contain prohibitions which prevented those municipalities from forming the Use of Force Review Board and Citizen Review Board respectively; and the fact that when the City Charter was originally drafted, the Board of Freeholders included the prohibition of a civilian Police Review Board to ensure that the citizenry would not "second guess" the Police Department.

Chairman Kavanaugh thanked Ms. Spinner for her input.

6. Discuss and consider future work of the Committee.

Special Assistant to the City Manager Eric Norenberg advised that he would provide the Committee with copies of today's Power Point presentations for their review and would also distribute audio recordings to those individuals who were unable to attend the meeting.

Chairman Kavanaugh stated that once the Committee obtains the additional information referenced by Mr. Norenberg and hears a report from the City's consultant regarding the feedback obtained from the Town Hall meetings and web-based survey, it is his hope that the Committee would begin the process of formulating its recommendations to the City Council relative to this matter.

Chairman Kavanaugh expressed appreciation to the Committeemembers for their attendance and apologized for the meeting extending beyond 6:00 p.m.

7. Items from citizens present.

There were no items from citizens present.

8. Adjournment.

Without objection, the Ad Hoc Committee to Study Police Oversight Meeting adjourned at 6:10 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 28th day of April, 2004. 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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