

**PUBLIC SAFETY, COURTS & CIVIL SERVICE MEETING
JULY 16, 2020**

Members Present: Council Member Allison Hiltz, Chair
Council Member Curtis Gardner, Vice Chair
Council Member Angela Lawson, Member
Council Member Alison Coombs
Council Member Juan Marcano
Council Member Marsha Berzins

Others Present: J. Batchelor, A. Robnett, C. Hills, C. Andersen, D. Parker, D. Cooper, D. Giordano, D. Wilson, F. Gray, G. Begnaud, G. Koumantakis, H. Glidden, I. Evans, J. Bergeron, J. Twombly, J. Campbell, L. Condreay, M. Dudley, M. Longshore, M. Chapman, M. Fassio, M. Moore, S. Day, S. Wright, V. Wilson, W. Lippman, Z. DeBoyes

REVIEW/APPROVAL OF MINUTES

June minutes approved and signed.

ANNOUNCEMENTS

None.

CONSENT ITEMS

None.

INDEPENDENT INVESTIGATION UPDATE

Summary of Issue and Discussion

Council Member Hiltz advised that the committee has been in discussions with consultant, Jonathan Smith, about conducting a comprehensive and thorough investigation into the incident with Elijah McClain that occurred on August 24, 2019, and his subsequent death. Mr. Smith is the Executive Director of the Washington Lawyer’s Committee for Civil Rights and Urban Affairs. Prior to his government services, Mr. Smith was the Executive Director of the Legal Aid Society of the District of Columbia, the Public Justice Center in Baltimore, Maryland, and the D.C. Prisoners’ Legal Services Project.

CM Hiltz and City Manager Twombly are continuing to work together to establish the scope of the investigation and then move into discussions about recommendations. City Manager Twombly explained the scope they have been discussing includes investigating the actions of the police officers and fire fighter/paramedics on the scene August 24, 2019, that responded to a call about a suspicious person. The investigator will be asked to look at the actions of the police officers in response to the call, the subsequent investigation, and the internal force review of the incident; the actions of the Aurora Fire Rescue personnel on-scene; and the administration of ketamine with regard to all applicable laws, and best emergency medical protocols. The investigation should be conducted in light of the APD and AFR policies, directives, procedures, practices, and training. Evaluations will be conducted with respect to applicable laws, best practices, national policing, and emergency response standards. And recommendations provided with regard to APD and AFR policies, directives, procedures, practices, and training.

CM Lawson asked for clarification on the scope and if it is focused on just the incident involving Elijah McClain. CM Hiltz confirmed this investigation will be specifically looking into the incident involving

Elijah McClain but conversations around more holistic issues with the department are taking place. CM Lawson asked if a timeframe to complete the investigation is included. CM Hiltz noted that the request is to have the investigation and report done as quickly as possible. Part of the scope of work will be developed with the consultant hired to do the investigation. Coordination will also need to be done with the Attorney General's Office to make sure they are working in tandem. City Manager Twombly can provide CM Lawson with the scope of work.

CM Hiltz explained that she and CM Gardner had a conversation with Mr. Smith approximately two weeks ago and discussed the goals of the investigation, his experience, and got information in terms of what they would like to see with regard to working with the AG's office and potential obstacles they might face. They are still looking for someone with medical experience with regard to the ketamine aspect. They have found potential issues with conflict of interest and want to bring someone on that is not local. They hope to have a name by the end of the week to be brought forward to full council. CM Lawson supports moving this forward to full council but expressed concern that the other committee members were having conversations and had information that she did not have or was not included in. CM Hiltz explained she had requested that the full committee be included in the meeting that was held with Mr. Smith and will look into the circumstances of her not being invited.

Outcome

Move forward to full council.

Follow-up Action

None.

DISCIPLINARY PROCESS INCLUDING GRIEVANCE PROCESS

Summary of Issue and Discussion

Police Deputy Chief Harry Glidden presented this item to the committee. All full-time public employees have a recognized Constitutionally protected property interest in their continued employment. This includes police officers, whether or not there is a union. This is covered under the 14th Amendment of the US Constitution as well as City Charter, and numerous court cases. Because of this property interest, officers are required to have a due process for their continued employment. They cannot be disciplined or terminated without their proper due process. Generally, the process that is due a public employee is laid out in local ordinances and charters, case law, and, for some public employees, their collective bargaining agreement. The process due for APD officers is set forth in City Charter, applicable court case law, and certain policies. The Collective Bargaining Agreement (CBA) does not have a role in discipline. Per the City Charter, discipline is exclusively a management right. Therefore, discipline is not a topic for negotiation and is not a term covered by the CBA. An officer can be disciplined for a sustained violation of policy. Discipline is imposed by the Chief of Police.

Any misconduct that appears to warrant discipline greater than a Written Reprimand requires an investigation, either at the District level or in Internal Affairs. An officer is disciplined for any violation of department policy and the only discipline not subject to the appeal is a written reprimand. Written reprimand is the lowest form of discipline in APD. An officer can be terminated for a serious violation of Department policy, committing a felony, or violating a POST rule that would result in decertification. An officer would be put on automatic unpaid administrative leave when charged with a felony. There are two types of investigations. Administrative Investigations which can be conducted at the District level and are cases where the violation of policy would not result in discipline greater than 40 hours suspension. The District Commander will consult with the Internal Affairs Bureau (IAB) to ensure the comparable discipline is less than 40 hours and the officer doesn't have a history of misconduct that would result in progressive discipline

of more than 40 hours. The officer and the District Commander meet and come to an agreement on discipline. The officer must admit to the violation of policy. Internal Affairs Bureau Investigations are cases where the Chief or designee has ordered the investigation. These cases are typically more serious, more complicated, implicates a public trust issue, or the officer does not acknowledge wrongdoing. The complaint is received and logged, the IAB investigation is initiated including interviews, gathering of evidence, and preparation of the file. Officers are allowed to have representatives with them and review the entire case prior to it being sent forward. The IAB Commander then reviews the file and makes recommended findings that are included in the file. The file is then given to the Chief's Office for review by the officers' chain of command. After review, the CRB is convened to determine recommended discipline. The CRB is given a presentation from the IAB Commander, they discuss the details of the case, and review the officer's history and comparable discipline. The CRB's recommendation and the file is then given to the Chief for review. The Chief can accept or reject the CRB recommendations. The Chief has a pre-disciplinary meeting with the officer as mandated by *Loudermill vs Cleveland Board of Education*. The officer can make a verbal statement to the Chief at that time or submit a written statement within three days, per Charter. The Chief can order an Independent Review Board (IRB) or the officer can request an IRB through the Chief. The IRB is comprised of citizens and officers, chosen at random, and the process is managed by Human Resources. The IRB reviews the case, meets to discuss the case, and provides recommended discipline to the Chief. It is the discretion of the Chief as to whether or not the IRB will be granted if requested by the officer. A Final Discipline meeting is then set where the Chief issues the Discipline Order.

Only the Chief can implement discipline within the organization. If discipline is over 1/3 the officers' monthly salary, up to and including termination, the Chief must get approval from the Deputy City Manager prior to the discipline being imposed. The officer can appeal the discipline to the Civil Service Commission (CSC). The CSC will hold a hearing regarding the case and the discipline imposed. They can uphold, overturn, or modify the discipline imposed. If the officer or the Chief are not satisfied with the CSC decision, they can appeal to the District Court. The District Court decision can be appealed to the Colorado Court of Appeals.

CM Gardner asked what the Department's philosophy around punishment versus behavioral change is. A lot of times it's better to try to change the behavior. Chief Wilson explained there are many times that discipline is given in conjunction with additional training to correct the mistake or behavior. The discipline is documented for tracking of progressive discipline. There are times when the violation is so egregious that corrective discipline may not be appropriate. The Chief reviews comparable discipline but there isn't a discipline matrix that must be adhered to. CM Gardner asked if tracking is being done for early warning signs to indicate there might be other problems going on that need to be addressed. Chief Wilson explained there is tracking in the PEIS system that assigns points for low sick leave balances, incidents of Use of Force, and complaints. Once the predetermined threshold of points is accumulated, a supervisor's review is conducted, and they meet with the employee to discuss. Deputy Chief Glidden added that there are a variety of things that go into the early warning system. Supervisors must meet with the employee and the documented conversation is reviewed by the next supervisor in the chain of command. If necessary, the Employee Support and Wellness Unit is contacted for assistance. CM Gardner noted that it was said earlier that the IRB is a function of HR and separate from the PD. He asked where the policy comes from that the Chief can deny an officer's request for IRB. HR Director Dianna Giordano explained it is an HR policy and part of the policy is that request is made to the Chief and he/she can choose to submit that request to HR. The intent of the IRB process is to make a recommendation to the Chief, but if there is a course of discipline that has already been defined it may not follow the IRB process. CM Gardner noted that he believes a report of discipline should be created to be shared with the community as an additional transparency measure. He asked what the Chief's thoughts were about developing a discipline matrix and would like to meet with her offline to discuss. Chief Wilson is open to the discussion and noted that she would want the matrix to have a range of discipline because each case is different. CM Gardner agreed and added that having discipline

entirely subjective can sometimes give the community the impression that different officers are given different discipline for reasons that the community may not know. Having the matrix can provide a bit of certainty.

CM Lawson asked if the PD keeps record of or tracks non-discipline, such as corrective actions and discipline actions. Deputy Chief Glidden explained there is a corrective action process for minor policy violations. If they have performance issues, they would be put on a performance plan and if they have behavior issues, they would be put on a behavior improvement plan. All of these are monitored and the officer would receive regular progress evaluations. Chief Wilson added that all of these are tracked in AIM and as the officers move assignments their supervisors can look at their past performances. CM Lawson asked if there is a corrective action grievance process and if continuous issues are referred to IAB for investigation. Chief Wilson explained that repeated mistakes or behavior could rise to the level of an IAB investigation. She added that there isn't an appeals process for corrective actions. The APD tried to start at the lowest threshold possible by the supervisors meeting with the employee to talk about and address the issues before handing out discipline. Deputy Chief Glidden added that the PD institutes progressive discipline starting with counseling/corrective actions, then written reprimands, if the issues continue, the discipline could be suspension or discipline up to and including termination.

CM Hiltz noted that the Committee will be requesting a presentation from the Civil Service Commission on hiring, firing, and the appeal process. She would like to know what the average length of time to go through the Civil Service Appeals Process is and why it takes so long. She noted that there is an argument to make that the length of time for appeals undermines public trust in the process and the department. Chief Wilson agreed that this question would be best addressed by the Civil Service Commission. She added that the hearings are much like a trial, where both sides can request extensions to prepare their cases. City Attorney Isabelle Evans confirmed both sides have the ability to request extensions. Typically, one or both sides makes an extension request from the initial setting because, per Charter, the initial setting is one day after the 15 to 30 days after the discipline is imposed. This is not usually enough time for case preparation and clearing calendars for all involved. Additionally, case hearings frequently take more than one day to be heard. Cases are set as they are received so a new case would be scheduled after all the others already in process. CM Hiltz asked for staff to expand on the Personnel Intervention System. Deputy Chief Glidden explained many incidents are automatically tracked through the CAD system to AIM and each incident is assigned points that are connected to the officers. Once they reach a threshold of points the system generates a report that is sent to the officers' supervisor. A conversation is mandated by policy with that officer and the supervisor. The supervisor is tasked with finding out what the issues is and if it can be addressed. CM Hiltz asked how often the early warning intervention is triggered. Looking at the last few years, she's curious if any of the terminated employees triggered that threshold or if the system isn't providing the intended results. Chief Wilson explained that staff could come back with those statistics and agreed that further review of the program could be done to make it more vibrant and make sure that there's more involvement and improvements to be made. CM Hiltz noted that there are challenges specifically related to alcohol and mental health and wants to make sure the point system is used to help people move in the right direction before it's too late. Chief Wilson agrees that this issue is extremely important and would like to include a presentation from Psychological Services at a future meeting.

Deputy Chief Glidden provided the Grievance Process to the committee. He explained it is defined in Article 14 of the CBA. This process is specifically related to complaints about violations of the CBA. The officers submit the complaint through the Collection Bargaining Unit to the Chief. There are timelines that must be adhered to. The officer can appeal a grievance decision to the City Manager or designee and arbitration after the City Manager responds. Grievances are not related to discipline. Examples of what a grievance complaint might be about are equal pay for equal jobs, overtime rule applications, assignments, or maintenance of standards.

CM Lawson asked which directive says that the Chief can refuse an IRB if requested by the officer. Deputy Chief Glidden responded that the IRB process is found under Directive 10.02.

Outcome

Information Only.

Follow-up Action

Staff will provide PEIS stats to the committee.

USE OF FORCE POLICY & TRAINING FOLLOW-UP

Summary of Issue and Discussion

The Committee submitted questions for staff's response and those were included in the backup for review prior to the meeting.

CM Hiltz asked about the tier zero use of force refence in the backup. She noted that it looks like guns are being drawn on more people than are being handcuffed. She would like to know why that is. Chief Wilson explained there are situations, such as felony stops, where officers are trained to have their guns drawn while giving orders. There are many reasons that an officer could draw their weapon. Former Chief Metz implemented the tracking of these cases some time ago. Handcuffing comes into effect where there is an actual arrest or when someone is combative and they need to be restrained while the call is being assessed. CM Hiltz noted that tracking is not done on use of force for medical, mental, or emotional incidents and she would like to know why not. There are few instances in the backup where data is missing or simply not collected. She would like to know if there is a technological limitation into why the data isn't being reported and collected. Chief Wilson clarified a tier zero is reported when an officer uncuffs someone and they contact a supervisor to let them know an arrest is not being made. This is to track that people aren't being handcuffed for no reason. Chief Wilson added that she believes any use of force, even on medical calls, is being documented. Division Chief Lee Condrey confirmed this is correct. They are documented just not separated for medical purposes. This can be done in the future if requested. CM Hiltz added that more frequent training on use of force policies, less-lethal deployment, ethics, and weaponless control techniques should be considered. CM Hiltz noted that the data on the 2019 Use of Force complaints is concerning and she has a hard time believing there were zero complaints of use of force or IAB investigations for that whole year. She asked if it's possible to go back and review the data for accuracy. Commander Marcus Dudley explained there are multiple policies that could pertain to lack of de-escalation. If each policy violation was reviewed, they might find something that pertains to IAB Investigations. But when looking specifically at the Police-Community Relations policy there were no investigations done in IA for 2019. CM Hiltz thanked him for the clarification.

CM Lawson referenced pages provided in the backup and use of force percentages by race. She would like someone to explain why use of force is used more on black people than any other race. She understands the use of force is per incident but noted it's still questionable that the percentages amongst black people are so high Chief Wilson confirmed the data was per incident. Even with some of the reforms and Senate Bills, this will help for incident reviews. The question is reasonable and improved tracking in general can be used to identify disparate treatment in the community. CM Lawson asked why the data is not currently tracked because what she is interested in is understanding the type of force used and how it is correlated to the race of the population. Looking at the data, she can see the concerns people are having, especially black people, due to the high numbers of use of force used upon them She doesn't understand why some data wasn't available for these reports because it should be in the officer's reports when written. She asked, is there any way to get additional data from Colorado Springs and Denver to see holistically of what use of force by race looks like in other jurisdictions. The numbers are very disturbing and there is a bigger picture that needs to

be looked at and examined. Chief Wilson confirmed major city comparisons in Colorado can be requested. She agrees that more review on this is needed. APD is looking at new programs to help filter the data and something to work towards. CM Lawson reiterated her concern about the percentages in the backup and noted there is much to work on. CM Hiltz asked staff to also include lawsuit payout from other agencies.

Outcome

Information Only.

Follow-up Action

Staff will provide use of force comparisons and payouts from other Colorado agencies to the Committee.

VETERANS COURT RESOLUTION

Summary of Issue and Discussion

Presiding Judge Shawn Day presented this resolution request to the Committee. He noted that discussions about the Veterans Treatment Court date back several years. After meeting with council members about this project it is now moving forward. The program is still in the very early stages of building out the program and there may be some thoughts and ideas from Council about using resolutions versus ordinance or vice versa, and he will defer to the City Attorney's Office to answer those questions. This program will serve a very underserved population, the nation's veterans. CM Hiltz noted that she has been working on this for over a year is excited to finally see this on the agenda and supports this moving forward as an alternative criminal justice program. Committee approves moving it forward to Study Session. Judge Day added that the implementation of the program include the Justice and Vets Organization on August 17, 18 and 19 and will rely on their expertise to build out the program and very excited to be accepted into their program.

Outcome

Approved to moved forward to the next Study Session.

Follow-up Action

None.

MISCELLANEOUS ITEMS FOR CONSIDERATION

None.

NEXT MEETING AGENDA ITEMS

The Committee will meet twice a month for July and August. The Committee does not have any conflicts for July 30, August 13, and August 27. Agenda items for July 30 will include Community Police Task Force Update, Lobbying Positions of Membership Organizations, Fitzsimons Campus Response, and Crime Stats from January through June 2020. August items include follow-up from items in this meeting, Fireworks, No-Knock Warrant Ordinance, a presentation of the Employee Support and Wellness Unit to include Psych services with Dr. Brower. CM Hiltz requested the Civil Service presentation related to recruiting and hiring process including questions asked and oral boards, and appeals process occur in late August or September. CM Gardner asked for DOJ findings related to CSC and would like that to be included in CSC presentation.

Meeting adjourned at 12:20pm

APPROVED: _____

Allison Hiltz, Chair