

**PUBLIC SAFETY, COURTS & CIVIL SERVICE MEETING**  
**NOVEMBER 19, 2020**

Members Present: Council Member Allison Hiltz, Chair  
Council Member Curtis Gardner, Vice Chair  
Council Member Angela Lawson, Member  
Mayor Pro Tem Nicole Johnston  
Council Member Francois Bergan  
Council Member Alison Coombs  
Council Member Crystal Murillo  
Council Member Juan Marcano  
Council Member Marsha Berzins

Others Present: J. Batchelor, A. Robnett, A. Jahanian, B. Hoffman, C. Juul, C. Andersen, D. Parker, D. Giordano, D. Jones, D. Wilson, F. Gray, H. Hernandez, H. Glidden, I. Evans, J. Lanigan, J. Bergeron, J. Twombly, J. Campbell, J. Schneebeck, J. Heckman, C. Amsler, M. Fassio, M. Hays, M. Cain, M. Chapman, M. Platt, M. Moore, N. Rodgers, N. Wishmeyer, R. Gambetta, R. Payan, R. Gambetta-Alvarado, R. Venegas, R. Weber, S. Day, S. Stowell, S. Redfearn, T. Velasquez, T. Buneta, V. Wilson, Z. DeBoyes

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**REVIEW/APPROVAL OF MINUTES**

October 15, 2020 minutes approved.

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**ANNOUNCEMENTS**

None.

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**CONSENT ITEMS**

2015-2020 Separation Survey Stats

CM Gardner thanked staff for the additional information. This demonstrates what some of the issues are. It looks like pay and leadership are common reasons in Fire. Police is more varied, but reasons such as working conditions, and leadership. Other reasons noted this year are different from past years. He would like to see a presentation on what staff is doing with the information, if they are making changes or not. CM Hiltz would like to see a presentation as well. A presentation from Fire and Police is requested for January or February 2021.

Use of Force Statistics Follow-up

CM Hiltz thanked staff for putting all the stats into percentage form. CM Lawson thanked Chief Wilson and Deputy Chief Parker for breaking down the statistics. She is aware that Chief Wilson is working collaboratively to address the issues and hopes that seeing the statistics that staff start to see some of the problems. She has been criticized for bringing it up, but the statistics reflected show there is a lot of racial disparity. She's hoping with the training and initiatives that, when presented again, the stats of use of force of certain demographics will be lower. Chief Wilson thanked CM Lawson for her leadership and insight on the item. She hopes to get programs, such as Benchmark Analytics, for better tracking and reports.

Presentation of the 2021 Audit Plan for the new Internal Police Auditor

There was no discussion on this item.

### Police Department Non-Criminal Contact Juvenile Procedures

CM Hiltz thanked Deputy Chief Parker for providing this information. The request was for clarification on the procedures in place to make sure juveniles get to a safe place if they are involved in an incident. She noted that each situation is a little bit different.

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### **COMMUNITY POLICE TASK FORCE UPDATE**

#### Summary of Issue and Discussion

Mayor Pro Tem Johnston provided an update to the Committee. The Task Force continues to meet twice a month. This past Saturday they held a three-hour workshop with the task force members. They continue to work on recommendations. The scope is the community review systems as well as the recommendation of improving communication between APD and the community. They are focused on that task as outlined in the resolution. They are scheduled to be on time and present the recommendations to Council by the end of the year. The next meeting is November 24, 2020 at 6:30pm.

#### Outcome

Information Only

#### Follow-up Action

None.

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### **INVESTIGATIONS STATUS UPDATE**

#### Summary of Issue and Discussion

City Manager Jim Twombly provided an updated on the multiple investigations to the Committee. The Elijah McClain investigation being led by Jonathan Smith. They continue to work and conduct interviews. They have requested quite a bit of information such as 911 audio, Standard Operating Procedures (SOPs) and policies from Police and Fire, and additional interview requests of staff. They will be getting into the report writing stage likely after Thanksgiving. The presentation of findings will likely be in January at a Study Session. Mr. Smith also requested names of community stakeholders to get community input and perspective. 21CP is conducting the in-depth review of APD. They have six or seven experts, each looking at different aspects. They will be looking at the public engagement piece likely in the coming months in addition to the review of the polices, directives, training, etc. In light of the presentation from the Civil Service Commission to this Committee in September, and concerns that were raised, he asked 21CP to carve out the hiring piece of the study and expedite it. Quite a bit of information on recruitment and hiring practices were provided to them and he will be checking with them on their progress after Thanksgiving. CM Twombly is providing new reports and articles to the investigators so they are up to speed as they are developing.

CM Hiltz appreciates the updates and that someone from the outside is looking at the recruitment and hiring component.

#### Outcome

Information Only.

#### Follow-up Action

None.

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### **LEGAL DEFENSE FUND ORDINANCE**

#### Summary of Issue and Discussion

CM Crystal Murillo introduced this ordinance proposal to the Committee. This ordinance and the following

ordinance on Federal Immigration Cooperation and Issues are somewhat tied together for creating a safer community. The Immigrant Legal Defense Fund would be implemented to help provide access to legal representation for immigrant and refugee community members. The other proposed ordinance, Safer Aurora, has to do with creating boundaries between federal immigration cooperation and the local police department. Council has had derivatives of this conversation before. She explained they want to help support the process of building trust between the community and police department and couldn't ignore the nexus between social justice issues and the Black Lives Matter movement and how important it's been in Aurora. In addition to the nexus of marginalized communities having representation and what that might look like in immigrant communities. Because of the impacts of COVID, keeping people with their families and being able to provide for them economically keeps people in their homes, and that's where it's safe when talking about prioritizing public health.

CM Coombs added that there has been a major outbreak of COVID at the GEO Facility between the detainees and staff, putting a finer point on the importance of making sure people have access to representation and don't end up unnecessarily in a place where they are likely to contract COVID.

Deputy City Attorney Nancy Rodgers provided the basic foundational points on the Immigrant Legal Defense Fund Ordinance. She explained this establishes a fund that would be overseen by the Office of International Affairs. They would contract with a foundation to manage the fund. The ordinance says that it would start no later than June 1, 2021 and subject to annual appropriation by Council. There is an executive committee that would decide how the fund would be managed and rules and regulations for the fund. The ordinance provides structure for this committee and outlines who would be eligible, non-citizens that could benefit from this fund, what would be the requirements for the type of cases that could be supported, and financial limits for eligibility of those that apply. There is also discussion about the applicants, people who would be providing the legal defense out of this fund, and the requirements for those individuals. There is also a section outlining reporting. The applicants who benefit from this fund have to explain how the fund would be used, limited by attorney-client privilege. This would be required so the city can be sure that the funds were used in the defense of someone during an immigration proceeding. The other regulations and requirements would be established by the executive committee and they would be overseen by the City Attorney's Office.

CM Gardner noted that staff had previously indicated that the Office of International Immigrant Affairs didn't have the proper expertise or staff to administer this program. He asked if that had changed and if staff has the ability to assume this new responsibility. N. Rodgers explained that this would be a partnership with a foundation and the City Attorney's Office. Intergovernmental Relations Manager, Ricardo Gambetta-Alvarado explained the plan is to work with the local foundation who are going to be delivering the legal services. They will over see this partnership and the process. Deputy City Manager Roberto Venegas explained this proposal creates a third party that would essentially be responsible for the majority of the vetting of the legal defense requests. The responsibility would not fall to the Office of International Immigrant Affairs, because they don't have the legal or technical expertise, but they feel comfortable in the oversight role as proposed. CM Murillo explained the initial proposal didn't outline the structure in this way. CM Gardner asked if there has been discussion on annual appropriation from the city in regard to what that would be and how it would be used. CM Murillo explained that it would be based on each budget cycle. They can't commit future funds and the budget needs to be balanced. The fund will be there, whether it's funded by the City or not. For this initial year, they would like to get the structure set up. Previous budget conversations indicated \$86,000 unallocated one-time funds and she suggested \$50,000 for this item. CM Gardner noted that there isn't a budget for this. N. Rodgers confirmed he was correct. This ordinance is being used to lay out the structure if it's funded. If it's not funded, the restrictions in the ordinance wouldn't apply and the next steps would be supplemental budget request. They didn't want to include the budget request in this legislative piece. DCM Batchelor confirmed and added this will establish the fund within city

code and the next step would be for Council to consider an appropriation request as part of a supplemental or part of the 2022 annual budget adoption. CM Gardner asked for the City Attorney's Office to speak about right to legal counsel, criminal versus civil, and felonies versus misdemeanors. N. Rodgers explained this would not cover criminal defense. CM Gardner asked for clarification about if the City was responsible to pay for legal counsel for someone that would not necessarily be afforded it under the Constitution. N. Rodgers explained that would be a policy decision.

CM Lawson asked how many people would be expected to benefit from this program. Legal defense is very costly and \$50,000 for the first year likely wouldn't go as far as needed and there would be a request for more money. CM Murillo agreed legal counsel fees will vary and she doesn't know how many people could benefit with that amount of funding. If that's something to pay attention to moving forward to get a sense of how many cases are funded, she would support that. CM Lawson explained legal costs can be very expensive depending on the case and she wants to make sure this fund helps more than just a couple people. She would like more information. CM Murillo added that she will make note to provide ways to answer this question should it go to Study Session. Outside speaker, Arash Jahanian, explained costs do vary. The services included would apply to people in removal proceedings, including bond proceedings and defense from deportation. Representation in just a bond proceeding could cost \$5,000 and \$10,000 for more extensive representation. He noted that the amount being discussed wouldn't help a huge number of individuals but could be supplemented by funds from private sources. He noted that it's important to recognize that while there isn't a constitutional right to appointed counsel on immigration proceedings, jurisdictions across the country have taken this on because of the dire consequences that people face, such as life and death situations, and people's liberty. He would argue that even if only one case was impacted, it would be profound. However, he believes this will help more people. The applicants presented to the foundation would be evaluated and possibly matched by private funding. At a minimum, a handful of cases and potentially more could benefit. CM Lawson noted she still has concerns but thanked everyone for the explanation.

CM Bergan asked why attorneys don't just offer free services and have this be a donation-funded organization. Have a local non-profit foundation vet the applicants and raise the money via donations and fund it themselves. Why use taxpayer dollars? CM Coombs explained that in consideration of the population of Aurora, which is 20% foreign-born residents, they have an interest both economically and socially, as a city, to ensure that those people are not subject to unreasonable or unjust removal proceedings that disrupt their businesses, their families, and our community. There will be fundraising. But as a city, making that statement that we see ourselves as being part of the solution and protection of the community members. CM Bergan asked if it was legal to use taxpayer dollars. N. Rodgers said it is a policy decision, not a legal one.

#### Outcome

Committee approves to move forward to Study Session.

#### Follow-up Action

None.

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## **FEDERAL IMMIGRATION COOPERATION AND ISSUES ORDINANCE**

### Summary of Issue and Discussion

N. Rodgers explained this is a comprehensive ordinance, as mentioned earlier by CM Murillo, that focuses on the level of cooperation and limitations with Federal Immigration Enforcement. The first component is a restriction on city employees from using any city fund or resources to assist in the enforcement of federal immigration laws. There is a limitation on employees prohibiting them from notifying or responding to requests or information from immigration authorities short of a judicial order or judicial warrant. There is a provision on safe spaces which mandates that employees not permit federal immigration into city public places for the purpose of enforcing immigration actions when they don't have a warrant. This would apply

to city facilities as well as those who get funding from the city through contracts. They would be required, in the contract, to create a safe space in the publicly open areas. The last piece of this ordinance is a restriction on 287G agreements, which is an agreement in law enforcement where police officers can be deputized to do federal immigration enforcement. She noted that Aurora has not and will not do a 287G.

CM Hiltz noted that she will likely introduce a couple amendments to make these ordinances stronger and she supports moving it forward. She would like a more accurate count from GEO on confirmed COVID cases. She would like this to include non-sworn personnel as well. N. Rodgers explained that the ordinance is written to cover all city employees. CM Hiltz would like to add that if an officer goes on a call and they think someone might be undocumented, she would like to have a legal mechanism that would prohibit that officer from sharing that information while off duty. She wants to make it clear that information gained about immigration matters while working can't be shared outside of work and, while she believes the Chief could investigate these matters under the policy for Conduct Unbecoming, she wants it to be in law because chiefs can change. Her understanding is that the requirement for safe spaces can't be made retroactive in contracts currently in place. She would like to include an opt-in option for those organizations that are currently receiving funds so they can create a safe space and have that legal protection be the same as a city building without having to wait for the contract to come up again next year. She knows a lot of this is done already but these are some things she thinks could be added to drive it home.

CM Lawson noted that it appeared that city employees found to have violated this ordinance would not be subject to discipline or corrective action. N. Rodgers confirmed that they would be subject to discipline and would be an employment issue. The reason the section she noted is included in the ordinance is because it would not be subject to municipal prosecution. Should an employee violate the code, the remedy will be something in the employment context, whether it be corrective action or discipline by their supervisors. CM Lawson asked if the employee would then go through the personnel board to appeal any sustained discipline. N. Rodgers confirmed that was accurate.

Chief Wilson noted that APD already restricts officers from using information that they get in their daily activities as an officer. That applies to their personal life as well. She wanted to make sure this was clear as this goes forward.

#### Outcome

Committee approves to move forward to Study Session.

#### Follow-up Action

CM Hiltz will send amendment draft language she mentioned to CM Murillo.

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### **DISCIPLINE MATRIX RESOLUTION PROPOSAL**

#### Summary of Issue and Discussion

CM Gardner explained that this matrix is a formal schedule for disciplinary action. The reason for bringing this forward was some concerns he heard from the community in terms of why some officers receive certain discipline while others receive a different discipline. He thinks there is a lot that goes into the final decisions on discipline, but the community doesn't always have that information. A discipline matrix is standard for larger policy departments and it would be prudent for Aurora to have something similar. He did talk to Chief Wilson and one of the concerns she brought up was that the matrix still allows her to take into account the totality of the circumstances. He agrees with this. I would like to bring this forward as a resolution because it's a policy direction from Council. He doesn't want to micro-manage the actual development of the matrix because he thinks the Chief, community stakeholders, labor unions, the officers, and city management need to be involved in that process. They also talked about some of the groups he would like to see involved in

that. Examples of other major cities were included in the backup. Chief Wilson noted that she opposed to creating a discipline matrix. It will be very difficult to create one that will capture all the nuances of each case. Since she took over in January, she has terminated ten individuals and five others resigned or retired in lieu of termination. She doesn't want to put anything in place that would add to the difficulty of upholding those terminations. She wants to assure everyone that she is bringing a civilian voice to the Chief's Review Board in addition to HR staff being involved. HR Director, Dianna Giordano supports the position of the Chief. She has invited HR to be part of the process and the process is consistent in terms of what it evaluates and criteria for determining discipline. One of the things from the articles that she opposes, is taking extenuating or mitigating circumstances into consideration. One of the examples is car collision, the difference between just an accident or maybe someone that is intoxicated. There are so many mitigating circumstances. It removes the discretion that the Chief has been consistent with in her position. In addition, any trends that the organization might be experiences or areas of concern that might be on the rise, the Chief may want to focus on more severe discipline to mitigate those trends and the matrix will remove that ability. Work history is a factory that should be considered as well. A matrix will make it difficult to use discretion in some situations where it may be needed.

CM Hiltz said she came into the meeting supportive of moving this forward but didn't know HR felt so strongly about it. CM Lawson asked the Chief to clarify that if there's discipline, there's different aspects of the discipline that may not be the same and that would be hard to capture. She stated that just because the discipline is similar, there are different things that go into a discipline matter, such as their employment record. Chief Wilson confirmed that was correct. She added that if an employee disagrees with the discipline they receive, they are able to appeal to the Civil Service Commission. She believes the system is already working. She doesn't believe that a matrix would have been able to capture some of the cases that led to terminations this year. It would be able to capture the intensity or the public outcry of officer misconduct in a matrix.

City Manager Twombly added that he too was concerned by the possibility of a matrix. He looked over the Phoenix, AZ example and tried to walk through it with some of the cases that have come through APD in the last 18 months. He doesn't believe the matrix would have made any difference in some of the cases. He's not sure what the purpose of a matrix, such as the one provided by Phoenix, would be other than perhaps a false sense of security or accountability due to the latitude given to the Chief to terminate or not. With the discretion that is required and the fact that there are checks and balances in place, he's not sure what the benefit of going through the process to create a matrix would provide.

Mayor Pro Tem Johnston noted that she has some concerns and a comment. She and CM Lawson met a couple years after the Civil Service Commission overturned the termination of Lieutenant DeShazer. While it wasn't a discipline matrix, it was a matrix on discipline issues that the Civil Service Commission relied upon to make their decision. She has concerns that this could backfire if the Chief takes a strong stance that a person who could be terminated or face discipline could use this matrix to undermine an appropriate discipline decision. And by setting this in stone, it could happen more often with appeals during the Civil Service Commission. Chief Wilson noted that she agrees with MPT Johnston. Comparable discipline is reviewed now, but as the new Chief of Police and the many reforms taking place within the agency as well as across the nation, she needs to be able to move with the reforms and not be boxed into a matrix.

CM Bergan noted that she understands the intent behind the resolution, but she agrees with the HR director and Chief. It's too prescriptive and falls into micromanaging. It doesn't allow for outstanding variables that do need to be considered. She would prefer that they allow the Chief, Civil Service, and HR work on making improvements if needed rather than a matrix.

CM Hiltz stated that after hearing the concerns and MPT Johnston's point about how this could backfire,

she has concerns she hadn't previously thought of. She doesn't believe this is ready to move forward but does want to continue the conversation about having more predictable discipline without having unintended consequences. CM Lawson noted that after reading the materials and after the points made, she believes there are too many variables, and this wouldn't be a good thing to do at this point. She does not support moving this forward. CM Gardner said he will remove the item.

#### Outcome

Committee does not approve to move forward to Study Session.

#### Follow-up Action

None.

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### **ROCKY MOUNTAIN PARTNERSHIP PROPOSAL**

#### Summary of Issue and Discussion

Mayor Pro Tem Johnston noted that there was a meeting attended by Council over the Summer that discussed violence in the city and collective impact model. As the city moves forward, they have talked to one of the partners of Rocky Mountain Partnership about joining their membership. There are fees associated with the membership. She looks at it as an investment opportunity as they look at data-driven policy and having a subject matter expertise organization that can help facilitate that would be something the PSC should look at and, with support, present to full council. DCM Batchelor added that this stemmed from some discussions that took place over the summer. They were able to learn a little bit about the Collective Impact Model employed by Rocky Mountain Partnership. It was thought to be a beneficial program based on comments from council regarding making sure county partners are at the table when having conversation such as youth violence. Adams County is also involved in the RMP.

RMP CEO Becky Hoffman was in attendance to provide more information or answer any questions. She added that they are committed to the process that it takes to get systematic change and eliminate racial disparities and equity gaps. They would love the opportunity to expand to the City of Aurora. She explained that Collective Impact's goals are to achieve outcomes to work towards such as eliminating racial inequity and disparity gaps using qualitative and quantitative data. It's a top down and grassroots approach. The voice of the customer and how they are able to move from talk to action. There are four components of the Theory of Action; Shared community vision and communication, Evidence based decision making, Investment and Sustainability, and Collaborative Action.

#### Outcome

Committee approves to move forward to Study Session.

#### Follow-up Action

None.

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### **JOB SUITABILITY EVALUATIONS**

#### Summary of Issue and Discussion

CM Hiltz explained that this is a presentation provided to the Civil Service Commission and PSC members were not able to attend so they requested her to present to this Committee.

Dr. Jamie Brower, CEO of Brower Psychological. The backup included her PowerPoint presentation. CM Hiltz thanked her for the presentation. Looking through the material, there are best practices personal history indicators. She thinks a lot of the personal indicators have built-in institutional biases such as school suspensions and expulsions, interactions with police, etc. She thought maybe this is where the big difference

in disparate outcomes and demographics comes from. But then she saw the statistical review stating that isn't the case because this process has been certified as being statistically valid and not having those statistical biases. Having seen that, a lot of her questions dropped off. However, this part of the process is where there is a large drop off of certain demographic applicants. If the large drop off isn't because of the screening questions, why is there such a large drop in qualified applicants at this point? Is there something not being done on the front end or is there something else that is missing. Dr. Brower explained the California Post Psychological Screening dimensions are the best practices for the entire country. A lot of research is based on this. In 2014 the test developers did an evaluation of over 75,000 applicants looking to see if the personal history indicators have any potential for bias. What it ended up showing was little to no disparate impact on protected classes. The assumption may be that there may be more people of color who have had court related incidents or who perhaps have been expelled from school. However, the 2014 study suggests otherwise. Dr. Brower contacted some of her colleagues from around the country and they are looking to add an 11<sup>th</sup> dimension or criteria to the evaluation. This dimension would look at factors related to emotional intelligence such as openness, intellect, empathy, tolerance, flexibility, interpersonal skills, and cognitive control. The State of California recently put forward legislation on how to develop or create something that would help identify any issues with racial bias.

Dr. Brower noted that Aurora's failure rates are higher than other agencies that she works with. Her assumption is that it is because they end up getting people in their office that don't meet minimum qualifications. Some are no where near minimum qualifications. Possibly because it wasn't reported, or it wasn't caught before the applicant made it to the psychological exam. Her concerns are that there are a lot of people that come through and that's an attributing factor to the high fail rate. Other agencies complete very detailed backgrounds before the applicants make it to the psychological exam. Generally, background investigations take out about 25 to 30% of the applicants. Nationally, psychological exams take out approximately 30%. She doesn't know Aurora's system well enough to know if they are being reviewed and taken out on the front end or if they are being used as the first screening. If they are then the unfortunate part is that there will be a high failure rate at that part of the process.

CM Hiltz noted that this is very concerning because the city is paying her for these services and if the Civil Service Commission is sending unqualified applicants, then there is a waste of time and resources for things that should be picked up on the front end. It's concerning that she is getting sent applicants that don't even meet minimum qualifications, which results in a higher failure rate that can skew the data. It's another variable in already concerning data from the Civil Service Commission. She is sorry that Dr. Brower and her staff have to spend their time doing that. Dr. Brower added that to be somewhat fair, there are a number of applicants that are untruthful, and some applicants won't even report certain aspects of their history. They have to look at a lot of integrated data, not just one piece. There are some processes that can be put in place and different things that can be done. CM Hiltz noted that people will always lie but she doesn't buy that people lie more when they apply to Aurora than they do anywhere else. She would expect that to be fairly consistent.

CM Hiltz thanked Dr. Brower for the information and the backup. She would like to bring Civil Service back to talk about the front-end process before it gets to the psychological exam.

Outcome

Information Only.

Follow-up Action

None.

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**MISCELLANEOUS ITEMS FOR CONSIDERATION**

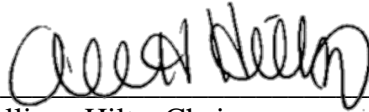
None.

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**NEXT MEETING AGENDA ITEMS**

Next meeting confirmed for December 10. Agenda items will include Restorative Justice and a summary of the items presented to the Public Safety Committee in 2020.

Meeting adjourned at 12:30pm

APPROVED:  \_\_\_\_\_  
Allison Hiltz, Chair